FA NEWS

FOOTHILL - DE ANZA FACULTY ASSOCIATION

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President's Report

Single-Payer, In Principle, Could Lead to Universal Coverage, In Fact

by Tim Shively, FA President

In September, U.S. Senator Bernie Sanders released a new version of his Single Payer Healthcare bill, "the Medicare for All Act," sponsored by a range of other high profile senators, including Elizabeth Warren, Corey Booker and our own Kamala Harris. In the same month, at the California Nurses Association (CNA) convention, Lt. Governor Gavin Newsom declared, "There's no reason to wait around on universal health care and single-payer in California….If we can't get it done next year, you have my firm and absolute commitment, as your next governor, that I will lead the effort to get it done." And in terms of constituencies, universal health care of one form or another has strong support from a wide range of health professional, academic, trade and other union groups both in California and across the country. Though there are different ways to achieve universal coverage, single-payer solutions highlight most vividly the unfairness of American healthcare (thus occupying a kind of moral high ground) *and* establish a fruitful starting place for negotiations or debate. Thus, with the welfare of Foothill-De Anza employees (particularly part-time faculty) in mind, at its November 1 meeting the FA Executive Council unanimously adopted a position of support in principle for single-payer healthcare.

Shively

I was thus a little taken aback when a campus colleague equated this position with "what all the half-ass, quasi-Democrats are saying." Like the CNA, she was hoping for unequivocal support of a particular piece of legislation, SB 562, the "Healthy California Act," which passed the State Senate in June of this year. The bill was then stalled in committee by Assembly Speaker Anthony Rendon, who, over the protests of the CNA (among others), insisted that "even senators who voted for SB 562 noted there are potentially fatal flaws in the bill." Chief among these is that despite the projected cost of $400 billion, more than three times the amount of the state's entire general fund, the bill does not identify a revenue stream. Beyond being, as gubernatorial candidate Anthony Villaraigosa has characterized it, "pie in the sky," this is half-baked pie. Even accounting for all existing local, state and federal funding, we're still looking at costs of between $50-100 billion, according to the legislative analysis.

Regardless of the (de)merits of this particular piece of legislation, it is past-time for FHDA faculty (and citizens generally) to advocate for a more stable healthcare system, whether at the state or federal level, that provides coverage for all employees. Although our current partially employer-paid benefits are pretty good, relative to other California Community Colleges, many part-time faculty can't afford or are ineligible for district healthcare. And when our District's three-year budget reduction plan starts in, additional instructors will lose their existing coverage or be forced to pay more as they fall beneath instructional load thresholds. To raise the stakes further, healthcare costs for all FHDA employees will only continue to rise under the current insurer mandated market, particularly as insurers pass along the costs of Trump's efforts to sabotage the

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FA Break Schedule

The FA Office will be closed at noon Friday December 15 and reopen Monday January 8. Faculty in need of assistance may leave voicemail on the FA phone (650.949.7544), which will be monitored only periodically. Unless extremely urgent, a message will not be responded to until January 8.

Negotiations Update

Silence on Salary Proposal, Talks Continue on Permissions for Online Course Evaluators

by Kathy Perino, FA Chief Negotiator

FA presented the District with its 2017-18 salary proposal at the end of October. The proposal included a request to research cost savings associated with a Supplemental Retirement Plan (SRP), also known as a "golden handshake." The District reports that it is now working with a consultant to research these cost savings, but other than that, the District has had no response to any of the other aspects of FA's salary proposal.

Perino

While waiting for the response on salary, the teams have been discussing which aspects or elements of an online course an evaluator should be given permission to access. Last year, FA and the District reached agreement on the language for the new section of the Administrative and Peer Evaluation Form (*Appendix J1*) to be used for evaluation of online courses. When negotiating that language, the teams agreed the evaluation of an online course should remain as close as possible to the evaluation of a face-to-face class. Though the delivery method is very different, an instructor of an online course shall not be held to a higher standard than an instructor of a face-to-face course. Thus, the language in the online instruction section of *Appendix J1* closely parallels the language in the classroom instruction section of *Appendix J1*.

Now that we have the language for the online evaluation, we must agree on which parts of an online course an evaluator can view while completing the evaluation. For example, FA insists the evaluator cannot have access to the gradebook in Canvas because, in an evaluation of a face-to-face course, the administrator or peer evaluator does not have access to the scores earned by students on exams or papers and does not see the individual comments provided as feedback to students. Thus, evaluator access to the online gradebook must be prohibited.

At the same time, the evaluator must be able to confirm that there is "regular, timely, and effective contact for student-teacher interactions" in the online course, and that there is "ongoing student engagement with course content." FA and the District are researching the different permissions available in various Canvas roles, such as "Student", "Observer", and other customizable roles such as "Evaluator," and the team hopes to reach agreement on the appropriate permissions prior to the start of Winter Quarter.

In the process of researching and testing these permissions, FA realized that for online course evaluations, the current optional pre-evaluation meeting between the evaluator and the faculty member is more imperative than for a face-to-face class. When the evaluator and the faculty member meet in person, or online, prior to the start of the evaluation, the faculty member can communicate the overall design of the online class, clarify the main methods of interactions with students, and give the evaluator a 'quick tour' of the course. And, if the main method of communication and interaction with students is through comments on assignments and in the gradebook, the faculty member can share samples of those interactions since the evaluator will not, and should not, have access to the full gradebook. Perhaps one solution to establishing appropriate evaluator access would be to require a pre-evaluation meeting that covers a specified list of criteria for all evaluations; this meeting is already noted as a "best practice" in all of the District's training and supplemental materials for tenure committees and evaluations.

As we move forward with these discussions, FA will insist on the following:

1) Online course evaluation should parallel face-to-face course evaluation as much as possible, while allowing for assessment of the agreed upon evaluation language.

2) Because evaluation is negotiated District-wide, the permissions granted to an evaluator must be consistent District-wide.

3) The evaluator cannot have the ability to edit any part of the course, including course settings or content availability.

4) Student scores and grades must not be part of the evaluation.

5) The evaluator must not have the ability to interact with the students during an evaluation.

FA and the District hope to reach agreement on these issues as soon as possible as the number of online courses undergoing evaluation is increasing and winter quarter evaluations are coming soon!

Register Early For FACCC Conference

The Faculty Association of California Community Colleges (FACCC) Advocacy and Policy conference will be held in Sacramento this coming March 4 and 5, and includes workshops on student equity, lobbying, and state politics. On Monday March 5, during the afternoon, participants will have a chance to directly lobby the State Assembly and Senate.

Labor and civil rights icon Dolores Huerta will be the keynote speaker and recipient of the Alumni of the Year Award at this annual Conference. President and co-founder (with César Chávez) of the United Farm Workers union, Dolores Huerta has been a leading voice for social justice in California and across the country since the mid-1950s. Having coined the expression, ¡Si, Se Puede!, she brings a unique and timely perspective on the issues of today.

Because last year the FACCC conference sold out well in advance and because FA wants to encourage faculty to take advantage of the professional conference and equity funds still available, apply now: registration rates increase after January 31. For the agenda, to register, and to see the schedule, go to http://www.faccc.org/event/ap2018/.

Because FA has a contract membership with FACCC, all FHDA faculty are eligible to register at the member rate. Registration closes on February 22.

The conference will be held at the Holiday Inn Sacramento-Capitol Plaza, 300 J Street, Sacramento.

PT Faculty Unemployment Benefits

Even if offered an assignment for Spring Quarter, part-time faculty may be eligible for unemployment benefits from the date of the last final exam through the date of the first class in the new quarter. According to a court ruling, "… an assignment ... contingent on enrollment, funding or program changes is not 'reasonable assurance' of employment."

To file a claim for benefits, faculty can submit an application to the Employment Development Department (EDD) by phone, fax, on-line, or mail. However, the quickest way to apply is online through the updated EDD website, which makes filing secure and expeditious: *http://edd.ca.gov/Unemployment/Filing_a_Claim.htm*. The website also offers a step-by-step process guide. Once a claim is established, EDD mails the materials, including a Benefits Handbook and a Notice of Unemployment Insurance Award. Tables and other information to help determine the amount of benefits are available on the EDD web site.

Questions? Contact Mary Ellen Goodwin at the FA Office (650.949.7746 or, by email, GoodwinMaryEllen@fhda.edu).

Keeping Medical Benefits: Eligible part-time faculty not teaching Winter Quarter are reminded that they need to take transition steps when in non-pay status, either moving to COBRA or Direct Pay. The forms and process for these steps can be found under the Direct Pay subheading at *http://hr.fhda.edu/benefits/e-forms.html*.

. . . Single-Payer

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Affordable Care Act (we'll have to wait and see what comes out in the wash with the Republican tax plan).

There are numerous universal healthcare models already in existence—from Canada, to Taiwan to the United Kingdom—and other states in the US (Vermont and Colorado among them) have already taken a stab at passing such legislation. So when Speaker Rendon says that SB 562 is not "dead," and that now is the time "to fill the holes," he has a range of likely examples to draw from to ensure the revived bill is fiscally responsible. Either existing revenue streams must be diverted towards healthcare (recreational marijuana, anyone?), additional sources of revenue must be found (an increase in sales tax, perhaps?), savings identified in current expenditures, or some combination of these. Among the more innovative proposals I've run across calls for an incremental expansion of Medicare, starting with children (the age group, along with seniors, most frequently requiring healthcare), and gradually extending coverage to all citizens.

To paraphrase Bette Davis, it's likely to be a bumpy ride, though probably less a question of if than when we'll adopt a single payer system, particularly if the aforementioned "incremental" model is adopted. But as the first steps are taken and the bumps are smoothed out, I think we'll see that extending coverage to all will be ultimately beneficial to all. And when the right bill comes along, I hope that FA and its membership can play a small role in getting us there.

Important Facts About Your Union

There are scores of new faculty members in the District, and most have only a vague idea of what the Faculty Association is, the role it plays in the District, and their professional and legal relationship to it. This is the first installment of a semi-regular series of articles designed to offer *all* faculty a useful synopsis of FA's history, its purpose and how it functions within the District.

Q: What is the Faculty Association?

A: It's the exclusive collective bargaining agent for all faculty (full-time, part-time, probationary, grant funded) in the Foothill-De Anza District. FA bargains with District management on behalf of all faculty over working conditions (load, hours, calendar, etc.), compensation (salary, benefits, awards, etc.), discipline (reprimands, dismissals, etc.) and classification (granting tenure, reemployment preference, etc.), or more precisely, over all items "within scope" of California collective bargaining law.

Q: Does "exclusive collective bargaining agent" mean that I can't negotiate a working condition or some special compensation for myself?

A: Yes. That practice is called "direct dealing", and it is illegal. FA bargains collectively, for all faculty as a group, rather than for individual faculty members, and it is the exclusive bargaining agent, which excludes all other agents, including individuals.

Q: How are FA and the college Academic Senates related?

A: They are distinct organizations with separate responsibilities. FA is a labor union that negotiates collective bargaining agreements and monitors the enforcement of its provisions. The college Academic Senates represent District faculty to management on academic issues like curriculum, textbooks, course prerequisites, matriculation, etc.

Q: Are there other unions in the District?

A: Yes. Classified staff belong to either ACE (Association of Classified Employees), CSEA (California School Employees Association), or the FHDA-POA (Police Officers Association), all independent unions. Classified Managers belong to the Teamsters. District managers and Confidentials do not belong to a union; they "meet and confer" with top District administrators over their work issues.

Q: Is FA affiliated with a larger union?

A: No. FA is an independent union. All faculty dues stay in the District and are spent to support union activities within the District.

Q: When was FA started?

A: In 1976 the state Legislature passed the Rodda Act (SB 160) authorizing collective bargaining in schools and community colleges. FA was certified as the exclusive bargaining agent for District faculty in June, 1977, and signed its first collective bargaining agreement on November 23, 1977, some 40 years ago.

Q: How were compensation, working conditions, etc., determined in the District prior to 1977?

A: Pursuant to the Winton Act, faculty "met and conferred" with management to make their appeals. After meeting and conferring, management was legally free to unilaterally decide what compensation and working conditions would be, regardless of faculty objections.

Q: As a new faculty member, do I have to join the Faculty Association?

A: No, but because FA is an agency shop, all faculty must either pay dues or pay an equivalent agency fee to FA. The dues are presently six-tenths of one percent (0.006) of total gross salary for full-time faculty, and four and a half tenths of one percent (0.0045) of total gross salary for part-time faculty. Well over 99 percent of all faculty are dues paying members.

Q: How is FA organized, and who represents me at FA?

A: A closer look at how FA is organized is the topic of a future article in this series. Each member of the FA Executive Council is assigned to represent a division within the District, so your representative is the person who leaves you the brief, but informative, phone or email messages about Executive Council meetings. If you have a job-related question or concern, call your FA representative or Susanne Elwell in the FA Office, (650) 949-7544.

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Supreme Court Case

Slouching Towards Janus: It's Hour Has Come 'Round at Last

by Raymond Brennan, FA Negotiation Team

History does not take place in a vacuum but is best understood in context, and to contextualize the Janus Case requires understanding its antecedents. But for those who take solace in Dr. King's claim that "the arc of the moral universe is long, but it bends toward justice," a spoiler alert is in order. This historical arc does not end well.

At the heart of the Janus Case—legal briefs to be in January at the Supreme Court in Washington D.C., oral arguments in March, decision probably by June—is whether a union can collect "agency" or shop fees from all its members to prevent "free riders," members who benefit from the union's efforts on their behalf without paying dues. Such a right was enshrined the 1977 Abood case when Justice Potter Stewart, writing for a unanimous Supreme Court, held that the agency shop clause was valid "[i]nsofar as the service charges are used to finance expenditures by the Union for collective bargaining, contract administration, and grievance adjustment purposes." Looking ahead from Abood, some may take comfort from thinking that the Supreme Court should be reluctant to overturn 40 years of clearly stated precedent, but in that regard, it is instructive to note that the odious 1896 Plessey v. Ferguson decision enshrining "separate but equal" as the law of the land remained settled precedent for 58 years until rectified by the Brown decision of 1954—an overturning of precedent that upholds Dr. King's maxim. The unions' arc seems to bend the other way.

As with the circumstances leading up to Janus, Abood was not decided in a vacuum. In the Abood decision, the Court cited as precedent another unanimous decision, Railway Employees and the American Federation of Labor v. Hanson, which, when decided on 21 May 1956, the Supreme Court held that the "financial support of the work of the union in the realm of collective bargaining, [. . .] involves no violation of the First or the Fifth Amendment." As an additional buttress of its reasoning in Abood, the Court also mentioned the Machinists V. Street decision of 19 June 1961, when in a 7 – 2 decision, the Court ruled that "a union may constitutionally compel contributions from dissenting nonmembers in an agency shop only for the costs of performing the union's statutory duties as exclusive bargaining agent." So, the bottom line in the Abood case was that collecting shop fees was a union's constitutional right and that collecting such fees from members was not a violation of members' Constitutional rights. So far, so good, right? Perhaps, but the 1970s were followed by the 1980s.

Eight months into his first term, in August of 1981, President Reagan reached back to the 1947 Labor Management Relations Act, better known as the Taft–Hartley Act, to justify his decertification of the Professional Air Traffic Controllers Organization (PATCO), fire 11,400 of its members, and bar them from any future civil service positions—a ban later lifted by President Clinton. Though admittedly, this use of executive authority was exactly what the Taft-Hartley Act was designed to allow, it was an unprecedent union busting action, and one could be forgiven for thinking this was the beginning of a long, steady drumbeat of attempts to undermine the collective power of all unions and particularly, public-sector unions.

In Reagan's second term, Justice Stevens, writing for a unanimous Supreme Court in handing down the Teachers v. Hudson decision on March 4th, 1986, subtly opened the door for future dissenters when, after affirming Abood, he added that "The union, however, could not, consistently with the Constitution, collect from dissenting employees any sums for the support of ideological causes [such as any engagement with political or policy making persons or bodies] not germane to its duties as collective-bargaining agent." This weakening of the absolute protections in the collection of agency fees is furthered when on June 1, 2012, Justice Alito, writing for a 7 – 2 majority in deciding the Knox v. Service Employees International Union, offered an insight into his anti-union feelings when he held that unions must send out what is now known as a Hudson notice explaining any increase in fees. What is important in this decision is the Court's ruling that those paying only agency fees had to be given the option to "opt-in" on increased fees, thereby weakening previous understandings of "agency fees." This requirement of an opt-in offers a crack in the dike that was Abood.

Brennan

However, in a subsequent case, one more nuanced than most, Justice Blackmun, writing for the majority when deciding Lenhnert v. Ferris Faculty Assn on May 30, 1991, affirmed Abood. More than that, Justice Scalia, he no friend of labor, though dissenting in part, held that "Where the state imposes upon the union a duty to deliver services, it may permit the union to demand reimbursement for them; or, looked at from the other end, where the state creates in the nonmember a legal entitlement from the union, it may compel them to pay the cost." But, other aspects of the case led the Court to rule that as "the challenged lobbying activities relate not to the ratification or implementation of a dissenter's collective-bargaining agreement, but to financial support of the employee's profession or of public employees generally, the connection to the union's function as bargaining representative is too attenuated to justify compelled support by objecting employees." This effectively made an "attenuated" line more hazy than clear which paved the way for the two most recent predecessors to Janus.

The first of these, Harris v. Quinn was decided June 30, 2014, and in another ruling written by Justice Alito, in its 5 – 4 decision the Court ruled that "The First Amendment prohibits the collection of an agency fee from the plaintiffs in this case, home health care providers who do not wish to join or support a union." Which, as Reuters summarizes, means that "the court declined to extend the Abood precedent to Illinois home-healthcare workers. The 5-4 ruling stated that state-paid, in-home care workers cannot be compelled to pay union dues, even for collective bargaining. Writing on behalf of the court majority, Alito again criticized the 1977 Abood decision. But the ruling stopped short of blocking organized labor from collecting such fees from other non-union public employees."

Although this decision wasn't a complete win for the plaintiffs, their attorney, William Messenger of the National Right to Work Committee, asked the Supreme Court in oral arguments before the case was decided to hold that public employee unions are unconstitutional. And in response to a question from Justice Kagan, Messenger acknowledged that the National Right to Work Committee's end goal was to compel all public-sector unions to abide by the "right to work" laws that have so effectively limited union power in private sector unions. (The concept of a "right to work" means that even when represented by a union, an employee is under no obligation to pay union dues.) And, as Justice Kagan noted in her dissent, "The Abood rule is deeply entrenched, and is the foundation for not tens or hundreds, but thousands of contracts between unions and governments across the nation." Should the court overturn Abood, this would have the effect, in Kagan's words, of "imposing a right-to-work regime for all government employees."

The narrow ruling in Harris v. Quinn suggested that the same interests and money that have been funding anti-union efforts legislatively since the Reagan years now had a sympathetic Supreme Court which afforded them a golden opportunity to evisacerate public sector unions' ability to collect agency fees. These interests wasted no time in mounting a case designed to do exactly what Justice Kagan said an overturning of Abood would entail. The case they mounted in 2016 was Fredericks v. California Teachers' Association, a case named for California school teacher Rebecca Fredericks and nine other California teachers who argued that the collection of agency fees was a violation of their First Amendment Rights; they did not wish to support "political activities" with which they disagreed. This First Amendment argument was denied in the 1961 Machinists V. Street decision, when the Court held that agency fees did not support political activity, but were necessary to support a union's ability to bargain collectively, engage in grievance resolution, and fund other mandated administrative duties, but the plaintiffs in the Fredericks case wanted this argument revisited by a Court not nearly as labor friendly as the one that decided the Machinists' case. The plaintiffs held that all union activity was political. Certainly, given the makeup of the Court, the Fredericks case may well have been the death of agency fees, and so it would have been were it not for the death of Justice Scalia, which meant the Court split 4 – 4, rather than voting the expected 5 – 4, in favor of Fredericks. But, since the Court split 4 – 4 on Fredericks, the prior court's ruling—the 9th Circuit's ruling in favor of the California Teachers' Association—stood, which gave only a year's respite to public sector unions.

The closely watched Janus case now awaiting the Court's calendar for oral arguments is a do over for the forces that mounted the Harris v. Quinn case. The Janus case is more problematic than it might have been thanks to the Senate's abdication of its "advise and consent" role which allowed Senate Majority Leader Mitch McConnell and his minions to refuse to hold a confirmation hearing for President Obama's nominee to replace Scalia on the bench and instead confirm Neil Gorsuch, a known anti-unionist.

For more on the outcome and likely consequences of this case, as it proceeds, stay tuned for future issues of the *FA News*.

E-Forms Available

Downloadable Microsoft Word templates of the *Agreement* Appendix forms regularly used by faculty, including the updated *Appendix J1* Evaluation, can be found on the FA website at fafhda.org/faculty_forms.html.