

CSUEU bargaining 101

Collective bargaining

In 1978, the Legislature adopted the **Higher Education Employer-Employee Relations Act (HEERA)**. This law established the right to collective bargaining for “wages, hours of employment, and other terms and conditions of employment” (also called the “scope of representation”). The law is administered by the **Public Employment Relations Board (PERB)**. Pursuant to HEERA, PERB supervises the process of determining groups of classifications that share similar interests.

So far, there are 13 bargaining units in the CSU:

- Unit 1 — Physicians
- Unit 2 — Health Care Support
- Unit 3 — Faculty
- Unit 4 — Academic Support
- Unit 5 — Operations Support
- Unit 6 — Skilled Trades
- Unit 7 — Clerical/Administrative Support
- Unit 8 — Police
- Unit 9 — Technical Support
- Unit 10 — Crafts and Maintenance (California Maritime Academy)
- Unit 11 — Academic Student Employees
- Unit 12 — Head Start Employees (San Francisco State University)
- Unit 13 — English Language Program Teachers (CSU Los Angeles)

HEERA permits employees to elect **exclusive bargaining representatives** (unions) or to be non-represented. Exclusive bargaining representatives have the right to **meet and confer** (bargain) and to reach an agreement in a **Memorandum of Understanding (MOU)** or union contract. HEERA also allows many sections of the Education Code to be **superseded** by the terms of a collective bargaining agreement. Generally, no part of a contract that requires money can be put into effect unless the Legislature has provided funding for it. The CSU Board of Trustees serves as the employer for the purposes of collective bargaining.

There are employees who are not in bargaining units—**managerial** and **supervisory** employees, **executives** (these three are collectively called **management**), and **confidential** employees (employees who perform bargaining unit duties but who have access to sensitive collective bargaining information for the employer). HEERA defines the meaning of these types of employees. Any employee who has independent authority to assign, reward or punish an employee must be outside of a bargaining unit.

HEERA permits employees to choose to join or not join a union and it protects the rights of employees to participate in organizing a union and bargaining. Employees are permitted release time to attend meetings of the Trustees and to bargain. The law also provides that unions may collect **fair-share fees** from non-members of the union to pay for the costs of negotiating and enforcing the union contract.

PERB also hears charges that either the employer or the exclusive bargaining agent has violated the terms of HEERA. These charges are called **unfair labor practices (ULPs)** and may be filed by the employer or the union.

Bargaining process

The union and the employer each adopt **Initial Proposals**. These are the contract provisions that each side would like to put into effect. The law requires that these proposals are opened for public comment in a **sunshine period**.

After four weeks of review, the parties meet and decide on **ground rules**—how they will conduct negotiations in terms of schedule, location, public comment, etc. Ground rules are not required, but they are useful for facilitating the process of bargaining. Following an agreement on groundrules, the two sides begin meeting and exchanging **proposals** and **counter-proposals**. The law requires the parties to meet in **good faith**—fairly consider the proposals of the opposing side and not dismiss them outright—but it does not require the parties to compromise or come to an agreement. The parties cannot engage in **regressive bargaining**—making their proposals or counter-proposals worse than their prior proposals.

The parties try to settle negotiations by compromises on contract provisions. There is an incentive for both sides to compromise because neither can create a contract without the other and there is pressure from each side to reach an agreement. As a result, the parties try to narrow their differences to the most important issues on each side.

Impasse

If the parties are unable to reach agreement, negotiations may be declared at an **impasse**. This means that neither side is willing to compromise further on any of the outstanding issues. PERB verifies whether or not the parties are at impasse and, if so, the State Mediation and Conciliation Services appoints an independent person to **mediate** between the sides. If the **mediator** is unable to persuade the parties to compromise, then a **fact-finding panel** is created. Each party appoints one person to serve on the panel and PERB provides a list of independent arbitrators from which the parties mutually select one to serve as the chairman of the panel. This panel hears presentations from each side on the issues and issues a **fact-finding report**. The report is only advisory, however.

If the parties are still unable to agree after the report, the Trustees are permitted to **unilaterally implement** terms and conditions of employment. They do not have to implement their last, best and final offer. However, CSU cannot unilaterally implement terms that were not “reasonably contemplated” with its last, best and final offer. They can also pick and choose which items they wish to implement. None of these unilaterally imposed terms are allowed to supersede the law (i.e., the Education Code) and many laws come back into effect (only a mutually agreed upon contract can supersede the law).

Agreement

If an agreement is reached, it is called a **Tentative Agreement** because it is not put into effect until each side has **ratified** it. The Trustees vote to ratify for the employer and union members (not fee payers) vote to ratify for the union. Contracts may be for varying periods of time, but usually cover two or three years with a **reopener** clause. The reopener clause allows the parties to negotiate only a portion of the contract (usually salaries and benefits) while the rest of the contract remains in force. If a contract is not ratified, the parties go back to the table and begin negotiations all over again.

Zipper and Savings clauses

Most contracts have a **Zipper Clause** that states that the agreement supersedes any prior agreements, if any, or practices covered by the new agreement. It also states that the parties are under no obligation to renegotiate any term of the contract while it is in effect. The **Savings Clause** covers situations where the contract is found to violate the law (sometimes caused when the law changes, for example, by court decision). The sections of the contract that are in violation are void and the parties renegotiate only on those sections.