

Raises, Rights and Respect

Your Bargaining Team will be on our campus from June 13-15, 2006 at Oviatt Library Room 314 (Conference Room).



RALLY FOR RAISES!

California State University Employees Union

Chapter 312 - Northridge

Give an hour or half-hour on *June 14*:
Ask the CSU for
Raises, Rights, and Respect
(and get a free lunch*)

Sign up online: <http://www.csun.edu/csueu/commitmentcard.html>

BARGAINING 101

Terms

Agency Fee

Ground Rules

Regressive Bargaining

Arbitration

HEERA

Reopener

Bargaining Unit	Impasse	Savings Clause
Board of Trustees	Initial Proposal	Sunshine Period
Education Code	Management	Tentative Agreement
Exclusive Representative	Mediation	Title 5
Fact-Finding	MOU	ULP
Good Faith	PERB	Unilateral Imposition
Grievances and Complaints	Ratification	Zipper Clause

Questions

What is the legal basis for a union contract?

Who represents employees?

How is the contract enforced?

Background

Statutory Authority

Prior to collective bargaining, state university employees were governed under the **Education Code** - laws enacted by the Legislature to define the overall governance of K-12, community colleges, the California State University (CSU), and the University of California (UC). State civil service employees are governed by the Government Code while educational employees are exempted from civil service by the state constitution. One section of the Education Code was adopted as the Donahoe Higher Education Act and provided for a revised master plan for education in California.

The Education Code covers all aspects of state university governance, including students, staff and faculty. The Education Code also gives the **CSU Board of Trustees** the legal authority to make rules for the system and its campuses. The Trustees are appointed by the Governor for fixed terms. The code defines permanent status and probation, layoff, discipline, etc. and serves as the primary legal basis for the operation of the CSU.

The Trustees adopt administrative regulations for the CSU in the **California Code of Regulations, Title 5** - usually known just as Title 5. These regulations provided specific procedures and details for the broadly defined terms of the Education Code. Some of the important provisions cover leaves, medical retirement, information access, etc.

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)**. PERB examined all classifications in the CSU and placed them in separate **bargaining units** - groups of classifications that shared a similar interests. There are 11 bargaining units in the

CSU:

<u>UNIT</u>	<u>UNION</u>
Unit 1 - Physicians	Union of American Physicians and Dentists (UAPD)
Unit 2 - Health Support	California State University Employees Union (CSUEU)
Unit 3 - Faculty	California Faculty Association (CFA)
Unit 4 - Academic Support	Academic Professionals of California (APC)
Unit 5 - Operations Support	California State University Employees Union (CSUEU)
Unit 6 - Skilled Trades	State Employees Trades Council (SETC)
Unit 7 - Clerical/Administrative Support	California State University Employees Union (CSUEU)
Unit 8 - Police	State University Police Association (SUPA)
Unit 9 - Technical and Professional	California State University Employees Union (CSUEU)

Unit 10 - Operating Engineers
(California Maritime Academy)

Operating Engineers (OE)

Unit 11 - Teaching Assistants

United Auto Workers (UAW)

The law 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. No part of a contract that requires money can be put into effect unless the Legislature has provided funding for it. The Trustees serve 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 and 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 **agency fees** from non-members of the union to pay for negotiating and enforcing the union contract.

There are specific procedures in HEERA for the election or decertification of an exclusive bargaining agent and the recission of agency fees.

PERB also hears charges that either the employer or the exclusive bargaining agent have violated the terms of HEERA. These charges are called **unfair labor practices** (ULP's) and may be filed by the employer, union, or an employee.

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**. This period of review is set by the terms of the last contract, usually in January preceding the expiration of the current contract (usually in June).

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. Following this, 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 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 they 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 issues. PERB then 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.

If the parties are still unable to agree after the report, the Trustees are permitted to **unilaterally impose** terms of their last offer on the bargaining table (not the terms of the fact-finding report or terms different from their last proposal). 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). The unions are also allowed to conduct **strikes** and other **job actions** in order to pressure the employer. State employees are legally entitled to strike.

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. Once the contract is ratified, it is put into effect. 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

The contract has a **Zipper Clause** that states that the agreement supersedes any prior agreements 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.

The contract supersedes all **past practices**. The union contract does not cover every possible subject involving wages, hours and working conditions. When the employer and the union both observe an employment practice over a long period of time, it is considered a past practice. If that practice is not changed after the ratification of a new contract, it becomes an enforceable and unwritten part of the agreement between the parties.

A common misconception is that anything that is not in the union contract is at the discretion of the employer. That is not the case if the employer makes a change in the **status quo** in a matter of wages, hours, and working conditions. For example, the employer may provide equipment such as cell phones to employees but this may not be mentioned in the contract. The employer cannot simply change their past practice in providing cell phones without negotiating the change with the union.

Contract Enforcement

Once a contract is in place, enforcement of its terms is normally done through the **grievance procedure**. The contract has its own rules for employees or the union lodging a complaint that one of the contract provisions has been violated, misinterpreted, or misapplied. The grievance procedure provides for administrative hearings at the campus and the Chancellor's Office. In some cases, an unresolved case is put before an independent **arbitrator** who is paid by both sides and makes a binding decision.

Some parts of the contract are not subject to the grievance procedure. If they are matters of management discretion, then an employee or the union can use the **complaint procedure**, which is the same as the grievance procedure but does not include **arbitration**. The union can also take action through unfair labor practices (to enforce past practice) or **writs of mandate** (court actions compelling the employer to follow its own rules).

For more information on participation in unions, see **Union 101**.

This information presented courtesy of the **California State University Employees Union** (CSUEU), an affiliate of CSEA, CFA, and SEIU.

