

Labor Relations Glossary of Terms

Access

The right to come into; approach employees; or use university property. The law seeks to strike a balance between employee rights to form, join, and participate in their union, and for union organizers to distribute union literature, with the right of UC to manage its business in an orderly fashion. HEERA grants rights of access to unions under Article 4, § 3568, Rights of access and use by employee organizations, which reads:

Subject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this act.

ADA/FEHA

Americans with Disabilities Act (ADA) and the California Fair Employment & Housing Act (FEHA) are Federal and State laws that prohibit discrimination against employees or potential employees with disabilities in the terms and conditions of employment.

Administration

The process of carrying out or enforcing a collective bargaining agreement/contract. Management carries out the contract provisions through implementation of the language. Unions enforce the contracts through labor/management meetings and by filing grievances.

Administrative Law Judge (ALJ)

Under the California public sector collective bargaining laws, an agent of the Public Employment Relations Board (PERB) appointed to conduct a representation or unfair practice hearing.

Agency Fee

A provision of Higher Education Employer-Employee Relations Act (HEERA) which requires employees in the bargaining unit, who are not members of union, to pay a fee to the union as a condition of employment. By law, the fee cannot exceed the dues amount.

Arbitration

A procedure involving an impartial third party to whom disputing parties submit their differences for decision, usually in accordance with a formal, written procedure. In a collective bargaining context, the procedure for selection of an arbitrator is generally written into the collective bargaining agreement.

Authorization Card

A statement signed by an employee designating a union to act as his or her representative in collective negotiations. Unions, to demonstrate employee support for the organization and to either demand recognition from an employer or request an election for an appropriate bargaining unit, use authorization cards.

Bargaining Unit

A group of employees agreed to by unions and the employer or designated by an administrative agency, such as the Public Employment Relations Act (PERB), as constituting an appropriate unit for the purposes

of collective bargaining. A community of interest among employees determines appropriateness. This is demonstrated by similar jobs, commonality of work environment, skills, educational requirements, etc.

Bilateral Action

Process of management and the union jointly agreeing to some final action.

Certification

The formal determination by an administrative agency, such as PERB, that a union is the majority choice and hence the exclusive bargaining representative of all employees in a particular bargaining unit. The determination usually follows a secret ballot election of employees in the bargaining unit.

CFRA/FMLA

The state California Family Rights Act (CFRA) and Federal Family Medical Leave Act (FMLA amended 01-16-09) provides 12 weeks of leave for one's own serious health condition; the birth of a child; care of a newborn, newly adopted child or new fosters care placement; or the care of a spouse, child or parent with a serious health condition. FMLA has added 26 weeks of leave to care for an ill or injured service member. FMLA has added an "Exigency" leave up to 12 weeks for active duty military personnel.

Challenged Ballot

A vote questioned by one of the parties to a representation election. Votes may be challenged when the eligibility of the voter is in question. Challenged ballots are kept sealed and are opened and counted only if their number is sufficient to affect the outcome of the election.

Check-off

Check-off is the payroll deduction of fees from the pay of employees in the bargaining unit. It can be union membership dues, agency (fair share) fees for nonmembers and assessments. This money is turned over to the union.

Collective Bargaining (Labor Contract Negotiations)

A method of bilateral decision-making in which the employer and the exclusive representative of the employees determine wages, hours, and terms of conditions of employment for all workers in a bargaining unit through direct negotiations. The bargaining normally results in a written contract (memorandum of understanding) that is mutually binding and sets wages, grievance procedures, and other conditions of employment to be observed for a stipulated time.

Collective Bargaining Agreement (Contract, Labor Contract)

A written agreement or contract arrived at as the result of negotiations between an employer and a union. It usually contains provisions on conditions of employment and the procedures to be used in setting disputes during the term of the contract. It is referred to as a memorandum of understanding (MOU) when the agreement is between a union and a public employer.

Confidential Employee

According to the Higher Education Employer-Employee Relations Act (HEERA), any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.

Decertification

The withdrawal by PERB of a union's designation as exclusive representative. It is usually preceded by a decertification election that has been called because of the submission of a petition expressing employee dissatisfaction with the union and requesting decertification.

Disability (under FEHA)

A physical or mental disability that limits one or more major life activities including work. A history of such an impairment known to the employer. Applies to an individual who is incorrectly regarded or treated as having an impairment or is regarded or treated as having impairment with no presently disabling effects—then is covered and protected--such as a recovered cancer patient.

Disparate Impact

Occurs when a policy that is fair and is applied fairly ends up discriminating against one or more protected classes of individuals.

Disparate Treatment

Form of discrimination that occurs when two employees are similarly situated and one employee receives inferior treatment or suffers harsher consequences than the other suffers.

Effects Bargaining

The negotiation over the *impact* of management decisions on employees.

Employee

According to HEERA, any employee of the Regents of the University of California, the Directors of Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter.

Employee Organization

A union. The Higher Education Employer-Employee Relations Act (HEERA) defines employee organization as "any organization which includes employees of the University and Lawrence Livermore Laboratory and which has as one of its primary purposes representing its members in employer-employee relations" (i.e., regarding hours, wages, and other terms and conditions of employment).

Essential Functions of a Job

Essential function means the fundamental job duties of the employment position. The position exists to perform the function. Function requires significant time to perform. Serious consequence of not performing this job function.

Exclusive Representative

The employee organization designated as the collective bargaining agent for all employees, both members and nonmembers, in a unit.

Fair Share

See **Agency Fee**

FMLA

See **CFRA/FMLA**

Functional Limitations

The inability to perform an action or a set of actions, either physical or mental, because of a physical or emotional restriction.

HEERA

The Higher Education Employer-Employee Relations Act (HEERA) is a law passed by the California State Legislature, giving University of California employees the right to decide whether they want collective bargaining as the one means of determining their wages, hours and working conditions. Employees will make this decision by secret ballot. The elections will be conducted by PERB the State Public Employment Relations Board.

Impasse

A situation in collective bargaining that occurs when the employer and the union, both bargaining in good faith, fail to reach agreement. Impasses are often resolved by the intervention of a neutral party such as a mediator, fact finder, or arbitrator.

Interactive Process

A good-faith communication process between the employer and employee to identify a reasonable accommodation that allows the employee to perform the job effectively.

Managerial Employee

According to the Higher Education Employer-Employee Relations Act (HEERA), any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel, and other matters of educational policy.

Management Rights Clause

A provision in a collective bargaining agreement that expressly reserves certain rights and responsibilities to management and specifies that the exercise of these rights and responsibilities shall not be the subject of negotiations, grievances, or arbitrations.

Mediation

A process in which a neutral third party assists parties in a bargaining dispute to come to a voluntary agreement. The mediator may suggest to the parties various proposals and methods for resolution of disputes, but he has no formal power to force a settlement.

Medical Restrictions

Medical information that identifies restrictions and functional limitations.

Meet-and-Confer

Periodic discussions on wages, hours, and conditions of employment between the employer and the exclusive representative of the bargaining unit that results in a binding agreement. This is usually referred to as the bargaining or negotiating process.

Memorandum of Understanding

A written collective bargaining agreement (contract) between a public agency and an employee organization (union) setting forth agreed terms and conditions of employment.

Non-Essential Functions/Marginal Tasks

Any function of the job which does not meet the test of essential.

Public Employment Relations Board (PERB)

The five-member board appointed by the Governor to administer the Educational Employment Relations Act, the State Employer-Employee Relations Act, and the Higher Education Employer Employee Relations Act. Its duties are analogous to the National Labor Relations Board.

Recognition

The acceptance by a public employer of a union as the exclusive representative of employees in a bargaining unit. Recognition is a major step in the establishment of a collective bargaining relationship and usually follows an election in which the majority of employees voting have selected an organization to represent them. Under certain conditions, (i.e. where there is no doubt that the employee organization represents a majority), employers may voluntarily recognize an organization without an election.

Released Time

Means the job steward or designated union bargaining team representative is free from performing his or hers regular work duties while engaged in union business. Time can be paid or unpaid, as specified in the contract. When on released time, the employee cannot be held responsible for not performing work duties.

Representation Election

An election conducted by an administrative agency such as PERB to allow employees to express their choice of either "No Representation" or an exclusive representative from the unions showing legitimate evidence of interest in being the exclusive representative for that unit. Although the ballot reads "No Representation," it means "no [exclusive] representation." If the majority of votes are cast for "No Representation," employees continue to have the same nonexclusive representation rights as before the election.

Reasonable Accommodation

A logical adjustment to the job that allows a person with a disability to perform the essential functions of the position. The term also applies to any adjustment which allows the person to participate in any and all aspects of the employment process, including recruitment, application and promotion, as well as all other employee privileges and benefits.

Reassignment (per UCD Procedures)

If accommodation in the employee's current position is not possible, reassignment to an active, vacant position or a position anticipated to be vacant within a reasonable amount of time shall be required. The employee must meet the minimum qualifications of the position with or without accommodation in order to be eligible for reassignment.

Run-Off Election

A second representation election conducted when no choice (including "No Representation") wins a majority of the valid votes cast in the first election. The run-off is between the two choices receiving the most votes in the first election.

Scope of Bargaining

The subject matter that employers and exclusive representatives (unions) may bring within the area of the collective bargaining agreement of memorandum of understanding (contract).

The Higher Education Employer-Employee Relations Act (HEERA) states that the scope of representation is limited to "wages, hours, and terms and conditions of employment."

Showing of Interest

The support among employees in a proposed bargaining unit that the union must demonstrate in justifying its claim for status as the bargaining representative before elections are held. The most common evidence of support is an authorization card signed by thirty percent of the employees in the proposed unit.

Special Selection (per UC Policy)

An employee who becomes disabled, and who meets various criteria, may be selected for a position which has not been publicized.

Steward (Employee Representative)

An employee in a bargaining unit who has been designated by the union to act, on its behalf when meeting with management, or when representing bargaining unit employees. Stewards may assist employees in filing grievances, and in conveying their concerns to the union and/or the employer.

Strike

A work stoppage by a group of employees intended to express a grievance, enforce a demand for higher wages or for other changes in conditions of employment, obtain recognition, or resolve a dispute with management. There is a question as to whether strikes by University employees would be considered legal. A plurality of the California Supreme Court has determined that public employees have a common law right to strike. However, that right is not an absolute one. It is further unclear whether and to what extent the four major statutes governing public sector labor relations in California, such as HEERA, supersedes this common law right. In the only decisions to date from the Public Employment Relations Board (PERB), decided under EERA, the statute pertaining to K-12 and community college employees, teacher strikes have been found unlawful under the facts of the case.

Supervisor

According to the Higher Education Employer-Employee Relations Act (HEERA), any individual, regardless of the job description or title, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

Unfair (Labor) Practice

Action by an employer or union that violates certain provisions of the Higher Education Employer-Employee Relations Act (HEERA).

Unilateral Action

An independent action of either management or the union, without notice or consultation.

Weingarten Rights

Rights to representation developed because of the United States Supreme Court decision in *National Labor Relations Board v. J. Weingarten, Inc.* An employee is entitled to have a representative present at a meeting with management if the employee reasonably believes that corrective action may be taken as a

result of the meeting. This right does not extend to counseling sessions. The right to representation only arises when the employee requests representation.

Work Rule

Generally, procedures established by management to ensure discipline, efficiency and employee conduct, including the health and safety of employees.