

General Counsel



November 6, 2020

C.J. O'Donnell
President
MSCA

Re: MSCA Furloughs at Salem State University

Dear Professor O'Donnell,

I am writing with regard to Salem State University's request to bargain with the MSCA regarding cost-savings measures for FY21. I first wrote to you on June 30, 2020, notifying the MSCA of a projected shortfall of \$26M during FY21 and requesting that you meet with Salem State to discuss cost-savings measures that could be achieved through changes in the conditions of employment of unit members. I attached a draft furlough plan for the MSCA's consideration. You responded on July 12, 2020, stating that the MSCA Board of Directors voted not to authorize mid-term negotiations and stating that the "University has other avenues to address the budget shortfall." I responded to you on July 20, 2020, clarifying that the University was seeking to bargain the impact of and means of its decision to institute cost-savings measures and asking if you were waiving your right to bargain. I also provided additional information to you regarding the actions Salem State had taken over the past several years to balance its budget.

On July 23, 2020, you replied, stating that the MSCA was not waiving any of its rights and stating that "[t]he MSCA day collective bargaining agreement contains cost saving mechanisms" I replied to you on September 1, 2020, pressing you for clarification regarding your statements and asking whether the union favored retrenchment rather than other cost-savings measures. I pointed out that it would be very difficult to realize savings in FY21 through retrenchment.

On September 17, 2020, you responded that the MSCA was not waiving any rights but was also refusing to bargain with the University. You offered to discuss the MSCA's perspective of the University's financial situation in a labor-management meeting. I responded to you on September 23 and October 7, 2020, accepting your offer to meet. Hearing nothing from you, I reached out again on October 14, 2020, and provided possible dates and times to meet. I have received no response from you.

Despite the University's multiple attempts to engage the MSCA on this matter, your response, to date, has been an unequivocal refusal to meet. The MSCA's suggestion that the University use the cost-savings vehicle in the parties' collective bargaining agreement, namely retrenchment, is not a viable alternative for the university in that savings cannot be realized in FY21, the year for which we communicated the need for reductions. Unfortunately, by refusing to meet with the University to collaboratively discuss cost-savings measures, the University has been denied the benefit of your input. Your refusal to bargain in good faith with Salem State leaves the University with no alternative other than to move forward with a furlough plan for MSCA unit members working at Salem State. As the available dates for faculty furloughs are limited by the academic calendar to periods when classes are not in session, and because those dates are fast approaching, the University must act promptly.

The APA and AFSCME unions each negotiated a four (4) week furlough program (as opposed to the five (5) week program suggested by Salem State on June 30, 2020). This was recently reduced to a three (3) week program. The University will provide MSCA members the reduced three (3) week furlough schedule as well. **This correspondence will serve as official notice to you that Salem State is requiring MSCA day unit members to furlough for up to three (3) weeks during FY21.**

The following four weeks have been designated as possible furlough weeks for faculty members. Faculty have the choice of three (3) of the following four (4) weeks for furlough:

- 1) Week of January 3 to January 9, 2021
- 2) Week of January 10 to January 16, 2021
- 3) Week of March 14 to March 20, 2021
- 4) Week of May 23 to May 29, 2020

Faculty and librarians must fill out the appropriate furlough request form (attached) and submit it to their deans or supervisors by November 30, 2020. Librarian supervisors will approve or deny furlough requests based on the operational needs of the library. Librarians are encouraged not to choose two (2) consecutive weeks in the same pay period to furlough. In instances where two (2) or more librarians seek to furlough during the same week, and it is impossible to grant all requests, seniority at Salem State will be used to determine which employees may furlough.

All MSCA unit members will continue to accrue leave, as they otherwise would have, while on furlough.

The following employee groups will not be subject to furlough:

- Employees on approved paid leave such as FMLA, Military Leave or Worker's Compensation during the time period which they are on leave.
- Employees currently on H-1B visas. Per Department of Labor and U.S. Citizenship and Immigration Services (USCIS) regulations, the University is required to

honor its Labor Condition Application (LCA) obligations to its H-1B visa sponsored employees.

Due to their status as exempt employees under the Fair Labor Standards Act, all MSCA day unit members must take furlough in minimum 1-week increments. It is very important for all MSCA unit members to understand that while they are on furlough, they are not authorized to work and they cannot work, even voluntarily. This means they must not check or respond to email or phone messages, or perform other faculty work during their furlough weeks.

Department chairs and evaluators will be mindful of this disruption in faculty workload responsibilities when considering scholarship expectations for FY21. Adjustments to librarian work product expectations will be made in collaboration with the employee and their supervisor.

MSCA day unit members will be provided information on applying for unemployment benefits. Please note that Salem State employees have been denied benefits and that the University is working with the Department of Unemployment Assistance on those denials. Unfortunately, the University has no control over the approval or processing of unemployment claims.

Although the MSCA declined to bargain the manner of cost-savings measures, the University remains open to bargain the impact of the furloughs on your members. For example, the weeks during which the Christmas and New Year's holidays fall might be open to faculty for furlough if the parties can agree to "float" those holidays to a later date. If you wish to impact bargain this matter and others concerning the furlough, please respond with dates and times when the Association is available to meet.

Last, in addition to the furlough request forms, I have included a copy of the letter template that will be sent to unit members this afternoon.

Thank you for your attention to this matter.



Rita P. Colucci

cc: Tiffany Chenault
Joanna Gonsalves