

(PERB Case No. SF-IM-112-M)
IN GOVERNMENT CODE SECTION 5404.d FACT FINDING
PROCEEDINGS PURSUANT TO THE
STIPULATION OF THE PARTIES

CALIFORNIA NURSES ASSOCIATION,]	RECOMMENDATION
]	
]	of
Union,]	
]	Sue Fendley, Union
and]	Paul Kozachenko, Employer
]	John Kagel, Neutral
]	
WASHINGTON TOWNSHIP HOSPITAL]	
DISTRICT,]	
]	
]	
Employer.]	
]	
Re: Shift differential]	

APPEARANCES:

For the Union: Joe Lindsay, Labor Representative, CNA, Oakland

For the Employer: Marta M. Fernandez, Esq., Jon C. McNutt, Esq., Jeffer,

Mangels, Butler & Mitchell, Los Angeles

ISSUE:

The Parties seek a recommendation with respect to shift differential for their proposed 2013-2015 Collective Bargaining Agreement.

PROPOSALS:

The Employer has proposed a shift differential of 10.88 percent of the Staff Nurse II salary for the evening shift and 14.8 percent for the night shift. (Tr. 10)

The Union's proposal is to leave the shift differentials as they are, or to reflect the existing practice of 1.8 percent of the base rate for the evening shift and 6.4 percent for the night shift, or a 12 percent shift differential for the Staff Nurse II, Step 1 rate for the evening shift, and 20 percent of the Staff Nurse Step 1 rate for the night shift. (Tr. 10) According to the Union, its proposals preserve the *status quo* for the life of the new contract.

BACKGROUND:

According to the Parties' stipulation, a tentative agreement has been reached concerning all issues but shift differential. They agreed they would take the recommendation of the Fact Finding Panel, and their tentative agreements, to their respective ratification bodies. (Jt. Ex. 1)

Shift differential has been paid in a combination of two ways heretofore. First, there are distinct wage schedules for day, PM and night shifts. (Jt. Ex. 2, App. A) Further, there are specified evening (PM) and night shift differentials as well. (Jt. Ex. 2, Sec. 8.E).

While the proposals are reflected in terms of percentage, it is helpful to understand the shift differential issue in terms of dollars per hour.

A Union chart, converting from percent to dollars, shows that the PM Staff Nurse II shift differential currently ranges from \$6.32 at step 1 to \$6.66 per hour at step 10. For

nights, the range is \$10.10 to 11.09. (Tr. 37, Un. Ex. 11) One of its alternatives provides for flat rates for shifts irrespective of step ranges.

According to the Employer, it has made claimed erroneous overpayments, dubbed by it as the “baby shift differential”, by mistakenly combining the shift pay ranges in Appendix A with the shift differential in Section 8.E. These overpayments range on evenings from \$0.94 per hour up to \$1.28, depending on steps on the salary schedule. For nights the range is from \$3.47 to \$4.46. (Un. Ex. 3, *see also*, Er. Ex. 2)

While the Employer maintains that combining both rates has been an erroneous method of payment, and the Union contends that such a combination is correct as has been bargained over the years, the Employer does not principally rely on its contention in its proposals in this matter.

Rather, briefly stated, it urges that it has demonstrated that it needs to cut its costs by showing its decreased revenues. Although it has had an upturn at present, after declines, it is being faced with reduced federal reimbursements and reduced patient census, resulting in reduced services and cuts in personnel, but has not achieved the appropriate savings it sought in Nurses’ bargaining. (*E.g.*, Er. Ex. 2, Tr. 22ff, (\$490,000 has been achieved in cuts to prior benefits, Tr. 76)) In addition, it contends to maintain the shift differential as it currently is is not market-compatible with other Hospitals. (Tr. 53)

The Union maintains that the Employer, in it’s bargaining, announced that it was not seeking but minimal takeaways. (Un. Ex. 2) Further, the Union maintains that the current shift differential is within the range of comparability with other Employers, and it

has appreciated the Employer's position and has foregone wage increases in the first year of the proposed contract and has but modest gains, compared to other Hospitals, in terms of wages for the remainder of that contract. (Tr. 71)

DISCUSSION:

In fact finding pursuant to statute the Panel is required to, among other things, take into account:

"...(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies. ...

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received. ...

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations." (CA Govt. Code Sec. 5404.d)

Taking these factors into account, in this case, there needs to be a balancing of the demonstrated needs of the Hospital and the normal expectations of its Nurses. As to the latter, they have been receiving the shift differential as they have for years without any previous claim of erroneous payment and they are entitled, subject to a major showing to the contrary by the Employer not shown here, to continue to rely on its receipt.

A significant factor to take into account is the impact of tying the differential to a percentage of the Staff Nurse II compensation. As noted an earlier, but rejected, proposal concerning differentials was to change the rates from base-building percentages to flat dollar rates, resulting in savings. (Tr. 15) In addition, as the Union agreed, flat dollar rates contribute to clear understanding of what the rates are (Tr. 70), and its proposals do not take into account bargained increases for the remainder of the proposed agreement. (Tr. 68-69) Further, as set forth below, the recommended shift differentials compared to other Hospitals, while on the higher side, are not out of touch with those of applicable comparators and the shift differential, being a flat rate compared to percentages at other institutions, will become even more comparable over time. (See Un. Ex. 10, Tr. 72-73, Er. email, 8/27/13)

PANEL PROCEEDINGS:

After conferring, both Party-appointed Panel members abstain with respect to this recommendation. Both state they will recommend ratification of the tentative agreement and this recommendation to their respective bodies.

RECOMMENDATION:

The *total* shift differential for the duration of the proposed agreement, from the date of its adoption, should be:

Evening (PM) Shift: \$6.45 per hour.

Night Shift: \$10.75 per hour.

A handwritten signature in black ink, appearing to be 'AKL', is written over a horizontal line.

Palo Alto, CA 8/30/13