PERB Case No. LA-IM-3506-H



**FF-634-H**

IN FACTFINDING PROCEEDINGS PURSUANT TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES

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| CALIFORNIA FACULTY ASSOCIATION, Union, | RECOMMENDATIONS of FACTFINDING PANEL |
| and | John Travis, CFA |
| CALIFORNIA STATE UNIVERSITY, Employer. | Bill Candella, CSU |
| Re: 2008-2009 compensation | John Kagel, Neutral |

APPEARANCES:

For the Union: Edward R. Purcell, Labor Consultant, Palm Springs, CA

For the Employer: John A. Swarbrick, Labor Relations Consultant, C. Richard Barnes & Associates, Lawrenceville, GA

BACKGROUND:

<u>Agreement Provision, Compact, Its Abandonment by the State and CSU's Position:</u>

The Parties' 2007-2010 Collective Bargaining Agreement includes three types of compensation, general salary increases (GSI), equity increases, and service salary increases (SSI).

In fiscal year 2006-2007 (July 1 to June 30) a three percent GSI increase was provided effective July 1, 2006 and one percent on June 30, 2007. For fiscal year 2007-2008 a 3.7 percent increase was effective July 1, 2007 and an additional two percent June 30, 2008.

For fiscal year 2008-2009, the year involved in this proceeding, a three percent increase was to be effective July 1 and an additional two percent on June 30, 2009. Further increases were to be due on July 1, 2009 and June 30, 2010. (Jt. Ex. 1, §§31.7-31.10)

Section 31.11 of the Collective Bargaining Agreement provided:

> "The General Salary Increases provided in fiscal years 07/08, 08/09 and 09/10 shall be reconsidered if the CSU does not receive an amount in the Budget Act for that year consistent with the Compact. If less than this amount is appropriated and the CSU determines that the appropriated level of funding: requires a reduction in the contractual GSI percentages, the issue shall be subject to the meet and confer process. If during the meet and confer process the parties cannot reach an agreement on the amount of the GSI, Article 9 [prohibiting concerted activities] shall be suspended or, as an alternative, the parties may submit the issue to a mediation/arbitration process.
>
> Notwithstanding the provisions of Article 41, this process shall be the exclusive remedy for GSI and SSI adjustments in the event the CSU does not receive an amount in the Budget Act for that year consistent with the Compact."

The "Compact" referred to in that provision was a "Higher Education Compact, Agreement between Governor Schwarzenegger, the University of California, and the California State University, 2005-06 through 2010-11." Its funding aspects read:

> "The Master Plan, which has been California's blueprint for higher education for four decades, has produced the two best public

systems of higher education in the world. In order to assure access, quality and affordability, the Master Plan specifies the University of California's missions as teaching, research and public service, and defines the pool of high school graduates from which the University is to admit its students. The Master Plan designates the primary function of the California State University as provision of undergraduate instruction, and defines the pool of high school graduates from which it, too, is to admit its students. In addition, the CSU mission incorporates the responsibility for applied research and community service to support business and agriculture in providing instruction opportunities for their students. By delineating the mission of each institution, the State is able to concentrate its resources within each segment to best meet priorities.

Adequate financial support for the University of California and the California State University is essential if UC and CSU are to fulfill their missions under the California Master Plan for Higher Education, contributing to a higher standard of living and better quality of life for the citizens of the state.

This Compact is based on the value of the UC and CSU to the State of California and its citizens. To ensure these institutions are well positioned to serve the State's students and industry, Governor Arnold Schwarzenegger commits to a long-term resource plan for UC and CSU that addresses base budget allocations, enrollment, student fees and other key program elements for 2005-06 through 2010-11. In exchange for this long-term stability, UC and CSU commit to focusing their resources to address long-term accountability goals for enrollment, student fees, financial aid, and program quality. To allow appropriate monitoring of progress toward these goals, UC and CSU commit to providing student and institutional outcome data in numerous program areas including program efficiency, utilization of system wide resources, and student-level information. The details of this Compact are contained in the body of this document.

## State's Commitments to Provide Adequate Financial Support for DC and CSU

The following represents a phased, multi-year plan for providing sufficient basic operating and capital funding needed through the remainder of this decade to support UC's core missions of teaching, research and public service and CSU's core missions of teaching, applied research, and public service. This multi-year plan is contingent upon UC and CSU agreeing to report progress, and to sustain or improve performance on the accountability measures delineated in this agreement. This Compact is developed within the context of the fiscal crisis currently confronting the State of California. UC and CSU have faced several consecutive years of base budget cuts and unfunded cost increases. Salaries at the segments have fallen significantly behind the market, cost increases related to employee benefits, energy, libraries, instructional technology, maintenance, and inflation have not been funded, and base budget cuts have seriously reduced the basic infrastructure of UC and CSU.

Both segments have significant unmet funding needs, both related to budget cuts over the last several decades and insufficient funding of programs critical to the academic enterprise. This Compact does not meet all of the segments' budget needs, but does provide the minimum level of funding needed to prevent further erosion to their budgets, while accommodating enrollment growth, and maintaining quality.

The Administration, UC and CSU share a deep concern for both preserving the quality of the higher education system in California, and for maintaining the ability of the segments to meet their basic missions under the Master Plan. By providing fiscal stability in the initial two years of this Compact, the State is able to prevent further erosion of support for higher education in California. Funding commitments in the third year and beyond reflect the belief that the State will return to a position of fiscal health based on moderate economic growth that will allow some recovery of vital needs for UC and CSU, such as the ability to provide competitive salaries, and to address several years of underfunding of core programs.

Basic Budget Support: The State will provide a General Fund increase of 3% to the prior year's base in both 2005-06 and 2006-07. This will help prevent further erosion in the segments' ability to fund competitive faculty and staff salaries, health benefits, maintenance, inflation, and other cost increases. Beginning in 2007-08 and through 2010-11, the State will provide a General Fund increase of 4% to the prior year's base for basic budget needs including salary increases, health benefits, maintenance, inflation, and other cost increases. …

Core Academic Support Needs: In 2008-09, 2009-10 and 2010-11, the last three years of this Compact, the State will also provide an additional 1% increase to the prior year's base to address the annual budgetary shortfalls in State funding for other instruction

> and research support for core areas of the budget critical to maintaining the quality of the academic program-including instructional equipment, instructional technology and libraries, and for ongoing building maintenance. …" (CSU Ex. 1)

SSI increases refer to upward movement on faculty salary schedules. They do not apply to all Bargaining Unit personnel and require those eligible for it to have performed satisfactorily. (Jt. Ex. 1, §§31.20, 31.25). The Agreement provided for annual 2.65 percent increases during each fiscal year and also required that funding under the Compact be obtained or there would be a determination by the CSU to require a reduction in the SSI percentages under similar language as contained in Section 31.11 quoted above. (Jt. Ex. 1, §§31.25-31.26) Section 31.11, as noted, also applied to SSI's.

There was a provision for "equity increases" in the Agreement to which $7,000,000 was allotted in 2007-2008 and in 2008-2009. The distribution of these funds was to be determined by an Administrative Oversight Committee and was to be used to alleviate salary inequities compared to peer groups. 2007-2008 distributions focused on Assistant Professors and equivalent ranks. (CFA Ex. IV-3) 2008-2009 was to focus on Associate and Full Professors and equivalent ranks. $6,000,000 was used in 2007-2008 and the remaining $1,000,000 was to roll over to be used along with the second $7,000,000, in 2008-2009. (Jt. Ex. 1, §31.17a) The Oversight Committee had reached agreement on the distribution of these funds for both years which distributions were geared to the faculty members, many of whom were also eligible also receiving SSI increases. The Parties agreed in a separate Memorandum of Understanding that in the event of funding shortfalls that the same conditions as stated in Agreement Section 31.11 would apply to the equity increase program. (Tr. 100)

July 1, 2008 passed without the State having an enacted budget. In September a budget was passed cutting CSU's budget by $97.6 million from the previous year notwithstanding CSU's request for funding pursuant to the Compact. Adjudging that the State had abandoned its obligations under the Compact CSU took the position that the provisos of Sections 31.11 and 31.26 of the Agreement had been triggered. It also took the position that without Compact funding it was not required to grant any GSI, SSI nor equity increases for 2008-2009, with the exception of the $1,000,000 equity increase monies carried over from 2007-2008. It continued to fund the two percent increase granted at the close of business June 30, 2008, which was to be paid from 2008-2009 revenues, a Post Promotion Increase program which was related to merit increases for Full Professors (PPI, Jt. Ex. 1, §31.18)), promotions and range elevations earned by faculty, and "Increases for Market," the latter essentially as bargained by individual faculty members at their respective campuses. (Jt. Ex. 1, §31.37, Tr. 224, *e.g.*, CSU Ex. 25).

<u>Context of this Proceeding:</u>

The Parties bargained after the CSU determined to not grant GSI's, SSI's nor equity increases after the 2008-2009 budget was enacted. On impasse there the CSU elected not to engage in mediation/arbitration as offered in Sections 31.11 and 31.26 resulting in this factfinding proceeding. By the Parties' stipulation it deals solely with 2008-2009 and CFA sought to limit any evidence to the events of that year. However, the

Factfinding Panel determined that it could not proceed in that kind of vacuum given everyone's substantial knowledge of the massive decline in financial support for the State's public higher education system and its deleterious effect on the people of California. Accordingly, the Panel determined to give such weight as it deemed appropriate to that precipitous lack of support, including notice of increased student fees, legislative manipulation of funding and the 2009-2010 requirement leading to agreements resulting in a nearly 10 percent reduction in pay of most CSU faculty through furloughs.

The following is based on the record presented by the Parties, including exhibits presented in their closing briefs where the Parties agreed they could be considered without further hearing.

DISCUSSION:

Priorities in the Face of Budget Meltdown:

According to the CSU, notwithstanding its position here, it stands by its agreement concerning compensation if funding was received as not only what was agreed to but also what it needs to attract and hold quality faculty to fulfill its mission to the State. (*E.g.*, CSU Ex 4, pps. 4, 22) According to the University, it could not pay any GSI, SSI nor complete the equity increases agreed to because of other priorities and because any such increases would be continuing by being added to the base compensation required to be renewed year to year, and as to which the University foresaw that there would be still further reductions in State funding.

With respect to its stated priorities ahead of GSI, SSI and equity increases it pointed to the policy of the Trustees that one-third of student fees, including the 2008-2009 increases, go to student financial aid. (Tr. 97) Various expenditures were reduced such as travel, purchases and filling vacant positions. (Tr. 128) There were about 400 less FTE faculty positions in 2008-2009 (Tr. 193) and 11,000 more students for which there was no State funding. (Tr. 130) The CSU continued compensation agreements reached before July 2008. In bargaining with CFA the University stated its priorities were "to provide student access, courses needed to graduate and support services needed to assure their educational success." (CSU Ex. 30) It summarized its priorities in 2010 as

> "to preserve as much as possible, one, the quality of the academic program, two, access to necessary courses for students, three, access to financial aid, four the maintenance of as many faculty and staff jobs as possible and, five, maintaining the financial and fiscal integrity of the University." (Tr. 139, CSU Ex. 32)

However, evidence of how CSU set its priorities in the fall of 2008, before any State "suggested" budget give-backs or legislative-mandated mid-year reductions in general fund allocations, and who set them, outside of a reference to the Chancellor, was not presented in this case. There was no evidence presented as to the specific process that the University went through in determining which programs to continue and which to drop to meet its general statements of priorities. Why specifically the half-completed equity increase program was dropped, as opposed to all other programs that were retained or dropped, is unknown from this record. The CSU's Assistant Vice Chancellor for Budget, its point person on its financial dealings with the State, was unaware of how salary issues were considered. (Tr. 349)

Salary Equity and Inversion and Compaction:

At the factfinding hearings CFA, for the first time, agreed that a 2008-2009 GSI increase was its lowest priority in light of the CSU's budget constraints and CFA's other goals. (Tr. 89) Its members already had a two percent increase that, while nominally awarded in 2007-2008, was paid out for the first time in 2008-2009. What CFA seeks instead is payment of the 2.65 percent SSI and the equity payments already agreed to by the Oversight Committee to those eligible to receive them for that year. While resulting in more money for those faculty members, the Union urges that the creation of rational salary relationships among peers—the goal of the equity increases as agreed-upon in detail—would occur. The correction of these relationships are necessary for eliminating inequities that would be compounded by being ignored, especially if ignored for several years.

Examples of such inversion and compaction, which were uncontradicted, included that persons with less experience were being paid more than others with more experience, or the pay of the less experienced person was nearly the same as the more experienced faculty member. (Tr. 70, *see also* CSU Ex. 27, p. 18, salaries of new associate professors exceeded average salary of all associate professors) With the 2007-2008 equity payments, which went to approximately 2000 people (Tr. 72), but not the second set of payments originally to be paid in 2008-2009, assistant professors in some instances can now be paid more than associate professors. (Tr. 71)

The CSU had the responsibility to have shown that it at least specifically considered and then discarded the equity program in its pay schedules on its merits in favor of funding something else, which it did not establish in this record, the Union also had the responsibility to have highlighted that issue, as it did here, in its bargaining. The record showed that its proposal to subordinate GSI increases to SSI and equity occurred during the factfinding hearings; that had not been its position theretofore. (*See* CSU Ex. 30) Nonetheless, even with the hindsight of the timing of these hearings, untenable salary inversion and compression issues persist and are compounded, perhaps intractably so, by the passage of time unless ameliorated.

The equity program was determined to be a two-year program as agreed to by the Parties and as agreed in detail by a "high level" CFA-CSU committee (Jt. Ex. 1 §31.17.a.4) which included the Vice Chancellor for Human Resources. If there was failure to resolve the program's parameters disputes would be subject to final and binding arbitration. (Jt. Ex. 1 §31.17.a.8.iii) These kinds of obligations, let alone the Committee's unanimity as to how both years' equity payments would be distributed (Tr. 73, 78), would not have been made and achieved unless the problem was mutually viewed as both serious and of major importance. As noted, the CSU did not explain why it would be left uncompleted, particularly where only half-implemented it exacerbated, rather than resolved, the very problems the program was to fix.

According to the record the equity program to achieve its goals also may require continuation of the SSI increases to those affected. (Tr. 82-83, 85-86) Given this record the continuation of that program is meritorious and should be completed as the Parties contemplated.

Costs:

The University maintains its best estimate of SSI costs is one percent of faculty compensation if paid to all eligible Bargaining Unit employees. Using the latter computation, the combined costs, according to the CSU, of equity increases, $7,000,000, and one percent of its budget for faculty compensation for SSI, $15,659,000 for 2008-2009 (Tr. 94), is $22,659,000, one-half of one percent of the University's total budget, again assuming SSI is paid to all eligible employees, as opposed to limiting such payments to those needing the SSI compensation to fulfill the equity program's purposes, which limited group is all that is affected by the recommendation of the Panel that follows. (CSU Ex. 18, p. 5)

The Parties, over the years, and in this proceeding, have battled back and forth over how much SSI's, when they have been granted, have cost. CFA maintains that there is no cost since retirees' salaries being taken off the books offset the cost of SSI's to those eligible to receive them. CSU maintains that the cost, based on actual payments, assuming campuses have properly accounted for them, do amount to around the one-percent figure again assuming SSI's would be paid to all eligible irrespective of whether or not they were also part of the equity program. (CSU post-hearing submission p. 7) In the current Agreement the Parties agreed to reopen SSI bargaining in the event that Compact funding disappeared, so that if SSI's were cost-neutral no reopening would have been necessary. (Jt. Ex. 1, §§ 31.11, 31.25) However past fact finding reports are read, they are not conclusive as those neutrals fully embracing CFA's analysis.

The University also seeks to add in recruiting costs for new faculty, which are costs the University incurs whether or not SSI's are payable. Similarly, CFA's concerns about pay increases for non-bargaining unit personnel appear to make no substantive difference in this record. From the foregoing, the issue of whether or not there are new costs for SSI's are a sideshow in this case which does not have to be resolved here.

What is the difference is what this record establishes is a currently on-going serious problem that the Parties can resolve even now. This is not a recommendation to grant salary increases for the sake of increasing salaries. The overall record shows no basis to recommend a GSI increase for 2008-2009 notwithstanding a then 12.9 percent—and rising—salary lag behind comparable institutions. (*E.g.* CSU Ex. 4 p. 15, CSU Ex. 11) Rather, it is a recommendation to resolve a mutually recognized management problem to pay employees based on their achievements and experience as demanded by fairness, equity and morale "for recruitment and retention of professionally trained and highly skilled employees" (CSU Ex. 11, p. 11), to aid the University, in these most difficult of times, to seek to educate its students to the greatest degree resources will allow.

Given the passage of time the Oversight Committee would have to restudy who would be eligible for equity increases since promotions and other salary adjustments would have occurred, and assumptions as to whose salary was inverted or compacted compared to others would necessarily have changed. It is important to reemphasize that the recommendation here is limited in scope solely to alleviate such current inversion and compaction; that not necessarily all of the 2008-2009 $7,000,000 equity increase would be required, particularly when $1,000,000 left over from 2007-2008, as to which there was no dispute, would be added to needed funding. Similarly, any SSI funding necessary to complete the program would not be across-the-board SSI funding but would be tailored solely to end the inversion and compaction involved. The Panel does not recommend that such increases be retroactive ones but would be prospective after the Committee reaches agreement.

Without specific reasons presented in this record as to why the University determined not to resolve these problems that administrators at its highest level recognize exists, given the relatively slight overall cost involved even in tough economic times, and where there was no evidence as to why the program was abandoned in light of other programs going forward, the program should be completed.

RECOMMENDATIONS:

1. The 2008-2009 equity increases and such SSI payments as needed should be paid for the sole purpose of alleviating salary inversion and compaction in faculty pay as recommended above.
2. No GSI increases for 2008-2009 are warranted based on this record.

____s/John Kagel_________________________

Neutral, concurring

CSU Concurring in part, Dissenting in part:

As the CSU's representative on the Panel, I concur with recommendation 2, and dissent as to Recommendation 1 to the extent that the recommendation as drafted would require the CSU to provide "new money" to fund the equity increases.

As discussed in the report, there is a substantial residual amount of money available for distribution, subject to negotiation, as faculty compensation within the Collective Bargaining Agreement that remains currently unspent by the parties. Re-directing that pool of compensation towards the relatively small population of faculty that would be covered by Recommendation 1 would, the CSU believes, make substantial inroads into dealing with the localized inversion, compaction, and equity issues identified by the neutral.

Such an approach would have the benefit of providing targeted relief to the most deserving of faculty, without any corresponding negative impact on the CSU's stated priorities of preserving, as much as possible, the quality of the academic program; access to necessary courses for students; access to financial aid; the maintenance of as many faculty and staff jobs as possible; and the maintenance of the financial and fiscal integrity of the University.

In coming to this conclusion that no new money should be used to fund the recommended equity increases, the CSU was highly cognizant of the fact that these remain the most difficult and challenging of times when the vast majority of CSU employees remain subject to a furlough program that effectively reduces their salaries by 9.23%.

______s/Bill Candella

I concur that Equity Increases should be paid and that SSIs are an integral part of achieving equity, but I continue to believe that SSIs should be paid to all eligible faculty as provided in the collective bargaining agreement and as done by all other state agencies.

______s/John Travis

CFA concurring