



# The Peralta Retiree

April — June 2010

Vol. 6 No. 3

<http://www.peraltaretirees.org>

## From the President...

by Jerry Herman, PRO President

### **Be Happy, But Be Wary...**

On March 5 Judge Donald Franson of the Fresno Superior Court handed down a decision that should make all of us smile (See full article on page 4). He ruled that the fees imposed since 2005 on retirees of the Fresno Unified School District by the District to cover their guaranteed lifetime health benefits were illegal because the District had promised that those benefits for its retirees would be without charge. The Fresno Unified Retirees Association, with Bob Bezemek as their lead attorney, fought that modification to their benefits and now has won the case. If this decision stands up – an appeal by the Fresno District is likely – it will set a precedent that should cause any governing body of a public agency in California to back off from plans to change retirees' benefits. This should be a cause for celebration, so go ahead and put on party hats and crack open the champagne, but sober up quickly because life is never that simple.

PRO has it on good authority that Peralta's budget crisis is so severe that some PCCD board members are "looking into" modifying retirees' benefits as a means of saving the District money. In the face of the Fresno decision and the fact that bond issue revenue pays for nearly all – if not all – of our guaranteed lifetime health benefits, we should be able to feel secure that those benefits will go untouched. But two of our primary advocates within Peralta will be gone by the end of the school year. Tom Smith, former Peralta CFO and architect of the bond issue that is funding retirees' benefits, has already retired (and is now a member of PRO), and Chancellor Elihu Harris will retire in June (and has indicated he will join PRO). We know also that Peralta has sometimes made decisions without con-

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## **PRO is having a Spring Garden Party**

**You're Invited!**

**Sunday, May 23**

**1—5 PM**

**\$10/Person**

**Details on Page 3**

**Reservations Required by May 13**

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## PRO President Addresses Peralta Board

*On February 9, PRO President Jerry Herman addressed the Peralta District Board in order to formally introduce PRO to the Board and emphasize our commitment to preserving the health insurance benefits that they guaranteed to us by contract. Jerry was supported by the presence of most of the members of PRO's Board of Directors. Below are Jerry's remarks.*

Members of the Peralta Board of Trustees, I'm Jerry Herman, president of the Peralta Retirees' Organization - better known as PRO.

I'm here to formally introduce you to our organization since retirees are an important component of the Peralta family even though we lack the visibility of active employees.

PRO was founded five years ago by a few Peralta retirees who realized that retirees had no official representation to monitor and protect our most precious Peralta asset: our contracted, guaranteed lifetime health care benefits. PRO was enthusiastically welcomed by retirees who hastened to join our

fledgling group. Currently we have approximately 400 dues paying members.

There is no hierarchy among Peralta retirees; we are all simply retirees, without rank: Among our members are retired trustees, retired chancellors, retired college presidents, deans, faculty, classified staff. No one is anybody's boss or underling. We are all living out our golden years in the glorious equality of thinning hair, expanded waistlines, hearing aids, false teeth, and digestive dysfunction.

Though our primary purpose is to protect our health benefits, we are not a one-dimensional organization. We sponsor social activities such as theater parties and attendance at other events such as jazz and dance concerts, and our annual picnic. We have a yearly membership luncheon at which the attendance is typically around 100. (Two years ago Cy Gulassa was our speaker at the luncheon.)

We also believe in serving the Peralta community, specifically the students. Perhaps our finest achievement has been our scholarship program. We work cooperatively through the Peralta Foundation and the individual colleges to facilitate the awarding of the scholarships. By the end of this academic year PRO will have contributed about \$15,000 in scholarships to the four colleges.

We have heard through the grapevine that PRO is the largest, most active and strongest of any com-

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### Peralta Retirees Organization

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**(From the President...** Continued from page 1)

sidering long-term consequences and has often had to pay a price for its shortsighted actions. We hope that won't happen with our benefits.

Rest assured that PRO will monitor everything we hear from Peralta regarding our benefits. We will use any resource we have and take any action necessary to keep our benefits protected. That's why we exist as an organization. In the next few months PRO Board members will schedule meetings with members of the PCCD Board to explore their thoughts and feelings regarding our benefits, and we will keep you informed about what we discover.



# It's Spring! PRO is Having a Garden Party You're Invited!

## Sunday, May 23 1-5 PM

We'll be gathering in the garden at the home of Shirley Conner at 1624 San Jose Avenue, Alameda, CA. There will be hors d'oeuvres, wine, non-alcoholic beverages, music, and, of course, door prizes.



**\$10/person • Reservations required by May 13**

Name \_\_\_\_\_ # of People \_\_\_\_\_ X \$10 = \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

I need driving directions

## Peralta District Benefits Office Lists Upcoming Activities

by Jennifer Seibert

### Current/Upcoming Mailings

Look for your communications from the District regarding the dependent eligibility verification project. As previously announced the District will be confirming eligibility of dependents covered under a Peralta group medical and/or dental plan. You should expect a formal notice from the Chancellor in the coming week; you will then receive a personalized request for documentation of dependents you have listed under a Peralta group insurance plan.

If you are on a medical or dental group insurance plan with Peralta and have no dependents covered, then no response will be required. CoreSource is performing the audit for

current enrollees of Kaiser, United Health Care Dental and Delta Dental plans as well as for enrollees of our self-funded plan currently administered by CoreSource.

### Visit the Peralta Retiree Benefits Website – Usage Is Up!

Webhits to the Peralta Retiree Benefits Website have doubled over the course of a year! Stay up-to date with current benefits information and activities in the District. <http://peraltaretirees.pswbenefits.net/>

### Activities:

The 3rd annual Peralta Picnic is scheduled for Saturday,

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# Fresno Retirees Victorious Over District In Battle Over Lifetime Health Benefits

By Robert J. Bezemek, FURA Legal Counsel

On March 5, 2010, in the Fresno County Superior Court, the Honorable Donald R. Franson, Jr., Judge, issued a decision granting the Petition for Writ of Mandate filed by the Fresno Unified Retirees Association (FURA), against the Fresno Unified School District, thereby confirming and enforcing the District's Promise of district-paid, lifetime retiree health benefits.

The hearing, coming five years and five months after Fresno retirees first contacted our office for assistance, was attended by more than 200 retirees, and interested retiree groups from other districts, who packed the courtroom and another next door. For the first time in nearly five years of litigation, the District had a management representative in court for the hearing. FURA members have attended the many court hearings in large numbers, reflecting their intense interest in the case.

It was not anticipated by FURA that a decision would be issued on March 5. But in an unexpected and dramatic conclusion to the parties' lengthy oral argument, the judge read a decision which holds that the Fresno retirees were the beneficiaries of an express contract which promised that the District would provide them with retiree health benefits without charge (no premiums, fees, assessments) following retirement, for those who served the requisite years and met other conditions.

The District imposed premiums and

fees on retirees in 2006, retroactive to 2005, in violation of this Promise, and has thus far collected roughly \$850,000 each year from its retiree class members.

The litigation battle involved numerous legal disputes. Eventually, the District's procedural defenses to the case proceeding were rejected, and the class of retirees was "certified" during 2009. FURA filed its Motion for a Peremptory Writ of Mandate on August 31, 2009.

FURA's Motion filled three completely full boxes, and included declarations and testimony from about 55 witnesses, including 3 former superintendents, 2 former District chief negotiators, District recruiters, District risk managers, District human resources personnel, several union leaders and negotiators, and other employees. Altogether, FURA estimates that at least 20,000 pages of evidence was submitted, including about a 1,000 pages of nearly verbatim negotiation notes from the 1976-1977 negotiations.

We also filed copies of more than 50 collective bargaining agreements, and hundreds of other exhibits.

These exhibits included recruitment literature, retirement forms, letters, negotiation newsletters and handbills, auditor reports, health pamphlets and even the recording of an early retiree recruitment meeting. Four former superintendents, the District's two chief negotiators over a 30 year span, the teachers' union chief negotiators for 25 years, other district and union negotiators, a district director of "risk management," a district CFO, district recruiters, those conducting new employee ori-

entations and those conducting retiree exit interviews were among our witnesses for whom we submitted evidence.

We argued that the District made a promise of lifetime, fully-paid retirement health benefits (no premiums or fees). More than 45 of the documents referred to the lifetime benefits, and many of these had been sent by the District to hundreds or thousands of its employees. We proved that employees accepted lower wages in exchange for these lifetime benefits. We offered proof that "district-paid" was understood by management and union negotiators to mean "fully paid," and "no charges" for premiums or fees. One particularly notable piece of evidence was a tape-recording, made by a hearing-impaired prospective retiree, of a district manager informing prospective retirees that the benefit was fully-paid by the district, for life, and that was "all" they needed to know. The District deposed 15 of our witnesses during the summer, who consistently reaffirmed the District's promise, and FURA introduced much of that testimony as well.

The District responded with their Opposition on November 23, 2010. The District's Opposition raised approximately 10 defenses. The retirees filed their Reply on January 19, 2010, countering each of the District's defenses. The hearing on March 5 was the culmination of this process. In his decision, Judge Franson stated his conclusions, including that the District made an express promise in its contracts and policies

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**(Victory in Fresno** *Continued from page 4*)

to provide these benefits without monthly premium contributions or administrative fees. The Judge referenced the contracts and other evidence he relied on, particularly the evidence of the former superintendents, District managers, District negotiators, and recruiters. His decision essentially holds that the District had made a vested promise, which it impaired when it imposed premiums. He cited the Terry case, saying it was still good law. The Judge also held that independent of the agreements, the District was stopped from now charging premiums or fees.

During its closing argument, the District advanced several entirely new defenses, but these did not affect the outcome, and FURA successfully refuted each.

The District argued that nothing prevented it from enacting a "fee," for retirees to "pre-fund" the future cost of their benefits. Retirees countered that the Promise of the district was fully understood to mean that the retirees did not pay for their benefit after retirement (as opposed to co-pays and deductibles); and that they had expressed this by using numerous words such as district-paid, fully paid, at no charge, at district expense and so on. Retirees argued that the term "administrative fee" was newly created by the District and not part of the parties' vocabulary in 1976-1977 when the Plan was initiated, and that in the District's view it apparently could charge any type or amount of fee it wanted, such as a "convenience fee" under its new theory, although the plain intent of the Plan was that the benefit was to be fully paid. Retirees accused the District of playing word games by advancing this new theory at the last minute.

The District argued that it never promised "fully paid benefits," then cited a consultant's study from 20 years ago as proof. However, as the Judge commented, that study indicated the benefits were to be fully paid.

The District argued that nothing prevented it from vindictively jacking up deductibles to \$10,000 a year, or cutting health care services to the bone, if it could no longer charge retirees premiums. Retirees countered that this case was not about deductibles, that any increase in deductibles had to be bargained, that an evisceration of a

## **The District argued that nothing prevented it from vindictively jacking up deductibles to \$10,000 a year, or cutting health care services to the bone, ...**

Promise by increasing deductibles would also be illegal. The Judge agreed this case was not about deductibles. Retirees also countered that restricting benefit coverage would be like refusing to treat someone with a modern medical development and "bleeding them" to treat an infection. Thus, this District's argument that it could "cut services" also fell flat.

The District argued that a writ of mandate could not be granted because the District had "discretion" to charge fees, since the only promise it made was that of "no premiums." Again, retirees proved in innumerable exhibits that the Promise was to provide a plan at "no charge" after retirement, a fully-paid plan, which prevents the district from charging "fees" to retirees.

Finally, the District argued it should have "flexibility" to impose charges

on retirees after they retired. This argument essentially rejected nearly 100 years of precedent protecting deferred compensation and the legitimate expectations of retirees. While public employers can, in extremely limited situations, impose changes in vested rights on a temporary basis, out of a proven fiscal necessity, such changes merely defer a promise during an unexpected emergency. Here, the money taken from retirees is less than one tenth of one percent of the District's annual budget, and the District neither sought to nor proved the extreme, dire necessity allowing the temporary deferral of a vested benefit.

It should be noted that retirees do not get their benefits "for free." Retirees pay the same co-pays and deductibles as are paid by active employees. In addition, retirees who are Medicare-eligible are required to join Medicare, and once they do, they pay Medicare premiums, with the District providing only a Medicare-supplement plan. In addition, in 2006 the District restricted the benefit significantly for future retirees, and eliminated it almost totally for new hires.

In his decision the Judge ordered the District to reinstate that benefit, and make retirees whole for premiums and fees that they have paid, plus interest. A hearing on costs and legal fees will take place in the future.

FURA's success in this case is resulted from not only the strength of its case, but also to the collective action of the Fresno Unified retirees in coming together to form an effective, committed organization, which located thousands of documents that provided invaluable evidence of the Promise, to the testimony of scores of witnesses, to the selfless commitment

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**(PRO Addresses Peralta Board** *Continued from page 2*) community college retirees' group. We are proud of that and plan to maintain that reputation.

We also take an intense and active interest in retiree issues in other areas. We are following carefully the case between the Fresno retired teachers and the Fresno unified district in which the district violated its contract with the retirees by imposing fees on their health care benefits. That case, which has dragged through the courts for five years, is about to be decided in March. [The decision favored the retirees. See story on page 4.] PRO and its members have contributed over \$2000 to the Fresno retirees cause, not even a drop in the bucket compared to the millions of dollars of district money that Fresno unified has wasted on the case.

We communicate with each other – and with you – through the PRO website and our excellent quarterly newsletter *The Peralta Retiree*, as well as through email.

We also serve as a trouble-shooting agent for retirees. I won't begin to estimate the staff time we have saved the district by being able to answer retirees' questions and clear up confusion about retiree issues that have arisen over the last five years. Our members – and even retirees who are not PRO members – know they can call or email us with their problems, and we will do our best to solve them.

PRO has worked closely in a mutually advantageous relationship with benefits coordinator Jennifer Seibert. We have representation on the district benefits committee and we never miss a meeting.

PRO is blessed with an extraordinary board of directors, most of whom are here tonight. I'd like them to introduce themselves individually to you, but first let me tell you that collectively they represent 356 years of service to Peralta. We represent an institutional memory that should not be ignored. To tap that institutional memory and document it officially, we are in the process of recording video

interviews with every living participant in negotiations with the district regarding the lifetime health care benefits the district has guaranteed to Peralta retirees.

The PRO board is smart, resourceful, tenacious and persistent. Let me cite one example:

Several years ago retired faculty, for the most part, could not join Medicare because most of us had not been in the social security system for the required number of quarters, so the Peralta district had to pay for the entire cost of health care for its faculty retirees.

STRS devised a plan to enroll formerly non-qualified retired faculty in Medicare at no cost to retirees or districts, but

each district had to agree to the plan individually. Peralta did not take its own initiative regarding this plan, but two of our current PRO board members (this occurred before PRO was formed), Alex Pappas and Ned Pearlstein, got together and went to district officials to inform them of the program and get Peralta to join it, thereby saving the district significant money.

Despite the evidence they had as to the cost savings and the ease of enrolling in the STRS program, their advice fell on deaf ears. The district wouldn't pay attention to them. But they didn't give up. Tenaciously they persisted for two years until the district saw the light and joined the program. Peralta retirees in Medicare now save the district millions of dollars a year largely due to the perceptiveness, resourcefulness and persistence of Alex and Ned. And the rest of the PRO board is just like them.

Let me end by saying that PRO would like to continue our reciprocally beneficial relationship with the district. We would gladly contribute time to Peralta activities that concern retirees and other issues as well. For example, we would appreciate representation on the hiring committee for the new chancellor. We would bring tremendous experience and expertise to it.

**We have heard through the grapevine that PRO is the largest, most active and strongest of any community college retirees' group. We are proud of that and plan to maintain that reputation.**

## Contribute To The Pro Scholarship Fund By Honoring Or Memorializing A Friend Or Loved One

✂ **Yes, I want to support the PRO Scholarship Fund with a contribution.**  
(Please print)

In honor of:     On the occasion of:     In memory of:

**Please send acknowledgement card to:**

**Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Contributor's Name:** \_\_\_\_\_

**Contributor's Address:** \_\_\_\_\_

**City:** \_\_\_\_\_ **State:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

Make check payable to: **The Peralta Foundation—PRO**

Send to: PRO, PO Box 1951, El Cerrito, CA 94530

*Contributions are tax deductible to the extent allowed by federal and state law.*

### Contributions Received for the PRO Scholarship Fund

A number of generous donations were recently made to the PRO Scholarship fund in memory of Lee Spenza. At the 2010 College of Alameda's annual awards ceremony there will be recognition of Lee's successful academic career as the PRO scholarship is conferred.

In Memory of	Contributor
Lee Spenza	Edythe Chan
Lee Spenza	Ednette Chandler
Lee Spenza	Susan Chin
Lee Spenza	Hector Lopez
Lee Spenza	Ida Pound
Lee Spenza	Tom and Barbara Southworth

### IN MEMORIAM

*The following Peralta retirees have passed away during the last months. PRO extends our deepest condolences to the families and loved ones.*

**Frances W. Frame**  
**Lee Spenza**  
**Claire Barankin Wasser**

*If you have any information about the passing or the serious illness of a Peralta retiree, please contact Bruce Jacobs at: [webmaster@peraltaretirees.org](mailto:webmaster@peraltaretirees.org) or by writing to PRO, PO Box 1951, El Cerrito CA 94530.*

**(Benefits Office Activities** *Continued from page 3)*

June 5 at Marine World in Vallejo California. Tickets will be \$30 per person and will include a hamburger buffet. Bring your family. Contact the Benefits Office at 510-587-7868 for more information.

The Peralta Colleges Foundation's Golf Tournament and Reception are scheduled for May. You are invited to attend the reception to be held at the Claremont on May 6. You may also play golf on May 7. The cost for the reception is \$130; PCCD retirees receive a \$30 discount. Call Socoro Taylor of the PCCD Foundation at 510 587 7206 for more information. The PCF provides scholarships to PCCD students.

**(Victory in Fresno** *Continued from page 5)*

and assistance of FURA's founders and leaders, to the hundreds of retirees and others who gave countless hours of their time and information, to retiree groups and others throughout California who came to FURA's aid with financial and other support, and to the commitment of numerous people in our office or who worked with us on some or all parts of the case, and others. This brief note barely scratches the surface in describing the efforts undertaken by everyone over the last five years and five months.

The retirees case was very strong, with an especially powerful factual record confirming the promised benefits. FURA's evidence included scores of documents which had been issued by the District over a period of 30 years, and which inducted retirees' reliance on the promise. Most retirees worked about 30 years for the District, and altogether the 3,500 retirees in the class served upwards of 100,000 years of public service for the Fresno School District and the students of Fresno.

## **Transportation to Evening Concerts**

Transportation to evening events is often a concern for retired people. Four Seasons Arts, a concert presenter in its 52nd year, continues to provide door-to-door transportation to a series of classical concerts held at the Regents' Theatre on the grounds of Holy Names University in the Oakland hills. Subscribers are picked up at their homes, transported to the theatre, and escorted home after the performance. Those who attend enjoy an evening of music with neighbors who also participate. For more information call Four Season Arts at 510-845-4444.

This case was about the sanctity of contracts, and the retirees' enforcement of a fundamental principle of law, one the Founding Fathers fought for when they created this country: that contracts should be enforced, and not impaired by governmental action. FURA is very pleased the retirees' rights have been enforced.

The Judge directed that a formal written Statement of Decision be prepared, and that process will take several weeks. It is not known if the District plans to appeal the decision.

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**Peralta Retirees Organization**  
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