



The FLSA and Contract Negotiation: What Every Member Should Know

By The Negotiations Team

What is the FLSA?

Established in 1938, the Fair Labor Standards Act (FLSA) was created as an outcome of the Great Depression and the New Deal and has set the parameters for overtime pay, among other things (like minimum wage). See <https://www.dol.gov/oasam/programs/history/flsa1938.htm> for a more detailed history of the creation of the FLSA.

What do “Exempt” and “Non-exempt” mean?

Within the overtime rules set by the FLSA, there are two classifications of workers: exempt and non-exempt. While exempt workers are not entitled to overtime pay, non-exempt workers are.

In addition to other groups, teachers and adjuncts, for example, are exempt from the FLSA Overtime Rule. At MVCC, the administration recently determined that some professional staff members of the PA are exempt and that others are not. As a result, the College began paying a different rate of pay for overload teaching to those PA members the College believes are non-exempt because the College conflated overtime and overload.

The Department of Labor states that there are three basic tests to determine exemption. An exempt employee must pass all three tests:

1) The salary basis test: an employee is paid a fixed (not hourly) salary. All PA members currently pass this test.

2) The salary level test: the basic salary must be at a certain minimum amount of pay. All PA members currently pass this test.

3) The duties test: the employee’s duties are primarily executive, administrative, or professional in nature (<https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>). While there are explanations and examples of these types of duties, this is where the water gets murky. The PA has asked for an explanation of how those exempt and non-exempt designations were determined, but we have been told that it would be too time-consuming to explain.

How does the College Interpret the FLSA and Overtime?

The College believes that it should pay “non-exempt” members a “blended rate” of their regular pay and the overload rate when these members teach a course as overload. Additionally, the College believes that this blended rate should be used for all of the time involved in teaching a course (prep time and grading time, in addition to time in class). This has cost the College a great deal of money. For the spring 2017 semester alone, the College

spent \$147,000 over what it has typically spent on overload. On December 19th, 2017, the PA requested information on how much the College had paid “non-exempt” employees for overload for the fall 2017 semester. As of this publication, we have not received this information.

What is the PA’s Position?

The College’s interpretation of the Law makes no sense for the following reasons:

1) We have contract language for overload pay. Overload and overtime are two different things; what’s more, the overload rate for any PA member is more than time and a half (the typical pay for overtime) for any PA member.

2) Teachers and adjuncts are exempt and so not eligible for overtime pay. Overload teaching for professional staff is separate from a member’s primary job duties; a member is not working beyond forty hours a week in the job for which he/she was hired. Overload teaching is voluntary and separate. It is teaching, and

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PREZ DESK



What is a union?

By Norma Chrisman

- *A combination or mixture of two or more elements.*
- *To come or bring together for a common purpose or action.*
- *An organized association of workers formed to protect and further rights and interests.*

The three statements above define what the PA is all about. We are a mixture of faculty and twelve month professionals that are united for excellence in education.

Together, our members have impacted, in some shape or form, the educational goals of thousands of students annually. Each year, we have helped approximately 1350 students meet their goal of graduating and watched them experience the joy of crossing the stage to accept their diploma.

Together, our members have donated numerous canned goods, school supplies and monetary donations to those in need.

Together, our members ensure that we are treated fairly and equitably as defined by our contract language.

Together, our members continue to fight the fight. Whether it is locally by fighting to negotiate a contract. Or statewide fighting to get adequate community college funding. Or nationally fighting against groups, such as the Koch Brothers, who are attempting to dissolve unions through Supreme Court cases. You'll read more about the current case Janus vs AFSCME in this issue.

Together, our one on one meetings continue with the membership. These meetings are yet another form of communication that we have chosen to use to keep our membership in the loop. We hope that you enjoy these meetings with us as much as we do having them with you. Please let me know if you have not had your one on one meeting with a member of the PA.

Together, our members make a difference. That's why we must continue to work together. By working together, we can accomplish more as a group than you can on your own. We are stronger in numbers but the union begins with you.



Panorama's Editorial Policy

Panorama is the voice of our local. In addition to the PA website (www.mvccpa.org), email, and bulletin boards, Panorama is the principal vehicle for bringing you, on a regular basis, information on the views and activities of our members.

We welcome articles by, for, and about PA members of union related issues and concerns as reflected in NYSUT and AFT activities as well as in the purpose and functions of the PA's standing committees: Community Outreach, Education & Training, Grievance, Internal Communication, Political Action, and Research and Records.

All submissions are subject to the review and acceptance of the Editor and/or Internal Communications Committee. We do not accept articles that make personal attacks and we reserve the right to edit articles for length. We look forward to hearing from you.

Publisher
MVCC Professional Association
President
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Editor
Sharon Kane Zohne
Edition
March 2018
Website
www.mvccpa.org



Affiliate #2839 Affiliate #39015

The FLSA and Contract, cont.

so the work should be exempt as it is for others teaching courses.

3) No other community college in New York State is paying non-exempt professional staff this blended rate for teaching an overload course.

In addition, NYSUT has provided us with a legal opinion that supports our position. The College has provided no legal opinion in their defense.

What Has Happened So Far?

4/15/16: First meeting: PA emphasizes the importance of the College's team having the authority to negotiate. The College assures the PA that they do. The College's initial proposal calls for the end of priority for overload for professional staff members.

5/6/16; 6/8/16; 6/23/16 7/14/16; 9/30/16: Meetings between the College and PA Negotiating Teams. No mention of FLSA concerns.

11/15/16: College cancels 11/16/16 meeting in order to work through potential Department of Labor changes to the minimum salary level for non-exempt employees. This Obama-era regulation (the "FLSA Final Rule") would have raised the minimum salary for exemption from \$23,660 to \$47,476. This would have been an issue since some PA members' minimum salaries are below \$47,476. HOWEVER, this change did not take place. A preliminary injunction stopped the "Final Rule" shortly before it was supposed to be implemented.

12/20/16: This was not the end of the issue, though. The day before this negotiation session, the College then shifted its focus from the minimum salary for exemption to their perception of how non-exempt professional staff should be paid for overload teaching.

After the College claimed that it could not present proposals because of the impact of their understanding of the FLSA Overtime Rule, the PA declared impasse.

3/22/17: 1st Mediation: College agreed to seek outside legal counsel regarding FLSA. It did not acquire such counsel.

1/8/18: 2nd Mediation: College presented two proposals; the second was worse than the first.

2/8/18: 3rd and final Mediation: The College presented a new proposal and the PA countered it, including many of the College's proposals. It became clear, though, that the main issue was priority for teaching overload for professional staff. The College would not provide another counter proposal because, while they were given parameters for negotiating, they ultimately did not have

the authority to present a counter proposal. The PA then stated that, while we would be happy to return to the table to discuss any new proposals, we would move forward with the process, which is "fact finding." The PA will also move forward with the grievance arbitration over the non-contractual "blended rate" of pay the College is paying "non-exempt" professional staff.

What's Next?

Fact finding. At this stage, both the College and the PA will present their cases in writing, and an arbitrator will make a ruling. The ruling will be non-binding.

How Can We Work without a New Contract?

We operate under the Triborough Amendment of the Taylor Law, which holds the provisions of our current (expired) contract in place until a new contract is negotiated. In exchange for that protection, we cannot strike or slow down our work. We must do our jobs as professionally as we have always done them.



This Is What A Union Looks Like!!

While the extended and fruitless negotiations with the College have certainly been frustrating, they have also underscored exactly what it is about our union that is so important.

Together, in solidarity, we are a stronger force. Presently, the College is paying “non-exempt” professional staff members teaching overload at a rate (the “blended rate”) that is higher than the negotiated overload rate. This “blended rate” was not negotiated; it was implemented based on the College’s interpretation of the FLSA overtime law. Some PA members have been paid rather large amounts of money.

One might guess that this different rate of pay is intentional or strategic. What better way to try to divide our members? Division and discontent lead to a less stable organization. A less stable organization is easier to manipulate.

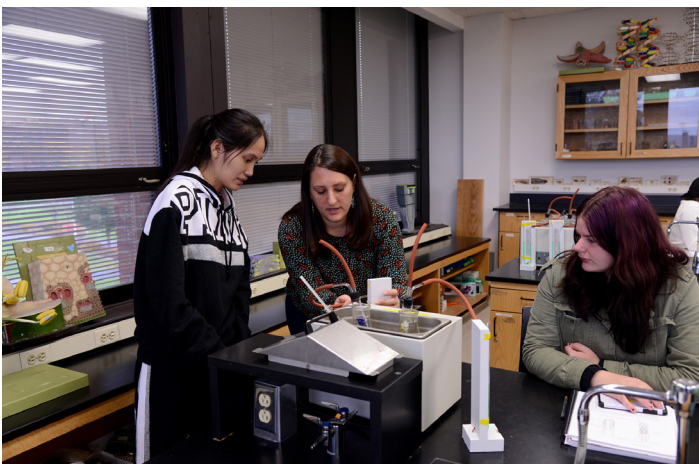
The Janus v. AFSCME Supreme Court case is another, national, attempt to divide and destabilize union membership. The case is over “fair share,” the idea that everyone pays a fair share (dues) for the benefits a union provides, regardless of union membership. If the union loses this case, all states will become “right to work” states that do not require dues to be taken from all possible bargaining unit members. It would, in essence, divide our membership into those who belong to the PA and pay dues, and those who don’t. If there were a divide, it would weaken our union. It would weaken our voice. It would weaken our power to negotiate meaningful contracts.

From a study by Elise Gould and Will Kimball of the Economic Policy Institute (<http://www.epi.org/publication/right-to-work-states-have-lower-wages/>):

No matter how you slice the data, wages in RTW (Right to Work) states are lower, on average, than wages in non-RTW states.

As shown in great detail in Gould and Shierholz (2011), these results do not just apply to union members, but to all employees in a state. Where unions are strong, compensation increases even for workers not covered by any union contract, as nonunion employers face competitive pressure to match union standards. Likewise, when unions are weakened by RTW laws, all of a state’s workers feel the impact.

We must remain one, despite local or national issues. There is strength and power in a unified group of professionals. This has been the case with the PA since its inception, and there should be no doubts about our strength moving forward.



Spot the

Difference?



Answers on page 6

\$\$ MVCC PA Benefits Trust Fund\$\$

There are many financial issues you may encounter the Professional Associations Benefit Trust Fund has a benefit offered through Stacey Braun that may help!

FINANCIAL COUNSELING PROGRAM

Services Available to Each Member (at no cost):

1. Free financial consultation each year*: Consultations will be held throughout the year on campus. Members can receive up to six hours of time, in person or over the phone or in combination. For more information or to schedule an appointment call 1-888-949-1925. Spouses and/or other family members may attend consultations with you.

2. Unlimited access to Stacey Braun's proprietary website: This password-protected website is a useful financial tool intended to address many of your financial concerns. The website contains financial narratives, market data, quotes, charts, portfolio tracking, financial news, financial glossary, financial calculators, links to other useful financial sites and the email helpdesk. To access the site use "money" as your

password and "hendrick" as the User ID.

3. Unlimited use of Stacey Braun's email helpdesk: To provide answers to basic financial questions, you have access to qualified professionals via Stacey Braun's email helpdesk.

Topics for consultations include, but are not limited to: Retirement Planning, Refinancing, Mortgages, Debt Management, Budgeting, Divorce, Investments (403B, Pension Advice), Mutual Fund Questions, Asset Allocation, Establishing Risk Tolerance, Taxes, Inheritance Issues, Gifting, Estate Planning, Savings, Cash Flow, General Education, Elder Care, Social Security, Education Funding (i.e. 529 plans), Second Opinions & Life, Disability and Long-Term Care Insurance

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*Written summaries of consultations containing recommenda-

tions are available to members upon request.

Stacey Braun Associates, Inc.
377 Broadway
New York, NY 10013
1-888-949-1925

Need Legal Assistance? The benefits fund has a legal service benefit that may be of assistance to you!

SOCIAL SECURITY BENEFITS

Are you interested in learning about social security benefits prior to retirement? We will be offering a session on social security on March 29th at 2:30 pm. We will have a representative on hand from Social Security to give a presentation and answer any of your questions. This session is to help prepare our members for retirement. Please contact Justin Wilcox, Chair @ jwilcox@mvcc.edu if you wish to reserve a seat for this session.

Should you have any questions pertaining to benefits though the Professional Association's Benefits Fund please contact Justin Wilcox, Chair jwilcox@mvcc.edu or 315-792-5319

Local Action Project Spotlight

Through our participation in the NYSUT LAP program, the PA was able to recognize its retirees in a brand new way. Recent retirees who attended our Annual PA January Luncheon and General Membership meeting were given the gift of time, a brand new silver branded, union made, Professional Association Watch! Lori Phillips, a 32 year veteran of the Professional Association stated "What a nice memento that I will treasure for years to come."



The Member Engagement Committee will also be recognizing other Professional Association milestones with union made, PA branded products. Be on the lookout for more about this wonderful initiative in future editions of Panorama.

Overload Instruction Rights (Article 5.6 D)

By Dawson McDermott

Many contracts ago, the negotiations team negotiated the rights for all bargaining unit members the ability to request to teach a course, and to be paid at the overload rate. For teaching faculty and non-teaching faculty (professional staff), the right to teach adds to our salaries, but also brings with it other benefits for just not the bargaining unit members, but also the college and students.

One benefit is the financial addition to salary. The current rate of compensation per the 2013-2016 CBA is \$63.95 per hour. That works out to a total payout of \$2887.75 for a three-credit hour course. Not bad...and can be a boost to anyone's paycheck. I can remember when I was first hired when I met with the Human Resources director at the time, Jerry Brown, that there was not much room to negotiate a higher overall salary. But, because he noticed my prior teaching experiences, I could possibly teach overload courses. Of course I took him up on that, and I am proud today that I have taught 24 years, and yes the negotiated rate for overload has made a big difference.

Another benefit for the non-teaching faculty (professional staff) is we get to experience students in a different setting other than our full time positions. For those staff that may not get to work with students, another way to add value and understand the experiences of students is with instruction. This also adds to how

we feel we fit in with the MVCC community, which we contribute to and value. I have taught psychology courses for 24 years, between two colleges. One of my first students at MVCC was Sam Lilly. Sam is now one of our nursing faculty. Sam was an incredible student. To see him come back here to teach fills me with such honor and respect for how far he has come. Not only for coming back here, but I recently found out he is teaching a class that he had taken from me...I am so proud of my student, now a peer. That does not happen with quick discussions over what courses to take, changing a major, etc.

The language in our contract concerning overload has to do with distribution of overloads, IT IS NOT A CAP on the number of overloads. Bargaining unit members have priority up to 12 hours of overload per academic year (fall and spring). Overload hours requests made during the inter-session or summer are not figured into that number...BUT BARGAINING UNIT MEMBERS STILL HAVE PRIORITY TO OVERLOAD DURING INTER-SESSION AND SUMMER!

Most recently, two bargaining unit members received a settlement as a result of the College not following the proper distribution of overload over a summer. Obligation is met when the College assigns and the bargaining unit member teaches... these two had courses cancelled due to low enrollment. There were courses that both could have taught, but no offerings were made. Bottom line, they received a settlement equivalent to a three credit hour course, without teaching the course. Bargaining

unit members have priority rights over part-time faculty, administrators, and others when it comes to overload assignments.

Being aware of your contractual rights is important. Have you lost overload assignments due to any issue? Were there other options to be considered? Were other courses brought to your attention? Think of the impact of not teaching an overload. Could it impact your annual average salary towards retirement? Were you counting on that overload pay to assist with your finances? If you have to let that go over many semesters, it adds up to the total amount of money lost.

Teaching is a wonderful way to engage peers, students, and colleagues that for some would not have such interaction otherwise. For me, it's exciting to work with students in this role. I have seen students walk across for graduation, go on to careers, and in some instances teach others. Overall, it's an activity outside of my normal duties that I adore, and appreciate that our contract assists me with that. If you ever have questions concerning overload, please feel free to contact me anytime.

8. Missing wooden plank 9. Student's hair color 10. Missing Grey stripe on pants 11. Missing person in back 12. Missing shirt 13. Missing person in back 14. Color of flowers on Erica's shirt 15. Number of hoses 16. Missing blue beads in beaker 17. Erica's earrings