

December 3, 2019

Dear Colleagues,

In case you missed the Informational Session this past Tuesday regarding impasse and other important information, I am providing you with a summary. I am also attaching the documents that were provided during the sessions.

The goal of the sessions:

1. To provide a historical summary of negotiations.
2. Defining impasse.
3. Expectations regarding the timeline
4. And providing faculty with additional information regarding the potential for union action in the future.

1. Historical summary of negotiations:

2013 MOU

Memorandum Of Understanding (MOU) signed by UF and NOCCCD to bring the total compensation of faculty to the 75th percentile among surrounding districts.

2015 Total Compensation Study that was commissioned by the District:

Purpose:

“The North Orange County Community College District (District) requested that School Services of California, Inc., (SSC) conduct a Total Compensation Study. The purpose of the study is to provide an expert, impartial analysis of the total compensation (salaries and benefits) for full-time faculty positions compared to other districts with similar characteristics”

Findings:

“The District’s total compensation for full-time faculty is low in comparison to the comparative districts, and for the District-identified step-and-column placements, the total compensation is below the median total compensation of the comparative districts in every instance”

2015 Fred Williams Memo

In 2015 Fred Williams, Vice Chancellor of Finance sent a memo in which he wrote:

“The results of the 2015 Total Compensation Comperability Study indicated that our District is low in both salaries and benefits across the member units”

2015 – Present

Faculty Salaries have only slipped back further in comparison to surrounding districts.

May, 2019

In May, 2019 a Tentative Agreement (TA) was rejected due to the failure of the district to offer meaningful on-schedule raises and health coverage for dependents.

November 14th, 2019

The district provided a proposal that was near identical to the previously rejected Tentative Agreement (TA) with minor and meaningless adjustments. The proposal also contained mathematically incorrect statements that were repeated by Chancellor Marshall in a memo that was sent to faculty on November 27th, 2019. The claim that **one-time payment** of \$3,098 is equivalent to the COLA of 2.71% is mathematically incorrect, misleading, and insulting to our faculty's intelligence. How can the District claim that any amount represents the same percentage of 2.71% for all faculty when our faculty has different salaries? In addition, **one-time payments are not the same as salary raises**. They are a temporary 'feel-good' offers that are meaningless and show a lack of commitment and respect. We were also surprised by the fact that the Chancellor sent a memo last week to our faculty regarding negotiations, despite the fact that she did not attend any sessions, other than the first 10 minutes of our initial meeting to schedule dates.

November 22, 2019 Negotiations Session

This session only lasted a few minutes since the District provided us only with a multi-year proposal the week prior, and we wanted to give them one final opportunity to provide us with a proposal for 18/19 only since they originally agreed to do that. We asked Lead Negotiator Irma Ramos if she had anything other than a "Status Quo" and she replied "no" and stated that she only had the multi-year proposal that was provided to us the week prior, so we declared an impasse and left the meeting so that we can file the paperwork and send it to Public Employment Relations Board (PERB) as soon as possible. (Please read the attached *Side-By-Side Proposal Comparison* document)

Defining Impasse

The word "impasse" is often used loosely to describe a "deadlock." However, there is also a legal definition that requires three components:

- Prolonged negotiations leading to a **deadlock**
- The parties consistently **bargained in good faith**
- Further negotiations must be **futile**

The Impasse was officially filed on 11/27/2019 to PERB.

Please reference the document titled "What Does Impasse Mean" for detailed information.

Timeline for the Impasse

Please reference the document titled "UF Impasse Timeline" which provides a rough estimate based on several possibilities.

What Can Faculty Do to Support Our Union during Impasse?

We will be forming an Organizing Committee before the end of the semester that will help guide our faculty regarding potential union action.

Meanwhile,

- Work To Contract Only (No work beyond the contractually required hours)
- Attend Board Of Trustees Meeting and Voice Your Concerns.
- Wear your red United Faculty T-shirts on Wednesdays.
- Follow us on Facebook for regular updates: <https://www.facebook.com/ufnorthorange/> (You don't need a Facebook account)

One final note: Please be careful in regards to rumors about union action. Directions regarding union action will come directly from the Union leadership and/or the Union's Organizing Committee through one or multiple methods of communication. If you are not sure about anything, please do not hesitate to reach out to us to clarify.

In Solidarity,

Mohammad M. Abdel Haq, M.A.
UF Lead Negotiator
Associate Professor of Sociology
Chair of the Diversity Committee
Fullerton College, Fullerton

Side-By-Side Comparison:

May 2019 Rejected TA for 18/21 and November 2019 District Proposal for 18/21

May 2019: Rejected Tentative Agreement (TA) for Fall 2018 through Spring 2021	November 14, 2019: District Proposal for Fall 2018 through Spring 2021
	2018-2019 Fiscal Year: "Status Quo" (District's Words)
	2019-2020 Fiscal Year
	Fall 2019: Nothing
A. One-time, off-schedule 2% paid Spring 2019	A. One-time, off-schedule payment in Spring 2020 that District claims to be equivalent to 2.71%
B. 1% on all salary schedules starting Fall 2019	B. 1% on all salary schedules starting Spring 2020
C. \$3382.00 fringe increase starting Fall 2019	C. \$3381.00 fringe increase starting Spring 2020
	2020-2021 Fiscal Year
D. Lifetime medical vesting increased to 50 years for all new hires starting July 1, 2019	D. Lifetime medical vesting increased to 50 years for all new hires starting July 1, 2020
E. 1% on all salary schedules starting Fall 2020	E. 1% on all salary schedules starting Fall 2020
F. \$4069.00 fringe increase starting Fall 2020	F. \$4762.00 fringe increase starting Fall 2020

UF 19/20 Contract Successor Proposal and 18/19 Contract Closure Proposal

October 14, 2019: United Faculty Proposal for Fall 2019/Spring 2020 Successor Agreement	October 28, 2019: United Faculty Proposal for Fall 2018/Spring 2019 Contract Closure
1. 75 th percentile comparability on all salary schedules	1. COLA (2.71%) + 7% on all salary schedules
2. Dependent Health Benefits	2. Retro pay to July 1, 2018 on all salary schedules
3. Lecture/Lab Parity	3. Dependent medical coverage effective Jan. 1, 2020
4. Longevity Increases	

Fall 2015 to Fall 2019 Full-Time Faculty Salary Comparability

Comparability model and methodology for 75th percentile ranking per April 13, 2015 NOCCCD *Total Compensation Study (Full-Time Faculty)* by School Services of California, Inc. and 2013 UF/District Memorandum of Understanding (MOU) to "assess and address the relative ranking of Unit Member compensation at the 75th percentile"
(Board of Trustees Approved Feb. 25, 2014)

		Two additional mandatory workdays (Flex Days) added in Fall 2017.	
2015 Class B (Minimum Qualifications)--Step 10		2019 Class B (Minimum Qualifications)--Step 10	
Rank/College	Salary	Rank/College	Salary
#1. Mt. SAC	\$86,782	#1. Riverside	\$96,527
#2. South Orange	\$84,264	#2. Mt. SAC	\$94,316
#3. Riverside	\$82,790	#3. South Orange	\$94,179
#4. Long Beach 75th Percentile	\$81,739	#4. Cerritos 75th Percentile	\$90,997
#5. Coast	\$80,262	#5. Rio Hondo	\$89,991
#6. Rio Hondo	\$79,943	#6. Long Beach	\$89,657
#7. North Orange (175 workdays)	\$79,245	#7. Chaffey	\$86,200
#8. Cerritos	\$78,778	#8. Coast	\$86,572
#9. El Camino	\$77,770	#9. El Camino	\$85,180
#10. Santa Monica	\$77,764	#10. Santa Monica	\$85,167
#11. Chaffey	\$77,051	#11. Rancho	\$84,974
#12. Pasadena	\$76,000	#12. North Orange (177 workdays)	\$84,528
#13. Rancho	\$75,453	#13. Pasadena	\$81,210

Researched and created by Christie Diep

2015 Class E (Min Quals plus 54 units)-- Step 20		2019 Class E (Min Quals plus 54 units)-- Step 20	
Rank/College	Salary	Rank/College	Salary
#1. South Orange	\$115,120	#1. South Orange	\$128,666
#2. Santa Monica	\$111,300	#2. Riverside	\$124,335
#3. Riverside	\$110,307	#3. Santa Monica	\$119,507
#4. Rio Hondo 75th Percentile	\$105,581	#4. Cerritos 75th Percentile	\$119,507
#5. Mt. SAC	\$104,699	#5. Mt. SAC	\$118,842
#6. North Orange (175 workdays)	\$103,698	#6. Coast	\$116,970
#7. Coast	\$102,012	#7. Rio Hondo	\$115,711
#8. Rancho	\$101,017	#8. Rancho	\$110,766
#9. Chaffey	\$100,086	#9. North Orange (177 workdays)	\$110,611
#10. Long Beach	\$98,872	#10. Long Beach	\$109,246
#11. El Camino	\$98,868	#11. Chaffey	\$109,200
#12. Pasadena	\$95,959	#12. El Camino	\$108,287
#13. Cerritos	\$90,222	#13. Pasadena	\$102,540

Researched and created by Christie Diep

2015 Class F (Earned Doctorate)-- Step 25		2019 Class F (Earned Doctorate)-- Step 25	
Rank/College	Salary	Rank/College	Salary
#1. South Orange	\$132,922	#1. South Orange	\$145,910
#2. Mt. SAC	\$122,571	#2. Riverside	\$136,047
#3. Santa Monica	\$117,632	#3. Santa Monica	\$130,032
#4. Riverside 75th Percentile	\$116,687	#4. Rancho 75th Percentile	\$129,491
#5. Rancho	\$114,981	#5. Mt. SAC	\$129,204
#6. Coast	\$113,580	#6. Coast	\$126,090
#7. Cerritos	\$113,101	#7. Cerritos	\$125,690
#8. North Orange (175 workdays)	\$112,911	#8. Chaffey	\$124,600
#9. Chaffey	\$112,566	#9. Rio Hondo	\$122,300
#10. El Camino	\$109,909	#10. North Orange (177 workdays)	\$120,438
#11. Rio Hondo	\$108,644	#11. Long Beach	\$117,777
#12. Pasadena	\$107,358	#12. El Camino	\$114,858
#13. Long Beach	\$106,348	#13. Pasadena	\$114,720

Researched and created by Christie Diep

2015 Class E (Min Quals plus 54 units)-- Step 13		2019 Class E (Min Quals plus 54 units)-- Step 13	
Rank/College	Salary	Rank/College	Salary
#1. South Orange	\$103,252	#1. Riverside	\$118,420
#2. Riverside	\$101,568	#2. South Orange	\$115,402
#3. Mt. SAC	\$101,279	#3. Mt. SAC	\$115,222
#4. Santa Monica 75th Percentile	\$95,970	#4. Cerritos 75th Percentile	\$110,826
#5. Cerritos	\$95,944	#5. Rio Hondo	\$106,288
#6. Long Beach	\$95,554	#6. Coast	\$104,536
#7. North Orange (175 workdays)	\$95,547	#7. Rancho	\$102,364
#8. Rio Hondo	\$94,420	#8. Santa Monica	\$101,920
#9. Rancho	\$93,552	#9. North Orange (177 workdays)	\$101,917
#10. El Camino	\$92,471	#10. Long Beach	\$101,744
#11. Coast	\$91,169	#11. El Camino	\$101,282
#12. Chaffey	\$90,642	#12. Chaffey	\$97,000
#13. Pasadena	\$90,250	#13. Pasadena	\$96,400

Researched and created by Christie Diep



WHAT DOES IMPASSE MEAN?

I. Definition of Impasse

Government Code section 3540.1(f) defines impasse as: “Impasse” means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.”

II. Steps in Process

A. Determination of when the parties are in impasse

Neither party may unilaterally determine that they are at impasse, rather either a single party “declares” that the parties are at impasse and then requests PERB to appoint a mediator. The other party may challenge that declaration, with PERB making the final determination if impasse exists.

When a unilateral request is filed, a Board agent or regional attorney will contact the responding party to ascertain their position regarding the request. Once PERB determines that an impasse exists, the case is referred to the State Mediation and Conciliation Service (now a part of PERB) for the assignment of a mediator. Note: as a practical matter, PERB will often err on the side of determining the parties are at impasse.

Once impasse is determined by PERB, it suspends the duty to bargain on those items currently in impasse, until impasse is broken by one party changing its position and moving towards the other.

B. Mediation

The parties may mutually select a mediator, or ask PERB to assign a mediator. There are advantages and disadvantages to each. If the parties mutually select a mediator, they are responsible for the costs. If PERB selects the mediator from CSMCS, there is no costs to the parties. Parties also may contact CSMCS and request a mediator in the normal course of their negotiations.

C. Fact-finding

Once mediation is concluded, and no earlier than 15 days, the parties then participate in fact-finding. This requires the mediator "certify" the parties for factfinding to PERB, and then have a party request PERB to appoint a fact-finder. Fact-finding includes a report to, and presentation before the fact-finding "panel." The Panel is made up of a neutral, a union appointee and a district appointee (so the decision is functionally made by the neutral member).

The neutral member is appointed by PERB (free to the parties), or in the alternative is mutually selected by the parties. As with the mediator, if the parties mutually select a fact-finder, they bear the costs.

Fact-finding requires each party to make a (1) written and (2) live presentation to the fact-finding panel. At the conclusion of the hearing, the panel will issue a report.

The criteria for fact-finding include the following:

1. State and federal laws that are applicable to the employer.
2. Stipulations of the parties.
3. The interests and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment involved in the fact-finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The consumer price index for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

7. Any other facts, not confined to those specified in items (1) through (6), which are normally or traditionally taken into consideration in making the findings and recommendations. Government Code section 458.2(b)

D. Fact-finding report

At the conclusion of fact-finding, the fact-finder will issue a private report and recommendations to the parties. The parties have one more chance to negotiate prior to the report being made public, and have an obligation to consider the report in good faith. After 10 days, either the District must publicize the report and recommendations. This can be a powerful tool for the prevailing party. The report is non-binding on the parties.

Sample reports may be found at: <http://www.perb.ca.gov/factdecisions.aspx>

E. Conclusion of impasse (after the report is publicized)

UF — At the conclusion of impasse, the union may strike over the District's failure to meet its demand in negotiations.

NOCCCD — The converse of the union's right to strike is the District's right to implement its "Last, best, and final offer" (LBFO).

1. The District may not impose an offer worse than the last offer it brought to the impasse proceeding.

2. Any concession by a party "breaks" impasse and restarts the obligation to negotiate, even if the concession happens post-impasse.

3. The District may not impose a waiver at the conclusion of impasse. For example, the District may not impose a term for its LBFO (such as a 1% increase each year, for three years), and then refuse to negotiate during that imposed term. State of California (Department of Personnel Administration) (2010) PERB Dec. No. 2130-S. Similarly a district may not implement a zipper clause limiting negotiations to a set number of issues (Rowland USD)

Thus, even in those instances, the duty to negotiate continues.

III. When a Union may strike

Strikes are not expressly prohibited by the EERA, although in some instances they may constitute an unfair labor practice by a union. Typically, a union may only strike at the conclusion of the entire impasse process. Almost all collective bargaining agreements have a “no strike” clause that prohibits striking during the life of the contract, and the right to strike pre-impasse is limited, as it is a presumptive unfair labor practice as bad faith bargaining or bad faith participation in impasse.

There are two exceptions to this rule:

A. Strike preparation

- a. In Sweetwater Union High School District (2014) PERB Order No. IR-58, PERB held that a Union’s strike consideration and strike preparation, prior to the conclusion of impasse did not violate the EERA.
- b. Such conduct may lawfully include: Strike authorization votes and meetings to urge such a vote, informational picketing, and publicizing the dispute (letters to the editor, emails to faculty and the college community.)

B. An “Unfair Practice Strike”

- a. In California Nurses Association (2010) PERB Decision No. 2094-H, PERB held that a strike prior to the conclusion of impasse may be legal (although it is presumptively an unfair labor practice, which is rebuttable by the union), and is not a per se violation, if:
 1. the employer committed an unfair practice; and
 2. the employer’s unfair practice provoked the strike.
- b. Even if an employer commits unfair practices, a strike to force economic concessions prior to impasse remains unlawful. The Union has the burden to prove (as a question of fact) that its strike was provoked by the District’s unfair labor practices. Rio Hondo Community College District (1983) PERB Decision No. 292

IV. Impasse strategy

A union’s strategy for impasse will vary greatly on whether the District’s LBFO offer failures to provide sufficient benefits or other items requested by the union (such as not agreeing to a requested salary step increase). In the former case, the Union will challenge any request by the district for fact-finding and continue to seek further negotiations. In the latter case, there are benefits to both continuing negotiations and seeking impasse.



IMPASSE TIMELINE

UF and NOCCCD are at an impasse in contract negotiations.
Here is an estimated timeline for the impasse process.

November 27, 2019



A formal written declaration of impasse was submitted

December 2019



California Public Employees Relation Board (PERB) assigns a mediator

January 2020



Mediation begins, UF & NOCCCD bargaining teams resume bargaining with the assistance of a mediator

If mediation works

OR

If mediation does not work

Early Spring 2020



A tentative agreement is brought to UF membership for approval

Late Spring 2020



UF & NOCCCD move to fact finding and continue to bargain

Imposition.
Strike is likely.



What is fact finding?

During fact finding, both parties present their best arguments about the financial factors that could impact bargaining. Then a three person panel hears these arguments. The panel is comprised of one appointee from each side and a neutral PERB appointee. The neutral appointee then issues a report that includes a non-binding recommendation for settlement. This report will then be made public and the parties will continue to bargain.