

# **In-Range Progression and Reclassification: How the CBA Can Help You to Get a Pay Raise, and How PERB Charges & Grievances Can Help When the CBA Doesn't**

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Recent changes to the APC Collective Bargaining Agreement (CBA) make it easier to apply for an In-Range Progression. However, even after these changes, In-Range Progression and Reclassification decisions by the campus are still generally not grievable. This handout explains the changes to the CBA and gives examples of how APC can nevertheless use grievances and unfair practice charges to challenge the imposition of new non-negotiated requirements for In-Range Progressions and the assignment of new job duties belonging to a higher classification.

## **I. Effective November 12, 2014, Unit 4 Employees Have a Right to Initiate In-Range Progression Requests Themselves and Must No Longer Rely on Supervisors to Do So.**

### **A. Changes to the CBA (in Bold and Underlined)**

under this provision, or regarding the amount of such increase, shall be final and non-grievable. However, APC may grieve an alleged violation of a specific term of this provision 23.11, subject to provision 10.5.F.4.

**23.11** An increase in an employee's pay rate within a salary range of a classification due to increased responsibilities and skills of the employee, in recognition of extraordinary performance, or for market or pay equity reasons, is referred to as in-range progression. **A request for an in-range progression review may be submitted by the employee or manager. Employee initiated in-range progression requests shall be submitted to Human Resources. An employee shall not submit a request for an in-range progression prior to twelve (12) months following submission of any prior in-range progression request by the employee. Review of an in-range progression request shall be completed within ninety (90) days.** When an in-range progression occurs, the appropriate salary increase shall be determined by the President. Such increases shall be campus funded. This provision 23.11 shall not be subject to Article 10, Grievance Procedure. The decision of the President to award or not award an in-range increase

### **B. What the Changes to the CBA Mean.**

1. Whereas *before*, Unit 4 employees on some campuses *did not have the right* to submit In-Range Progression requests directly to HR, *now* Unit 4 employees on all campuses *do have that right*.

2. Whereas *before*, Unit 4 employees on some campuses had to wait twelve months from the *receipt of a response to a prior In-Range Progression request* before submitting a new request, *now* Unit 4 employees on all campuses only have to wait twelve months from the *submission of a prior request* before submitting a new one.
3. Whereas *before*, there was *no time limit* on the review of an In-Range Progression request, *now* the review must be completed *within ninety days*.

## **II. Challenging New Non-Negotiated Requirements for In-Range Progressions.**

### **A. When a Campus Unilaterally Imposes New Requirements for In-Range Progressions, APC Can File an Unfair Practice Charge with the California Public Employment Relations Board (PERB) for Violation of the Duty to Meet and Confer.**

1. **In Its Old “Student Services Classification Definitions,” Cal Poly San Luis Obispo Promised that Most SSPs Could Expect to Reach the SSPIII Level Through Good Performance and Professional Competence.**

#### **III. Student Services Professional III (exempt)**


1. Mid-level practitioner.
2. Minimal project supervision
3. Performs complex Student Services professional work:  
Job performance requires application of high degree of judgment, persuasiveness, imagination and professional skills and knowledge in a specified program area.
4. Requires direct client and program contact.
5. Administrative planning in the development of programs which may integrate across organizational lines.
6. Minimum qualifications: BS + 5 years of progressively responsible experience OR Masters + 4 years.
7. Cal Poly internal standards note that “it is reasonable to expect that most Student Services professionals, through good performance and professional competencies, could expect to reach the SSPIII level.

2. **Cal Poly San Luis Obispo Unilaterally Deleted this Promise from Its New “Student Services Classification Definitions.”**

#### **III. Student Services Professional III (exempt)**

1. Mid-level practitioner.
2. Minimal project supervision
3. Performs complex Student Services professional work:  
Job performance requires application of high degree of judgment, persuasiveness, imagination and professional skills and knowledge in a specified program area.
4. Requires direct client and program contact.
5. Administrative planning in the development of programs which may integrate across organizational lines.
6. Minimum qualifications: BS + 5 years of progressively responsible experience OR Masters + 4 years.

**3. APC Filed an Unfair Practice Charge with the California Public Employment Relations Board.**

	<b>STATE OF CALIFORNIA</b> <b>PUBLIC EMPLOYMENT RELATIONS BOARD</b> <b>UNFAIR PRACTICE CHARGE</b>
<b>DO NOT WRITE IN THIS SPACE:</b> Case No: _____      Date Filed: _____	
<b>INSTRUCTIONS:</b> File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at <a href="http://www.perb.ca.gov">www.perb.ca.gov</a> . If more space is needed for any item on this form, attach additional sheets and number items.	
<b>IS THIS AN AMENDED CHARGE?</b> YES <input type="checkbox"/> If so, Case No. _____    NO <input type="checkbox"/>	
<b>1. CHARGING PARTY:</b> EMPLOYEE <input type="checkbox"/> EMPLOYEE ORGANIZATION <input checked="" type="checkbox"/> EMPLOYER <input type="checkbox"/> PUBLIC <sup>1</sup> <input type="checkbox"/>	

<b>6. STATEMENT OF CHARGE</b>	
a.	The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one) <input type="checkbox"/> Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.) <input type="checkbox"/> Ralph C. Dills Act (Gov. Code sec. 3512 et seq.) <input checked="" type="checkbox"/> Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
d.	Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and <i>not conclusions of law</i> . A statement of the remedy sought must also be provided. <i>(Use and attach additional sheets of paper if necessary.)</i>  See attached Statement of Charge

**Statement of Charge**

1. Charging Party Academic Professionals (APC) is an exclusive representative within the meaning of Government Code section 3562(i) representing approximately 2,200 employees in Unit 4 at all 23 campuses of Respondent California State University (CSU), an employer within the meaning of Government Code section 3562(g), including employees in Unit 4 at California State Polytechnic University San Luis Obispo (Cal Poly).
  
4. Prior to November 2007, the CSU maintained "Cal Poly Student Services Classification Definitions" (Old Definitions) that provided in pertinent part: "Cal Poly internal standards note that 'it is reasonable to expect that most Student Services [P]rofessionals, through good performance and professional competencies, could expect to reach the SSP III level.[']'" A true and correct copy of the Old Definitions is attached hereto as Exhibit "A" and incorporated herein by this references.



5. In November 2007, the CSU issued, and currently maintains, revised "Cal Poly Student Services Classification Definitions" (New Definitions) that no longer contain the provision quoted in Paragraph 4 above. A true and correct copy of the New Definitions is attached hereto as Exhibit "B" and incorporated herein by this reference.
6. CSU never gave notice to APC's statewide office and an opportunity to meet and confer about the New Definitions described in Paragraph 5 above.
7. APC first learned of the unilaterally implemented New Definitions described in Paragraph 5 above on September 19, 2104, through an e-mail message from an APC member at Cal Poly to APC's statewide labor relations staff.
8. As a result of the unilaterally implemented New Definitions described in Paragraph 5 above, Unit 4 members at Cal Poly in the SSP IA, IB, and II classifications have been denied the opportunity to reach the SSP III level through good performance and professional competencies per the expectation in the Old Definitions described in Paragraph 4 above.
9. By the conduct described above, CSU refused and failed to engage in meeting and conferring with APC in violation of Government Code section 3571(c). The same conduct also violated Government Code sections 3571(a) and (b). CSU should be ordered to make whole all affected employees and to cease and desist from violating its obligation to meet and confer with APC, as well as to post the usual notices.

**4. Cal Poly San Luis Obispo Agreed to Re-Insert the Deleted Promise Into Its "Student Services Classification Definitions."**

**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD**



ACADEMIC PROFESSIONALS OF  
CALIFORNIA,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE  
UNIVERSITY (CALIFORNIA POLYTECHNIC  
STATE UNIVERSITY, SAN LUIS OBISPO),

Respondent.

Case No. LA-CE-1230-H

**SETTLEMENT AGREEMENT**

3. Cal Poly SLO agrees that it will reissue the Cal Poly Student Services Classification Definitions with the following language restored under Section III. Student Services Professional III (exempt):

7. Cal Poly Internal standards note that it is reasonable to expect that most Student Services Professionals, through good performance and professional competencies, could expect to reach the SSP III level.

**B. When a Campus Violates the In-Range Progression Procedure in the CBA, APC Can File a Contract Violation Grievance.**

**1. The CBA States That an In-Range Progression Can Be Based on “Extraordinary Performance Alone.**

23.11 An increase in an employee’s pay rate within a salary range of a classification due to increased responsibilities and skills of the employee, in recognition of extraordinary performance, or for market or pay equity reasons, is referred to as in-range progression.

**2. In Denying an In-Range Progression Request, CSU Dominguez Hills Stated that It “Does not Grant In-Range Progressions Based on Performance Alone.”**

The employee received an overall rating of “Outstanding” on his 2013/2014 annual performance evaluation, and a rating of “Exceeds Expectations” on his 2012/2013 annual performance evaluation. According to the CSUDH guidelines for requesting an In-Range Progression, such a request may be used to recognize outstanding job performance. The incumbent’s performance as demonstrated by his last two performance evaluations meets this criterion, however the University does not grant In-Range Progressions based on performance alone, and the incumbent does not meet any of the other criteria for an In-Range Progression salary increase. Therefore, we are not able to approve this request.

**3. APC Filed a Contract Violation Grievance.**

**THE CALIFORNIA STATE UNIVERSITY  
GRIEVANCE PROCEDURE FORM  
UNIT 4**

**APPENDIX E**

**LEVEL OF FILING**

**DATE OF FILING**

Campus: CSUDH

Level I - President

\_\_\_\_\_

Level II – Campus Relations/Dispute  
Resolution, Office of the  
Chancellor

\_\_\_\_\_

GRIEVANT'S NAME

Albert Carpenter

CLASSIFICATION

SSP III

CAMPUS TELEPHONE NUMBER

310-243-3561

Specific term of agreement alleged violated (provide Unit 4 contract provision number):

Article 3, Article 8, Article 23

Detailed description of the grounds of the grievance (include dates, places, times, etc.):

Grievant was denied consideration for an In-Range Progression based on a campus practice in violation of the CBA of Unit 4.

(If more space is needed, additional sheets may be attached.)

Proposed remedy:

Make grievant whole by granting the In-Range Progression retroactive to the initial filing date; eliminate the campus practice which violates the CBA.

Grievant's signature:

Albert Carpenter

#### **4. CSU Dominguez Hills Agreed to Grant the IRP Request and to Abolish the Policy that Violated the In-Range Progression Procedure in the CBA.**

3. CSUDH agrees that IRP requests may be approved based upon "an increase in an employee's pay rate within a salary range of a classification due to increased responsibilities and skills of the employee, in recognition of extraordinary performance, *or* for market or pay equity reasons" as set forth in Provision 23.11 of the Collective Bargaining Agreement.

4. CSUDH agrees that it will instruct its administrators who initiate, review, and/or approve IRP requests of its recommitment to the language of Provision 23.11.

5. CSUDH agrees that it will approve the IRP request made on behalf of Albert Carpenter that was denied in October 2014. Mr. Carpenter will receive a 10% salary increase retroactive to July 1, 2014.

### **III. Grieving New Job Duties that Properly Belong to a Higher Classification.**

#### **A. In the APC CBA, Article 13 Is Explicit Where Article 17 Is Silent.**

##### **1. Article 13 Explicitly Makes the Outcome of a Classification Review Non-Grievable.**

- 13.12 Employees who believe they are misclassified may request a classification review in accordance with campus procedure. APC may also request a classification review in accordance with the campus procedure if the Union believes employee(s) are misclassified. The decision or outcome of the classification review cannot be appealed to the grievance or arbitration procedures contained in the agreement.

**2. Article 17 is Silent on Whether a Grievance Can Challenge New Job Duties as a Temporary Assignment to a Higher Classification.**

- 17.4 An employee may be temporarily assigned to a position(s) in a higher or lateral classification within Unit 4, the Management Personnel Plan ("MPP"), or another bargaining unit by the President for no more than twenty-four months, when the President determines such an assignment is in the best interests of the campus. An employee shall be provided with notice of such a temporary assignment at least fourteen (14) days prior to the effective date of such a temporary assignment.

Said notification shall include a copy of his/her position description.

If a position description is to be altered, the employee shall be provided with a copy of the altered position description at least seven (7) days prior to its effective date. Position descriptions shall reflect the employee's assigned duties and responsibilities.

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- 17.6 An employee shall begin to receive the appropriate compensation of the higher classification from the effective date of the temporary assignment.

**B. CSU Sacramento (Smith) (Francis, 1992): New Job Duties Are Grievable as a Temporary Assignment to a Higher Classification Where the Position *Has Not* Undergone a Classification Review.**

FACTUAL CONTEXT OF THE DISPUTE

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On June 22, 1988, the grievant, a representative of the Union and David L. Wagner (Dean of Faculty and Student Affairs) executed a "Settlement Agreement and Release of All Claims"

2. Assign Linda Smith from a permanent Student Services Professional II, AY (SSP II) position in the Career Development Center to a permanent SSP II, AY position in the Office of Institutional Studies:

...

The grievant testified that there was never any discussion between herself and any CSUS official regarding the duties she would be assigned in the Office of Institutional Studies, but that in July or August 1988 while she was on leave during the summer, she was provided a position description form indicating that 75% of her time in the position in the Office of Institutional Studies would be

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## DISCUSSION

...  
grievant's case. The Settlement Agreement assigned the grievant to the permanent position of SSP-II, AY in the Office of Institutional Studies. The only conclusion to be drawn from that unembellished provision of the Settlement Agreement is that her permanent assignment would encompass a set of duties within that classification and that she would be compensated accordingly for the performance of that set of duties. It is axiomatic that any set of duties in the Office of Institutional Studies which does not fall within that classification must necessarily be regarded as a temporary assignment, since the University does not have the right, via either the Settlement Agreement or the collective bargaining agreement, to permanently assign the grievant outside her classification.  
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### **C. *CSU Sacramento (Clark) (Joseph, 1993): New Job Duties Are Not Grievable as a Temporary Assignment to a Higher Classification Where the Position Has Undergone a Classification Review.***

#### BACKGROUND:

In September, 1990 Jeffrey Clark was permanently reassigned to the Academic Achievement Center. The job description that was developed for his position was forwarded to Faculty and Staff Affairs for a position audit. On March 18, 1991, the Classification Coordinator determined that the duties performed by Dr. Clark were equal to the SSP-AR II Level. The decision was appealed in accordance with the University's classification review policy, and the classification decision was confirmed.  
...

#### DISCUSSION:

In September, 1990, Dr. Torres, who was then interim Director of the Academic Achievement Center, developed a new job description for Dr. Clark. He meant the position to be classified at the III level, and used the position description of an employee who was classified as an SSP-AR III as a model. It was undisputed that the job description written by Dr. Torres reflects the Grievant's duties in the relevant time period. The description was accepted by Faculty and Staff Affairs, but Management rejected his request that the position be classified as an SSP-AR III.  
...



In contrast to the Smith case, Dr. Clark was assigned to a position for which Dr. Torres wrote a detailed Position Description. That position, as described by Dr. Torres, was reviewed and found not to meet the requirements of an SSP-AR III. The decision that the position should not be advanced to SSP-AR III was supported by a detailed report of the classification review, which included the standards used by the reviewer, findings of fact, and explanations of the application of the critical criteria. The record established that the Grievant's position and duties were reviewed and classified in accordance with the University's classification review program, procedures, and standards. In contrast to the Smith case, there is no basis for not crediting the Classification Coordinator's report and classification decision. Ms. Milliesdotter's determination that the Grievant's duties had not yet met the criteria for SSP-AR III is not grievable, and the Arbitrator has no authority to evaluate the judgments on which the classification decision was based. Since the record shows that Dr. Clark performed the duties set forth in his Position Description there is no basis for a finding that he had been temporarily assigned to work in a different position at a higher level.

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#### **IV. Links**

##### **A. APC Homepage:**

<http://www.apc1002.org/>

##### **B. APC Labor Relations Page:**

<http://lrc.apc1002.net/index.php>

##### **C. CSU Classification Standards:**

<http://www.calstate.edu/HRAdm/Classification/index.shtml>