FA News

Monday
November 3, 2008
http://fa.fhda.edu

FOOTHILL-DE ANZA FACULTY ASSOCIATION

President's Report

District Again Ignores Faculty Needs

by Richard Hansen, FA President

"Districts have found a way to address their facilities needs, but they have not yet found a way to meet their human needs" was my comment at a retreat of state leaders held this fall. We were introducing ourselves to State Senator Jack Scott, who is set to take over as California Community Colleges Chancellor in January. When asked to cite important challenges facing the community college system, I was referring to the ability of districts to raise money for facilities through local bond measures. Unfortunately, this funding cannot be used for employee salary and benefits, and, consequently, we are still on the short end of a very small state budget stick.

FA has always had to wage a major battle with the District simply to pass COLAs through to faculty. This year the state budget is tighter than ever, and a measly 0.68 COLA is on the table. You can read about how the District has swept this money from the table in this month's "Negotiations Update." Here I want to explain why it makes perfect sense to invest this small, but very important, amount of money on the human side of the house. In the end, it all boils down to priorities.

First, Foothill-De Anza's two local bonds, Measures E and C, helped secure the wellbeing of our campuses and Central Service facilities. Indeed, during its ramp-up on the Measure C campaign, the administration rallied faculty and staff support with loud promises that passage of Measure C would "free up funding for other needs." Of course when asked what other needs would be considered, administrators failed to cite the needs of employees.

The argument makes sense only if employee needs become a priority when the time comes to decide how those freed funds will be used. But unfortunately, the argument appears now to have been a cynical ploy. Already we are hearing in District meetings how Measure C allocations are inadequate to the task, so those freed-up funds will need to be enlisted to supplement "inadequate" Measure C accounts.

Hansen

Second, we must not forget about "equalization funding." Beginning in 2004-05, the state embraced a system-wide effort to equalize per-student-funding for all districts in the state. It was part of a simplified budget model concocted by financial officers that would substitute per-FTES (full-time equivalent student) funding for the program-based funding model the system had been using for the past fifteen years. Under equalization, Foothill-De Anza enjoyed an ongoing increase in funding of some $4.6 million annually along with a one-time allocation of about $4.2 million, none of which was shared directly with faculty and staff.

This is sad, but not surprising. It's sad because under the old program-based funding model, this kind of new money would have been considered program improvement funding, triggering various spending requirements. These include making progress toward recognized standards, such as hiring additional faculty toward the goal of having 75 percent of teaching load in the hands of full-time instructors. The Disrict's actions are not surprising because we have seen time and again that the human side of

(See Page 6)

The Retirement News

• VOLUNTEERS NEEDED to help organize the May 15, 2009 district-wide Retirement Workshop with speakers from Social Security, STRS, PERS, and FA. To sign up, contact Barbara Fink, FA Executive Secretary (finkbarbara@fhda.edu, 408.864.8632)

• CalSTRS CHECKUP WORKSHOP for those approaching retirement is set for November 11, 3:00 to 4:30 pm in the District Board Room with Susan Milne as the presenter.

• CalSTRS POST-RETIREMENT EARNINGS LIMIT for 2008-09 is $29,700.

Negotiations Update

Negotiations Prove Contentious on Four Important Issues

by Anne Paye, FA Chief Negotiator

Recent stormy talks at the bargaining table have revealed that the District has battened down the hatches on a three-pronged set of interests: what's good for the bottom line, what's good for students, and what's good for managers. Apparently, what's good for faculty does not factor into the equation—or at least this is the impression gleaned from recent negotiations sessions on four key issues.

• COLA

In its final 2008-09 adopted budget, the State appropriated 0.68 COLA for community colleges, translating into $1.2 million for the FHDA District. On October 15, at the first FA-District negotiations session following the State budget approval, FA proposed that the faculty share of the 2008-09 COLA (approximately $550,000) be allocated to a line item for post-1997 faculty medical savings options. The Executive Council directed FA's negotiating team to make this proposal in order to address the disparity between pre- and post-1997 full-time faculty benefits.

Historically, FA's proposals on COLA have been directed toward salary adjustments, but the Council determined that FA must take a proactive role in resolving the most urgent and divisive issue among its members. FA emphasized that the proposal constituted a one-time, non-precedent-setting approach to meeting the benefit needs of its constituency.

The District responded that its position on COLA for employees was "0." While the purpose of a COLA is to offset inflation in both institutional and employee expenses, the District has never simply "passed through" COLA—instead, the union groups have always had to haggle for it through often-protracted salary talks.

Given the current $7.9 million operating deficit, and with nary a thought to employee needs, District budgeters have now evidently started cleaning house, intending to vacuum up the entire COLA for "District needs" (See "President's Report"). If the District continues in this direction, it will definitely have a fight on its hands and mutiny in its ranks. More information relevant to this issue appears below.

• Medical Savings Options

As described in the September *FA News* and at the Retirement Workshop on District Opening Day, the conceptual model FA proposed to the District is a voluntary 403(b) tax-deferred plan intended to help provide post-1997 faculty with financial security for health care costs (i.e., Medicare Part B and purchase of a Medicare-supplement plan). Faculty could elect to participate, and the program would be based on a maximum employer match of $1,000 annually for each year of service starting from the effective date of the plan until retirement. The plan also includes a "catch-up" provision whereby the District would match an additional $1,200 annually for each year of service an employee rendered between July 1, 1997 and the plan's inception.

Paye

While summer negotiation discussions of the FA model seemed encouraging, at the October session the District stated it is "not interested in establishing supplemental retirement accounts for employees" and certainly "not interested in creating retirement accounts that could be used for discretionary spending."

Further, it reiterated that its position was made clear back in 1997: the District was no longer in the business of providing retiree health benefits. According to the District, going back to putting money into a fund for this purpose seemed, in its view, a lot like the financial obligations the District carries for pre-1997 employees.

Instead, the District is now developing a Grand Plan to "change the culture of health and wellness" throughout the District, to incentivize employees to participate in wellness and to provide opportunities for them to accumulate financial resources for retiree out-of-pocket expenses. The expressed goal was keeping the workforce healthy and on the job to assist students, which faculty "can't do when they are sick or managing disease." This sounded to the FA team a little like keeping the robots well-oiled so they don't break down, but readers are free to draw their own conclusions.

When FA argued that even the healthiest workers, in their retirement years, will be obligated for the cost of Medicare Part B and a supplemental plan and asked for details on how the Grand Plan would help offset these expenses, the District responded that "discussions are at the conceptual level." It did, however, note that some health plan design changes would have to be made—and that, in itself, is cause for concern.

Because the District's Grand Plan does not appear to directly address the retiree health needs of post-1997 faculty, FA will continue to pursue a viable medical savings option. Now that the District appears inalterably opposed to the 403(b) model that permits what it calls "unfettered access [for discretionary use]," FA will propose an alternative savings model that restricts its use to qualified medical expenses only.

In the coming months, FA will be calling on faculty to voice their protest of the inequitable two-tiered retiree benefits directly to the Board.

• Part-Time Load Limit

FA proposed that the *Article 7* maximum allowable load limit be increased from 60 to 67 percent, in accordance with recent legislation (AB 591) effective January 1, 2009. The District indicated its willingness to do so but—and this is a big "but"—it was *not* willing to lift the artificial ceiling of 55 percent stipulated in *Article 7.4.2*.

Jettisoning the District's long-standing rationale that the 5 percent margin provided protection against "back-door" tenure (due to inadvertent assignment above the load limit), the District proposed increasing its margin to *12 percent* (the difference between 55 and the new 67 percent limit), citing the need for "discretionary flexibility" to tap special expertise within the discipline, support diversity, bring in "new blood," and contain costs (since senior part-time faculty receive higher pay than new faculty).

If the District continues in this direction, it will definitely have a fight on its hands and mutiny in its ranks.

The District's proposal is clearly unacceptable. Limiting some part-time faculty to 55 percent and allowing others to work the full 67 percent would undermine the principles behind earning reemployment preference, lead to arbitrary and capricious allocation of assignments, and enable deans to play favorites under the guise of professional discretion.

FA pointed out that the District's position was inimical to the intent of the new legislation, which is to increase the amount of service a part-time faculty member could render in a district, and advised the District that it will not relent on this issue. More information relevant to *Article 7* employment appears below.

• Managers Teaching

While the District evidently does not have an interest in improving the *Article 7* rights of part-time faculty, it does have an interest in improving the *Article 7* rights of *managers*. Moments after resisting FA efforts to increase the ability of part-time faculty to teach more classes under *Article 7*, the District proposed to increase both the number of managers who can teach overloads under *Article 7* and the number of overloads they can teach.

The right of deans and educational (academic) administrators to teach District assignments is contained in a Memorandum of Understanding (p. 236-239 of the *Agreement*) initially signed by FA and the District in 1992. In accordance with the specified provisions, managers listed on Attachments A and B can teach a limited number of classes as part of their management load.

In addition, the MOU allows for a manager to teach one assignment per quarter for "extra compensation," i.e., under *Article 7*, "provided that in any one quarter of the regular academic year, the total number of assignments within the District taught by administrators for extra compensation shall not exceed three." This means that managers can teach a total of nine *Article 7* classes district-wide during the academic year.

For the first time, the District is attempting to increase managers' access to overloads. Why? According to the District, difficulty in finding qualified and available faculty for some core courses, keeping managers current with today's teaching challenges, difficulty in recruiting faculty into administrative positions because of the potential loss of income related to overload assignments (if the faculty member has been teaching at least two overloads per quarter), and—let's face it—they need the money in order to meet the high cost of living in the Bay Area.

Ah, now, that last reason is really persuasive: after all, managers' base salaries are already in the low to mid-six digit range, and *they need more money?* Would that the District had the same compassion for part-time faculty who hope simply for six rather than five classes per year and who thought that AB 591 might let them make $30,000 rather than $25,000.

When FA asked if the District's stated interests in maintaining the part-time 55 percent limit—careful readers will remember them from the bullet point above: flexibility, special expertise, diversity, "new blood," and containing costs—would be served by allowing managers to teach more *Article 7* classes, the response was, "No. This proposal is not intended to serve those interests and is not in any way related to the [part-time] discussion."

This writer is hard-pressed to determine which is more objectionable: the (il)logic of the District's response or the self-serving nature of its managers' proposal.

All in all, the negotiations ahead promise to be less a trip down the yellow brick road and more one heck of a rocky ride.

FA Retreat Focuses on Past Practices

by Linda Lane, FA News Editor

At the annual FA retreat last month, the keynote speaker was Robert Bezemek, labor law expert and FA's legal counsel since 1976. Bezemek began with a brief overview of labor law. Educational "rights" are established in three documents: EERA (Educational Employment Relations [Rodda] Act), the Ed. Code, and Title 5. PERB (Public Employment Relations Board) is the body that enforces these rights. Collective bargaining, which must not conflict with labor laws, results in mutually agreed-to language on wages, hours, and terms/conditions of employment as well as language that clarifies vague areas in the three documents. For example, Title 5 mandates all colleges adopt an academic freedom code but does not specify how to do that or what to include (our academic freedom statement is in the *Tenure Review Handbook*).

"Past practices," Bezemek said, "fill-in the gaps in a contract. A contract, no matter how many pages or how well crafted can't possibly cover everything that could and will occur."

But what exactly is a "past practice"? The notion is basically this: if labor and management have been doing things a certain way for a long time, and what they are doing does not violate contract language (or labor laws), then what they are doing is an *enforceable* past practice. If either side stops the practice, the other side can legally insist that it be continued; in fact Bezemek stated that a union must respond (demand bargaining) in such situations or it risks losing the right to demand continuance of the practice in the future.

A past practice does not need to be established in contract language; the only requirement is that the practice in question qualifies as a legitimate "past practice." Specifically, Bezemek's, and FA's, definition is that a past practice must meet three equally important criteria: (1) the practice must be uniformly applied, unequivocal and consistent; (2) the practice must be clearly understood by all (or virtually all) affected by it; and (3) the practice must be in place for an extended period of time, usually years.

Past practices can work for or against the interest of faculty. If a new, onerous, but well-understood and uniformly applied practice goes unchallenged for an extended period of time, it may replace one more favorable to faculty. Likewise, if a new, favorable and well-understood practice uniformly applied is in effect for an extended period of time, it behooves faculty to document the practice as potential legal evidence that the practice exists.

In arbitration hearings, past practice is often key in determining the outcome, along with contract language, contract review (clarification of the intent of the language), and common law of labor relations. Bezemek gave example after example of legal cases in which past practice was *the* deciding factor in winning.

After Bezemek's presentation, the FA staff and members of the Executive Council had a lengthy and lively discussion on past practice. One interesting point that emerged was that the term has a negative connotation to some faculty: comments included, "*We shouldn't be restricted to what was done in the past... The term implies that things done in the past are better... Past practices aren't always relevant or agreed to.*" Using Bezemek's definition, it became clear that what some faculty view as an "ineffective" past practice is not an actual one. Policies that were never mutually agreed to, not known to faculty, nor universally applied to faculty can not be called "past practices." Furthermore, if legitimate past practices aren't working, they can be changed, albeit some requiring time and effort.

If "past practice" is a pejorative term, another way to look at past practice is simply that it is how a division or department does business, both for contractual matters, such as scheduling, and common tasks, such as selecting faculty for tenure committees. It is faculty who engage in these activities regularly, so it is they who must decide if this work is or isn't to be governed by past practice.

Faculty who wish to memorialize their practices have many options. De Anza's math department has a formal seven-page document that covers six areas: department meetings, voting procedures, department coordinators, class assignment procedure, committee service, and textbook selection. It

(See Page 5)

NEWS *Volume 33, Number 2*

FOOTHILL-DE ANZA FACULTY ASSOCIATION

FA News is published nine times during the academic year by the Foothill-De Anza Faculty Association, an independent California corporation certified by the California Public Employment Relations Board as the exclusive employee representative for the faculty of the Foothill-De Anza Community College District.

Letters and articles from District faculty are invited.
FA, 12345 El Monte Road, Los Altos Hills, CA 94022.
Ph: 650.949.7544 Email: ElwellSusanne@fhda.edu
Website: http://fa.fhda.edu

FA Executive Council Members:

Bea Cashmore (F) | MaryAnne Ifft (DA)
Susanne Chan (DA) | Roger Mack (DA)
Kathy DePaolo (F) | Faith Milonas (DA)
Amy Edwards (F) | Anne Paye (F)
Karen Erickson (F) | Bob Pierce (F)
Mary Ellen Goodwin (DA) | Tim Shively (DA)
Nicole Gray (F) | Alan Simes (DA)
Richard Hansen, Pres. (DA) | Chris Storer (DA)
Meredith Heiser (F) | Laurel Torres (DA)

ADMIN. ASSISTANT: Susanne Elwell
FA NEWS EDITOR: Linda Lane

What Happens to My PDL Application?

by Linda Lane, FA News Editor

For those of you who have just submitted your Professional Development Leave (PDL) application, you may be wondering what happens next.

The PDL committee– which is comprised of three managers (the VC of Human Resources, one Foothill and one De Anza manager), four FA representatives (two from each campus), and four Senate representatives (two from each campus)–meets several times Fall Quarter and in January to review all applications before the February 2 Board meeting at which time applications are approved/disapproved.

Typically each year there are from 25 to 50 applications. Before each PDL committee meeting, members are asked to review a batch of applications (alphabetically ordered) and make note of any questions regarding the details of the leave. At the meetings, applications one-by-one are discussed.

If no questions are raised, a member of the committee is assigned to call the applicant to inform him/her the application will be recommended for approval to the Board (the official notification letter of Board action is sent after February 2). If the application appears to lack appropriate substance or duration, a PDL member contacts the applicant to get clarification or additional information. The goal of the PDL committee is to recommend approval for each applicant and, when necessary, to offer assistance in filling out the application.

Once a PDL application is submitted, applicants may NOT change their stated objectives. However faculty wishing to change timelines or replace activities (which must also meet the original objectives) may submit to the committee *Appendix P2*, "Request for Change to Professional Development Leave," available on both the District and FA websites. This form is to be submitted *prior to the start of the leave* or as soon as possible thereafter. For example, faculty who specified particular classes would be completed in a particular PDL quarter must amend the application if a class is cancelled or changed. If the Request for Change is approved by the committee, it is attached to the original application; if the Request is unclear or does not appear to contain equivalent activities, the applicant will be contacted.

If PDL activities require tuition, fees, books or other educational expenses, faculty may apply for Training-Retraining Funds. Faculty who will be applying for a Professional Achievement Award during or soon after a PDL are reminded to get all administrative, peer, and student evaluations done in time for the PAA deadline. And faculty who are eleven or twelve month employees should be aware that a PDL reduces salary in all pay periods. For example, eleven month faculty who take a full year of PDL receive 86.36 percent of salary for all eleven months of the academic year, which includes the July and/or August paycheck preceding the leave.

A final note: after a PDL is completed, the official Leave Report, *Appendix P3* (available on the FA website) is due within 30 calendar days after the first work day of the next quarter; for example, for a leave completed June 30, 2008, the report would be due October 17, 2008, 30 days after September 18.

If you have questions, visit the FA website [fa.fhda.edu] or call the FA office (650.949.7544).

Retreat Focuses on Past Practices . . .

(From Page 4)

is given to faculty when hired, used at department meetings, and updated every five years. Foothill's English department has an informal two page chart, referred to as needed, which details policies approved at department meetings (updated yearly), including, for example, what constitutes a 'yes' vote, how textbooks are selected, and how literature assignments are rotated. Doubtless others within the district have a record of common practices, but only a couple of Council members present were aware of any within their divisions.

The question then becomes what, if anything, to do about past practice. The FA staff supports memorializing past practices, with perhaps a survey or questionnaire, to protect the rights of faculty, especially those practices affecting most faculty, for example, how Professional Achievement Award applications are reviewed. And, with so many senior faculty and managers leaving or changing positions, now is a good time to record practices. Council members want research on division policies to focus on only a few "key" areas, such as scheduling, committee selection, and voting procedures. A survey could begin productive discussions of how business does get done. Though past practices were acknowledged as an integral component of working conditions, several Council members expressed concern that unearthing them might be seen as intrusive in some departments, threatening to some managers, and, as one put it, likely to "open a BIG can of worms."

At the final goal-setting session of the retreat, Council members voiced strong support for FA to continue to work towards securing post-1997 medical savings options and higher load limits for part-time faculty (see "Negotiations Update"). Support for pursuing past practices was voiced but mixed; some faculty see the project as overwhelming while others compared it to the *Agreement*, a work-in-progress. It was agreed the staff will present a research plan to Executive Council members at a future meeting.

Benefits Committee Considers Provider Change

by Barbara Fink, FA Executive Secretary

After examining year-end plan data and reviewing results from the District Health Benefits Survey conducted last Spring, the District Health Benefits Committee has decided to consider a change of health care provider and third party administrator. Requests for Proposals (RFPs) will be sent out to the five top healthcare providers, known as the "BUCAs": Blue Cross, Blue Shield, UnitedHealthCare (our current provider), Cigna and Aetna. With almost three years of service from UHC (it replaced Principal/CCN in July, 2006), the District is following industry practice in periodically researching competitive network alternatives.

Fink

Some survey respondents—both actives and retirees–expressed dissatisfaction with UHC, identifying poor claims processing as their major complaint. However, the number of complaints regarding UHC has significantly decreased in the last year, and many employees expressed reluctance to endure yet another network change.

The Health Benefits Committee will evaluate the alternatives to UHC on the following criteria: (1) better service to employees, (2) discounts that are as good as or better than UHC to prevent district healthcare costs from skyrocketing, and (3) a network that is large enough to include most doctors currently being used by employees. If the competitors fail to provide evidence of superiority in these three areas, the committee may decide to continue with UHC to prevent the usual disruption that occurs when networks are changed.

Because a significant number of employees use the Palo Alto Medical Foundation, the Camino Medical Group, and the Santa Cruz Medical Foundation, all contracted with the Sutter Health Group, only networks that include Sutter will be considered. Although some employees have indicated a desire to return to our previous third party administrator, Principal Financial Group, it will not be among the contenders because its CCN network providers discount their rates by only 29 percent, compared to the 40-45 percent offered by the BUCAs, and it does not include Sutter Health.

The Health Benefits Committee, assisted by the health benefits consultants for the District (Lockton) and FA (Rael-Letson) will review the proposals at its November 20 meeting.

Faculty Priorities Not the District's . . .

(From Page 1)

the house is not a high priority. In fact, when faculty groups advocated for the legislature to designate equalization as "program improvement funding," administrators throughout the state, including those at Foothill-De Anza, opposed them because faculty priorities are not their priorities.

Finally, consider how the District has dealt with one-time windfalls like the $4.2 million in equalization and the $2.9 million that came as a Proposition 98 catch-up in 2006-07. Knowing that such funds usually disappear into the murky pit of budget allocations, FA suggested that these 2006-07 millions be set aside for future needs. The District turned a deaf ear and responded instead to college and Central Service demands for the money. The colleges promised "growth initiatives," but faculty can easily attest to the wide variety of pet projects that have been funded.

When the current budget crunch descended, FA again urged that the remaining funds be set aside, and predictably, administrators went ballistic; their own special projects again received highest priority.

In the final analysis, despite the dismal economic news that surrounds us, there is plenty of money flowing at Foothill-De Anza. In the greater scheme of things, the 0.68 COLA, amounting to a little over $1 million in ongoing funds, is a pittance. Still, to post-1997 employees who have no retiree supplement to Medicare, this seed money means a lot.

It's too bad that these faculty and staff just aren't high among district spending priorities.

Announcements

• All employees are now asked to use their campus-wide identification (CWID) on all forms, instead of a social security number. Your CWID is the 8-digit "Employer ID" located on your paystub in the upper left corner.

• The FA website (http://fa.fhda.edu) now has downloadable FHDA forms commonly used by faculty in easy to use templates, which can be typed into, saved, and printed.