



December 23, 2020

Steve James, Chief Negotiator
Office of the Chancellor
401 Golden Shore
Long Beach, CA 90802

Dear Mr. James:

This letter is to memorialize the positions of the parties regarding negotiations for pandemic-related emergency measures, in particular those measures which would protect employees with underlying medical conditions and dependent care needs.

In March, CSU implemented multiple programs to protect employees:

- Telework – To move employees off-campus into telecommuting assignments.
- COVID Emergency Pay – To pay essential employees at a higher rate for remaining on-campus.
- Special Considerations Paid Administrative Leave (SC-CPAL) – For employees over age 65 or with underlying medical conditions who could not work on-campus or telecommute.
- COVID-Paid Administrative Leave (CPAL) – For employees who could neither work on-campus nor telecommute (such as employees caring for children and other dependents at home).
- Non-Telecommuting Workers Leave (NTWL) – A short-term extension program for CPAL (May).

All told, CPAL and NTWL added up to 560 hours of potential leave (although more than three-quarters of employees did not use the banked hours because they could telecommute or work on-campus). SC-CPAL was not limited in any bank. The leave banks were scheduled to expire December 31, 2020.

When the CSU implemented these programs, the Chancellor's Office informed the Union but did not negotiate. For our part, we made clear that the urgent and emergency nature of the pandemic justified swift and unilateral action but that after implementation the University had the obligation to bargain. Unfortunately, the CSU implemented without any later bargaining.

The CSU compounded its error by terminating programs without bargaining. COVID emergency pay was abruptly canceled on May 31 and SC-CPAL on July 6, neither cancellation noticed to the Union. These two changes were the cause of unfair labor practices since you left us no other option to enforce our rights. Our understanding is that many campuses warned the Chancellor's Office about the possible consequences.

CSU discovered from the Public Employment Relations Board (PERB) that the unfair labor practices were serious and could result in considerable back pay liability. Failure to bargain program implementation and termination would result in these programs continuing to run until negotiations finally took place. This is exactly the warning that CSUEU gave to the Chancellor's Office immediately following the cancellations. Not acting then to correct the mistakes was irresponsible and costly.



CSUEU is in its rights to simply follow the unfair labor practices to conclusion with mandatory decisions from PERB. A rough estimate of how long that would take would be a decision by the end of 2021 or later – with the meter running on back pay and leave compensation. The Union instead generously offered to negotiate the programs now to cut short your liability and in an attempt to reach mutual agreement, not punishment.

The parties met on November 24, December 2, December 15-16, and December 22. CSUEU made proposals for programs to protect salaries and benefits during isolation and quarantine, continue hazard pay, reimburse employees for telecommuting expenses, and cover vulnerable employees and those with dependent care. We also proposed a Thirteen Point Plan for healthy and safe reopening of campuses based on professional health advice (originally presented for all campuses in September and rejected until December's Cal OSHA standards corroborated all of our proposals).

While some progress was made on telecommuting and repopulation, our most important task is left unfinished – protection of vulnerable employees and those caring for their families. With all leave banks expiring December 31, the University's intention is to begin pay docks for those employees who have already exhausted their personal leaves.

The employees who will be affected by the loss of dependent care leave are often the youngest, newest, and lowest paid CSU employees. They are the future of CSU's work force who will be sorely missed coming out of this pandemic. Medically-vulnerable employees, on the other hand, are often your most senior employees whose contributions have built this great institution. None of them deserve this shabby treatment.

CSU made one proposal for a new leave – Extended COVID-19 Relief Leave or ECRL on December 15. It was for an 80-hour bank for next year, expiring June 30 but with a waiver on further leave bargaining in 2021. It was coupled with abandonment of all emergency pay earned and a promise to prevent further emergency leave in the future. CSU made one separate emergency pay proposal – to waive all emergency pay earned, retroactively authorize CSU's unilateral cancellation, and to waive further negotiations on the topic. CSU has refused to make new proposals on either emergency pay or a new leave program despite repeated Union requests for counter-proposals. Your first offers are your only offers.

CSUEU responded to both proposals and we have now made multiple proposals. On emergency pay, we proposed reinstatement of hazard pay and clear designations of essential workers. We also point out that campus conditions for those providing first line care in health centers, cleaning and disinfecting potentially contaminated areas, and those providing direct support to students in limited on-campus instruction and athletics continue with high risk of infection. Other employers recognize rewards should be commensurate with risks; CSU associates rewards with rank.

Regarding the CPAL leave replacement, the Union counter-proposed 512-hour leave banks. This is lower than the total hours offered over the past ten months. Eighty hours will only cover two weeks of pay, leaving families with dependents cut off from pay and benefits by the end of January. They will actually

be worse off than if they were fired and claimed unemployment. You responded that a request for 512 hours showed “Why no one in the CSU wants to bargain with you.”

A week later, you refused to respond to Union proposals on emergency pay or ECRL despite our direct requests. We offered to meet again on any date that the University would provide counter-proposals. You provided no dates for proposals. Despite months of warnings, offers of compromise, and proposals to continue existing programs, you have made no significant efforts to meet your obligations to your employees.

The Union warns the University again on the obligations of the collective bargaining law (HEERA). Bargaining requires good faith and it is bad faith to submit proposals which are repugnant to the bargaining obligation. Your proposals refusing your bargaining obligation, linking unrelated concessions, and refusing to continue bargaining are all indicia of bad faith bargaining and expose you again to unfair labor practices.

Also, although no unfair labor practices were filed on the CPAL and NTWL programs, neither of these were negotiated and the termination of those programs has no bargained authority. You have exactly the same exposure for unilateral start and stop of these programs as you did for SC-CPAL and COVID emergency pay. The Union objects to the termination and zeroing-out of any leaves that would protect our vulnerable members and working families.

To be clear, here are our positions:

- COVID-19 leave should be continued for vulnerable populations and families with dependent care. This leave should address the continuation of pandemic conditions through the end of the year, not just the first two weeks.
- Hazard pay should be given to those employees who continue to serve on campuses that are increasingly infected. Their pay should never have ended and should be tied to the risks they experience.
- The University must properly bargain the termination of programs, not just demand a “Get of Jail Free” card for your mistakes. The programs terminate when we agree, not when you demand.
- The Union is willing to meet anytime the CSU has proposals and will authorize any leave which protects employees. Emergencies and the urgent needs of employees and working families demand immediate action from the employer and we will not condition emergency measures on prior approval. We will insist, however, that bargaining take place after the emergency measures start to establish conditions and duration of the measures.
- CSUEU will take all actions necessary to protect our members, including bargaining and – if necessary – unfair labor practices. We prefer to bargain rather than litigate and have made



every effort to give you the opportunity. We can correct but we cannot excuse your bargaining errors.

With this letter, CSUEU is demanding CSU take the following affirmative actions:

- 1. Cease and desist from bargaining in bad faith.**
- 2. Cease and desist from unilaterally changing wages, hours, and working conditions.**
- 3. Continue all programs put into effect in 2020 to protect vulnerable employees and working families.**

You should take these measures immediately, before the holidays, to spare your very hard working employees the stress and fear that they face in the new year.

Sincerely,

Brian Young
Senior Labor Relations Representative

Cc: *Chancellor Timothy White*
Chancellor Joseph Castro
Vice Chancellor Evelyn Nazario

CSUEU Bargaining Team
CSUEU Chapter Presidents
CSUEU Executive Officers