

# NATIONAL CENTER

**for the Study of Collective Bargaining in Higher  
Education and the Professions**

## E-Note

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February 2019

The National Center E-Note is a monthly electronic newsletter containing research and analysis relevant to unionization and collective bargaining in higher education and the professions. In this issue:

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## Register for the National Center's 46th Annual National Conference

### Registration Information

[Click Here for Online Registration](#)

Regular Conference Rate-\$398: includes one conference registration with admission to all event activities and additional attendee(s) for a discounted rate of \$238.

Single Conference Rate-\$356: includes one conference registration with admission to all event activities.

Special Conference Registration Rates for adjunct faculty, post-doctoral scholars, graduate and undergraduate student employees, CUNY faculty, staff, and students. For promo codes, contact the National Center.

To pay by check, access the [2019 Conference Registration Form](#) and mail it with your payment to the National Center. Click here for: [Hotel Registration Information](#) and the map of [conference locations](#).

### Announcement: New Addition to Conference Agenda STEVEN GREENHOUSE

#### Steven Greenhouse to Discuss Teachers and Other Workers: New Strategies for Progress 2019 at a Conference Reception on April 8, 2019



Steven Greenhouse is an award-winning journalist who was a reporter for *The New York Times* from 1983 to 2014 and covered labor and the workplace for nineteen years there.

He is the author of the upcoming *Beaten Down, Worked Up: The Past, Present, and Future of American Labor*, which is being published by Knopf in August. His earlier book *The Big Squeeze: Tough Times for the American Worker* was published by Knopf in 2008 and was awarded the Hillman Prize in 2009.

Greenhouse is a graduate of Wesleyan University, the Columbia School of Journalism, and New York University School of Law.

**BEATEN DOWN, WORKED UP**  
The Past, Present, and Future  
of American Labor  
**STEVEN GREENHOUSE**



# Conference Theme

## COLLECTIVE BARGAINING AFTER JANUS

### Keynote Speaker: Paul Krugman

Paul Krugman is best known to the general public as an opinion columnist for *The New York Times*, a position he's held since 2000.

In his academic life, Krugman is a Distinguished Professor in Economics at the City University of New York (CUNY) Graduate Center, a core faculty member at the Stone Center on Socio-Economic Inequality, and Luxembourg Income Study (LIS) Senior Scholar.

Krugman was the sole recipient of the Nobel Prize in Economic Sciences in 2008 for his work on international trade theory and the geographic distribution of economic activity. In addition to the Nobel, in 1991 Krugman received the John Bates Clark Medal from the American Economic Association, an award given every two years to a top economist under the age of 40. The King of Spain presented him with the Asturias Award in 2004, considered the European Pulitzer Prize.

Krugman is Professor Emeritus of Princeton University's Woodrow Wilson School, from which he retired in 2015. He has served on the faculties of MIT, Yale and Stanford. He is a Fellow of the Econometric Society and a member of the Group of Thirty. He has served as a consultant to the Federal Reserve Bank of New York, the World Bank, the International Monetary Fund, the United Nations, as well as to foreign countries including Japan, Portugal and the Philippines.

He has been a contributor to ABC-TV's "This Week" with George Stephanopoulos and appears on Bloomberg Television, Business Insider, NPR and CNN, to name just a few. Author of 27 books and over 200 published professional articles, Krugman has written for non-economists as well. Before joining the staff of *The New York Times*, his work appeared in *Fortune*, *Slate*, *Harvard Business Review*, *Foreign Policy*, *The New Republic* and *Newsweek*.

Krugman's approach to economics is reaching a new generation of college students. He and his wife Robin Wells have coauthored college textbooks on Micro and Macroeconomics that rank in the top-selling economics textbooks used in American colleges today.



Photo Credit: Fred R. Conrad/ The New York Times

## Confirmed Panels and Workshops

**Plenary Presentation: The History of Right to Work from the First Gilded Age to Janus** with Cedric de Leon, Director and Associate Professor, UMass Amherst Labor Center, Elizabeth Tandy Shermer, Associate Professor, Loyola University Chicago, Chad E. Pearson, Professor of History, Collin College, and Sophia Z. Lee, Professor of Law and History, University of Pennsylvania Law School, Moderator and Presenter.

**The Economic Impact of Right to Work** with Fred Floss, Professor and Chair, Department of Economics and Finance, SUNY Buffalo State University and Fiscal Policy Institute Senior Fellow, Heidi Shierholz, Senior Economist and Director of Policy, Economic Policy Institute, Cherrie Nicole Bucknor, Ph.D Student, Harvard University, and Jeffery Frumkin, Associate Vice Provost for Faculty Affairs, University of Michigan, Moderator.

**Progressive State Responses to Janus** with New Jersey State Senator Linda Greenstein, Nancy Walker, Pennsylvania Attorney General's Office Chief Deputy Attorney General for Fair Labor, ReNika Moore, New York Attorney General's Office Labor Bureau Chief, Maryann Parker, SEIU Associate General Counsel, and Terri Gerstein, American Constitution Society and Harvard Law School Labor and Worklife Program, Moderator.

**Community Colleges, Collective Bargaining, and Right to Work** with Deborah Williams, NEA Faculty Association President and Lead Negotiator, Johnson County Community College, Terry Calaway, former President, Johnson County Community College, Lee Cross, Trustee, Johnson County Community College, Martin Balinsky, Vice President and Chief Negotiator, United Faculty of Florida-Tallahassee Community College, and DeWayne Sheaffer, President, NEA National Council for Higher Education, Moderator.

**Shared Governance and Collective Bargaining following Janus** with Carl Levine, Levy Ratner, P.C., Holly Stern, General Counsel, New Jersey Institute of Technology, Saerom Park, Associate General Counsel, SEIU, Joe Ambash, Fisher & Phillips LLP, and Catherine Cleaver, Executive Director, AAUP, Adelphi University, Moderator.

**Mending Fences and Building Bridges: A Labor-Management Dialogue on Cultural and Institutional Change** with Daniel Greenstein, Chancellor, Pennsylvania State System of Higher Education, Kenneth Mash, President, Association of Pennsylvania State College and University Faculties, and Scott Jaschik, Inside Higher Ed, Moderator.

**The Adjunct Faculty Experience: Is What We "Know" Correct?** with David P. Richardson, Managing Director of Research, TIAA Institute, Paul Yakoboski, Senior Economist, TIAA Institute, Maria Maisto, New Faculty Majority, Commentator, and Helen

Fairfoul, Chief Executive, Universities and Colleges Employers Association, Commentator, and Joseph J. Jelinicic III, Senior Manager of Systemwide Labor Relations California State University

**Reaching First Graduate Student Employee Contracts at Brandeis and Tufts** with Lisa Lynch, Provost, Brandeis University, Matt Dauphin, Higher Education Coordinator, SEIU Local 509, Lili Palacios-Baldwin, Associate General Counsel, Tufts University, Desiree Murphy, Morgan, Brown & Joy, LLP, and Vimal Patel, Chronicle of Higher Education, Moderator.

**Bargaining for the Common Good in Higher Education** with Malini Cadambi Daniel, SEIU Director for Higher Education, Daniel J. Julius, Senior Vice President and Provost, New Jersey City University, Barry Miller, Senior Policy Advisor on Labour Relations, York University, Liz Perlman, Executive Director, AFSCME, University of California Employees, Gary Rhoades, Professor and Director, Center for the Study of Higher Education, University of Arizona, and Marilyn Sneiderman, Professor and Director, Center for Innovation in Worker Organization, Rutgers University School of Management and Labor Relations, Moderator.

**Book Session: Henry Reichman, The Future of Academic Freedom (Johns Hopkins University Press, March 2019)** (panel in formation), with Kent D. Syverud, Chancellor and President, Syracuse University, Jennifer Eagan, President, California Faculty Association, Lili Palacios-Baldwin, Associate General Counsel, Tufts University, and Henry Reichman, Chair, AAUP Committee on Academic Freedom and Tenure.

**Investigating and Handling Employee Discipline** with Letitia F. Silas, Associate General Counsel for Labor Relations, Howard University, Joshua D. Nadreau, Fisher Phillips, Kathy Sheffield, Director of Representation, California Faculty Association, Pat Domaratz, Labor Relations Specialist, UUP, and Nancy E. Hoffman, Arbitrator, Moderator.

**Arbitrators' Perspectives on the Handling of Disciplinary Issues** with Homer C. La Rue, Labor Arbitrator, Mediator, and Professor of Law, Howard University School of Law, Haydeé Rosario, Labor Arbitrator and Mediator, John Woods, Labor Arbitrator, Mediator, and Ombuds, and Sarah Miller Espinosa, Labor Arbitrator, Mediator, and Ombuds, Moderator.

**Racial and Economic Equity in Higher Education** with Sara Goldrick-Rab, Professor, Higher Education Policy & Sociology, Temple University, Catharine Bond Hill, Managing Director, Ithaka S+R, Mark Huelsman, Associate Director, Policy & Research, Demos, and Sameer Gadkaree, Senior Program Officer, Joyce Foundation, Moderator.

**Challenges and Opportunities of the Metro-Strategy in a Post-Janus World** with John C. Cavanaugh, President & CEO, Consortium of Universities of the Washington Metropolitan Area, Anne McLeer, PhD, Director of Higher Education, SEIU Local 500, Patricia McGuire, President, Trinity Washington University, and Maria Figueroa, Director, Labor and Policy Research at the Worker Institute, ILR School, Cornell University, Moderator.

**Peer-Based Faculty Evaluation v. Student Evaluation of Teaching** with Leah Akins, Professor of Engineering and Technology, Dutchess Community College, Laura Murphy, Professor of History, Dutchess Community College, Henry Hornstein, Associate Professor, Department of Business and Economics, Algoma University, Sarah Zeller-Berkman, Academic Director, Youth Studies Program and Director of Intergenerational Change Initiative, CUNY School of Professional Studies and Director, Youth Studies Initiatives, John F. Kennedy, Jr. Institute for Worker Education, and Alexandra Matish, Interim Director, Academic Human Resources, University of Michigan, Moderator.

**Title IX Revisited** with John T. Rose, Dean of Diversity, Hunter College, CUNY, Rana M. Jaleel, Assistant Professor in Gender, Sexuality, and Women's Studies, University of California, Davis, Donna E. Young, President William McKinley Distinguished Professor of Law and Public Policy, Albany Law School, and Risa Lieberwitz, Professor of Labor and Employment Law, Cornell ILR, and AAUP General Counsel, Moderator.

**Sexual Harassment in Higher Education: Understanding Root Causes and Developing Labor-Management Solutions** with Ana Avendaño, Vice President for Labor Engagement, United Way, Eve Weinbaum, Professor University of Massachusetts, Labor Center Amherst, Janet Elie Faulkner, Faulkner Legal, Frazier Benya, Senior Program Officer, Committee on Women in Science, Engineering, and Medicine, National Academies of Sciences, Engineering and Medicine, and Liesl Zwicklbauer, Associate Vice Chancellor for Employee Relations, SUNY, Moderator.

**Faculty Compensation in Public Higher Education** with Stephen G. Katsinas, Professor, Higher Education and Political Science, Director, Education Policy Center, at the University Alabama and Nathaniel J. Bray, Professor, Higher Education Administration and Associate Director, Education Policy Center at the University of Alabama; Jacob Trull, Stephanie Paul and Michael Malley, Graduate Students, Education Policy Center at the University of Alabama; and Jacob Apkarian, Assistant Professor of Sociology, York College, CUNY, Moderator.

**Transformational Bargaining: How the Lecturers' Union at the University of Michigan Built Sufficient Power to Dramatically Improve Member Compensation** with Ian Robinson, President, Lecturers' Employee Organization, AFT, Local 6244, University of Michigan, Kirsten Herold, Vice-President, Lecturers' Employee Organiza-

tion, AFT, Local 6244, University of Michigan, Michael Eagen, Associate Provost for Academic Personnel, University of Massachusetts, Commentator, Theodore Curry, Associate Provost, Associate VP, Michigan State University, Commentator, and David Cecil, Executive Director, United Academics, AFT-AAUP, University of Oregon, Moderator.

**Conflict and Cooperation in the Neoliberal University: The Impact of Changing Labour Processes on Canadian Universities** with Stephanie Ross, Associate Professor, School of Labour Studies, McMaster University, Hamilton, Ontario, Canada, Larry Savage, Professor, Department of Labour Studies, Brock University, St. Catharines, Ontario, Canada, David Robinson, Executive Director, Canadian Association of University Teachers, Commentator, and Sara Slinn, Associate Dean (Research and Institutional Relations) & Associate Professor, Osgoode Hall Law School, York University, Commentator.

**Legal Issues in Higher Education: Annual Review of Court and Administrative Developments** with Natasha Baker, Hirschfeld Kraemer LLP, Beth Margolis, Gladstein Reif & Meginniss, Aaron Nisenson, Senior Counsel, AAUP, and Michael Loconto, College Counsel, Curry College, Moderator.

## Workshops

**Workshop for Administrators: Collective Bargaining and Contract Implementation** with Nicholas DiGiovanni, Morgan, Brown & Joy, LLP, Karen Stubaus, Vice President for Academic Affairs, Rutgers, The State University of New Jersey, and Margaret Winters, Former Provost, Professor Emerita - French and Linguistics, Wayne State University.

**Workshop for Academic Labor: Membership Mobilization and Collective Bargaining in an Open Shop Environment** with Penny Lewis, Associate Professor of Labor Studies, CUNY School of Labor and Urban Studies and PSC Vice President Senior Colleges, Jennifer Eagan, President, California Faculty Association, Rudy Fichtenbaum, AAUP President, Noeleen McIvenna, Wright State AAUP and Kim Cook, Extension Associate Faculty, Cornell ILR.

**Workshop: Bargaining Healthcare in Higher Education** with Larry Singer, Senior Vice President, Segal Consulting, Joel Solomon, Senior Policy Analyst, NEA, Earl Redding, Roemer Wallens Gold & Mineaux LLP, and Debbie Bell, Executive Director, PSC, CUNY, Moderator.

**Workshop by SUNY SAIL Institute: Discovering My Leadership Voice** with Scott Vinciguerra, Leadership Development Associate, SUNY Strategic and Academic Innovative Leadership Institute.

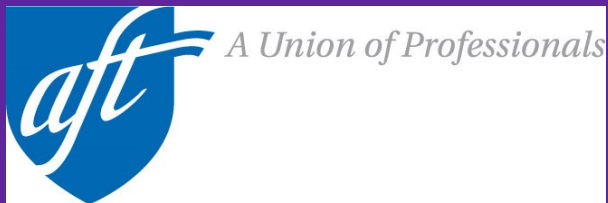


**Workshop by SUNY SAIL Institute: Assertive Communications: Leading Difficult Conversations on Campus** with Scott Vinciguerra, Leadership Development Associate, SUNY Strategic and Academic Innovative Leadership Institute

Major support for the conference is provided by:



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## Journal of Collective Bargaining in the Academy, Vol. 10



Volume 10 of the National Center's Journal of Collective Bargaining in the Academy is now available. The Journal is our peer review multi-disciplinary journal that is co-edited by Jeffrey Cross, Eastern Illinois University (Emeritus), and Gary Rhoades, University of Arizona. The following are links to the articles in Volume 10:

### **Op-Eds**

University Adjudications of Sexual Assaults: A Lesson To Be Learned from Collective Bargaining Agreements by James Ottavio Castagnera

A Higher Authority for Collective Bargaining: 2018 by John Lavin

### **Articles**

Salary Compression Among University Faculty: A Review and Case Study of Remediation and Prevention in a Collective Bargaining by Brent M. Graves and Dale Kapla

Bargaining for Adjuncts: An Assessment of Adjunct Union Growth in the Saint Louis Region by Jameson Ramirez

### **Practitioner Perspectives**

Managing Internal Tensions in Contract Negotiations: A Perspective from the Academic Union's Side by John Allison and Jonathan Blitz

Notes on the Same Side by Margaret E. Winters

We encourage scholars, practitioners, and graduate students in the fields of collective bargaining, labor relations, and labor history to submit research articles, op-eds, and practitioner perspectives for potential publication. The Journal is particularly interested in contributions related to collective bargaining and unionization issues in the post-Janus world.

The Journal of Collective Bargaining in the Academy is supported, in part, by a generous contribution from TIAA and is hosted by the institutional repository of Eastern Illinois University.

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### **College of Saint Rose: SEIU Certified to Represent Visiting Professors**

*College of Saint Rose*, NLRB Case No. 03-RC-233615

On January 25, 2019, SEIU was certified to represent a unit of 18 full-time and part-time visiting professors at the College of Saint Rose in Albany, New York. The certification was issued following a representation election in which 9 faculty members voted for representation and 4 voted against. Since 2014, SEIU has represented another unit of over 300 adjunct faculty at the College of Saint Rose.

The following is the new visiting professors unit represented by SEIU:

Included: All full-time and regular part-time visiting assistant professors and visiting instructors employed by the Employer at its Albany, New York location.

Excluded: Office clerical employees, guards, supervisors, all other professional employees as defined in the Act, and all other employees.

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### **Delta College: NEA Certified to Represent a Full-time Faculty Unit**

*Delta College*, MERC Case No. R18 H-068

On January 17, 2019, the Michigan Employment Relations Commission (MERC) certified the Michigan Education Association as the exclusive representative of a unit of approximately 200 full-time faculty members at Delta College. The certification followed an election in which 145 faculty members voted in favor of representation and 24 voted against.

The following is the at-issue unit at Delta College:

Included: All full-time faculty who hold faculty rank of instructor, assistant professor, associate professor, and professor, including any individual hired to serve in a temporary assignment or replacement assignment for more than one semester. All full-time faculty serving any alternative assignment, that still retains the rank faculty (i.e. Honors Director, etc.). If the Division Chair positions (which are being eliminated January 1, 2019) are ever reestablished in the future, the college would agree to include them.

Excluded: Emeritus, adjunct, temporary assignments or replacements of one semester or less, and Academic Advisors. Officers of the College, Associate Deans, and oth-

er administrative and supervisory professionals.

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## Elon University: Election Scheduled for Adjunct Faculty Unit

*Elon University*, NLRB Case No. 10-RC-231745

On February 5, 2019, NLRB Acting Regional Director Terry D. Combs issued a decision and order concerning a representation petition filed by SEIU seeking to represent full-time and part-time non-tenure track faculty at Elon University in North Carolina. In the decision, the Regional Director found the following faculty bargaining unit to be appropriate:

**Included:** All limited term, visiting, and adjunct faculty employees at Elon University teaching at least one credit-bearing undergraduate course in the Employer's College of Arts and Science, School of Communications, School of Education, or Martha & Spencer Love School of Business.

**Excluded:** All other employees, all tenured and tenure-track faculty, all continuing track faculty, all lecturing track faculty, all employees teaching online courses only, staff with faculty rank, all administrators (including those with teaching assignments), managers, and supervisors as defined by the Act.

A mail ballot election has been scheduled by the Regional Director with ballots being mailed on February 19, 2019 and tallied on March 21, 2019.

If SEIU is certified to represent the faculty unit at Elon University, it will be its second faculty unit in North Carolina. SEIU already represents an adjunct faculty unit at Duke University.

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## University of New Mexico: AAUP-AFT File Petition to Represent Faculty

On February 13, 2019, United Academics of the University of New Mexico, AAUP-AFT filed a representation petition with the University of New Mexico Labor Management Relations Board seeking to represent approximately 1,650 faculty at the University of New Mexico.

The following positions are in the proposed unit: Assistant Professor; Associate Professor; Department Chair; Department Director; Division Chair; Professor; Professor of Practice; Distinguished Professor; Endowed Professor; Regents Professor; Research Professor; Research Assistant Professor; Research Associate Professor; Adjunct Professor; Lecturer I, II, and III; Principal Lecturer I, II, and III; Research Lecturer, I, II, and III; Senior Lecturer, I, II, and III; Visiting Lecturer, I, II, and III; Visiting As-

sistant Professor; Visiting Associate Professor; Visiting Professor; Visiting Professor of Practice; Senior Instructor; Instructor; and Working Emeritus (teaching at least one 3-credit course).

The proposed unit excludes all supervisors, managerial, and confidential employees, as well as the following positions: Instructors in the Health Sciences (School of Medicine, College of Nursing, College of Pharmacy, College of Population Health); Academic Deans; Associate Deans; and Provosts.

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### **City Colleges of Chicago: ULP Dismissed Against Union**

*IEA-NEA (Farmer)*, IELRB Case No. 2019-CB-0001-C

On January 3, 2019, the Illinois Educational Labor Relations Board issued a decision affirming the dismissal of a charge filed by a member of City Colleges Contingent Labor Organizing Committee (CCCLOC) at the City Colleges of Chicago alleging that that IEA-NEA violated the Illinois Educational Labor Relations Act in the manner that the union conducted its internal elections. The charge was dismissed because the agency lacks jurisdiction to review internal election procedures.

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### **Portland State University: ULPs Filed by GSE Union and University**

*Portland State University*, OERB Case No. UP-030-18

*Graduate Employees Union AFT/AAUP*, OERB Case No. UP-031-18

On December 13, 2018, the Graduate Student Union, AFT/AAUP filed a unfair labor practice complaint with the Oregon Employment Relations Board alleging that the university engaged in unlawful interference when it circulated a memorandum to university chairs and other supervisors of graduate students, which prohibited meetings with union representatives to discuss issues relating to the contract. The university's memorandum was issued in response to a union letter to department chairs and other supervisors that raised concerns about university funding decisions and encouraged an open dialogue about contract issues.

On December 14, 2018, Portland State University filed an unfair labor practice complaint against the Graduate Employees Union AFT/AAUP contending that the union's original letter to individuals with supervisory responsibilities over graduate assistants included misstatements and constituted an attempt at direct dealing with department chairs or chair-equivalents. The complaint also asserts the union engaged in an unfair labor practice by failing to provide the university with the identity of the individuals who were sent the at-issue letter.

Both unfair labor practice complaints are under investigation by the Oregon Employment Relations Board.

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## University of Pittsburgh: Professor Not Denied Due Process Over Salary

*McKinney v. University of Pittsburgh*, Case No. 17-2084 (3d Cir. 2019)

The United States Court of Appeals for the Third Circuit has dismissed a lawsuit filed by tenured professor Jerome McKinney against the University of Pittsburgh, which alleged that the university unconstitutionally reduced his salary.

McKinney was granted tenure by the university in 1974. His terms of employment are governed by university policies rather than a collective bargaining agreement. University policies address faculty salary increases based on performance but do not explicitly address the issue of salary decreases.

Following a 2012 annual performance evaluation, McKinney was notified that his performance was deficient and he was ranked lowest among graduate school faculty. As a result, his salary was increased by only .5% and he was informed that if his performance did not improve in the following year, he would receive no raise or a salary cut. In 2013, the university's annual review found that his performance had not improved. Based on that evaluation, the university reduced McKinney's salary by 20%.

McKinney commenced a federal lawsuit alleging that the salary reduction violated his right to due process under the United States Constitution. Under Supreme Court decisions dating back to the early 1970s, in order to demonstrate a due process violation McKinney was required to establish that he was deprived of a property interest in his base salary based on a law, rule, or other "mutually explicit understandings."

In dismissing McKinney's lawsuit, the federal appellate court found that the following university policy was insufficient to establish that McKinney had a property interest in his base salary: "Each faculty or staff member performing satisfactorily will receive a percentage increase of the size determined for that year for maintenance of real salary."

The appellate court reasoned that the university policy focused on incremental increases for inflation, the policy was not explicit on the subject of salary decreases, the policy anticipates adverse consequences for unsatisfactory job performance, and the university had reduced the salaries of at twenty faculty members in the past.

## Florida Polytechnic University: Department Chairs Excluded from Faculty Unit

*Florida Polytechnic University*, FPERC Case No. UC 2018-037

On January 24, 2019, the Florida Public Employees Relations Commission issued a decision granting a petition by United Faculty of Florida to exclude two newly created classifications from the faculty bargaining unit it represents at Florida Polytechnic University: department chair and division director. The decision to exclude the two positions was based on the fact that both had supervisory responsibilities over faculty in the unit, thereby creating a legal conflict of interest.

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