FF-687-H

FACTFINDING PROCEEDINGS UNDER CALIFORNIA
GOVERNMENT CODE SECTIONS 3560 - 3599

University Of California, EMPLOYER AND American Federation Of State, County And Municipal Employees, UNION PATIENT CARE TECHNICAL UNIT (EX)	REPORT AND RECOMMENDATIONS OF FACTFINDING PANEL PERB NO. SF-IM-2973 REPORT DATE: 29 March 2013

FACTFINDING PANEL:

Robin Matt, Neutral Chair
Peter Chester, University Panel Member
Seth Newton Patel, AFSCME Panel Member

HEARING DATES: 14, 18, 19, & 21 March 2013

APPEARANCES:

FOR THE UNIVERSITY:

Nadine Baron Fishel
Associate Director Labor Relations

FOR AFSCME:

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Research Director

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BACKGROUND

The University of California (UC) employs about 185,000 employees, of which AFSCME represents about 13,000 in the Patient Care Technical Unit (Unit EX) at five large medical centers and several other locations.

The most recent collective bargaining agreement expired 30 September 2012. A number of bargaining sessions, commencing in July, 2012, and several mediation sessions in early 2013 did not result in an agreement. Accordingly, on 1 March 2013, AFSCME requested the appointment of a neutral Fact Finder pursuant to the impasse procedures in California Government Code Section 3591.

Of approximately 40 separate bargaining issues, the parties have achieved tentative agreements on about 5, and consider themselves close to tentative agreement on about 10 others. Of the remaining 25 outstanding issues, the parties have agreed to submit the 17 most urgent to the Fact Finding Panel for findings of fact and recommendations as set forth below.

II

ISSUES SUBMITTED FOR FACTFINDING

Unless otherwise indicated, the findings and recommendations below are those of the neutral chair. Following the findings and recommendations, space is provided at the end of the report for the University and AFSCME panel members to indicate concurrence or dissent.

1. CONTRACTING OUT

<u>AFSCME's Proposal and Arguments</u>

AFSCME proposes to modify existing contract language (Article 5 & Side Letter App. N) to prohibit contracting out new as well as existing services, and to limit exceptions from the prohibition to work

requiring special expertise, special services or equipment. The proposed modification deletes "financial necessity" from the current contract language as an exception available to UC from the prohibition on contracting out.

AFSCME has been able to determine that, at UCSF, for example, hours worked by registry (i.e. outside contractor) personnel increased from 135 to over 140,000 between 2008 and 2011, equating to over 70 FTE positions on an annual basis. Resorting to temporary help to this degree degrades the quality and continuity of patient care and erodes the EX unit. The comparable agreement covering nurses at Kaiser medical centers provides stronger protections to bargaining unit work and recourse to arbitration.

University's Proposal and Arguments

UC rejects AFSCME's proposal.

UC sees no need to change the current contract language. UC is not interested in contracting out significant portions of the work currently done by EX unit employees, and regards them as the backbone of operations at the medical centers. The current exceptions to the prohibition on contracting out unit work are reasonable, and the current language of the article protects EX unit employees by assuring them reassignment to another comparable position at UC if they are displaced from an assigned position by a registry worker or outside contractor. UC has found no record of any grievances filed during the last 4 years over failure to protect existing employees under this article, so there does not appear to be any basis for accepting the Union's proposed modifications to this article. The proposed prohibition of UC's ability to contract out work is an excessive encroachment upon UC's right and obligation to manage its operations and work force, and is therefore outside the Union's statutory scope of representation.

Findings of Fact and Recommendation

The panel chair finds that the question of the extent to which the applicability of Article 5 to contracting out new or existing work lies within the statutory scope of representation remains an issue.

The panel chair recommends the parties negotiate and add language to this Article that provides a mechanism for notification to AFSCME of any intention to contract out work or services at any existing or new location, or any new facility at an existing location, that would normally be performed by employees in the EX bargaining unit, and that provides AFSCME an opportunity to propose a method whereby UC may perform the work without using an outside contractor. The panel chair further recommends that Article 5 be modified to provide some form of independent third party review of any remaining dispute over contracting out new or existing work or services normally performed by EX unit employees.

2. HEALTH BENEFITS FOR CURRENT EMPLOYEES

AFSCME's Proposal and Arguments

No further increases in health care plan costs, including premiums and co-pays during the term of the Agreement.

Comparable employers, such as Kaiser Foundation, provide free health insurance with lower co-pays.

University's Proposal and Arguments

UC proposes to eliminate the caps (current Article 4a) on the amounts by which it can increase the employee portion of premium contributions during the term of the Agreement, and proposes a waiver of the meet and confer requirement for any further increases during the term of the agreement.

UC provides excellent coverage at comparatively low cost to employees. However, to maintain this level of coverage, EX bargaining unit employees need to pay the same 2013 rates, and any subsequent rate increases, as all other covered employees at UC going forward. Therefore, current language capping EX unit employees' rates should be removed, as well as the meet and confer requirement with respect to any further increases .

Findings of Fact and Recommendation

The current dollar caps on the benefit plan premiums referenced in Article 4a.1.b.2 expire, by the continuing terms of the Agreement, upon the effective date of the new Agreement being currently negotiated by the parties. Although predicting future increases in the premium and co-pay costs of health insurance is always difficult, the advent of several of the provisions of the Affordable Care Act during the term of the new Agreement introduces additional uncertainties with respect to its possible impact on EX employees' out of pocket costs for health insurance. Nevertheless, evidence provided in fact finding suggests that premiums for health insurance plans available to EX unit employees are increasing at a slower rate than in prior years. Accordingly, the panel chair recommends that the parties negotiate a mutually agreeable cap on EX unit employees, according to pay band, for the referenced health plans for the first year of the Agreement, not to exceed a combined 4% increase over the prior year, averaging both Kaiser and HN Blue & Gold premiums for all pay bands. The panel chair also recommends the parties retain the meet and confer language of Article 4a.1.b.2 to deal with the issue of capping employee and retiree outlays for these plans in the subsequent years of the term of the Agreement.

3. HOURS OF WORK

AFSCME's Proposal and Arguments

AFSCME proposes modifications to the current contract language (Article 12) that limit UC's ability to create different workweeks and work schedules, limit the use of mandatory overtime, impose additional overtime compensation requirements, increase straight time and overtime compensation for on-call and call-back work, and establish a 6-hour minimum rest period between shifts in certain call-back situations, and additional pay for missed breaks.

The use of mandatory overtime is strictly limited in comparable units such as UC's NX nursing unit and at Kaiser medical centers. A minimum of 50% of regular straight time pay is paid at comparable Kaiser medical centers for time in on-call status. Call- back pay is compensated at overtime rates at

comparable Kaiser locations. A 6-hour minimum rest period between a call-back shift and an employee's next regular shift is already included in the contract covering UC's NX unit nursing employees, and is clearly needed to enable employees to function properly and ensure patient safety. Employees in UC's NX unit are compensated with 15 minutes additional pay for missed breaks, and employees in comparable Kaiser medical centers receive one hour straight time compensation for any missed break or meal period.

University's Proposal and Arguments

UC rejects AFSCME's proposed changes, and proposes modifications to Article 12 that provide increased notice to employees of schedule changes, and replace the current "40 hour option" and "8/80 option" with language that gives UC the sole non-grievable option to change the method of overtime compensation.

Current language is sufficient to address the issue of missed breaks, as employees are provided either an alternate meal period or paid for the time worked if a break or meal period is missed. No grievances over this issue have come to UC's attention, so it is presumed that the current practice is acceptable to EX unit employees. UC cannot accept limitations on its ability to respond to fluctuating levels of patient load and acuity presented by the severe limitations on mandatory overtime proposed by AFSCME. The current language adequately protects EX unit employees by preventing the mandatory assignment of overtime work until qualified volunteers and Per Diem employees have been solicited to do the work, after which UC assigns mandatory overtime to the least senior qualified employee. If AFSCME believes that any of the existing protections enjoyed by EX unit employees regarding overtime and other issues related to hours of work are being ignored or abused, it has ready recourse through the contractual grievance and arbitration procedure, but has not availed itself of this remedy.

Findings of Fact and Recommendation

The panel chair finds, based on evidence developed in the fact finding hearing, that lack of adequate rest between shifts in a call-back situation and missed breaks may be an issue at some medical centers

depending on patient load and acuity. The panel chair recommends the parties negotiate language that gives an employee whose regular shift commences less than 6 hours after the end of a call-back shift the option of taking time off the beginning of the next shift until 6 hours' rest is achieved or working the next regular shift at the overtime rate. For example, an employee whose call-back shift ended at 0300 hours and whose regular shift commenced at 0700 hours would have the option of declining to start his/her next shift until a full 6 hours rest was achieved (i.e. 0900 hours), or coming in at 0700 hours and receiving pay at the overtime rate for the entire regular shift. The panel chair also recommends the parties negotiate language that addresses the issue of excessive missed meals and breaks by establishing a standard or goal for reducing the number of such incidents that will trigger compensation to affected employees if the standard or goal is exceeded for more than a negotiated amount of time.

4. LAYOFFS

AFSCME's Proposal and Arguments

AFSCME proposes to modify the layoff provisions of the Agreement (Article 13) to add language requiring UC to meet and confer over the alternatives, dates, selection, and effects of any layoffs, reductions of time or furloughs, and to provide that location-wide seniority be used, rather than the current departmental seniority, to determine the order of layoff . AFSCME's proposal also seeks to limit UC's discretion in the selection of employees for layoff on the basis of skills and abilities and to provide bumping rights for laid-off employees to any position for which the laid-off employee is qualified.

Employee morale, recruitment and retention of qualified staff, and basic fairness require that EX unit employees not be subject to favoritism or mere expediency in determining whether layoffs are necessary and in the selection of employees for layoff. Employees in comparable units at Kaiser medical centers enjoy the protection of provisions that review seniority, timing, selection for layoff, and provide for bargaining over alternatives and effects on unit employees.

University's Proposal and Arguments

UC proposes the addition of a new section to Article 13 that permits it to reassign an employee to a comparable or higher paid position in order to avoid a layoff, as well as improved notice and severance provisions.

While UC rejects AFSCME's proposal of a meet and confer requirement, and bumping and strict location-wide seniority proposals, as inconsistent with its management prerogatives, it has responded with a new section to provide alternatives to layoffs, and improved notice and severance language to address AFSCME's concerns. While UC must retain sole discretion to determine the necessity for layoffs, current language and UC's proposed language uses seniority to the greatest extent possible consistent with management's right to retain the most qualified employees to staff its operations. The location-wide bumping rights proposed by AFSCME are inconsistent with UC's "cost center" model of operation and with its right and obligation to retain the most qualified employee in the few instances where it is necessary to depart from the general rule of laying off in order of departmental seniority.

Findings of Fact and Recommendation

The panel chair finds that AFSCME's proposal to apply seniority on a location-wide basis does not unduly burden UC in selecting employees for layoff, since the" skills and abilities" exception to strict seniority provided in the existing contract language permits management to address the fact that the same job title may perform markedly specialized functions in different departments. The question of whether AFSCME's proposal to subject the selection of classes for layoff to a bargaining obligation exceeds the statutory scope of representation remains an issue. For the question of AFSCME's ability to bargain over alternatives and impact, see Issue No. 1, CONTRACTING OUT, above. The panel chair recommends that, with the exception of the proposed change to apply seniority and bumping rights on a location-wide basis, AFSCME's proposed changes to Article 13 be rejected.

5. LEAVES OF ABSENCE

AFSCME's Proposal and Arguments

AFSCME proposes that all personal requests for leave of absence (Article 14) be subject to the contractual grievance and arbitration procedure. AFSCME proposes that night shift employees who must perform jury service be compensated with additional leave.

University's Proposal and Arguments

UC has offered to increase the amount of sick leave useable for family emergencies, and to provide for the use of compensatory time off for personal leave, and the parties have reached agreement on many issues related to this article.

AFSCME's proposal to make denial of personal leave grievable is unnecessary. FMLA and Military Leave are already available as a matter of law to any employee who document the need for the leave. In matters of personal leave requests, UC must retain its management right to balance leave requests with operational requirements. UC already accommodates night shift employees called for jury service by temporarily assigning them to the day shift for the duration of their jury service.

Findings of Fact and Recommendation

The panel chair finds insufficient evidence was presented at the fact finding hearing to indicate a wide-spread problem with respect to the handling of personal leave of absence requests. or to support AFSCME's proposal. The panel chair recommends that the proposals concerning grievability and jury duty be rejected.

6.LEAVES FOR UNION BUSINESS

AFSCME's Proposal and Arguments

AFSCME proposes to reduce the notification requirements for union business leave requests, improve UC response time, provide for leave requests of less than one day, remove restrictions on the number of members allowed to be on union business leave, and mandate approval of union business leave requests under Article 15.

University's Proposal and Arguments

UC rejects AFSCME's proposed changes, and proposes to increase the reimbursement from AFSCME to UC for the costs of leave for union business from 36% to 50% to cover the costs of maintaining contributions to benefit plans for employees who may be off for periods of time up to 3 years.

UC believes AFSCME's demands in this area are unreasonable given the impact on operations and patient care of such possibly long term paid absences, and the cost to UC of paying full salary and benefits to employees taking union business leave. UC takes the position that, if AFSCME would be willing to increase its share of the cost of union business leave beyond the proposed 50% share, it could be more accommodating in granting such leave.

Findings of Fact and Recommendation

The panel chair finds that little evidence, such as an increasing number of meritorious grievances filed over denial of leave under this article. was presented in fact finding to support the conclusion that leave requests are being unreasonably denied. The panel chair rejects AFSCME's proposal and recommends that the parties use UC's proposal as the basis for negotiating any mutually agreeable changes to this article.

7.PARKING

AFSCME's Proposal and Arguments

AFSCME proposes that parking fees (Article 24) not be increased during the term of the Agreement.

Although UC claims it is prohibited from spending taxpayer funds on parking costs, this does not explain why non-taxpayer funds from university and medical center revenues can't be used to defray this cost. The outlay for parking paid by EX unit employees can exceed $1100 annually and represents a major financial burden imposed by UC on its employees. There is no reason UC, whose non-tax revenues remain robust, can't help keep a lid on this financial burden.

University's Proposal and Arguments

UC proposes to increase parking rates by various capped percentages or dollar amounts at all campuses and medical centers each year during the term of the Agreement, except for UCLA and UC Santa Barbara, where it proposes unspecified annual increases

UC is constrained by the State Master Plan for Higher Education to operate all parking facilities on a self-supporting basis, without the use of any taxpayer funding. Fees at the various campuses and medical centers must be structured to support all parking facilities and related campus transportation facilities. Although fees may vary depending upon access and proximity of the various parking facilities found at a particular campus or medical center, UC has a long-standing practice of charging all employees the same rate for the same type access. AFSCME's proposal to freeze parking rates for the term of the Agreement is not feasible, given that funding requirements for parking and transportation structures, equipment and operations may increase during that period, necessitating an increase in parking fees, since there is no other source of funding. The rate caps provided by UC, which have not been reached during the preceding Agreement, balance the interest of the Union in avoiding unreasonable and unanticipated rate increases with UC's need to adequately fund parking and transportation operations.

Findings of Fact and Recommendation

The original Master Plan mandated that ancillary costs of education incurred by students, such as parking, not be paid for out of state funds. Over time, UC has imposed this requirement on parking

services for employees as well. The panel chair finds that increases in parking fees can result in substantial costs to EX unit employees, and can erode the value of the total negotiated compensation package. The panel chair recommends that, before UC imposes any increases in parking fees during the term of the Agreement, the parties agree to establish a joint committee to explore possible methods of reducing the impact of parking fee increases on EX employees, including the possibility of increased support from TAPS funds or other non-tax UC revenues for carpooling and other alternate means of commuting. It is recommended that the committee should make its recommendations in sufficient time to enable UC to implement the recommendations by the end of the first year of the Agreement, and that the parties negotiate language that UC will not unreasonably refuse to adopt joint committee recommendations.

8. POSITIONS/APPOINTMENTS

AFSCME's Proposal and Arguments

AFSCME proposes to modify current contract language (Article 29) to make Limited Appointment employees and Per Diem employees eligible to elect conversion to a career appointment after attaining 500 hours in a rolling 6-month period, and to limit the ratio of Per Diem to career employees in the EX bargaining unit.

The current high thresholds for conversion to career status, 1000 hours in the case of Limited Appointment employees and 12 months in the case of Per Diem employees, makes conversion to career status difficult. By comparison, On-call or Limited employees at Kaiser medical centers achieve regular status if they at least 40 hours per pay period for only 6 consecutive pay periods. Under the current contract terms, UC is not supplementing, but supplanting career employees in the EX unit by abusing the use of Limited and Per Diem employees. The number of Per Diem employees in the unit has grown at twice the rate of career employees, and hours worked by them in 2012 grew three times faster than hours worked by career employees.

University's Proposal and Arguments

UC proposes to remove current language in Article 29 limiting the growth of the ratio of Per Diem to career employees to no more than 12% in three years.

UC uses to Per Diem and Limited Appointment employees to augment career staff. Hard and fast ratios are unproductive since they vary with patient load and acuity factors. Current contract language permits qualified Per Diem employees who express an interest in doing so to convert to career status after 12 months employment. It is unclear how the use of Limited and Per Diem employees is eroding the EX bargaining unit, since these employees are in the bargaining unit. The current EX language is more favorable to the Union than any of the other collective bargaining agreements at UC, none of which have automatic conversion provisions for Per Diem employees.

Findings of Fact and Recommendation

The panel chair finds that evidence produced in the fact finding hearing establishes a growing use of Per Diem employees in the EX unit, sufficient to support AFSCME's concern about the ratio of Limited and Per Diem to career employees. The panel chair recommends that UC's proposal to remove the ratio requirement from Article 29.D.3 be rejected, and that the parties negotiate language that converts interested Per Diem employees to career status upon attaining 750 hours within any 12-month period.

9. RETIREMENT

AFSCME's Proposal and Arguments

AFSCME proposes to cap the EX unit employee UCRP contribution rate at 5%, and to remove current contract language (Article 4b.B) that permits UC, at its option, to alter the terms of the plan, including contribution rates, benefit formulas or eligibility criteria. AFSCME rejects UC's proposed New Tier pension plan for employees hired on or after 1 July 2013.

UC espouses a conservative funding policy, but fails to adequately fund it, using an unconventional "level dollar" amortization method, and dubious actuarial assumptions. Using a more conventional "level percentage" method would result in lower costs initially and similar overall costs over a 30-year projected funding cycle. UC's assumed return on investment is low and contributes to an unrealistically high "normal cost" estimate, resulting in higher than necessary contribution rates for both the University and its employees. Although UC is moving towards a 50/50 contribution ratio between the employer and employees, similar to the Governor's PEPRA state pension reform, it fails to cap benefits for high-end non-unit retirees at $110,000.00 as PEPRA does, capping them as high as $375, 000.00 instead, thereby increasing ultimate costs that disproportionately fall on lower-paid EX unit employees, who mostly populate the three lower Pay bands of the salary schedule.

UC's proposed New Tier plan for new hires requires them to pay more and get less. The cumulative cost to New Tier employees of rate increases, later retirement age, and reduced benefits amounts to almost a 5% negative impact on their pay. The same 3% saving in "normal cost" claimed for the proposed pension changes could be achieved by adopting a more conventional funding method and more realistic earnings projections.

University's Proposal and Arguments

UC proposes to increase EX unit employee contributions to the UCRP pension plan from a current contribution rate of 5% to 6.5% on 1 July 2013, and to increase the contribution rate to 7% for employees hired on or after 1 July 2013, and to exempt these specific increases from the meet and confer obligation in the current contract (4b.B). Additionally, UC proposes to place all EX unit employees hired on or after 1 July 2013 in a New Tier pension plan that shifts full retirement age out 5 years and deletes certain current benefits, such as inactive COLA, survivor benefits, and a lump sum cash out option.

As a consequence of implementing the New Tier pension plan, UC will be able to maintain the most significant benefits of the pension plan for employees going forward at a reduced normal cost of 15% vs. 18% for the existing plan. The proposed pension reform is necessary to maintain the viability of the

UCRP pension plan, and bring EX unit employees into conformance with the employee contribution rates paid by other UC employees. As the fiduciaries of the plan, the Regents are required by law to act in the exclusive interest of all plan beneficiaries. Having adopted a 100% funding policy, UC needs to increase rates to ensure that earlier periods of underfunding are mitigated, and that all covered employees continue to receive attractive post-employment benefits.

Findings of Fact and Recommendation

The panel chair finds that increases in retirement contributions and attenuation of retirement benefits under UC's proposed new tier have an immediate and quantifiable impact on the value of EX employees' total compensation package. The panel chair recommends that wages and salary steps for the new Agreement be adjusted as recommended in Issue 16, below, to reduce the immediate impact of any increases in EX employee contributions to UCRP.

While not adopting AFSCME's proposed changes to the language of Article 4.b.B, the panel chair further recommends that, prior to the implementation date of 1 July 2013 for the "new tier" plan, the parties avail themselves of the meet and confer provisions of Article 4.b.B.2 (disregarding the language specific to past years), and of UC's latest offer to consider alternate plan design options, including consideration of AFSCME's proposals to lower "normal cost" by alternate funding policy and capping of high-end "pensionable compensation." The panel chair recommends that during the first year of the Agreement, EX employee contributions for both existing employees and those hired on and after 1 July 2013 be capped at the current 5% rate.

10. RETIREE HEALTH BENEFITS

AFSCME's Proposal and Arguments

AFSCME proposes to keep retirees in the pay band they were in when employed for purposes of determining the amount of the retiree's contribution to health benefit premiums.

The practice of placing all retirees in Pay band 2 for purposes of determining the retiree's share of health benefit premiums will result in drastic cuts to retirees' retained pension benefits under UC's proposed removal of health premium caps, to the point where a low-salaried retiree's combined years of service and retirement age could result in the retiree's entire pension benefit being insufficient to meet the retiree's share of health benefit costs. For example, a retiree at age 60 with 20 years of service who earned the lowest Pay band 1 salary would sustain monthly health plan costs of $951 while receiving only a $908 monthly retirement benefit.

University's Proposal and Arguments

UC proposes to modify eligibility for retiree health benefits for both new and existing employees (those not grandfathered) effective 7/1/13. Under the proposal, the minimum eligibility age for these employees to receive a UC contribution towards retiree health has been extended from 50 to 56. A new or non-grandfathered existing employee can still receive 100% of the University contribution to the retiree health premium if s/he retires at age 65 with at least 20 years of UC service.

UC believes it is important to understand that retiree health benefits are "pay as you go," without any pre-funding.

Findings of Fact and Recommendation

The panel chair makes no specific recommendation to modify the assignment of retirees to pay band 2 beyond the recommendation in Issue No. 2, above, to retain caps for the first year of the Agreement and to retain the meet and confer language of Article 4a.A1.b.2

11. RELEASE TIME FOR NEGOTIATIONS

AFSCME's Proposal and Arguments

AFSCME proposes changes to Article 32 to permit 2 bargaining team members to be released from each location, up to a total of 11 for the entire bargaining team, that team members be paid for all hours of their regular shift while bargaining, and that the requirement that team members report to work before and after negotiations be removed.

University's Proposal and Arguments

UC rejects this proposal.

Having more than one team member released from each location is burdensome financially and operationally on UC. UC has handled the reporting requirement in a night shift situation informally and will continue to do so. UC finds the current language adequate to support the bargaining relationship.

Findings of Fact and Recommendation

The panel chair finds, that, given the recent and projected growth of UC medical center facilities around the state, an increase of one in the total membership of the bargaining committee, and an increase of one in total members released from any location is not unreasonable or unduly burdensome. The panel chair recommends that AFSCME's proposal be adopted, with the proviso that the requirement to report for work before and after a bargaining session be retained on the basis that UC will not abuse its discretion to impose the requirement, and will do so only for genuine operational reasons.

12. SENIORITY

AFSCME's Proposal and Arguments

AFSCME proposes a new article to define seniority as used in several other existing articles, including the articles governing layoffs, hours of work, leaves of absence, vacation, transfer and promotion. For

purposes of Article 13, Layoff and Reduction In Time, the proposed new language would be: "...seniority shall be defined as an employee's earliest date in any staff career position at any University medical center...and campus operations...Seniority shall be among all employees sharing the same title series at each medical center/campus..." For purposes of all other articles using seniority, the definition shall be: "...an employee's date of hire for their (sic) series at her/his University medical center..."

The current definition of seniority in the various articles of the Agreement permits too much discretion by UC management in the selection of employees for layoff.

University's Proposal and Arguments

UC agrees to the insertion of a new article to define seniority.

UC agrees to the insertion of a new article to define seniority, but finds that the current language for layoff purposes - "...most recent date of hire..." - adequately honors employee service for layoff purposes, since this language allows an employee without a break in service to move from one department to another or from one medical center to another and still retain his/her full seniority. For hours of work and vacation, seniority must be defined as: "...most recent date of hire or transfer within the same job title into the work unit..." because a departmental, much less a system-wide seniority base is too large to accommodate the scheduling and staffing needs within a work location. Therefore, UC agrees to place the definition of seniority in a single article, but the definitions must remain close to the current contract language.

Findings of Fact and Recommendation

The panel chair finds that AFSCME's proposed seniority language for purposes of layoff and reduction in time is acceptable, and that the retention of management's ability to retain less senior employees on the basis of skills and abilities addresses the concern that location-wide seniority might be inconsistent with UC's operational needs. The panel chair finds that that UC's proposed language for purposes of other articles in the Agreement is better suited to those matters. The panel chair recommends adoption

of AFSCME'S language for purposes of layoff and reduction in time, including the location-wide scope of the seniority unit, and UC's proposed language for purposes of all other provisions of the Agreement.

13. SHIFT DIFFERENTIALS

AFSCME's Proposal and Arguments

AFSCME proposes to increase all shift differentials (Article 35) by $.75/hr except, at UCLA where it proposes a $1.00/hr increase. AFSCME also proposes a $.55/hr bi-lingual pay differential.

Current pay differentials at the medical centers for EX employees are inequitable and arbitrary. Differential rates paid by UC currently are either regressive or non-linear with respect to increasing for higher paid job titles. Some higher paid EX titles get as little as 2% differential pay working evenings, nights, or weekends. Not every title currently gets differential pay. EX differential rates have remained largely unchanged since 2008 and lag comparable bargaining units at UC such the NX nursing unit, and comparable outside employers.

University's Proposal and Arguments

UC rejects AFSCME's proposal.

UC pays market shift differential rates based on local surveys. AFSCME has not shown any evidence to support making any range adjustments at this time, and none is needed to maintain competitiveness in local markets.

Findings of Fact and Recommendation

Based on the totality of the testimony and evidence concerning shift differentials presented at the fact finding hearing, including evidence of differentials paid in comparable units at UC and outside medical

centers, the panel chair finds that increases are warranted. Given the fact that medical translation and interpreter services at UC medical centers are provided by qualified personnel in another bargaining unit, and that AFSCME has not detailed how employees are to establish second language proficiency, the proposed $.55 differential for bi-lingual employees is not warranted at this time. The panel chair recommends that AFSCME's shift differential proposals be adopted, but that the bi-lingual pay differential proposal not be adopted.

14. SICK LEAVE

AFSCME's Proposal and Arguments

AFSCME proposes that employees be allowed to donate any accrued sick leave to another employee who requires it for a serious health condition or family emergency. AFSCME also proposes that employees only be required to submit documentation of illness after the third consecutive day of sick leave use.

University's Proposal and Arguments

University rejects AFSCME'S proposal.

Although UC rejects AFSCME's sick leave donation proposal, it does maintain a catastrophic leave donation policy using vacation pay. Unlike vacation leave, which may be banked or taken more or less at the employee's discretion, sick leave is more like an insurance policy to be used when only when necessary, and may be needed by the employee at some future date. With respect to documentation of sick leave, UC will retain its discretion as to when to request documentation of illness or injury for sick leave. The management right and obligation to ensure that sick leave is being used appropriately requires that UC be able to request documentation when it is needed, which may be on the first day or not at all. If AFSCME believes that documentation is being demanded in an unwarranted fashion, it has recourse to the grievance and arbitration procedure to correct any such situation.

Findings of Fact and Recommendation

The panel chair finds AFSCME's proposal for donating accrued sick leave could be problematical should the donating employee unexpectedly need to use the donated accrued leave. With respect to the current language requiring documentation "when it appears to be justified," the panel chair finds the language somewhat vague and recommends the parties negotiate language incorporating more objective criteria. An example might be: "...when justified by the employee's attendance or other observable facts and circumstances..."

15. STAFFING COMMITTEE

AFSCME's Proposal and Arguments

AFSCME proposes language to empower staffing committees (Article 37) to establish staff to patient ratios, staffing levels, exam times, and square footage cleaning guidelines to ensure quality patient care.

Considerable evidence, in the form of testimony from EX unit employees was put on the record to show that medical center operations are frequently understaffed and overloaded. The current language does not provide sufficient means of ensuring that staffing concerns discussed at staffing committee meetings are translated into concrete steps to address problems.

University's Proposal and Arguments

UC rejects AFSCME's proposal, and proposes to remove Section A.8 of Article 37 that currently addresses custodial square footage guidelines and mandates provision of some requested information within 48 hours.

The current language of Article 37 provides sufficient union input concerning staffing and workload and other articles provide additional means of addressing similar items of concern through labor-management meetings. UC cannot accept language that allows anyone but the responsible

management to set staffing levels or establish policy on behalf of UC. AFSCME has not made much use of the existing staffing committee provisions. The current language is sufficient to meet the Union's need to raise and discuss workplace issues with management.

Findings of Fact and Recommendation

The panel chair finds that, with respect to patient ratios and staffing levels an issue remains whether AFSCME's proposal is entirely within the statutory scope of representation. The panel chair further finds insufficient evidence that the existing language in Article 37 concerning square footage guidelines is unduly burdensome to UC. The panel chair recommends rejecting both AFSCME's and UC's proposals.

16. WAGES

AFSCME's Proposal and Arguments

AFSCME proposes across-the-board (ATB) base-building wage increases of 6% in each year of the proposed Agreement's 4-year term, with retroactivity to 1 January of each year, and maintenance of the current salary range step structure with 2% step increases on 1 July of each year. AFSCME proposes that step increases will be based on all relevant professional and work experience, not just UC experience. Additionally AFSCME proposes increases in minimum wage, market equity, longevity pay, shift and duty differentials, and on-call and call-back pay.

The ATB and minimum wage increases are necessary to ensure EX employees are able to maintain their standard of living against an increasing cost of living. The maintenance and improvement of the salary range step system ensures that UC remains competitive in recruitment and retention, and that employees' long term commitment to UC is appropriately rewarded. Increased shift and bi-lingual differentials, and on-call/call-back pay are needed to ensure UC maintains equity with other medical centers currently paying more in these areas.

University's Proposal and Arguments

UC has not made a specific wage proposal.

Any wage or other pay increases must be contingent upon AFSCME's acceptance of UC's retirement and benefit plan reform proposals to make economic sense. UC already pays competitive wages at each of its medical centers based on a detailed market survey of comparable hospitals and health care organizations. AFSCME's proposed 6% ATB seems to have been picked out of thin air, and is not supported by any detailed survey data. Although the parties agreed to an annually increased salary step system for the term of the preceding Agreement, there was no agreement to maintain these particular salary range steps in perpetuity. The evidence produced in the Fact Finding process does not establish that AFSCME's salary range step proposal is preferable to an open range system for attracting or retaining qualified employees in the EX unit. AFSCME presented no evidence that longevity pay serves any purpose, especially when UC already has an experienced-based salary step system. The substantial pay increases that AFSCME obtained in the preceding agreement has resulted in UC compensating EX unit employees at well above market, especially when UC's generous benefit plans are included in the comparison.

Findings of Fact and Recommendation

Based on the evidence developed at the fact finding hearing, the panel chair finds that increases in the cost of living and compensation levels at comparable medical centers warrant increases over the salary range and other pay items of the most recent Agreement. Accordingly, the panel chair finds that at least a 3% ATB increase in each year of the Agreement is warranted, and that maintenance of the current salary step system at 2% is sustainable and desirable. Additionally, the panel chair recommends adoption of AFSCME's proposals to increase on-call pay to 50% of straight time pay.

17. PAID TIME OFF

AFSCME's Proposal and Arguments

AFSCME rejects UC's proposal.

University's Proposal and Arguments

UC proposes a new Article 47 in the Agreement that exempts 4 of its medical centers - UCSF, UCLA, UC Davis and UC Irvine - from the provisions of Article 36, SICK LEAVE, and Article 41, Vacation, of the current Agreement.

A Paid Time Off (PTO) system in lieu of a specific sick leave or vacation policy is the standard in the hospital industry, and has worked well for non-unit employees at 4 of the UC medical centers for a long time. Management has an inherent right to establish rules for the operation of the medical centers that do not conflict with any of the express provisions of applicable collective bargaining agreements. Employees working under UC's PTO system enjoy comparable total hours of leave but have greater control over their time than do EX unit employees working under the contractual sick leave and vacation articles. AFSCME's objection that PTO encourages employees to come in to work sick is not supported by any experience or evidence, since any policy that resulted in employees working while ill would hardly have become the hospital industry standard. It is time for the EX unit to become part of UC's long established program.

Findings of Fact and Recommendation

The panel chair finds that current sick leave and vacation provisions of the Agreement have not presented any serious problems in their implementation, and provide a uniform system for employees to track and manage their accrued sick leave and vacation pay. The panel chair recommends that UC's proposal be rejected.

III

CONCURRENCES/DISSENTS

The Panel Members' summaries of their concurrences/dissents are attached.

AFSCME Panel Member: Concur_____ Dissent_____X_____.

University Panel Member: Concur_____ Dissent_____X____

Respectfully Submitted 29 March 2013:

_____

Robin Matt

Impartial Chair

_____ Date: 29 March 2013

Seth Newton Patel

AFSCME Panel Member

_____ Date: 29 March 2013

Peter Chester

UC Panel Member

RESPONSE TO REPORT RECOMMENDATIONS

The factfinding panel chair's recommendations clearly endorse substantial changes, not inconsistent with many of AFSCME's proposals, to: address serious staffing issues at the University's medical centers and other health care facilities; strengthen caps on active employee and retiree health care premium increases; freeze pension contributions at their current level of 5%; endorse consideration of AFSCME's alternatives to the University's two-tier pension proposal; and provide for both substantial annual wage and ancillary pay increases, as well as maintenance of the guaranteed, experience-based step system.

The instant report is now the second factfinding report *not* to endorse the University's two-tier pension proposal (see PERB Case No. SF-IM-2956-H). In endorsing consideration of AFSCME's retirement proposals, the panel chair makes a point to highlight the alternatives of capping executive "pensionable compensation" and adopting a more mainstream funding policy. The panel chair also makes substantial recommendations to address the many critical staffing issues presented during the factfinding hearing, including recommendations for: automatic conversion for per diem employees, maintenance of per diem ratio language, additional contracting out protections with third party dispute resolution, additional pay for missed breaks, and campus-wide seniority for purposes of layoffs.

Though not capturing the entirety of AFSCME's dissent on the report's recommendations or omissions, AFSCME dissents on particular recommendations as follows.

CONTRACTING OUT

While the panel chair recommends protections against contracting out of new or existing work in the form of an additional notice provision, a provision providing AFSCME the opportunity to propose that University employees perform work the University would like to contract out, and independent third party review of disputes over the contracting out of new or existing work, AFSCME dissents on the absence of a recommendation to specifically prohibit the University from contracting out new or existing bargaining unit work due to "financial necessity."

HOURS OF WORK

While the panel chair recommends additional pay for excessive missed breaks, AFSCME believes that employees must receive pay for any and all missed breaks, consistent with State law and the University's agreement with CNA-represented nurses.

RETIREMENT

While the panel chair does not endorse the University's two-tier pension proposal, recommends consideration of AFSCME's alternatives (including capping executive "pensionable compensation" and adopting a more mainstream funding policy), and declines to endorse the University's additional pension contribution increase, AFSCME dissents on the University's "alternate" plan design options that cut the normal cost by 2.7 – 3.3%. The University's pension proposal would result in a 4.8% cut to new employees' total compensation.

RETIREE HEALTH BENEFITS

The University's retiree health care proposal would result in an additional 1.8 – 5.9% cut to employees' total compensation. While the panel chair finds against this proposal, and recommends instead strong caps on the amount by which the University can increase retiree health care premiums, AFSCME dissents on the absence of a recommendation to keep low-wage, pay band 1 employees in pay band 1 for the purpose of calculating the University's contribution to retiree health care premiums.

SENIORITY

While the panel chair recommends acceptance of AFSCME's proposal for campus-wide seniority for the purposes of layoffs, AFSCME dissents on the recommendation against AFSCME's proposal for stronger seniority rights in scheduling and work location decisions.

STAFFING COMMITTEE

While the report indicates that "considerable evidence, in the form of testimony from EX unit employees was put on the record to show that medical center operations are frequently understaffed and overloaded," AFSCME dissents on the report's rejection of a neutral third party

dispute resolution process for staffing committees. Such a process would contribute to more reasonable workloads, safe staffing, and quality patient care.

WAGES AND SHIFT DIFFERENTIALS

While the panel chair recommends annual ATB increases of *at least* 3%, maintenance of experience-based 2% steps, on-call pay of 50% of straight time pay, and AFSCME's proposed shift differential increases, AFSCME dissents on the absence of a specific recommendation for annual 6% ATBs and equity pools to ensure that the University pay market wages that enable employees to support their families.

Dated: March 29, 2013

Seth Newton Patel
AFSCME Panel Member

UNIVERSITY'S CONCURRING AND DISSENTING REPORT

As the University's representative to the panel, I have opted to file a separate report. For each enumerated article at issue, I have indicated whether I am concurring with or dissenting from the Chair's report. In most instances, where I have dissented, I am relying on the University's arguments and proposals that are summarized in the Chair's report. For several issues (e.g. Health Benefits for Current Employees), however, I have provided a substantive dissent intended to supplement the University's arguments and proposals summarized in the Chair's report.

1. Contracting Out (see UC Argument)

2. Health Benefits for Current Employees

The evidence demonstrated that PCT bargaining unit employees continue to pay 2012 premiums for their health benefits even though the great majority of UC employees are paying higher 2013 health premiums. The evidence also demonstrated that the premiums paid by PCT bargaining unit employees are heavily subsidized because most of them are in salary-based pay bands 1 and 2. Premiums for employees in these pay bands are significantly below those paid by higher paid employees in bands 3 and 4 even for high cost benefit plans such as the PPO. Fairness dictates that PCT bargaining unit employees pay the same premiums paid by other UC employees in the same paybands.

The caps proposed in the chair's recommendations do not allow for even modest increases employee premiums. For example, the 4% recommended cap would only allow for a $.70 monthly premium increase for "employee only" coverage in pay band 1 irrespective of the health plan selected by the employee. This does not provide the University with the necessary flexibility to address the potential increases in premium costs in a time of great uncertainty in the health insurance marketplace.

AFSCME's evidence largely focused on Kaiser's health benefits program for their employees that AFSCME asserted was provided at no cost to the employee. AFSCME conceded that Kaiser is the only health insurance plan available for Kaiser employees. AFSCME did not suggest or propose that the University eliminate all choices other than Kaiser in an effort to reduce premium costs for employees.

3. Hours of Work (See UC Argument)
4. Layoffs (See UC Argument)
5. Leaves of Absence (Concurs)
6. Leaves for Union Business –(Concurs)
7. Parking (See UC Argument)

8. Positions/Appointment (See UC Argument)

9. Retirement Benefits

At the hearing, the University presented compelling evidence that the existing Defined Benefit Plan (DBP) needs modification in order to meet the twin long-term goals of sustainability and affordability. In 2012, the State of California made substantial changes to retirement benefits for public sector employees participating in the largest public pension plans (CALPERS and the 37 Act plans) for the very same reasons. Those changes codified in the Public Employees Pension Reform Act (PEPRA) went into effect on January 1, 2013 and increased the minimum retirement age from to 52 and the maximum age factor to 67. In addition, PEPRA requires employees to contribute annually no less than 50% of the plan normal cost of the defined benefit plan. With an estimated normal cost of 15%, PEPRA covered employees will be required to contribute at least 7.5% annually for their retirement benefits.

The University presented persuasive and unrefuted testimony that its combined unfunded liability for UCRP and retiree health is approximately $24 billion. AFSCME's own evidence demonstrated that CALPERS (whose members are now covered by PEPRA) is slightly better funded than the UCRP. As a result, there should be little doubt that changes need to be made to the UCRP to ensure that the University is ably to meet the retirement needs of the following three groups: current retirees, current employees, and future employees.

The University has made a good faith effort to reach agreement with AFSCME on a modified Defined Benefit Plan tier for new employees that would provide generous retirement benefits and meet what should be mutual goals of affordability and sustainability. The first proposal made by UC on this issue was the 2013 tier that has been agreed to by numerous other unions and will also go into effect for other non-represented academic and staff employees on July 1, 2013. That plan provides the same benefits formula as the current University DBP but simply pushes the minimum retirement age back to 55 and the age at which an employee reaches the maximum age factor to 65. Comparing the University's 2013 tier to PEPRA, a UC retiree would be eligible for the 2.5 % factor at 65 whereas a PEPRA covered employee would need to retire at age 67 to receive the same age factor, two years later. The University's plan also has a normal cost of approximately 15%. AFSCME rejected this proposal out of hand; nor did it provide a counter.

In the interest of reaching agreement and in the face of a flat union rejection, the University submitted two alternatives to the 2013 tier which were similar to PEPRA. One of these plans was designed specifically in response to AFSCME's argument that its employees had physically demanding jobs that made it impossible for them to work beyond age 60. Under

this proposal, a UC employee would have been able to retire at 60 with a higher age factor than s/he would receive under the 2013 tier.

The Chair's recommendation seems to acknowledge that changes to the UCRP are necessary to make it affordable and sustainable. The changes proposed by the University are eminently reasonable, offer flexibility and reflect a sincere desire to address AFSCME's concerns regarding an employee's need to retire no later than 60.

The Chair recommends that contributions for employees in the first year of a contract be capped at 5%. Contributions will be increasing from 5% to 6.5% for non-represented and many represented UC employees on July 1, 2013. For UC employees hired on or after that date, contributions will be 7%. In light of the minimum 50% contributions required of PEPRA covered employees and the UCRP contribution increases described above, freezing contributions at 5% is neither fair nor reasonable considering the need to adequately fund the University's retirement plan –a goal that is in everyone's best interest.

10. Retiree Health Benefits

Retiree health benefits are provided to employees who are no longer actively working on behalf of the University. Under the current retiree health plan, it is not uncommon for a University employee to retire at a relatively young working age with full retiree health benefits and then obtain employment elsewhere.

The University presented uncontroverted testimony at the hearing demonstrating that combined with the University's Defined Benefit Plan, the unfunded liability for retiree pension and retiree health is approximately $24 billion. However, unlike the DBP, the University's retiree health benefit program is entirely "pay as you go" which means that no money has been set aside to fund the University's contributions to the retiree benefits program. Also, unlike the current UCRP, employees do not have a vested right to retiree health benefits. In addition, the University presented evidence demonstrating that very few other employers provide health benefits to their retirees (i.e. non-active employees).

As with the University's DBP, the University has been exploring ways to make retiree health both affordable and sustainable. After consulting widely, the University proposes to modify eligibility for retiree health for new employees and certain current employees who will not be grandfathered into the current retiree health benefits. Current employees will be grandfathered if they 1) have more than 5 years of service as of 6-30-13 and 2) their years of service plus their age as of 6-30-13 exceed 50. For these employees, the University is proposing to push back the current minimum eligibility age to receive a premium contribution for retiree health from 50 to 56.

Eligible retiring employees would receive a University contribution to the retiree health premium starting at age 56 and would be eligible for 100% of the University contribution if they retire at 65 with at least 20 years of service. These are modest changes given the fact that 1) the vast majority of employees in the public and private workplace do not enjoy any retiree health benefit and 2) that following the full implementation of the changes envisioned by UC, the University will be paying at least 70% of the total premium for a retiring employee who is entitled to the maximum retiree health benefit.

11. Release Time for Negotiations (See UC Argument)

12. Seniority (See UC Argument)

13. Shift Differential (See UC Argument)

14. Sick Leave (Concurs)

15. Staffing Committee (See UC Argument)

16. Wages

The chair's recommendation is to provide a 3% across the board plus maintain the regular step-based program. The recommendation is not supported by the evidence provided at the hearing. The University presented persuasive evidence at the hearing that consisted of specific compensation survey data from the Allied for Health Survey and live testimony from three UC Medical Center Compensation Managers that focused on the market competitiveness of PCT bargaining unit wages. The Allied for Health Survey is a rigorous third party classification specific survey that includes detailed salary data from hundreds of California health care providers, including major competitors of the UC Medical Centers. The Compensation Managers testified that they rely on the Allied for Health Survey in setting target salary rates for the classifications in the bargaining units. The data from the Allied for Health Survey, which includes Kaiser Hospitals (where they comprise part of the relevant market for a UC location), demonstrated that UC was at or above market for the vast majority of titles in the bargaining unit.

AFSCME's evidence focused on only one comparator health care provider, Kaiser, arguing that Kaiser consistently pays more than UC. Needless to say, it would not be responsible for an institution dedicated to paying market wages to look to only one market comparator in establishing its salary rates. In any event, because the Allied for Health Survey includes Kaiser, what Kaiser pays its employees in comparable titles is certainly reflected in the salaries paid to UC employees.

With respect to Wages and the other economic provisions at issue (e.g. health and retirement) the main report does not sufficiently consider the total compensation provided to bargaining unit employees against what is available to similarly situated employees in the market place. When one considers the total compensation provided bargaining unit employees, including base salary and health and retirement benefits, one should reasonably conclude that, as a whole, compensation for the PCT unit is competitive and does not require the major adjustments recommended in the Chair's report.

17. Paid Time Off (See UC Argument)

Respectfully Submitted,

Peter M. Chester
University Representative