Is it just me or does this summer seem different than others? Maybe it is global warming and the effect it is having on the weather, maybe it is the cacophony of noise from all the heavy equipment around campus, deep into the new construction; or maybe it is just the quiet anticipation shared by everyone of the opening of the new facilities in the near future. Whatever it may be, I seem to be at more of a loss for words at the moment, which is not particularly good when I am facing a column deadline. But, ever being the trained professional, I draw upon a motivational technique that can guarantee a stream of verbiage worthy of publication. What is my secret, you ask? I just read the District’s opening contract proposal and the shriek I emit makes the grind of the back- hoes and bulldozers pale by comparison. I am left with no recourse but to put my disquietude in writing.

When last we left you we had completed a brief review and historical context of the District’s offers relating through Article 7 of the Collective Bargaining Agreement. You may recall that the proposal attempted to make serious inroads into the assignments and job security for both full-time and part-time faculty. With the next article—Article 8, Workload—these endeavors continue.

Most faculty think of their workload as consisting of classroom and office hour time, or counseling and librarian duties (the school nurse and Children’s Center teachers have their own variation of these). However, all of us recognize there are other things that could be done: curriculum development, course revision, updating of curricular materials, accreditation requirements, attending applicable meetings, etc. Most of us choose to do what we wish and what is necessary for the success of our jobs. Indeed, the current contract allows this and explicitly states that we may voluntarily perform other professional services; we may choose what we wish to do. In practice, those who are interested are usually the ones that choose to do whatever other services they wish. This makes sense, since we all know how effective the outcome can be if one is forced to do a task. In the proposed contract, faculty will be “expected” to perform other professional services. And why not since we will now be working 5 days a week, including Saturdays!

Now before you get too outraged, let me remind you that up to five days and Saturdays are an assignment option under the current contract, but a day was a day and a night was also a day (so an assignment on Tuesday day

Continued on 2
and Tuesday night was counted as two “days”). Saturday was a possibility if voluntarily chosen or if no part-timer was assigned comparably during the week. For example, if PE 125 is offered during the week and on Saturday, the full-time instructor had the option of choosing which day they preferred to teach. The proposal would eliminate this option. The one concession in the District’s proposal might seem to be that a Saturday assignment must be consecutive with another day of assignment. Since Sunday is not usually an option, this means Friday. No problem though, if you believe that 4-5 weekdays (ignoring nights) is a regular assignment.

If you are a counselor or librarian you know your workload is slightly different from classroom faculty. Assignments in those areas could be 28-35 hours per week, respectively, in consultation with management. Under the District’s proposal, librarians would be scheduled any hours the library is open, with evenings and weekends rotated. Correct me if I’m wrong, but whenever the library is open, is there not a librarian on duty (full- or part-time)? So why the need to force everyone to do everything at some point or another?

Counseling has always been a little different in that there is a recognized need for the service at nearly all times, even when classes are not in session. The current contract takes this into account by providing for a counseling assignment as 175 days, possibly outside of the fall and spring semesters. However, currently there is a guarantee that 25% of the counselors must work during the academic year, with the remaining three-fourths possibly voluntarily assigned during intersessions, etc. (an intersession assignment for a counselor means the off-duty time would be when classes are in session). The proposal from management would eliminate the guarantee of 25% and make it subject to the “needs of the District” and eliminate the voluntary aspect. Currently counselors have handled the staffing needs with a rotation procedure of their own devising. Now, if accepted, any rotation procedure is merely a recommendation to management.

I suspect that you may be a bit outraged at what is under discussion at the bargaining table and not very open to further discussions and explanations. So let me leave you with what is currently the shortest article in the entire contract—Article 14, District Rights. Quite simply it states in its entirety: “The right of the District to manage the operations of the District shall remain unchanged except as it may be restricted or limited by the terms of this Agreement.” The end, one sentence. Now...9 paragraphs of authority with 5 sub-paragraphs, and it all ends with this winner of a sentence: “The exercise of any right reserved to the District herein in a particular manner or the non-exercise of any such right shall not waive such right or preclude the District from exercising the right in a different manner.” Guess who wrote this article for the District (can you say tick-tock?).

OK, get back to your lounging or whatever it is you may be doing if this is your intersession break (we now know that not everyone has the same work-year, right?). Just be prepared to return filled with energy and enthusiasm. As always, stay informed, stay in touch. See you next semester.

Letters to the Editor
Feel free to voice your comments and/or opinions concerning any article or issue about you, the College or your union. Letters should be signed, but names will be withheld upon request. Please direct your letters to john.sutherland@marin.edu
Belling the Cat

In the Aesop fable, a group of mice called a meeting to consider what they could do to outwit their adversary the Cat. Some suggested this and some suggested that, but finally the mouse who was elected to chair the meeting stood up and said that she had a solution that would solve all their problems. "You will all agree," she said, "that our chief danger results from the stealthful way that the cat moves." “Well, all we have to do is get a small bell and attach it with a ribbon around the Cat’s neck. Then we’ll always know when the Cat is near and we’ll be able to act accordingly to defeat its purposes.

Her proposal was met with great applause and the chair-mouse was highly praised for her ingenious solution. Until one old mouse stood up and said, “That is all very well madam mouse, but please tell us, “which one of us is going to bell the Cat?”

At the College of Marin our faculty has a similar problem. As witnessed by their proposals at the collective bargaining table, our Administration is attempting to undermine many of the contractual protections that are contained in our Collective Bargaining Agreement and which our Union has fought for many years to achieve.

The District is proposing to eliminate all upgrades for temporary and permanent part-time faculty; and they are demanding the right to impose arbitrary and unilateral standards on the Evaluation process; and the right to impose punitive actions whose severity will be determined by management. And they want to increase our assigned Workload and restrict our right to suitable office space. And they are proposing adverse changes to our Sick Leave benefits and our Sabbatical Leave policy, etc. etc.

In short, the District is attempting to rewrite our Contract so as to eliminate or assume control over a large number of the professional prerogatives, rights and benefits that we’ve negotiated over the years and that we presently retain.

So how shall we respond to the District’s unacceptable proposals? How shall we, so to speak, “Bell the Cat?”

As in the Aesop fable, ‘some have suggested this and some have suggested that,’ but recently the Chair of one of our faculty organizations has suggested to the COM Board of Trustees, a process by which the District might be able to bypass our Union and negotiate some of these contractual issues directly with members of the organization which she chairs. (See B.of T minutes of 6.26.07)

Aside from the il-legality of the District engaging in such direct negotiations with faculty, a question which should be asked is whether this Chair’s apparent foray into the negotiations process would truly result in “Belling the Cat,” or would it rather be playing into the hands of an Administration who is intent on silencing our Union and nullifying our Contract?

Continued on 4
Under the leadership of the *United Professors of Marin*, our faculty has a negotiated Contract that is the envy of Community College faculty throughout the state. We have the highest rate of pay for Adjunct faculty in all of California and significant protection from arbitrary and capricious management policies. Truly, our Union has been successful in “Belling the Cat.” It is no wonder that our Administration is attempting to purge the rights and privileges that we have achieved through the collective bargaining process, and believe that they might be successful in doing so by bypassing our Union and negotiating with others.

It would be a violation of PERB labor law for the District to negotiate with a group of faculty concerning matters that are within the purview of our UPM/MCCD Collective Bargaining Agreement, and it would be unfortunate if members of our faculty would choose to participate in such negotiations.

If we truly want to “Bell the Cat” and continue to maintain and enhance our wages, benefits, and working conditions, we should be supporting our Union’s collective bargaining team in their current negotiations with the District. Please let your Union representatives know that you support them in these efforts.

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**New UPM Website**

We have moved! United Professors of Marin announces their new Website. We have a place of our own, and although it may take you a few more keystrokes to get there, it will be very easy to remember.

The UPM Website is called www.unitedprofessorsofmarin.org, and it is Union made and hosted. But before I tell you about what is up and what is coming, I want express my thanks and great appreciation to David Jones, who served as Webmaster for the past ten years. I hope that in my own tenure as Webmaster I can be as successful as David has been in maintaining and improving UPM’s Web presence during the last decade.

We are now open for business, but nowhere near completion. Check it out, and don't be shy about letting me know about everything from typos and missing links, to new features you would like to see on the site. I am still working on getting the email addresses and phone extensions of all officers and representatives correctly entered, and have started to develop some ideas about providing a "Part Timer's Corner" with information especially useful for Part Time unit members. I can be reached at x7579 or send me an email mike@unitedprofessorsofmarin.org.
Democratic Bargaining Update

"Is it the less dishonest to do what is wrong, because not expressly prohibited by written law? Let us hope our moral principles are not yet in that stage of degeneracy.”
–Thomas Jefferson

The membership of the Democratic Central Committee of Marin contains at least three members of the College of Marin Board of Trustees, one of whom is the chairman. They espouse democratic principles and yet what we see them do at the College questions their democratic declarations. Particularly, the direction they give to their designees belies the very notion of democracy. Take, for example, the opening rounds of bargaining between UPM and the District. The general theme of their openers is “take backs.” That is, the District has opened 17 Articles in the Collective Bargaining Agreement, in most, if not all of which they want to take back previously agreed upon rights and agreements—the rights and freedoms our CBA has assured us for years.

District attorney Larry Frierson confided at the July 13 bargaining meeting that UPM has negotiated one of the best contracts in California. Clearly he meant that UPM has won more faculty rights than any other community college, and the undeniable intention of the District, represented by Frierson and Linda Beam, is to dissolve those rights. (Isn’t it curious that in this round of contract negotiation there are NO District representatives from the academic side of the house? Might this mean that the District isn’t interested in the Academic improvement of the college but rather in the power it has over us?)

At the July 20 Bargaining meeting, further evidence of take backs became even more evident. In one hotly contested CB article, Article 8, Workload, the District’s attorney insisted on District proposed language regarding “expected” service beyond the 15 service hours we are already assigned. That is, the District wants to be able to assign anyone to committee work—hiring committees, Curriculum Committee, Accreditation work, etc—on top of teaching hours. (The District’s proposal would also intrude on the Academic Senate’s right under 10+1 to assign faculty to committees—a second infringement on existing faculty rights).

Though Mr. Frierson stopped short of using the word “mandated” work, further discussion revealed that if anyone refused to perform the newly proposed duties, the refusal would eventually surface in his or her evaluation, in which case, refusal could very well result in punitive measures.

This meeting on the 20th was supposed to produce movement. After several meetings of clarification and after we had taken care of the “low hanging fruit,” as Mr. Frierson put it, we were to see where there was room for compromise. But the District’s persistence on mandated work was not to be changed. The impact this proposal could have on any of us is staggering. As an English instructor, I cannot imagine being able to read through hundreds of student papers week after week in addition to serving out the remainder of my 37.5 hours on District assigned committees. I’m sure most of you feel the same. We need time for course work and preparation, and in order to put our students first, that work must come first.

Furthermore, since the District would be in control of assigning this additional work, there’s no guarantee that certain people could serve on committees even if they volunteered. The ramifications of the District’s proposal are frightening. In essence, it means the District could load any given committee with only those who agree with them and who will report (think Accreditation) as the District

Continued on 6
wants them to. Since the recent progress report to WASC, written by Bernie Blackman (who stated that he based the report at least in part on personal observations and opinions), claims active and full participation by faculty on governance committees, one might ask why the District is trying to fix what ain’t broke. This hardly seems democratic. Why mandate us to serve on committees in addition to performing our current duties, especially when even the administration claims that governance committees and the like are full?

Recent Collective Bargaining meetings have also exposed another theme in the greater theme of take backs: On several instances the District representatives have stated that hiring criteria and procedures should not be items for CB discussion since they belong under the purview of the Academic Senate. One might see this as a program by the District to move power and authority away from the Union (contractual) to the Senate (advisory). That is, the contract is a legally binding agreement whereas the advice of the Senate is just that—advice—and as such can be ignored by the District. Recent history of the District’s “bypassing” advice is enough to make anyone ask why we faculty would be interested relinquishing contractual rights for the privilege to consult.

Coincidentally, at the June 26, 2007 Board meeting, Academic Senate President Yolanda Bellisimo made a presentation in which she claimed that “decisions regarding full time hires should be based on academic considerations and that is the purview of the Senate.” (Her entire statement can be read in the Board Packet of July 17, available on the College website.) In response to this statement, the UPM Executive Council consulted attorney Robert Bezemek, who responded with an opinion (printed below), which UPM then sent with a cover letter (also reprinted below) to all senators.

It is understandable that the District’s bargaining representatives would do as directed. What is more difficult to understand is the motivation behind the District’s directions to its bargaining representatives. Such action threatens the long-standing alliance between the Democratic Party and Unions. And with three COM Board members belonging to the Democratic Central Committee of Marin, one of whom chairs the Committee, this stance is even more baffling. Maybe this aggressive, anti-union attitude is what one Democratic COM Board member, resentful of the faculty upheaval several years ago during the no confidence vote in then-president James Middleton, meant when he threatened, “We’ll see you at the bargaining table.”

“The whole art of government consists in the art of being honest.”

-Thomas Jefferson

J Sutherland

UPM Letter to Academic Senators

TO: UPM members who are also members of the Academic Senate

FROM: UPM Executive Council

As part of this current round of collective bargaining, last spring UPM and the District formed a committee to study Article 16 (Upgrading/Hiring) of the Collective Bargaining Agreement. Both parties recognized that with the recent retirements and Basic Aid funding, the current language did not meet current needs. The study group produced new procedures that were sent to their respective bargaining teams. On June 21, acting in “bad faith”, the District reversed its position by announcing their intention to eliminate all the provisions of Article 16 from our binding agreement.

Continued on 7
agreement and transfer all hiring decisions to the advisory shared governance system. At the June 26 meeting of the College of Marin Board of Trustees, the president of the Academic Senate addressed the Board and announced that the Senate would be presenting to the District’s administrators a proposal that would deal with the hiring of full-time faculty. She indicated that under Title V and the principles of “ten plus one” this responsibility fell exclusively to the Senate and that she believed the District has been out of compliance, despite the fact that the current Collective Bargaining Agreement contains very specific language (Article 16) concerning the upgrading/hiring of full-time faculty.

As the attached letter from the attorney for UPM indicates, the President of the Academic Senate is wrong in her perspective. In addition, for the Senate to pursue this issue with the District would be what is called “direct dealing” and constitute an unfair labor practice charge that would require the Union to take action against the District. UPM must say to all faculty involved in this issue to “cease and desist”; you put yourself and your Union at risk.

Beyond the legalities of such actions, they undermine UPM’s ability to negotiate and represent the faculty as a whole in collective bargaining at a time when the District is already making unreasonable demands in its collective bargaining proposals. The United Professors of Marin has always sent the District to deal with the Academic Senate on matters that are the Senate’s purview (e.g., determining the academic competency of new hires) and we will continue to do so. We have also consulted with the Senate on bargaining issues that are negotiable yet have a direct relationship to the charges of the Senate (e.g., reassigned units for Senate officers, impact of Student Learning Outcomes and the impact of Program Review), and we will continue to do so. However, our obligation to represent and defend the faculty’s collective bargaining interests demands the Union vigorously respond to this apparent act of direct dealing between some representatives of the Academic Senate and District managers; cease and desist is not too strong a demand.

If you have any questions regarding this matter do not hesitate to contact the UPM president, Ira Lansing at 415-485-9531.

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**UPM Attorney Letter**

Mr. Ira Lansing, President  
United Professors of Marin  
AFT Local 1610  
Post Office Box 503  
Kentfield, CA 94914

**June 28, 2007**

**Re: Article 16 Is Within the Scope of Bargaining - it is Not a Senate Issue**

**Dear Ira:**

Recently, the District Academic Senate president expressed her opinion that under Title 5 regulations, the Academic Senate has the right to determine the criteria and procedures by which a department qualifies for a full-time hire. However, Article 16 of the Agreement already covers this particular subject. This letter is prepared so that it represents the position of UPM, and may be distributed by UPM without violating the attorney-client privilege.

Continued on 8
For analytical purposes I have framed the questions as follows:

**Question:** Does the Academic Senate have the right to determine which department qualifies for a full-time hire?

**Answer:** No, the Academic Senate has no right to determine which department qualifies for a full-time hire. This is a subject for negotiations.

**Question:** Is the District in violation of Title 5?

**Answer:** No, the District has a legal obligation to negotiate over work preservation clauses such as Article 16. This is not a Senate issue.

**Analysis**

Article 16 of the Agreement is a complex and sophisticated clause which addresses upgrading of part-time faculty to permanent positions, and the processes by which workload and other factors insure that permanent work is preserved for unit members. Article 16 specifies criteria, based on, inter alia, the percentage of temporary credit instructional FTE of total FTE units. The clause makes it clear that it is intended to preserve as much permanent work as possible for unit members. Is such a clause within the scope of bargaining? Without a doubt, the clause is within the scope of negotiations.

1. Rodda Act

   Although some employers insist that all decisions relating to hiring are managerial prerogatives, and thus outside the scope of negotiations, the fact is that many aspects of hiring are negotiable. Thus, the Senate is wrong to the extent it argues that matters contained within Article 16 are within its jurisdiction. Indeed, because the subject matter of Article 16 is within scope, the Senate members are not permitted to engage in direct dealing with the District concerning the subject. Likewise, the District cannot bypass UPM and deal directly with the Senate in regard to this subject.

   Article 16 is intended, inter alia, to protect the complement of tenured faculty and to provide upgrading opportunities to part-time faculty. PERB has held that Union collective bargaining proposals designed to insure that a district must replace tenure track faculty who retire is considered negotiable. Trustees of the California State University (1990) PERB Dec. No. 1333-H, 23 PERC Paras. 30129, p. 454.

   In Trustees of the California State University the Union proposed that the CSU could not hire temporary faculty until the ration of temporary faculty to total faculty was reduced to .38. The Union went to impasse on this issue and the employer filed an unfair labor practice charge against the Union, alleging bad faith bargaining by the Union taking a non-negotiable subject to impasse. PERB dismissed the charge, ruling that the proposal was negotiable. The dismissal was upheld by the Board itself.

   Continued on 9
PERB held that the proposal made by the Union was akin to a “work preservation clause” which PERB has consistently found to be within the scope of representation, citing State of California (Department of Personnel Administration (1987) PERB Dec. No. 648-S. The Union proposal at issue in Trustees of the California State University attempted to limit the number of temporary faculty and thus preserve the number of valuable tenure track jobs. The privileges, rights, and wages, of tenured and tenure-track faculty at CSU are much greater than those hired as temporary faculty, so PERB emphasized that the Union had a vested interest in preserving tenure track work. It also cited Fremont Unified School District (1997) PERB Dec. No. 1240, where PERB found an employer unilaterally altered its established practice regarding the re-employment of temporary teachers. PERB further recognized that such a clause is directly relevant to procedures for re-employing existing faculty.

Applying the principles of these cases, it is clear that Article 16 is both a work preservation and an upgrading clause. Article 16 is actually entitled upgrading, and it focuses on assuring the continuation of the complement of tenured faculty and providing consideration for existing employees. A major purpose is to assure that the District meets state guidelines in regard to full-time versus part-time ratios, a subject which is otherwise unregulated.

Applying PERB precedent, Article 16 is within the scope of bargaining and any suggestion to the contrary disregards PERB precedent, and common sense.

Only UPM can negotiate an enforceable agreement with the District to preserve tenure-track and tenured faculty work. Because this subject is a matter for negotiations, it is not appropriate for the Senate to attempt to “negotiate” with the district for procedures governing subject.

2. Senate and Title 5
The suggestion that the Senate has jurisdiction over the above is simply wrong. In 5 CCR section 53200 (c), the Board of Governors has delineated the subjects of District-Senate consultation. The subjects of work preservation and upgrading are not mentioned. Indeed, in 5 CCR section 53021, the Board of Governors recognizes that upgrading procedures are exempt from BOG requirements on open recruitment.

It is true that decisions about hiring administrators are not within the scope of bargaining and are appropriate matters for collegial consultation. This was the issue in a case I handled at DVC. However, that is an entirely distinct issue from that presented by Article 16.

Although the law provides that hiring criteria, policies and procedures are to be developed jointly between the board and the senate, these criteria, policies and procedures are intended to involve hiring qualifications and processes once a hiring decision has been made. See Education Code section 87360. This allowance for Senate involvement in hiring is quite narrow, and cannot intrude on negotiable subjects. In other words, what is negotiable under the Rodda Act erects a barrier to District-Senate consultation. Thus, the Senate cannot involve itself in work preservation proposals or clauses, which are the legitimate interest of the Union.

Even if there were any conflict between Senate interests under Education Code section 87360 and Union rights to negotiate under the Rodda Act, the law requires the District must negotiate with the Union to resolve actual or apparent conflicts. Here, the Senate’s legitimate interest is in regard to qualifications and procedures after the decision to hire, and the discipline for hiring, have been made.

Continued on 10
PERB (and the NLRB) had ruled that work preservation and upgrading or promotional clauses are matters within the scope of bargaining. Thus, the subject matter of Article 16 is not within the jurisdiction of the Senate.

Typical areas of Senate involvement in hiring processes may include various details of recruitment, paper screening and interviewing. Even then, the Union is entitled to negotiate upgrading or promotional clauses which give credit to existing employees, based on, inter alia, seniority.

Based on the above, the Senate has no right to determine the procedures and criteria by which a department qualifies for a new position. Allowing such Senate involvement would amount to intrusion into the collective bargaining relationship, and would constitute an unfair labor practice by the Senate and the District.

I hope this clarifies the situation. Please call if I can be of further assistance on this matter.

Sincerely,
Robert J. Bezemek

Note: The on duty Academic Senate President declined the opportunity to respond to the publication of these letters.

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**Treasurer’s Report**

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**Bank Accounts**

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Union Dues Increase

Mandatory pass-throughs from State (CFT) and National (AFT) affiliates will raise dues this fall. CFT's bylaws state in Article II, section 6, #1. "A local shall implement the pass through of AFT and CFT per capita increases and notify the CFT of such implementation." Full time rates will increase from $86.49 to $88.67. This is the first dues increase since 2002. The increase will be discussed briefly at the August flex meeting.

United Professors of Marin

PRESIDENT
Ira Lansing

BARGAINING TEAM
Paul Christensen
(Chief Negotiator)
Hank Fearnley
Theo Fung
Arthur Lutz
Mike Ransom
John Sutherland

UPM-PAC
Arthur Lutz
Radica Portello

GRIEVANCE OFFICER
Arthur Lutz

TREASURER
Theo Fung

BUDGET MONITOR
Deborah Graham

BAY 10 REPRESENTATIVE
Bonnie Borenstein

CCC REPRESENTATIVE
Bonnie Borenstein

NORTH BAY LABOR COUNCIL REPRESENTATIVE
Carol Costa

PROFESSIONAL AFFAIRS COMMITTEE
Mike Ransom
David Rollison

WORKLOAD COMMITTEE
Carl Cox
Don Foss

HEALTH AND SAFETY COMMITTEE
Jamie Deneris
Carol Lacy

PROFESSIONAL STANDARDS COMMITTEE
George Adams
Paul Christensen

SABBATICAL LEAVE COMMITTEE
David Jones
David Rollison

CRA TRUST
Ed Essick
(Chair)
Robert Kennedy
Ira Lansing
Ron Palmer

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Mike Ransom
John Sutherland
Yolanda van Ecke

WEB MASTER
Mike Ransom

EDITOR, UNION PRESS
John Sutherland

EXECUTIVE SECRETARY
Teresa Capaldo
United Professors of Marin
UPM-PAC Payroll Deduction Form

The UPM-PAC (Political Action Committee) provides financial support to candidates and measures that support or benefit education in Marin County and the College of Marin in particular. If you would like to support the UPM-PAC with a monthly contribution, small or large, please fill out the form below and send it to the Payroll Office.

To: Payroll, College of Marin
Date: ________________

I hereby authorize the Marin Community College to deduct from my earnings the sum of __________ beginning in the month of __________, __________ (year), and each month thereafter, and to remit this sum to the United Professors of Marin PAC #990958 until I revoke this authorization in writing.

Signature: ________________________________
Name: ________________________________
Address: ________________________________
City: ________________________________
Zip: ________________________________
Home Phone: ( ) ________________
Campus Ext: ________________ Dept ________________
Email: ________________________________
SSN: ________________________________

UPM Membership Application Form

I hereby apply for membership in the United Professors of Marin, AFT Local 1610

Date: __________
Name: ________________________________
Address: ________________________________
City: ________________________________
Zip: ________________________________
Home Phone: ( ) ________________
Campus Ext: ________________ Dept ________________
Email: ________________________________
SSN: ________________________________

Check the appropriate box:

☐ Permanent credit or non-credit employee or leave replacement.
☐ Temporary non-credit employee on the quarter system.
☐ Temporary credit or non-credit employee on the semester system.

Return to UPM Kentfield campus mailbox or UPM Office, Science Center 136