**Basic Primer on Impasse Procedures**

Impasse is the point at which the parties are deadlocked and further meetings without the assistance of a mediator would be futile. The two sides may agree they are at impasse, or one side may declare it. Then, either or both parties may file a request for PERB to determine whether the parties are at impasse and appoint a mediator. That investigation could take about a week. If the party that is seeking impasse engaged in unfair labor practices that were sufficiently severe enough to frustrate negotiations, PERB may find that the party’s bad faith contributed to the deadlock and determine that the parties are not truly at impasse.

If impasse is established, PERB will assign a mediator to attempt to bring the two parties closer together. That process could take a few weeks. If at least 15 days have passed since the appointment of the mediator, and the parties are still unable to reach a resolution, the mediator may declare that the dispute is appropriate for factfinding, and either party can then request that their differences be submitted to a factfinding panel.

During factfinding, the two parties essentially have a hearing before a panel of 3. One panel member is chosen by the union, one by the employer, and one is a chairperson (typically selected by PERB unless the parties mutually agree upon a chairperson). The parties present a statement of the issues in dispute, evidence, and extensive written justification for their positions and make oral arguments to the panel. At the end of factfinding, the panel will produce a report with findings of fact and recommended terms for settlement.

The panel has at least 30 days to conduct hearings, investigate, and make its findings and recommendations. The factfinder’s report with its findings and recommendation for settlement is only advisory. The panel will first give the report privately to the parties for consideration, during which the parties cannot make the panel’s findings and recommendations public. After 10 days, the panel may make the factfinder’s report public.

The parties are obligated under HEERA to participate in these impasse procedures in good faith.

If the parties are unable to come to an agreement, the union at that point has a right to engage in an economic strike. An “economic” strike is called expressly over terms and conditions, rather than unfair labor practices. The employer has a right to impose terms and conditions consistent with their last, best, and final offer. But, the employer cannot impose waivers of statutory rights, no-strikes clauses, binding arbitration provisions, or provisions that provide it with unfettered discretion. Post-impasse, new grievances would not have a contractual right to be arbitrated. After the employer implements terms post-impasse, the parties typically do not enjoy the same stability as they would if covered under a contract. Whereas under a contract, the wages and benefits are set for the lifetime of the contract; post-impasse, the employer could seek to rollback terms it previously imposed by arguing that “changed conditions” warrant further concessions from the union.