# The Process for Rights: Negotiations, an Introduction

**Darrell Eckersley, Chief Grievance Officer**

## Collective Bargaining

They were neither warriors nor soldiers, but teachers committed to shared governance and faculty rights. The first negotiations team began to form forty years ago. The Rodda Act (Educational Employment Relations Act [SB 160]) was passed in 1975 and took effect January 1, 1976. The Faculty Guild, AFT Local 1521, began a momentous but hard-fought first negotiations in 1977, however, because the CTA’s charge against our winning the election to become the collective bargaining agent held up our going to the table for six months that year. The first Agreement was ratified, after a long negotiations process, January 16, 1978.

Under then Executive Secretary Virginia Mulrooney’s leadership, the Guild executive board and district-wide membership created a list of topics, issues, and areas of faculty work environment and faculty rights for the first Local 1521 negotiating team, which researched articles it would pursue for the first Agreement.

From 1976 to 2014, each team that has negotiated our evolving contract has worn the wrinkled forehead of stress from the management team and from among themselves - *dramas of personalities, arguments of words and their meanings, anger against possible takeaways before they were yet implemented, and a questionable focus on Board of Trustees.*

Even so, that hallmark of all our negotiations so far was more onerous to those faculty on the team forty years ago than at anytime since; they bargained with a district management that was unaccustomed to understanding or adhering to labor-law negotiated language and concepts. Our first team laid the groundwork for our identity as a faculty collective bargaining union: *Gwen Hill (City), Hal Garvin (Harbor), Cedric Sampson (Mission), Jim Hardesty (Pierce), Phyllis Keeney (Southwest), Joe Hinojosa (Trade Tech), Arnold Fletcher (Valley), Andy Mason (West), and Virginia Mulrooney (Chief Negotiator).*

Forty years after the Rodda Act took effect, the Board of Trustees opened this month those Agreement articles it wants to “sunshine”. The Board is ahead of itself, but it has thrown down its challenge, and the Guild is preparing its team profile. Once we have our team and have contacted the district-wide members for issues of interest, we also will “sunshine” our proposals.

From a legal perspective, a negotiation is what passes between parties or their agents in the course of making a contract or arranging terms of a contract. In the Los Angeles Community College District, the parties are the faculty and the Board of Trustees. The agents are the Los Angeles College Faculty Guild, AFT Local 1521, for the faculty, and Board-approved district and campus administrators for the Board.

The Rodda Act (1975) authorized collective bargaining in California’s public school districts. Even earlier, a union’s right to negotiate employees’ working conditions dates back to 1926 when Congress established those rights in the Railway Labor Act. Later, in 1935, the National Labor Relations Act expanded that federal law making it legal for other unions the right to engage in collective bargaining (thus making it illegal for *private* employers to deny that right). In 1959, Wisconsin extended bargaining rights to *public* employees, the first state to do so. Federal employees got the right in 1962.

Our Guild’s negotiating team both sustains and revises current contract language. There is language that we do not want changed, and there is language that we would like to revise. Likewise, the district wants language sustained or revised. Negotiations concern which language of which side should be sustained or revised. In the issues involving debate, the faculty and management teams need to come to an eventual compromise. Does either side ever get exactly what it wants changed or added to the *Agreement*? - sometimes; more usually, no.

Between formal negotiations, the Guild and district approve *revisions* (Article 6.A) called "Memos of Understanding"; when clarity is needed, the Guild and district mutually approve “Contract Interpretations”. MOU language becomes contract language of the current negotiated *Agreement*.

## Collective Bargaining cont.

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Campus issues occur, and language remedying what we know is a violation of faculty rights may not be in the contract, known as the Agreement, but Article 6.E. states, “Both parties agree to comply with state and/or federal laws.” There are many laws that are extraneous to the contract and govern our work environment and our relationship to administration.

Not necessarily apparent to our professional profile is our being part of the national workforce; therefore, most faculty in the United States are members of a labor union. In other words, we work under the rights of labor laws, some of which are inherent in those Agreement articles we often refer to, but some laws are not apparent and must be referred to when necessary.

For example, the Fair Labor Standards Act (1938, [amended 29 U.S.C. 201, et seq.]) concerns the rights of workers to at least a minimum standard of living “necessary for health, efficiency, and general well-being” (§202). Specifically, among the many provisions the FLSA guarantees are an eight-hour workday, overtime pay if necessary, and mandatory lunch breaks except those exempted from the provisions: administrator, architect, lawyer, teacher, or anyone in “a professional capacity” (§213.a.1).

In other words, we as instructors, classroom, and non-classroom, are “exempt” employees in terms of overtime, lunch break, and work breaks [other employees, such as classified and maintenance, are “non-exempt” and must follow all FLSA laws]. Therefore, the Guild’s response to counselors who asked about lunch breaks and work breaks was that all of us in the faculty unit are not guaranteed those breaks in a workday that the other employees have. When non-classroom faculty take time away from assigned duties, that time must be made up.

In fact, Vice Chancellor Albert Roman (Human Resources) recently wrote a memo to all nine campus presidents noting that non-classroom faculty are not required (after one campus vice-president stated counselors were required) to take “lunch breaks or morning/afternoon breaks, but may take unpaid breaks if they request to do so.” They would make up the time probably at the end of the day in order to meet their standard workload as negotiated (Article 13 and Appendix D). Therefore, a break is a request, not a requirement.

More obvious, perhaps, LACCD Board Rules, Administrative Guides, and Human Resources Guides, all found on-line, create the outlines of every campus’s workday behavior. Some are logical in terms of professionalism and even morality. Others are not so obvious. Faculty focus on their students as daily work, so many of the rules concern that interaction. In spite of further obviousness and inherent moral considerations, a few of those rules are broken.

For example, no financial trans-action shall take place between students and faculty. Even so, an instructor held required Saturday tutoring sessions for his students at the campus and charged them a fee. In addition, he charged them for paper on which he printed his syllabus. The first financial interaction violated Board Rule 9700: “An instructor employed by the District is prohibited from offering private instruction or other professional services for compensation (1) to a student who is enrolled at the college to which said instructor is assigned (2) during any summer vacation period to a student or a former student who was a member of one of the instructor’s classes during the previous Spring semester.”

His second financial interaction violated Board Rule 9700.1: “Faculty members are prohibited from engaging directly with students in their classes in the sale or rental of required or recommended materials or activities charges.”

Another instructor sold his self-published book in the classroom to the students. Warned by his chair not to do so, he continued by having his “representatives” (other students) sell it to the class. He did have it for sale in the bookstore and on line, but he violated Board Rule 9700.1 when he sold it in the classroom.

There are other such directives that instructors must reasonably follow.

The Board Rules and other district regulations are not violations of an employee’s rights, nor are the employee’s violations of them grievable for the Guild to fight if the instructor egregiously conducts actions contrary to those rules. We do, however, represent the instructor in an investiga-tive process. During most investigations, the instructor is on an adminis-trative leave. Thus, we try to negotiate a reasonable solution under a Duty of Fair Representation (NLRB vs. Wiegarten, Inc. 420 U.S. 251, 88 LLRRM 2689 and Ca. Gov. Code 3542[b]).