

FACTFINDING REPORT

In The Matter Of:

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

Employer

and

AMERICAN FEDERATION OF STATE COUNTY AND MUNICIPAL EMPLOYEES, LOCAL 3289

Union

PERB CASE NO. SF-DM-2955-H

APPEARANCES:

For the Employer:

Renee Mayne, Senior Manager
Employee & Labor Relations
University of California, Santa Cruz
1156 High Street
Mail stop: Employee & Labor Relations
Santa Cruz, CA 95064

For the Union:

Seth Newton Patel, Lead Negotiator
AFSCME
2201 Broadway Avenue, Suite 315
Oakland, CA 94612

In accordance with Section 3591 of the Higher Education Employer-Employee Relations Act (HEERA), factfinding was deemed appropriate and a Factfinding Panel was appointed due to the existence of a continuing and unresolved controversy between the University and the Union. The following persons were designated as Panel members:

- Renee Mayne - University Appointed Member
- Seth Newton Patel - Union Appointed Member
- Kenlou H. Cosack - Chairperson

Both parties agreed to waive the time constraints of Government Code Section 5592 pertaining to the convening of the factfinding hearing and the thirty day requirement for submission of findings of fact and recommendations provided by Government Code Section 3593(a).

The Panel met, heard testimony, and deliberated in executive session on August 2 and August 3, 2012 and again in executive session on August 22, 2012. The following issues remained in dispute: duration of the agreement, health and retirement benefits, wages, and contracting out.

With respect to the issue of the duration of the agreement, the Union proposes that the agreement terminate on January 31, 2013; the University proposes it terminate on July 31, 2013.

With respect to health and retirement benefits, the Union proposes:

A. UNIVERSITY HEALTH & WELFARE BENEFITS - GENERAL CONDITIONS

2. Employee costs for healthcare premiums and costs for plans to which the University does not contribute, are paid by unit employees, normally through payroll deduction.

a. Effective the date of ratification by both parties, employees shall begin paying 2012 Health and Welfare rates, based on Health Net Blue and Gold and Kaiser increases allowable in the AFSCME Service Unit agreement.

b. For 2013, employees shall pay 2013 Health and Welfare rates, except that, with respect to Health Net Blue and Gold and Kaiser, the employee's share of health care premiums shall be maintained according to the percentages outlined in the AFSCME Service Unit Agreement.

D. UNIVERSITY OF CALIFORNIA RETIREMENT SYSTEM

2. CONTRIBUTIONS TO THE UNIVERSITY OF CALIFORNIA RETIREMENT PLAN (UCRP)

a. Effective July 1, 2011, all employees shall pay an increased amount of 1.5% to the UCRP, for a total contribution of 5.3%, minus \$19. Any delayed payments remaining as of the date of ratification shall be subtracted from lump sum checks issued for 2011 salary increases.

b. Effective July 1, 2012, all employees shall pay an increased amount of 1.5% to the UCRP, for a total contribution of 5%, minus \$19. Any delayed payments remaining as of the date of ratification shall also be subtracted from lump sum checks issued for 2011 salary increases.

c. The University agrees to meet and confer with respect to any additional increased employee contributions to the UCRP beyond those stated in a. and b. above. In the event an agreement is not achieved, the parties will conform to HEERA-mandated impasse procedures, including state-mandated mediation, factfinding, unilateral implementation of a contract, and the right to strike.

With respect to health and retirement benefits, the University proposes:

... to maintain the current contract language for employee contributions to health premiums. The intention of this proposal is that with the first paycheck deduction following the effective date of the agreement, Skilled Craft employees will begin paying current 2012 health premiums in the same amounts as the AFSCME Service unit. Under current contract language, Skilled Craft employees will continue to pay the same amounts for health premiums as the Service unit for the term of the agreement, including any changes effective January 1, 2013, ...

The University proposes modifications to the retiree health benefits program, effective July 1, 2013, with the terms as approved by the Regents. For retirement benefits, this conceptual proposal includes the new UCRP tier for employees hired on or after July 1, 2013, as approved by the Regents.

The University proposes that with the first paycheck deduction following the effective date of the agreement, current Skilled Craft employees will begin paying the same contributions to the UCRP as other eligible staff members: effective July 1, 2011, the employee contribution to the UCRP was 3.5% less \$19, effective July 1, 2012 that amount was 5% less \$19, and effective July 1, 2013 that amount will be 6.5% less \$19. The contribution rate for the 2013 Tier Employees (those hired on or after July 1, 2013) will be 7%.

The University proposes Skilled Craft employees make all mixed UCRP contributions in 2011, 2012, and 2013 through a deduction from the lump sum payment described in wages below.

With respect to wages, the Union proposes:

1. Effective October 1, 2011 the University shall increase the salary range and steps for all classifications and individual rates for each employee by 3%.

2. Effective October 1, 2012 the University shall increase the salary range and steps for all classifications and individual rates for each employee by 3%.

With respect to wages, the University proposes:

... a 3% salary increase effective October 1, 2011, with a lump sum equivalent retroactive payment from which all missed UCERF contributions for 2011, 2012 and 2013 will be deducted. The University also proposes a 1% salary increase effective October 1, 2012. If the tax initiative, Proposition 90, passes in November 2012, an additional 2% salary increase is proposed, for a total salary increase equal to 3%, effective October 1, 2012. Any retroactive payment for the October 1, 2012 salary increase will be a lump sum equivalent payment.

With respect to contracting out, the Union submits two proposals. The first would contain a commitment by the University to not subsequently contract out the work of previously laid off employees and when the University does contract out work that was normally performed by a bargaining unit employee the University will make a notice position available for the laid off employee effective the date the University issues an RFP for the work normally performed by the laid off employee. The second retains the current contractual language but allows grievance and arbitration of the decision of the Office of the President regarding whether the contract meets one of the three identified criteria.

The University objects to submitting disputes regarding contracting out to grievance and arbitration. It seeks no changes to the existing language concerning contracting out.

DISCUSSION

HBERA, the statute pursuant to which these proceedings were initiated, does not contain any statutory criteria to be applied.

The parties have been in continuous negotiations for a sustained period of time. I find the University's contention that there should be a hiatus before negotiations begin again persuasive. Therefore, I recommend the agreement terminate on July 31, 2013.

With respect to health benefits, the parties agree the employees in this bargaining unit should have the same benefits and make the same contributions as employees in the AFSCME Service Unit. The University's proposal retains that relationship and should be adopted. The Union has not established a need to modify the current language.

The University has proposed a substantial change to the retirement health benefit program. The proposal submitted to the factfinding panel was not made until the last day of factfinding. The Union has had no opportunity to bargain about the matter. The University's proposed change should be rejected. However, the parties are in agreement with respect to employee contributions to the UCERF for 2011 and 2012 of 3.5% minus \$19 for 2011 and 5% minus \$19 for 2012. Since it is recommended that the contract extend to July 31, 2013, it is also recommended

AFSCME DISSENTING OPINIONAFSCME Dissent Regarding Third UCRP Contribution

AFSCME is in agreement with respect to two separate 1.5% increases in employees' contributions to the UCRP, leading to a total pay deduction of 3% of wages (minus \$19), up from 2% of wages (minus \$19). AFSCME dissents, however, on the recommendation that employees' pay deductions for UCRP contributions should rise by yet another 1.5%, up to a total of 6.5% of pay, on July 1, 2013. This increase was first introduced in a proposal that the Factfinding Panel Chairperson confirms "was not made until the last day of factfinding." Indeed, as Chairperson Cosack noted in rejecting the other elements of this late proposal, the tardy nature of this proposal meant that "the Union has had no opportunity to bargain about the matter. The University's proposed change should be rejected." The same principle should apply to the proposed increase up to 6.5% of pay -- the parties should bargain about it in good faith, as part of upcoming negotiations regarding other changes for the 2013-2014 year and beyond.

AFSCME Dissent Regarding Contracting Out

In those instances in which AFSCME believes that the University fails to comply with provisions detailing the conditions under which the University may contract out services that result in the layoff of bargaining unit employees, current contract language denies AFSCME access to the grievance and arbitration procedures. AFSCME dissents on the recommendation that the current system remain in effect.

Respectfully submitted,



Seth Newton Paul
AFSCME Local 3299

Submitted: September 19, 2012

Renee Mayne

Renee Mayne
On Behalf of the University

I concur

I dissent

[^] partially

Date: 9/20/2012

Seth Newton Patel
On Behalf of AFSCME

I concur

I dissent

Date: _____

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SANTA CRUZ, CALIFORNIA 95064

Delivered via Electronic Mail and United States Mail

September 20, 2012

Jerilou H. Cossack
Arbitrator/Mediator
3231 Quandt Road
Lafayette, California 94549

Subject: UC-AFSCME Fact Finding No. SF-IM-2956-H – Letter of Partial Dissent with Fact Finder Report

Dear Ms. Cossack,

This letter will serve as the University of California's letter of partial dissent to the fact finder report in the matter of SF-IM-2956-H for the University and AFSCME.

During the course of fact finding the University and AFSCME were requested by the fact finder to submit a conceptual proposal for an agreement. The four issues were duration of agreement, University health and retirement benefits, wages, and contracting out.

The fact finder report concurred with the University's proposal for (1) the duration of the agreement to expire July 31, 2013, (2) the parties to retain the current contract language for unit employee contributions to health insurance, (3) unit employees to pay the same contributions to the UCRP as other staff, including missed payments in 2011, 2012 and 2013, (4) unit employees to receive a 3% October 1, 2011 wage increase, and (5) the parties to retain the current contract language for contracting out. The University concurs with the fact finder's report in these areas.

The fact finder report concurs with AFSCME's proposal for unit employees to receive a 3% October 1, 2012 wage increase. The University's proposal is 1% wage increase effective October 1, 2012, and if Proposition 30 passes on Election Day November 2012, the University would provide a total of a 3% wage increase to the unit employees. The University dissents to this portion of the fact finding report, that would require a 3% wage increase regardless of the outcome of a tax initiative that if it fails could result in a possible loss of \$375 million in state funds after several years of budget cuts to the University system.

The University also dissents to the portion of the fact finder's report regarding post-employment benefit changes, where the report recommends rejection of the University's proposed changes to UCRP benefits for employees hired after July 1, 2013 and to retiree health. The University's proposals on duration of the agreement always have been tied to its proposals in this area, and it has consistently been the University's position that any agreement that expires on or after July 1, 2013 should address these post-employment benefit issues. From the beginning of the parties' negotiations, the University and AFSCME discussed the relatedness of the duration of agreement, wages and the Regents action regarding post-

Jerliou H. Cossack

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September 20, 2012

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employment benefits. AFSCME is currently in negotiations with the University on this topic with another bargaining unit, and has participated in systemwide labor management discussions on this issue. The post-employment benefit changes were also a topic of discussions with AFSCME for 2011 systemwide benefits negotiations, which the Skilled crafts bargaining unit participated in. AFSCME clearly has been well-informed about the University's proposed post-employment benefit changes and the parties have had the opportunity to bargain about the topic.

Thank you for making this letter of partial dissent an attachment to the final fact finder report.

Sincerely,



Renée Mayne

Senior Manager, Employee & Labor Relations

Copy: Seth Newton Patel, AFSCME Lead Negotiator
Bill Parro, Assistant Manager, Employee & Labor Relations
Allison Woodall, Managing Counsel, Office of General Counsel
Peter Chester, Director of Labor Relations
Nadine Fishel, Associate Director, Labor Relations