

**FACTFINDING FOLLOWING DECLARATION OF IMPASSE
BETWEEN THE PARTIES**

In a Matter in FactFinding

Between:

**AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL
EMPLOYEES, LOCAL 3299
Union,**

And

**UNIVERSITY OF CALIFORNIA,
Employer**

Re: Contract Negotiations

**FACTFINDING RECOMMENDATION
Carol A. Vendrillo, Chair, Neutral Panel Member
Debra Grabelle, Union Panel Member
Gayle Saxton, University Panel Member**

May 2, 2008

Appearances:

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PUBLIC EMPLOYMENT
RELATIONS BOARD
HEADQUARTERS OFFICE

INTRODUCTION

This matter arises out of an impasse in negotiations between the University of California and the American Federation of State, County and Municipal Employees, Local 3299. AFSCME is the exclusive representative of approximately 8,345 employees in the Service Workers Bargaining (Unit SX) who work at ten campuses and five medical centers within the University System. The unit is comprised of building maintenance workers, bus drivers, cooks, custodians, food service workers, gardeners, parking attendants, and other service workers.

The University and AFSCME are parties to a collective bargaining agreement that ran from May 9, 2005, to January 31, 2008. The parties did not agree to an extension of their contract.

Following a timely request from the Union, the parties engaged in collective bargaining on 13 occasions, beginning in October 2007. The parties also participated in one mediation session. However, the parties were unable to reach an agreement and the mediator released the parties to factfinding.

Thereafter, pursuant to provisions of the Higher Education Employer-Employee Relations Act, at Government Code Sections 3590 et seq., the Public Employment Relations Board requested that the undersigned neutral, Carol Vendrillo, service as the chair of the three-person factfinding panel. The parties also have selected Gayle Saxton to serve as the University's panel member and Debra Grabelle to serve as the Union's panel member.

The parties and the panel met and conducted preliminary discussions and factfinding sessions in Oakland, California, on April 17, 23, 24, and 28, 2008.

DISCUSSION OF ISSUES IN DISPUTE

The parties were unable to reach an accord on several provisions of the contract. With regard to each issue in dispute, the parties presented their positions to the factfinding panel.

Article 1. Access. The Union's goal with regard to access is to gain the right to have an AFSCME representative participate in the orientation the University provides to new employees. The Union contends that the terms and conditions of employment of service workers are covered by a collective bargaining agreement with the University and new employees should know about the Union and the contract terms. The Union's proposal seeks less than the standard in the hospital setting, where paid released time is provided to stewards who participate in such orientation sessions.

The Union also seeks to delete the language in the contract that permits the University to enforce violations of the access rules by expulsion of individual employees, denial of future access rights, and loss of Union posting privileges (Article 1.C.1, 2, 3, 4). The Union asserts that this differs from other U.C. contracts and is contrary to current labor law precedent regarding access rights.

The University asserts that the current contract language provides the Union with the opportunity to meet with employees during their breaks and lunch periods. For example, on the Davis campus, the Union is advised of the new employee orientation and permitted to reserve a near-by room where it can meet with new employees. At UCD, the power point orientation presentation includes five slides designed to inform employees about the Union. The Union is free to distribute flyers, however, the University asserts that it cannot require employees to attend a Union meeting.

With regard to the penalty provisions of the access article, the University maintains that the current contract language must be retained to enforce sanctions against violations of the access rules and that this language has been in the contract since the parties' first agreement. Removal of the language would dilute the parties' understanding of the intent of the contract terms.

Discussion. By this proposal, the Union seeks a commitment to access to new employees during non-work time following the orientation process or during the lunch period. Currently, Article 1, N.5 requires that the University notify AFSCME in advance of the scheduled orientation session. It must include Union materials in any packets of information presented at the session. The current language states that the Union-related material "may include" information about the time and location of union meetings. The contract also provides that the Union "shall be permitted to meet with the new bargaining unit employees" according to local timetables and practices "immediately after" the new employee orientation session. The contract also provides that information about the time and location of the Union meeting shall be announced at the orientation meeting and employees "may attend AFSCME meeting[s] on non-work time, such as lunch or break times."

The record in this factfinding proceeding suggests that Union participation in orientation sessions is handled differently at different campuses. Indeed, it is apparent that many campus locations have established procedures that permit adequate Union access while reserving the orientation itself to University staff members conducting the session. The success of these localized approaches prompts the panel to recommend that the parties develop a procedure that will address AFSCME's need for access during the

lunch period or following the orientation. The process must ensure that the Union be provided a suitable area where representatives can meet on unpaid basis with new employees attending the orientation session during breaks and lunch time. It is important that this procedure require the University to convey to new employees through an announcement during the orientation session that the employees are free to meet with the Union representatives during this non-work time. The panel suggests that a Union representative be permitted to briefly address the new employees for the purpose of informing them of the Union's availability during breaks and lunch.

With regard to the Union's proposal to eliminate the specified penalties for access violations, the panel recommends retention of the current contract language. The University must be permitted to ensure that Union representatives conduct themselves appropriately and in accordance with local rules and procedures. This language is a reasonable mechanism for doing so.

Article 2. Bargaining unit work. The Union proposes that all new positions performing service work be placed in the service bargaining unit, that the ratio of "career" positions to casual/restricted positions be increased to 4:1, and that U.C. provide the Union with information relevant to these restrictions. The Union's proposal is based on its concern that the bargaining unit is being eroded by U.C.'s greater reliance on casual workers. It asserts that the proposed 4:1 ratio is the current practice at U.C. Berkeley. In 1982, there was a 1:13 ratio of service workers to enrolled students. This ratio is now 1:26. The Union also notes that in 1982, there were 10,200 service workers and 665 student workers. Currently, there are 8,355 service workers compared to 4,225 student workers, or nearly 50 percent of the service work force.

The University asserts that the Union's proposal would eliminate its ability to hire students and that the proposal is outside of the scope of representation. Staffing duties and staffing levels are managerial decisions directly tied to the determination of the level of service. Moreover, U.C. contends that because students are outside the bargaining unit, regulation of student hiring is not a permissible bargaining subject. Further, acquiescence to this proposal would impinge on student hiring that is related to educational goals.

Discussion. The Factfinder recognizes the need to balance the preservation of career positions with the University's obligation to offer employment to students who need work to pay for tuition and fees. The current contract at Article 2 D addresses the situation where the University seeks to reclassify a position and exclude it from the bargaining unit. This provision does not address the Union's concern, however, which is the transfer of bargaining unit duties from career employees to student workers. The Union's concern is with the erosion of the bargaining unit by removal of bargaining unit work. It does not involve a reclassification of a position.

While the panel is unwilling to set a specific ratio of career to student positions, as the Union demands, the Factfinder urges that the current ratio be maintained for the duration of the successor agreement. Continued adherence to current staffing levels will prevent the further transfer of unit work and erosion of the unit. Clearly, University has an interest in assisting financially pressed students. However, the Factfinder recommends that, if the University wants to assign career duties to students, it afford the Union the right to meet and confer over this decision.

Article 4 – Benefits

In general, the Union seeks agreement from the University that it engage in collective bargaining over health plans and that there be no increases in employee health plan costs during the life of the contract.

In support of this proposal, the Union refers to the University's contract with its registered nurses. Article 15 of that agreement demonstrates that the nurses' bargaining representative, CNA, has engaged in negotiations with U.C. over available health benefit plans and employees' contributions to those plans (Union Ex. 1, Tab 3, A). The Union also cites to Article 38 of the nurses' contract, which addresses the duration of that agreement. This provision reveals the University's agreement to re-open negotiations on the health benefit issue in 2008 and 2009 (Union Ex. 1, Tab 3, B).

In support of its maintenance of benefit proposal, AFSCME cites to the University's side letter agreement with CNA, specifying that the benefit structure of the University retiree health program shall remain unchanged for the duration of the contract term (Union Ex. 1, Tab 3, C).

In addition to its negotiations with CNA, AFSCME asserts that U.C. engages in bargaining over benefits with UPTE and CUE, two other employee organizations representing University employees.

The Union also argues that bargaining over health benefits is particularly important for the SX unit because of the number of bargaining unit employees who occupy Pay Band 1, the lowest U.C. pay band. It demonstrates that 98.4 percent of SX Unit workers are in Pay Band 1; only 1.6 percent are found in Pay Band 2, the Pay Band that includes 58 percent of the registered nurses. Thus, AFSCME asserts, while registered

nurses enjoy a higher income level than service workers, they also are given more flexibility in their health plan choices. In support of this assertion, the Union notes that 52 percent of the service workers are in the lowest cost health care plans; in contrast, 24 percent of the nurses are in the lowest cost plan.

The Union also argues that the industry standard permits negotiation of health benefits. It refers to seven community college districts where bargaining over health benefits occurs and three hospitals where health benefits are negotiated, Kaiser, Catholic Health Care West, and Sutter (Union 1, Tab 2, p.9). In addition, the Union data demonstrates that six community college districts and three hospitals provide for maintenance of health care benefits in their negotiated agreements.

As evidence of the need to bring health benefit costs to the bargaining table, the Union data reflect that premiums of Health Net family coverage in Pay Band 1 have increased 133 percent between 2005 and 2008 (Union Ex. 1, Tab 2, p.11). For a food service worker earning \$10.28 per hour, the premium for Health Net Family coverage in 2008 accounted for 4.6 percent of annual income (Union Ex. 1, Tab 2, p.12).

Historically, the Union notes that in 2000-2001, the University paid all health benefit costs in at least one HMO (Kaiser); it then began shifting a share of those costs to employees. Since that time, the employee share of the cost of health care has increased. This further demonstrates the Union's need to negotiate over benefits as part of a broader discussion of employee compensation.

AFSCME also contends that full employer-paid comprehensive family health care is the industry standard. It asserts that providing this benefit could be achieved at a relative low cost – about \$5,143 per campus per month. It estimates that 3,255 of service

workers (48 percent) would benefit from funded family coverage; in turn, provision of this benefit would improve the health care of low-wage workers and their children. The Union relies on a Kaiser Family Foundation analysis of RAND data for this assertion (Union Ex. 1, Tab 2, p. 16). And, the Union asserts, one no-cost quality family health plan is the industry standard. The Union cites seven community college districts in California and three hospitals that provide no-cost family health plan coverage.

With regard to pension benefits, the Union proposes that U.C. continue the current practice of maintaining pensions without required employee contributions. AFSCME asserts that U.C. can afford to continue its practice because its fund is 116 percent of market value of assets. Therefore, U.C.'s plan to unilaterally demand employee pension contributions in the range of 5 to 8 percent is unfounded.

The University's proposal with regard to health benefits is to extend the terms of the prior contract for a period of five months. This will allow the University to assess its financial circumstances in light of state budget uncertainties.

The University asserts that it negotiates with health care providers mindful of the disproportionate impact the cost of health care has on employees at the lower end of the pay scale. For example, Mark Esteban, director of health and welfare policy for the University, referred to the University's decision in 2003 to set premiums according to a pay banding scheme. As a result, employees who earn less compensation now pay less for their health care costs than more highly compensated employees. For example, an employee in Pay Band 1 currently pays \$16.86 for monthly coverage under the Health Net plan, while an employee in Pay Band 2 pay \$42.61 (University Exhibit 1, Tab 4, A). As expressed in a percentage basis, U.C. contributes 98.2 percent of the cost of health

care coverage for an employee in Pay Band 1 under the Kaiser plan; the University contributes 91.0 percent of the cost to provide the same coverage to an employee in the second Pay Band (University Exhibit 1, Tab 4, B).

Since implementing the banding system, the University has continued to pursue efforts to negotiate the most beneficial terms for health care benefits from providers. In 2007, after seeing a 12 percent increase in health care costs between 2006 and 2007, the University began an extensive bidding process with health care providers to secure reduced costs and to place caps on certain costs associated with the delivery of health care. The University met with a coalition of unions as part of the process. It explained the options facing the University in an effort to make the employee organizations aware of possible ways to address their health care cost concerns. For example, Esteban explained, the parties discussed prescription drug costs and co-payments as potential avenues for cost cutting. The University “received input” from the unions, but at the time of these discussions, all bargaining units (with two exceptions) were bound by contracts that contained waivers of the right to negotiate over health benefits. The two exceptions were the patient care unit, represented by AFSCME, and the registered nurses unit, represented by CNA.

The University asserts that because of the contractual waiver language in the parties’ agreement, U.C. was not required to negotiate with AFSCME during the 2007 talks. Moreover, the University explains, it rejected the Union’s request to be included in the health care provider bidding process because it is not an appropriate role for the unions. Faculty representatives were permitted to participate as part of the Faculty Senate’s role in shared governance within the University’s education structure.

The University's proposal to extend the health benefit provisions of the prior contract for a period of five months does not foreclose bargaining during these and future negotiations, but permits it to assess its financial situation as the state budget circumstances clarify.

Discussion. The rising cost of health care is a concern to all University employees. However, the panel is aware that, while all increases in premiums and co-payments necessarily reduce net income, these increases inflict a disproportionate impact on workers in this bargaining unit who are at or near the bottom of the wage scale. The record in this factfinding proceeding includes testimony of Juanita Cannon, a housekeeper at U.C. Davis Medical Center, who spoke about the "trade offs" she must make to support herself and her granddaughter. Ms. Cannon told the panel that, to conserve funds, she has had to forego her monthly blood pressure medicine.

While the panel recognizes that the University strives to contain health care costs, the out-of-pocket impact is felt more keenly on the service workers. For this reason, as health care premiums increase, reserving a seat at the bargaining table for AFSCME, as a spokesperson for this group of workers, becomes more critical. With this in mind, the panel recommends that the parties negotiate a provision that if employee health care costs increase more than an agreed-upon percent when rates are set in September, health care benefits will be deemed a mandatory subject of bargaining about which the University and AFSCME shall bargain. If the increase in employee health care costs is less than the agreed-upon amount, the Union shall agree to this increase.

The panel also recommends that if the University elects to redirect any component of employee compensation for purposes of pension funding, the University and AFSCME shall engage in collective bargaining over pension benefits.

Article 5. Contracting Out. The Union’s proposal seeks to retain bargaining unit work by requiring that the University bring all contracted-out bargaining unit work “in house” within 90 days of contract ratification. And it seeks language committing the University not to engage in contracting out. The Union argues that, since the last contract, the subject of contracting out has caused protracted acrimonious fights. It cites examples at U.C. Irvine (food services and grounds), and at U.C. Davis (food services). The Union also notes that within the hospital industry, there is a presumption against contracting out (Kaiser), a right to strike over contracting out (CHW), and a prohibition on contracting out (Sutter).

The University opposes this proposal, asserting that it is outside of the scope of representation because it interferes with management’s right to determine and change the level of service. It agrees that the effects of contracting-out decisions are negotiable and asserts that this is adequately addressed in current contract language in Article 5. Under that article, the University pledges not to contract out services that result in the layoff of bargaining unit employees except where there is a need to obtain special services that are not available internally, where there is a need to obtain special expertise or efficiencies that are better provided through an outside contractor, and where the contracting out is a matter of financial necessity.

UCSF Interim Facilities Director Kevin Austin testified that the ability to contract out services is important to ensure staffing at small facilities at remote work locations and

to “back fill” for short-term peaks in work demands. It would be inefficient for the University to recruit for employees who will be needed for a short duration.

Discussion. The panel recognizes that there is a huge cost associated with the Union’s demand to bring all contracted-out work back into the University. Labor costs are only one component. The equipment and facilities that outside contractors bring to the job would have to be purchased and maintained by the University. The panel notes, however, that at UCI and UCD, there has been a successful effort to bring contracted-out services back in-house. It is the panel’s recommendation that the parties work to use these achievements as a guide for reclaiming currently contracted-out work.

Looking forward, it is the panel’s view that the University must be permitted to utilize outside contractors for the performance of short-term, specialized services. This is currently reflected in Article 5B. However, the panel is concerned about the use of long-term contracting out. Finding a way to limit the movement of work away from University employees to outside suppliers is important. To this end, the Factfinder recommends that the parties develop a process to amicably resolve the continued use of long-term contract service employees.

Article 6. Development. The Union seeks to increase the number of hours offered to service workers for professional development from 24 hours to 40 hours. It also seeks language to ensure that employees have the ability to use the educational leave that the agreement provides. The Union argues that, as an educational institution, the University should not deny its service employees the opportunity to pursue educational development. Rather, it should be committed to encouraging employee advancement by opening up career ladders made possible by virtue of additional education and training.

AFSCME contends that the University denies service employees the use of educational leave based on “scheduling” concerns. In reality, this is caused by chronic understaffing over which the employee seeking to take advantage of educational development leave has no control.

Additionally, the Union points to the University’s contract with its RNs, which permits 40 hours of educational leave. In private hospitals, service workers are provided 40 hours of educational leave (Kaiser and Sutter); these institutions also make a financial contribution for employee training. At CHW, employees receive 16 hours of educational leave, \$3,000 in tuition reimbursement, and can participate in an employer-funded training program.

The University is opposed to this contract change, asserting that it is impossible to eliminate the operational needs of the institution that force it to deny educational leave requests. The University is committed to making a reasonable effort to grant leave and has proposed language to use such leave “to maintain a license/certificate, required for employment in the employee’s present position if options to reschedule the leave prior to the expiration of the license/certification are not available and leave is requested” in advance.

The University also notes that the contract permits disputes arising under this provision of the contract to be appealed to the department head in writing within 30 days of the denial of the leave. The department head or his/her designee must provide a written statement of the reasons for denying the leave request. If an employee is not satisfied with this explanation, the dispute may progress through step two of the grievance

procedure. The remedy for a violation of this section is limited to the provision of the written reasons for the denial of leave.

Discussion. The panel recommends that the cap be increased from 24 to 40 hours. This may permit an employee to attain a special certificate that requires completion of a full-week program.

Aside from the cap on hours, the Union also voiced concern with the University's denial of leave based on operational need prompted by inadequate staffing. Under the current contract language, such requests for educational leave "shall not be unreasonably denied." The panel believes that this strikes the appropriate balance because it preserves the University's ability to assess its operational needs and grant educational leave requests that reasonably can be accommodated. Taken together, recognition of management's operational needs coupled with a more generous educational leave allowance is the panel's recommendation.

Article 8. Duration of Agreement. The Union seeks a three-year successor agreement that would run until 2011. The University seeks a five-month contract extension.

The Union contends that the five-month extension the University proposes (along with agreement to bargaining waivers and no re-openers) would deny employees the opportunity for stability based on a firm agreement on terms and conditions of their employment.

As noted elsewhere in this report, the University points to the uncertainty of state funding as the reason to extend the contract until there is more fiscal certainty. It

underscores that it will continue to bargain with the Union during the contract-extension period.

Discussion. As discussed more fully in the section on wages, the panel recommends a three-year agreement.

Article 12. Hours of Work. Mandatory Overtime. The Union seeks to add contract provisions that would require the University to agree to no mandatory overtime except in the case of a University-declared emergency. Relying on language in the nurses' agreement with U.C., AFSCME defines such an emergency to include responses to local, state, and federal emergency situations. The Union asserts that employees are entitled to know when they will be able to leave work. This is necessary to attend to childcare needs and other obligations. AFSCME also contends that the University relies on mandatory overtime rather than staffing its facilities appropriately. U.C. does not rely on mandatory overtime regarding nurses' schedules at its medical facilities. The University can provide the same consideration to its service employees. The Union contends that the industry standard (community college districts and private hospitals) does not require mandatory overtime.

The University is opposed to this proposal and views it as an incursion on its needed flexibility. Under the current language of Article 12 F 1 and 2, the University first seeks volunteers for overtime assignments and then retains the authority to direct employees to work the overtime it assigns. The current contract language contemplates the rotation of overtime assignments based on seniority among employees who request to work overtime.

U.C. contends that the Union's comparison with University nurses is not valid because nurses rarely refuse to work beyond their shift and because the University can obtain nurses to work overtime from a nursing register. The nurses' contract is the only U.C. negotiated exception. The University does not object to having overtime assignments discussed at local labor/management committees on individual campuses.

The University supplied the panel with an affidavit from Rey Hernandez, food service manager at UCLA, who stated that, in instances where there are staff shortages due to absent workers and there is a need to cover for these individuals, management asks for volunteers. He stated that under no circumstances are employees forced to cover for a shift or work against their will (University Ex. 12B).

Kurt Baumgartner, operations manager of the security department at UCLA Medical Center, submitted an affidavit indicating that the obligation to satisfy minimum staffing levels prompts the need for overtime. When this occurs, he asks for staff volunteers using an agreed-upon methodology to ensure fairness. In the majority of instances, this elicits volunteers. When volunteers do not come forward, however, situations arise that mandate the assignment of overtime to meet the department's operational demands (University Ex. 12B).

Maria Shipkova, principal food manager at UCLA Medical Center, stated in an affidavit that overtime is sometimes necessary to fill in for absent workers who are needed to provide satisfactory patient care. When this occurs, volunteers are first sought; if no volunteers agree to work overtime, assignments are rotated in inverse order of seniority (University Ex. 12B).

AFSCME also provided the panel with affidavits on the issue of mandatory overtime. Union representative Danielle Di Silverio stated that security officers at UCSF regularly have been directed to work overtime during non-emergency situations under the threat of discipline. Amy Hines, another Union representative, stated that the Parking and Transportation Department periodically mandates overtime during weekends on a non-emergency basis. A lead gardener at UCB stated in an affidavit that gardeners are required to work overtime for non-emergencies due to staff shortages. This negatively impacts employee morale.

Discussion. The panel finds that the University must be permitted to assign staff members to work overtime under certain circumstances. Further, the evidence presented to the panel demonstrates that mandatory overtime assignments are not made on a consistent basis at the U.C. campuses. Procedures vary from campus to campus and from department to department. Given the problems generated by forced overtime, it is evident to the panel that the current contract language does not adequately address the employees' concerns.

The panel recommends that the use of volunteers become a more formalized process, adopting the "best practices" used at various campuses to inform employees of vacancies as far in advance as possible. Selection from among volunteers should be required before any mandatory assignment can be made. As discussed below, the University's adoption of the panel's recommendation that daily overtime be compensated above the regular rate of pay may go far to encourage additional volunteers.

Overtime Pay. A second component of the Union's proposal regarding work hours also concerns overtime. It seeks 1.5 pay after an 8 hour or 10 hour shift and after 40

hours per week. It also seeks double time after 12 hours. It asserts that earned time (sick, vacation, and holiday hours) should count toward the computation of overtime pay. In support of this demand, the Union notes that its proposal is consistent with the State and Federal law. It also asserts that overtime compensation is the industry standard in those community colleges that are neighbors of U.C. campuses and in hospital settings.

AFSCME notes that U.C. nurses receive overtime compensation.

The Union also argues that the University's practice of not paying overtime — coupled with its ability to mandate overtime work — gives the employer an economic incentive to under-staff its operations.

The University opposes this proposal. While fully compliance with the FLSA, it asserts that daily overtime after 8 hours as required by state law does not apply to the U.C. system. And, the payment of overtime compensation would impede the campuses' abilities to conduct business in a timely, budgeted manner.

Discussion. The payment of extra compensation for overtime work is a commonplace practice. Seventy years ago, the Fair Labor Standards Act mandated that employees receive time-and-one-half for work over 40 hours per week. While AFSCME's proposal also seeks overtime tabulated on a daily hour basis, the panel strongly urges the University to conform to the state practice and provide extra compensation for daily overtime work.

The Factfinder agrees with the Union that the University's ability to utilize mandatory overtime *and* not pay any additional compensation to those who must involuntarily perform extra work provides no incentive for the University to fully staff its operations. It is noteworthy that one of the reasons for enacting the federal Fair Labor

Standards Act was the reasoning that mandated premium pay for overtime work would give employers an economic incentive to increase the workforce. The same may happen in the University setting and thereby increase staffing. In addition, payment of extra compensation for overtime work may reap the added benefit of encouraging more employees to volunteer for overtime work. Thus, it is the Factfinder's recommendation that the University adopt the Union's proposal on daily overtime pay.

Meal and Rest Breaks. A third issue concerning work hours is addressed in the Union's proposal that service employees not be denied their meal or rest periods except in the case of emergency. The Union seeks compensation at the rate of 15 minutes of base pay for each missed break. AFSCME argues that workers should be entitled to take breaks and that state law provides an *hour* of pay for each missed break. It also notes that U.C. nurses receive 15 minute penalty pay.

The University responds to this proposal saying that payment for missed meal and rest breaks does not resolve the problem of having employees miss the break from work; it only imposes a penalty for doing so. U.C. invites the Union to provide it with information regarding the extent and frequency of missed breaks.

Discussion. Under the University's position, an employee who is permitted to take an earned break and an employee who must work through his or her break receive the same compensation. This is illogical. If an employee is not permitted to take a rest break, he or she should be compensated for providing more of his or her services than the law requires.

However, it is the panel's view that if additional pay is to be provided for missed rest breaks, language must ensure that the employee first ask his or her supervisor to take

the earned meal or rest break and be denied the opportunity to do so. Moreover, the panel stresses that this additional compensation is for the employee's provision of additional work. It is added payment for extra work, not a penalty for a missed meal or rest break.

Seniority for Scheduling. AFSCME proposes that Article 12 be amended to mandate that seniority will be used for scheduling, rather than as a "tie breaker" as it is in the current contract, and that application of this contractual provision be subject to the grievance and arbitration procedure in the contract. The subject of such a grievance would address whether the University misapplied the seniority provision of the contract, not the basis for management's decision to make the schedule change.

The University is opposed to this proposal on the basis that it conflicts with its management right in Article 15 B.3, "to plan, direct, manage, and control the use of resources and personnel..." The University seeks to maintain the language in Article 12 B.3, which permits an employee to submit a written preference for a particular shift and permits the University to "consider" the skills, knowledge, and abilities associated with the position. When two or more career employees have expressed a preference for a position, the contract states that the University "at its sole, non-grievable discretion, may use department length of service to make the shift assignment."

Discussion. The panel has carefully reviewed the current contract language regarding shift assignments set out in Article 12 B 3. Under that language, the panel finds that the University "shall," or is obligated to, consider the skills, knowledge, and abilities of the employees prior to deciding on a shift assignment. This is a mandatory act prior to selection. The panel notes, however, that the University retains the authority to determine appropriate qualifications and the panel recognizes that the job qualifications may vary

depending on the shift. For example, the availability of direct supervision might vary from day to night shift, thus calling for an employee who can function with less guidance. The need to communicate effectively with members of the public might vary depending of the shift, thus requiring an employee with better “people skills.” Therefore, while the University is compelled by the contract to consider an employee’s skills, knowledge, and abilities, the weight given to these criteria may vary depending on the shift assignment.

The contract also directs that when shift assignment candidates have substantially equal qualifications, the University “may” use seniority to make the shift assignment. This does not compel firm reliance on length of service. However, the panel believes that the University must be held to demonstrate why it assigned the shift as it did.

On-Call Pay. The Union seeks as on-call pay 50 percent of the employee’s normal hourly rate for the duration of the on-call shift and 75 percent of the normal rate when the on-call period coincides with a holiday. The Union asserts that this is the provision negotiated with U.C. nurses and in use in the hospital settings.

The University has demonstrated that it does not uniformly pay 50 percent or 75 percent for on-call pay. The University differentiates between employees who are called back to work and employees who are on on-call/stand by status. Employees who are called back to work after completion of a shift are entitled under Article 12 J to payment for time worked, with a four-hour minimum. In contrast, employees on on-call status are given extra compensation for periods when they are on stand by, according to Article 12 K. This adequately compensates an employee who is on on-call status. U.C. also asserts that on-call status is rarely used among employees in this bargaining unit.

Discussion. The panel believes that the current contract language provides the appropriate compensation for employees who are on stand by.

Article 13. Layoffs. The Union seeks contract language that provides that layoffs within classifications be based on seniority and that this contractual obligation be subject to the grievance and arbitration procedure of the agreement. The Union asserts that this is consistent with the practice at community colleges near U.C. campuses, which provides for layoff by classification, with bumping rights. Within the hospital setting, the contracts dictate that layoffs will be permitted within mutually agreed on departments. Under the parties' current agreement, layoffs for a select classification are effectuated by seniority within department. The Union seeks a contract agreement that designates certain classifications for which layoff will be by seniority.

The Union is not seeking to negotiate the decision to institute layoffs, but to challenge whether the University has complied with the contract language that provides for layoffs based on seniority.

The University asserts that the decisions regarding the selections for layoff be non-grievable and that selections for layoff continue to be affected within the same department/division. Ken Phillippi from UCB testified that the job duties and, thus, the abilities of individuals within the same classification, often differ even at the campus level. He gave as an example the situation of a building maintenance worker at facilities and in housing and dining, where the need to perform craft-type jobs had developed within facilities and does not exist across the classification.

Discussion. In the University setting, layoffs are driven by lack of work or lack of funds. Of concern to the Union are layoffs necessitated by a lack of funds. Given the

University's "cost center" focus on budgeting, it is at the cost center level at which savings must be accomplished. Thus, it is the least senior employee within the department/division that would face layoff as a way to address the lack of funds.

That said, the panel is aware that the size and configuration of a department can be manipulated to affect which individual employees will be impacted by the layoffs. These last-minute, out-come driven department designations are an anathema to the seniority system that stakes retention on length of service. To avoid the perception that the layoff units are manipulated immediately prior to the occurrence of a layoff, the panel strongly advises the parties to establish the appropriate units in which seniority will operate for purposes of layoff. While the University remains resolved to avoid future layoffs, it will serve the parties' interests to discuss and address this matter before any seniority-based layoffs might become necessary.

Article 21. Non-Discrimination in Employment. The Union seeks a contract clause prohibiting the University from discriminating against workers based on their immigration status. The terms of this proposal are drawn from model human rights language that has been accepted and utilized within the hotel industry. The Union's proposal would allow an employee to amend documents to cure presumed immigration status. The proposed language also limits the University's role in the enforcement of immigration laws. AFSCME asserts that the proposed contract language reflects the current law regarding immigration; it does not go beyond what the law currently provides. In sum, the Union seeks a contract provision that will allow an employee to correct immigration documents without fear of retaliation.

Union witnesses explained that the names and Social Security numbers maintained by the Social Security Administration have a 4 to 5 percent error rate and that the SSA is not a federal agency charged with enforcement of immigration laws. When a “no match” letter is received, it is the employer’s obligation only to notify the employee. The employer is not legally required to take any further action.

The University voiced concern over situations where an employee has come forward and submitted an entirely new name and Social Security number. This may not be the situation where a “no match” letter has been received. Nor does the name and number change appear to be the result of clerical error. Under these circumstances, U.C. seeks to maintain its authority to investigate the potential that the employee falsified employment documentation using a false name or Social Security number. In such instances, the University would want to retain the ability to discipline an employee who falsifies an employment record, including names and Social Security numbers.

Discussion. There are two related but separate issues raised by this proposal. One concern focuses on the University’s response to receipt of a “no match” letter. In general, the Factfinder urges the adoption of contract language that would clarify the University’s response in these situations. The “no match” language in Union Ex. 21B would achieve this result. It directs the employer to notify the union and the employees listed on the “no match” list. It provides that the employer post a notice advising employees of the importance that names and Social Security numbers appear correctly on wage documents. The language provides that the employer “will not take any adverse action against any employee just because they are listed on the notice, including firing, laying off, suspending, retaliating, or discriminating against any such employee.” The language

states that the employer agrees not to require that the employees listed on the “no match” notice provide a copy of their Social Security card for the employer’s review, complete a new I-9 form, or provide new or additional proof of work authorization or immigration status just because the employee is listed on the “no match” notice. Finally, the language states that the employer agrees not to contact the Social Security Administration or any other governmental agency after receipt of the “no match” notice. The Factfinder recommends that language drawn from this exhibit be enacted as part of the successor agreement. These provisions are consistent with the University’s responsibilities following receipt of a “no match” letter. To bolster this language, the Factfinder also recommends that new language be added to the non-discrimination provisions of the contract that goes beyond race and national origin and protects employees from discrimination based on immigration status — or perceived immigration status. This would be a benefit to the employees in the service bargaining unit.

Separate from its reaction to receipt of a “no match” letter, the University expressed legitimate concerns about its ability to continue to discipline employees who falsify their employment records, including the I-9 form. The panel believes that it is important to address this concern and that there is a critical need for clear, easily understood procedural rules. Hasty, poorly thought out reactions to real or perceived questions about immigration status can carry serious disruptive consequences.

Article 23. Parking. The Union is seeking a freeze on parking rates during the life of the agreement. It asserts that service workers currently pay as much as \$106 a month for parking; for some workers, this represents more than a full day’s pay. It also notes that some workers are unable to use public transportation because of time

constraints imposed by their second job. Requiring service workers to pay for parking is at odds with the industry standard; workers at Kaiser and CHW enjoy free parking. Thus, the freeze AFSCME is seeking is below the industry standard.

U.C. witness Greg Winegar offered testimony regarding the operation of auxiliary units, such as housing, food services, and parking. He testified that, while it is permissible to charge different fees for different parking locations, all users of a particular parking facility must pay equal parking fees. Rates are set by each campus and are intended to be market competitive. This is important, Winegar testified, because a parking auxiliary unit must be self-sufficient. He also explained that the banding that is used to reduce health care costs for lower wage earners is equalized by contributions of U.C. funds. If lower parking rates are charged for lower paid workers, the difference in rates would be subsidized by higher paid workers. Moreover, U.C. asserts that a two-tier parking fee structure would be impractical.

To address the parking problem, U.C. proposes that a cap be placed on increases to current fees. It proposes during the life of the agreement that there be a limit on parking fee increases. The amounts of permitted increases are outlined in U.C.'s proposal, and vary from campus to campus and for different types of parking permits. (U.C. Ex. 23A.)

The University also introduced the factfinding recommendation of John Kagel regarding parking fees for nurses in their successor agreement. This recommendation would limit the parking rate increase above the current rate to \$12 per month for FY 2008-2009 and no more than \$16 per month for FY 2009-2010 (U.C. Ex. 23C).

Also made part of the record is the factfinding panel's recommendation for parking fees in this unit in 2005. That panel rejected the Union's proposal for a freeze, but recommended as possible ways to address the disparate impact on low income service workers a fee structure that uses a system of banding, imposition of a cap on fee increases, or the creation of a link between fee increases and wage increases. That panel "strongly urged the University to undertake a concerted, determined effort to confront this difficult problem in a system-wide manner."

Discussion. The University has presented AFSCME and the factfinding panel with a new proposal addressing parking. It provides that the UCSD parking rate increase for 2008-2009 is zero.

In light of the salary increases discussed below, the panel finds that the University's proposal on parking fees be accepted.

Article 27. Personnel Files. The University has proposed two changes to the current contract language. It seeks to extend from two to five years the period of time it may retain letters of warning and/or disciplinary action (other than matters involving criminal violations) in an employee's personnel file. The panel heard testimony that retention of such documents for five years will enable the University to better track repeat offenders. While it is no doubt true that a more lengthy employment record likely will contain more material, the University did not produce evidence that the five-year time limit is common in other educational settings. Similarly, the University's proposal to indefinitely retain records involving certain criminal violations would impose a potentially severe consequence without adequate evidentiary support.

The contract currently requires the University to remove disciplinary documents from an employee's personnel file after they have been retained for two years if the employee requests such removal. The University asserts that to do so absent an employee's request is impractical. The panel is receptive to the University's argument. However, we recommend retention of current contract language.

Article 28. Position Appointments. The Union seeks the conversion of regular per diem workers to per diem career positions when an employee completes a regular 40 hour weekly pay period for more than 120 days in the same department and classification. To ensure compliance with this, the Union proposes that a per diem employee shall not be reduced in hours solely to prevent advancement to benefited status. It also proposes that career positions and schedules be posted as a vacancy under Article 38. The Union also proposes that a per diem employee working regular hours and receiving higher pay in lieu of benefits may request reclassification when eligible or may continue to work in the per diem position, subject to the Union's approval that the job will not be posted. The rationale for these proposals is the Union's assertion that per diem employees should be used to supplement the regular workforce, not to replace it. It refers to the practice in the health care industry, where per diem employees convert to regular employee status after a 40 hour weekly pay period after 90 days (Kaiser and CHW) or after 10 pay periods (Sutter).

The University rejects this proposal.

Discussion. The panel has been persuaded that, given the extremely limited use of per diem employees in the service unit, the University's position be accepted.

Article 31. Release Time. The University seeks to limit paid release time to designated bargaining team members only for bargaining sessions that occur during the life of the contract. Once the contract expires, U.C. would require that AFSCME reimburse the University for the release time of its bargaining team members. The panel does not accept the proposal.

New Article. Labor/Management Committees. The University also proposes the addition of a new contract article that addresses labor/management meetings. The Union is not opposed to this addition provided the language retains the same number of meetings and allows the same number of employee representatives to participate without loss of straight-time pay. The Factfinder reads the University's proposal as doing so and recommends adoption of the new language.

Article 34. Weekend Shift Differential. The Union seeks a 5 percent weekend shift differential in addition to any other differential paid for evening or swing shifts. It notes that community college districts provide for a 5 percent weekend shift differential, and U.C. employees in the patient care technical Unit at three campuses (UCLA, UCSF, and UCD) receive a weekend shift differential ranging from \$.60 an hour (UCLA) to \$3.75 an hour (UCSF). In addition, the Union notes that in the hospital setting, employees typically receive a weekend shift differential. U.C. nurses at all medical centers earn a weekend shift differential ranging from \$1 an hour (UCB and UCM) to \$3.08 an hour (UCSF).

The University rejects this proposal, arguing that the weekend shift differential is not a solid market practice.

Discussion. The panel recommends that the current shift differentials be maintained.

Article 36. Safe Staffing. The Union seeks to create a safe staffing committee to address work load concerns. Under its proposal, if a staffing issue is not resolved by the committee, the parties' dispute would be resolved through binding interest arbitration. AFSCME asserts that it has attempted to address its safety concerns in the past with no results. It contends that a labor management partnership process is used to address such issues with regard to U.C. nurses and at Kaiser, Sutter, and CHW.

The University rejects this proposal.

Discussion. Maintenance of a safe workplace is an important concern for both the University and for AFSCME. However, the panel recommends that the existing process for addressing these matters be continued.

The panel notes that the new contract language proposed by the University that is discussed above under New Article (Labor/Management Committees) also seeks to eliminate a side letter agreement regarding the staffing committee and its consideration of the square footage conversion chart. Noting that the language of the side letter expressly states that the square footage chart is only one factor among many that is relevant with regard to staffing and that the conversions found in the chart are not absolute, the panel recommends that the side letter not be deleted.

Article 37. Transfer and Promotion. AFSCME proposes with regard to transfer and promotion decisions that seniority be used as a "tie breaker" when there are two equally qualified applicants for a promotion or transfer. And, it seeks to have the application of this provision subject to the grievance and arbitration procedure in the

contact. The Union argues that the current contract language, which relies on seniority as a tie breaker when candidates have “substantially equal qualifications,” is unenforceable. AFSCME states that the grievability of this provision would not encompass the basis for management’s decision to make a transfer or promotion. The Union contends that community college districts routinely give preference to internal applicants. And, in the hospital setting, promotions are posting internally and the most senior applicant meeting the qualifications obtains the position.

The University is opposed to this proposal.

Discussion. As the Union has clarified, it does not seek to challenge the University’s managerial authority to make the *decisions* regarding transfers or promotions. The thrust of the Union’s concern is that the existing assurances concerning the use of seniority as applied in the University’s decision making process cannot be meaningfully reviewed or enforced. The University maintains that the current system of review — short of binding arbitration — adequately prevents abuse of the current contract provisions.

The panel believes that the procedures currently found in Article 37 of the contract give the University the flexibility to broadly publicize transfer and promotional opportunities to attract the most qualified pool of applicants.

The panel understands that the current contract language obligates the University to interview the “best qualified internal applicant(s).” The contract then dictates that “among equally qualified non-probationary career applicants for promotion or transfer, seniority will be considered as a tie-breaker.” The panel recommends retention of this

contract language without modification. It appropriately utilizes seniority when the candidates otherwise possess equal qualifications.

However, the Factfinder strongly recommends that the use of seniority in this context — to make the selection among equally qualified applicants — be subject to the grievance and arbitration provisions of the contract. The University's current agreement obligates the selecting official to rely on seniority in these instances and this would be untested if not subject to review by an outside neutral arbitrator.

Article 42. Wages. The Union is seeking a three-year agreement that provides a 10 percent market adjustment in the first year, the establishment of a \$15 minimum hourly wage rate (\$16 for licensed titles), equity increases for specific titles at specific locations, and placement on a step system. In the second year, AFSCME seeks a 6.5 percent across-the-board increase, automatic step movement, and other mutually agreed upon increases. The same is sought in the third year.

There are several components to the Union's wage proposal.

Funding sources. The Union asserts that 78 percent of the funding for service employee wages derives from sources other than state funds and more than one quarter of wage costs is from hospital revenues at the profitable U.C. medical centers. The Union underscores that the University is not relying on an "inability to pay" justification for its denial of AFSCME's economic demands. Indeed, the Union notes that U.C.'s net income rose between 2006 and 2007 from \$991,200,000 to 1,455,000,000, an *increase* of \$463,000,000. Thus, the thrust of the Union's argument is that the University's unwillingness to grant its wage demands is not from lack of funding, but from misplaced priorities.

“Poverty Wages.” In a 2005 study conducted by the National Economic Development & Law Center, findings revealed that 93 percent of U.C. service workers earned wages that were too low to meet basic needs for a family composed of one adult and one child. In data collected in 2008, this figure grew to 96 percent of U.C. service workers. Based on the Center’s calculations, thousands of U.C. service workers earn wages that entitle them to publicly funded welfare programs and benefits — food stamps, WIC, reduced school lunches, Section 8 and public housing, lifeline phone service, and subsidized child care.

Based on computations of the California Budget Project, an hourly wage of \$24.71 is needed to support a family with two children. By this measure, 8,318 service workers (99.6 percent) earn less. AFSCME asserts that, when compared to this hourly wage rate, the \$15 wage cap it seeks is *less than the minimum* needed to support a family of two. It charges that 5,171 (62 percent) of service workers earn less than \$15 per hour. According to AFSCME’s calculations, the cost of implementing its \$15 minimum wage only is approximately \$196,695 per campus per month, a meager portion of U.C.’s budget.

Step System. Another central component of AFSCME’s wage demand is a wage step system. U.C. currently uses an “open range” wage system. Employees can be hired anywhere onto the range and there is no system for advancing through the range. As a product of the 2005 factfinding, U.C. and AFSCME entered into a side letter agreement pledging to study the feasibility of implementing a salary step system. A committee was formed. Committee members agreed on the list of comparator employers to be used in the study and on the nine classifications it would use for comparison purposes.

The U.C. Joint Step Committee's Report was issued on July 19, 2007. It found that 94 percent of the employers it surveyed had a step system. Increments between the steps varied between 2 and 8 percent, and 88 percent of the organizations with step systems advanced employees to the next step based on the time in the step. The Committee also found that the step systems covering U.C. nurses, community college districts, and hospital systems all provide credit for years of U.C. service and for relevant service at other outside employers. The Committee found that movement through the steps was automatic, and that step increases were not deducted from across-the-board raises.

To implement a comparable step system, the Union first proposes the creation of a new minimum and maximum in each range and a 2.5 percent 10-step progression through the salary range. AFSCME proposes that employees be immediately placed onto the step system based on years of U.C. service and relevant outside service.

Wage Gap. AFSCME performed two market wage gap studies to support its wage demands. A weighted average comparison contrasted U.C. salary placement for specific classifications with comparator institutions, i.e., community colleges and selected statewide hospital systems. The results of this study reveal a 14 to 65 percent wage gap in average hourly wages between U.C. and community college districts near U.C. campuses. When hourly wage minimums are compared, the gap is as high as 57 percent. To address this wage gap, AFSCME asserts that service workers need a one-time 27 percent increase to reach community college hourly rates. It proposes a 10 percent market adjustment during the first year of the contract.

AFSCME also performed an analysis of minimum and maximum step ranges using February 2008 wage data obtained from UCOP. This comparison shows that U.C.'s salary ranges fall well below the steps at other comparable institutions. The minimum wage paid at U.C. is below the starting step at *all* comparator systems included in AFSCME's analysis. As one example, the lowest paid senior custodian at UCR earns \$11.59 per hour, while the starting step at the near-by community college in the Riverside area is \$16.13 per hour, a deficit of 39 percent. In addition, with few exceptions, the *average* hourly rate at U.C. is well below the comparator's *starting* step. For example, the Riverside custodians' average wage lags the comparator's starting step by 32 percent. Differences between the U.C.'s maximum wage and the comparator's top step similarly show a significant lag. For example, the top step differences in the Riverside custodian class reflect a 27 percent deficit.

To further address the market wage gaps, the Union seeks a 6.5 percent increase in the second and third years of the successor agreement.

The University has proposed a five-month contract extension with a 1.4 percent increase in FY 2007-2008. This position is based on the uncertainty in the state funding. It argues that would be imprudent for it to agree to wage increases now without knowing the amount of state funding it will receive.

The University also notes that in May 2005, service workers received a \$250 lump sum; in 2005-2006, a new minimum wage rate of \$9 per hour was set; a 1 percent increase for custodian classifications was gained, and a 3 percent across-the-board increase was attained. In 2006-2007, service workers received a 4 percent across-the-board increase, plus a 2.6 percent increase for employees earning less than \$40,000

annually. In 2007-2008, service workers received a 4.5 percent across-the-board increase. The unit's 2007-2008 wages would increase an additional 1.4 percent based on what the University has offered in these negotiations.

Discussion. The Factfinder must reject the University's persistent assertion that the absence of state funding forces it to reject the Union's salary demands. As revealed during the factfinding process, the University derives only 21.79 percent of its funding from the state and 78.21 percent of the funding for service workers' wages is from sources other than the state. While it is recognized that there are constraints and encumbrances on the University's financial allocations, the Factfinder believes it is not the lack of state funding but the University's priorities that leaves the service workers' wages at the bottom of the list. U.C. has demonstrated the ability to increase compensation when it fits with certain priorities without any demonstrable link to a state funding source. The Factfinder has heard that U.C. has "reallocated" resources to fund an increase in faculty salaries. Admittedly, the University's ability to attract and retain top-notch faculty — those who are essential to the University's mission — must be a priority. And, the Factfinder appreciates that foremost among the University's goals is the ability to provide an education to an ever increasing student body. But, it is time for U.C. to take a broader view of its priorities by honoring the important contribution that service workers make to the U.C. community and compensating them with wages that are in line with the competitive market rate.

Testimony during the factfinding process put a personal face on the hardship some members of the service unit encounter because of the under market wage scale.

Juanita Cannon, a housekeeper at UDC for 4 years, earns \$13.67 an hour. She described her financial circumstances as a “juggling act,” and resorts to collecting and recycling cans and bottles to make ends meet. Jose Lopez Rojas works in food services at the UCLA faculty center and has been a U.C. employee for 38 years. He earns \$12.54 an hour and, like Ms. Cannon, augments his income by recycling cans. He also receives money from his grown son, which helps pay for food, gas, and car repairs. Mercedes Garay works as a custodian at UCSD and has been a U.C. employee for five years. She currently earns \$2,017 a month; this amounts to an increase of \$321 since 2004. During that period, her medical insurance premiums increased by \$55 and parking fees increased by \$26. With these increases in premiums and fees, Ms. Garay’s net income has increased \$38.93 in the last five years (Union Ex. 34B). She told the panel that she has a second job at a hotel in order to survive on her U.C. compensation. Gloria Gonzalez has worked at UCSD as a custodian for nearly 10 years. She earns \$11.77 an hour and cleans houses on the weekends to support her family. Jerome Katel has worked at UCLA for 8 years as an inventory clerk. He earns \$14.04 an hour. He had been working two jobs, but recently enrolled in night school and hopes to become a welder. Following the birth of his son and with his debt “starting to snowball,” he told the panel he may have to again take a second job and abandon the welding program and his hopes for a better paying job. Mr. Katel told the panel that he works for UCLA because it is a prestigious institution and he wants to be a part of its rich tradition.

The Factfinder is moved by this testimony. And, while the Factfinder understands that the University must make careful use of its resources, raising service workers’ wages

needs to become one of the U.C.'s priorities and, along with other commitments, gets factored into the institution's long term goals.

Minimum wage. The Union is seeking a \$15 hourly minimum wage. The panel is receptive to the University's argument that the wage comparison to the community college districts may not be valid, given that it has a different funding source. That said, the University presented the panel with no wage comparables — other than a brief reference to a study performed by the Mercer Company — to demonstrate what would be an appropriate minimum wage.

Taken together, the Factfinder recommends that the University establish a \$12 minimum hourly rate of pay. This is a first step on the path to a \$15 minimum wage. However, the Factfinder recommends that additional movements be made during the life of the Agreement, specifically, that the minimum be increased by fifty cents each six months following the initial movement to the \$12 minimum.

The Factfinder also strongly recommends that the University retire the “open range” pay scale and make the \$12 hourly wage rate the bottom rung of a new step system. Use of a step-based wage system is nearly universal among the comparators that were surveyed by the Joint Committee and it is employed by the University in other bargaining units. Introduction of a step system is responsive to employees' frustrations with the current system that does not increase their compensation based on their longevity as University employees. A predictable, step-based system will inject a sense of equity and fairness into a system that appears to employees to operate arbitrarily.

Implementation of a step system that recognizes U.C. experience will move a significant number of service workers who are stuck at the bottom of the open range or

who have stagnated at one pay level for far too long. It is the Factfinder's recommendation that there be 10 steps separated by 2 percent wage differentials, rather than the 2.5 percent increments sought by AFSCME. The Factfinder also believes that employees should be moved onto the appropriate step in two phases, with placement dependent on years of U.C. service. The Factfinder recommends that movement to the first step be accomplished by July 1, 2008, and that this first phase of step placement reflect one half of an employee's U.C. experience. The remainder of U.C. experience should be reflected in the second phase of step placement to be completed six months thereafter.

In consideration of the Union's market wage research, the Factfinder proposes that, in addition to the \$12 hourly minimum and step placement based on U.C. experience, there be a 2 percent across-the-board increase. It is the panel's recommendation that in the second and third years of the contract, unit members receive a 4 percent across-the-board increase.

The panel also recommends that the parties' agreement adequately address health care and pension costs, expenses that disproportionately impact workers at the lower level of the wage scale. The University's implementation of the pay banding system demonstrates that it already is mindful of this consequence. The panel's recommendations regarding health benefits and pensions can be found in the discussion section for Article 4.

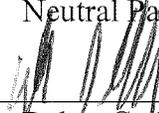
The panel has earnestly attempted to be responsive to the Union's wage demands. At the same time, we are aware that the University is faced with difficult choices when it divides up its budgetary pie.

The measured approach recommended by the Factfinder outlined here will ensure that service workers do not get left out and that the University begins to address the real human hardship encountered by some of its hardest working employees.

Date: May 2, 2008



Carol A. Vendrillo
Neutral Panel Member



Debra Grabelle
AFSCME Representative
Concur in part/Dissent in part



Gayle Saxton
University Representative
Concur in part/Dissent in part

AFSCME 32 Dissents on the following Items:

Article 1 Access

CNA, UPTE and CUE do not have the arcane language in their contracts limiting access. It is not appropriate to be treat one Union, AFSCME 3299 differently than the other Unions at the University of California.

Article 2 Bargaining Unit Work

The union strongly believes that erosion of the bargaining unit with casual/restricted workers has already gone much too far, and must begin to be rectified immediately.

Article 4 Health Benefits

During the fact finding panel workers testified that the increasing premiums and co-payments are a hardship for them. They have to choose between prescriptions and basic needs such as rent and food. Any premium increase during the life of the contract is a hardship for a worker earning only \$12/hour.

Additionally, all of the major competitors are able to provide: a free family health care plan and guarantee the benefit without premium increases for the of their contract. The University of California is a premier institution. It should at least treat its employees in a average way.

Article 4 Pension

AFSCME 3299 believes the pension should be fully funded. However, he University of California has not satisfactorily demonstrated the need for pension contributions during the life of this contract.

In 2006-2007 the University attempted to require pension contributions from *employees* when the pension was over funded. For 17 years the University of California has contributed nothing to the pension fund. If there is a need for pension contributions during the contract they should come from the University of California.

Every competitor institution guarantees the pension benefit during the life of the contract.

Article 12 Hours of Work

It is not a humane practice to mandate overtime. Workers have children they need to pick up from school and second jobs they must go to. Instead of staffing appropriately the University of California wants the right to mandate a worker to stay at the workplace. This is unacceptable. It is not the standard with competitor institutions such as Kaiser, Catholic Health Care West or the Community Colleges. Additionally, it is not how UC treats some groups of workers. There is an expressed prohibition against mandates for

the UC RNs. If UC believes it is inappropriate to mandate and an RN we believe Service Workers deserve the same respect and should not be mandated.

Article 21 No Discrimination

As we heard in fact finding the language AFSCME 3299 proposed regarding non-discrimination is the exact language that corporate multi-national hotels chains have across the United States of America. We heard testimony about the importance of this language because of the 4-5% error rate regarding social security numbers, as well as widespread confusion about Latino surnames.

A general manager from the Hilton Hotel in San Francisco testified of the importance of this language for the Employer. His testimony supports the need to implement systems that everyone has agreed to.

UC has not yet been successful in implementing consistent human resources policies in its ten campuses and five Medical centers. Even within such entities, there is a history of different departments implementing systemwide policies in completely different ways. The union is extremely concerned that these conditions will give rise to workplace discrimination. In a changing legal landscape, the need for a legal, agreed upon ways to handle these issues becomes even more important. Putting this language in the systemwide contract means everyone is clear on a process to legally and fairly resolve disputes.

The University has not made any compelling argument why they should not agree to this language. It has been vetted and tested by large employers including the Hyatt, the Hilton the Marriot. We strongly believe that as large multi-national corporations throughout the United States have agreed to and tested this language there is no reason the University of California can not.

Article 23 Parking

Parking increases have been a major issues for service workers at the University of California. At some campuses over a 3 year period the cost of parking for service workers has increased more than 200%. Monthly parking rates are more than a service workers entire daily wage. The proposed increase of \$144/year is significant when you earn as little as the University of California pays its Service Workers.

Article 36 Safe Staffing

During the previous contract the Union attempted to address unsafe staffing levels with the University of California in labor/management meeting. Unfortunately, many very important issues were continuously ignored or not addressed. This language the Union is proposing has already been adopted by major competitors of the University of California.

Article 41 Wages

Poverty Wages

The Union proposal is to move the bottom of the step system to \$15/hour, therefore creating a \$15/hour minimum. This is needed for workers and their families so that workers at the University of California, one of the richest institutions in the State of California do not qualify for public assistance.

Testimony in fact finding showed that workers can not continue to wait to become a priority at the University of California. Workers at the University of California are currently collecting recycling cans, working two jobs and using public assistance just to get by on a daily basis. The Union proposal of moving the bottom of the range to \$15/hour is still at every campus \$8/hour below what the California Budget Project sites as the wage needed to support a family in California.

Market Wages

The Union demonstrated that wages for Service Workers at the University of California are 26% below market. The across the boards of 2%, 4% and 4% would still leave thousands of workers significantly behind market. Every contract year Service Workers at the University of California has accepted only minimum across the board increases, because the University of California said they were poor. Last contract in 2005 at bargaining the University of California said the same thing. Workers believed and trusted the University, only to find put during the same time they were only getting minimal increases UC Executives were receiving hundreds of millions of dollars in extra compensation.

Workers who do the same job as UC Service workers at the Community Colleges and the Major Statewide Hospitals Systems are earning 26% above what the University of California workers are earning. The across the board increases need to reflect movement towards these market wages.

Steps

When the University of California transitioned the Registered Nurses from an Open Range Pay System to Steps they did this in the first year of the contract, retroactive the



date of expiration of the contract. Service workers should not be treated differently, by splitting up the credit for experience they receive in two phases.

Weekend Shift Differential

Workers who work weekends deserve to be compensated at a higher rate for that work, as the market demonstrates. Our experience also shows that having weekend shift differential cuts down on weekend sick calls.

Currently, Service workers in the Medical Centers, who must consistently work weekends at the hospitals, work side by side with Patient care workers. In most Medical Centers, these patient care workers receive a weekend shift differential.

Denying Service workers a weekend shift differential discriminates against service workers.

UC DISSENT TO FACTFINDING RECOMMENDATIONS – AFSCME SX UNIT
May 2, 2008

Issue #1: WAGES

BACKGROUND

AFSCME has proposed a 25% service unit wage increase package, which approximates \$55,000,000. The total payroll for this unit is \$207,000,000. AFSCME proposes that the following increases be effective October 1, 2008:

- a 10% across the board minimum increase for all employees, plus
- a minimum salary of \$15/hour for all SX employees, plus
- a minimum salary of \$16/hour for SX titles that require license or certification, plus
- the implementation of a step system for all titles, with each title having at least 10 steps at 2.5% increments – step one would be \$15/hour;
- 6.5% salary increase for all titles in 2009 plus 2.5% step advancement, and
- 6.5% salary increase for all titles in 2010 plus 2.5% step advancement.

The factfinding report generally supports the adoption of AFSCME's salary demands, although it recommends a somewhat reduced target for the increases. Additionally, the factfinding report has bought into AFSCME's erroneous allegation that the University has the ability to fund the recommended significant increase over a three-year period. Further, the recommendation ignores the 10% cut in state revenues that UC anticipates for FY 2008.

Specifically, the Factfinding report recommends, effective July 1, 2008:

- raise the minimum to \$12/hour at all locations with the minimum increasing by 50¢ every six months until the contract expiration in June 2011,
- give all titles a 2% salary range increase, and
- implement a step system that has 20% range widths with 2% step increments.

The Factfinder also recommends that UC provide within range movement in 2009 and 2010 plus a 4% across-the board movement,

The cost of this recommendation is at least \$9.3 million in 2008-2009, and is in addition to the approximately \$1.5 million the UC must find to cover the net cut in state revenues.¹

The University of California acknowledges and appreciates the Chair's efforts to phase in the proposed increases. However, in light of the impact of state funding on this bargaining unit, as exacerbated by the state budget cuts, the University disagrees with the number and size of the increases recommended in the report and firmly believes that the magnitude of the proposed changes in even the three year period would have adverse consequences for the academic mission of the University and for other employee groups funded by General Fund revenues.

¹ The State of California fund 21% of the SX payroll (\$207,000,000), the net cut of the State Funded portion is \$1.5 million less than the current year's budget.

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UNIVERSITY OF CALIFORNIA RESPONSE

AFSCME contends that this enormous salary increase is warranted by market data, for three reasons:

1. Salary ranges that include steps (with increments between steps of between 2% and 5%) are a market condition. AFSCME obtained this information from a joint UC-AFSCME survey in which the parties agreed on survey participants and methodology.
 - **UC RESPONSE:** The study conducted by UC and AFSCME in the spring of 2007 investigated how step programs worked. It was limited to public sector employers or unionized employers, because data from individual non-union private sector employers was otherwise unavailable available to the parties due to anti-trust regulations. It was also limited to employers with step programs.² UC and AFSCME found that the step increments range from 2% to 5%, and the range width is generally about 20%. 88% of the respondents surveyed have movement to the next step based on time in step.
 - The University has no fundamental objection to a step system. The University is concerned, however, with its ability to ensure annual 2% within-range movement for eligible employees, because an annual program requires on-going funding, while the SX unit is dependent on unpredictable State funds for 21% of the employees.
2. Some of the California Community Colleges pay custodial employees a minimum of \$12.63 (as compared to the University's \$10.46/ hour minimum paid at one campus).
 - **UC RESPONSE:** UC believes the data provided was flawed on a number of counts and therefore should not be relied upon by the Factfinder in making her recommendations:
 - » The basic market data provided by AFSCME was limited to selected community colleges or Kaiser Permanente, two of the highest paying employers utilizing service employees.
 - » The job duties assigned to Custodians from the Community Colleges are different than those assigned to UC Custodians. For example, the custodial employees at the Los Rios Community Colleges are actually a hybrid between UC Custodians and UC Building Maintenance Workers (who earn more than custodians at UC). The difference in duties was proven by AFSCME's own evidence: a job description of custodians in the unit.
 - » The limited number of survey participants causes the University to view the AFSCME "survey" as incomplete and self-serving. The survey did not include other public or private sector employers. The University stated that a survey conducted by Mercer and used as the foundation for a presentation to The Regents, showed that UC service unit salaries lagged the market by about 10%, and that The Regents had committed to correcting this lag over a 10 year period.
 - » AFSCME submitted no evidence, nor is there any evidence on the record that demonstrates that any particular campus, or group of campuses, is having difficulty recruiting staff into any bargaining unit title.

² CSU was omitted from the survey because the parties knew that they had no step salary structure to review.

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- » The Factfinder's recommendation fails to cite the progress that the University has recently made to address minimum salary rates. The prior contract contained a \$9.27 minimum in 2005, which was raised to \$10.28 by October 1, 2007. The University is willing to build on this progress, but cannot undertake the tens of millions of dollars associated with the Factfinder's recommendations.

3. AFSCME argues that the University has more than adequate funding to pay for the recommended increases, irrespective of the pending budget cut from the State of California. AFSCME put forth a number of arguments that it believes support its position.

First, AFSCME refers to the University's Unrestricted Funds functions as "reserve" funds, or "profits", arguing that this money could be used to subsidize the various proposed 50% increases to base payroll. The Factfinding Chair, while recognizing that many funds at the University are committed or targeted for use, also suggests that the University should divert funds to significantly augment the salaries of the Service unit in a year when State funding is expected to fall below the prior year's budget.

- **UC RESPONSE:** Unrestricted funds are neither "profits" nor "reserves". They are funds that the University has committed to various necessary purposes, many of which will be one-time expenditures. Unrestricted funds include monies that the University accrues as collateral for debt support, to pay for planned capital improvements or construction, facility maintenance, or to cover defaults or late payments on patient bills. Some of these are multi-year commitments; many are generated by hospital revenues for use by the hospitals. AFSCME has postulated that the increase in these revenues means that UC is building a reserve, and argues that the monies should be spent on salaries. Two significant problems exist with regard to the union's position.
 - » Funds that are targeted for one-time expenditures (like repaving a garage) cannot be used to support recurring salary increases, because they are needed for the intended purpose and once spent, will no longer exist.
 - » Funds targeted at multi-year commitments (like constructing a new building) cannot be diverted to other purposes: they are committed.

AFSCME's assumption, which the Chair supports, speculates that some of the funds must be "free" to be used on other items, or that the University can, in the future, set aside some funds that could be saved for identified and necessary priorities for salary increases. Adequate consideration has not been given to the on-going reliability of the source of these funds. The Unrestricted fund may have grown due to improvements in the stock market, which is unpredictable. It also may have grown due to unanticipated census increases.

However, these "reserves" are intended for unique and one-time expenditures, and cannot be relied upon as the basis for ongoing (permanent) salary commitments. The UC entity that will use the funds (for targeted purposes) has generated them, fulfilling necessary and appropriate managerial responsibilities for planning, budgeting and accountability. Diverting this money for other, unanticipated purposes for which the entity may have no responsibility or control would be unacceptable.

Second, AFSCME believes that the University could obtain additional funds from the State if it chose to. The union suggests that UC could request additional funds for service employee pay increases in the UC annual budget request – if UC makes an AFSCME-

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specific request. AFSCME asserts that it will lobby legislators to fund the additional increases for AFSCME employees.

- **UC RESPONSE:** The University strives for equity in the manner in which it attempts to address salary issues for similarly situated employees. In the past, the University has indeed requested additional funding to provide salary increases for all employees below a salary threshold. Approaching the State for one employee group, only, when other groups may be similarly situated would not be equitable.

Moreover, the University's primary current budget objective is to survive and mitigate severe budget cuts, and the University is concerned the union's request to significantly add new funds for employee salaries may undermine its key objective.

Third, AFSCME proposes that some of the general fund revenue could be diverted from other programs and/or employees to fund AFSCME increases. The union points out that UC is diverting monies from various sources to provide large faculty salary increases. The union does not disparage the University's actions in support of its faculty, however, AFSCME notes that the University could utilize the same flexibility in its funding decisions to support the union's proposals regarding SX employee salary increases.

- **UC RESPONSE:** Twenty-one percent of the funding for SX salaries is dependent of State General Funds, which also constitutes 60% of the University of California's "core support". This "core support" is the key support system for the University's academic mission, and more than 80% of this funding is used for state-supported salaries. Diverting even a portion of this money to the SX unit means that some other General Fund program or employee-funded group must be cut. Because we are struggling with a cut in the state revenues, any diversion at this time would have adverse consequences for other employee groups or for state funded programs, and it would therefore be inappropriate.

UC Conclusion on Recommended Wage Increases

The Factfinder's financial package absolutely fails to take into the account the resources needed to underwrite the commitments it asks the University to make. No rationale is given, other than a very general assertion, to support the recommendation to increase the minimum rate to \$14.50/hour by January 2011.

In a year in which the University is scheduled to be hurt by drastic reduction in state funding, the more responsible recommendation is to negotiate wage increases that are within University resources for FY 2007-08, and to set forth a reopener or a series of reopeners on wages, health and welfare, and retirement for 2008-2009, 2009-2010, and 2010-2011. In this manner the parties will be able to negotiate when the University has a clearer knowledge of its reliable and on-going resources.

Issue #2 - Bargaining Unit Work

AFSCME alleges that the number of student employees as compared with career AFSCME has risen dramatically since the original unit decision in the late 1970's from 25% of the bargaining unit to 50% of the bargaining unit. At that time, the University and AFSCME entered into a stipulation that acknowledged that many students perform the work also performed by AFSCME employees, that the provision of these jobs are a means of University support while

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students are attending the University, and that these student jobs are to remain outside the bargaining unit.

AFSCME is concerned that the University's assignment of work performed by bargaining unit employees is occurring without the union's knowledge. The University needs to be able to continue to support student financial needs by enabling students to work for the University. If the Union believes that the bargaining unit is being undermined, then the appropriate process is that it should file a unit modification with PERB. Otherwise, this is not a mandatory subject of bargaining, as AFSCME's proposal sought to limit the University's ability to hire student employees.

Issue #3 – Daily Overtime

The Factfinder recommends, over the University's objections, that the University begin to pay daily overtime in the amount of 1 ½ time overtime pay after 8 hours worked and double time after 12 hours worked.

The University of California is subject to the Fair Labor Standards Act, which requires overtime payment for work in excess of 40 hours in a week (or 80 hours in a two-week period at hospitals). The University abides by this standard.

AFSCME has failed to present clear evidence that daily overtime is a market condition for service unit employees. Further, this is a cost item that is recommended *in addition to* a wage recommendation that will already cost the UC tens of millions of dollars in a time of serious budget cuts.

Issue #4 – Pay for Missed Breaks

The Factfinder recommends, over the University's objections, that the University begin to pay employees an additional 15 minutes for missed breaks. AFSCME has provided only anecdotal information that employees sometimes miss breaks, and has never filed a grievance pertaining to missed breaks. The evidence submitted by AFSCME is inadequate to support its proposal or statement of "need". Finally, this is another cost item that adds to a wage and overtime recommendation that will cost the UC tens of millions of dollars in a time of serious budget cuts.

Issue #5 – Non-Discrimination and Immigration Status

The Factfinder has recommended that the University and AFSCME incorporate into its agreement language that has been utilized in the hospitality industry with regard to placing restrictions on management when a social security number/name "no match" is issued. Under this language, ("no-match") information could not be used for disciplinary purposes. In addition, the University believes that AFSCME continues to want the University to ignore a change in both name and social security number if such change was used to validate form I-9.

The effect of AFSCME's proposal, and its demonstrated intent, is that the University could be precluded from investigating the legitimacy of an employee's right to work documents if those right to work documents were used to permit that employee to gain employment by relying on

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a SSN or name that was changed. This is not acceptable. The University is legally responsible for ensuring that the right to work documents presented by the employee are valid once it has knowledge or constructive knowledge that they may not be fraudulent.

A second concern of the University is that we maintain the integrity of the employment process, which starts with a truthful employment application. The University relies on the information provided when conducting its background checks on prospective employees. While a change in name or social security number does not, on its own, imply falsification of the employment application, a sudden change in both the name and social security number (which has occurred) does raise a question that may require further investigation by the University. The University needs to be able to investigate questionable changes to determine if falsification did, or did not occur. More importantly, the University must demonstrate to the federal authorities that it continued to employ the employee in question after determining in good faith that the documents relied upon by the University are valid.

To the question of “no matches”, from which this issue supposedly arises, the University has a legal obligation to attempt to reconcile name and social security information in order to ensure proper wage and tax reporting to the Social Security Administration, the IRS and all other state and federal agencies receiving wage withholdings. AFSCME raises the issue that a “no match”, in and of itself, is not reason to assume falsification of records. That is a valid premise. Numbers and letters can be transposed on an employment application or by the University during employment processing. Names can be entered incorrectly; in particular, an AFSCME witness demonstrated that in the Latin American culture individuals may retain the last names of both their mother and their father. These names are not hyphenated, and are sometimes inaccurately entered into the payroll system (causing a no match). However, this does not relieve the University from its obligation to investigate in cases, for example, where a completely new name and SSN is offered by the employee. University witnesses showed that this has happened sometimes and, in those instances, the University may need to exercise its duty to inquire further to determine that the inaccuracy was not caused by submission of fraudulent documents. Lastly, AFSCME argues that the UC should not attempt to serve as the “immigration police” when “no matches” occur, since the social security administration has no responsibility for immigration issues. This argument may be correct but, again, it misses the point of the University’s arguments and obligations under federal law.

Clearly, there is a difference between ensuring that employees are not subject to discipline when a “no match” notice occurs, and when either the right to work document becomes invalid due to a name or SSN change, or when – in a final analysis – falsification of the employment application is suspected. In the latter case, the University’s legal obligation conflicts with AFSCME’s proposal. The University wants to work with AFSCME to address the “no match” issue, while remaining firm in its convictions that falsification of a record is impermissible, and that the University is accountable for ensuring that it employs individuals with proper work authorization. .

Issue #6 – Grieving Misapplication of Seniority in Transfers & Promotions

The University believes that the current written explanation for non-selection is a reasonable check on compliance with the issue.

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Issue #7 - Personnel Files

The recommendation failed to address issues raised in the testimony from Dawn Capp, Assistant Director, UCD Labor Relations. This testimony addressed, as an example, the need to retain records of discipline related to conduct involving sexual harassment which may not have risen to the level of termination upon the first offense. However, if similar conduct is repeated after the two-year record retention period, the University may not have the information in the personnel file to assess an individual's repeated pattern of sexual harassment. The University would not be excused from its obligation to ensure a workplace free of harassment because a union agreement does not allow for retention of records beyond two years. The University therefore maintains that it must indefinitely retain such records in the personnel file. The testimony also noted that the arbitrator has the authority to determine the weight given to any past disciplinary record.

The University appreciates the opportunity to provide background about its positions on the Factfinder's recommendations.



Gayle Saxton,
UC Factfinding Panel Member

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