# FF-721-M

(PERB Case No. SF-IM-137-M)

Jerilou H. Cossack
Arbitrator / Mediator / Factfinder
925-939-1904
jhc@jerilou-cossack.com

# FACTFINDING REPORT

| | | |
|---|---|---|
| In the Matter of a Controversy Between | ) | |
| DOCTORS MEDICAL CENTER | ) | |
| Employer | ) | |
| and | ) | PERB CASE No. ??? |
| NATIONAL UNION OF HEALTHCARE WORKERS (NUHW) | ) | |
| Union | ) | |

**APPEARANCES:**

For the Employer: Bob Redlo, Vice-President of Patient Relations
Doctors Medical Center
2000 Vale Rd.
San Pablo, CA 94806

For the Union: Brian McNamara, Organizer
National Union of Healthcare Workers
225 W. Broadway, Suite 315
Glendale, CA 91204

In accordance with the requirements of Government Code 3505, a Factfinding Panel was appointed by the Public Employment Relations Board due to the existence of a continuing and unresolved controversy between the Employer and the Union. The following persons were designated as panel members:

James Boatman – Employer Appointed Member
Fred Seavey – Union Appointed Member
Jerilou H. Cossack - Chairperson

The panel met and deliberated in executive session on February 17, 2014. When efforts to settle the matter proved unsuccessful, the panel met on February 18, 2014 and heard testimony on the remaining unresolved issues.

Taking into account all of the evidence and argument as presented by the parties, and the statutory criteria, the panel chairperson recommends as follows:

1. All previous tentative agreements will be honored.

2. The term of agreement will be effective upon ratification and will expire July 31, 2015. (Both parties agreed to this expiration date.)

3. **Wages**

The Employer has proposed a 1% salary schedule increase for all unit employees, effective with the first payroll period after ratification by the parties. In addition, in its November 14, 2013 Last, Best & Final Offer, the Employer proposes an incentive plan based on factors such as patient satisfaction and financial conditions that could result in a 1% bonus in January, 2015. In a subsequent final offer made on the first day of the factfinding process, the Employer withdrew the incentive proposal and instead proposed a 1% pay increase effective January 2015, contingent on the passage of a parcel tax by voters in May 2014.

The Union modified its wage proposal on the first day of the factfinding process. Its proposal for consideration by the panel is a 2% wage increase January 1, 2015, 1%

July 2014, and 1% January 2015. In addition, the Union proposes to implement a wage scale for the first time for Sleep Techs, effective January 2014.

**Recommendation:** The Employer is having serious financial difficulties. It is in the process of going out to stakeholders in the community to seek grants, loans, and other beneficial financial arrangements merely to stay in business. In addition, the voters within the District's geographical boundaries will vote on a parcel tax in May of this year. If the tax passes, it could help keep the doors of this crucial community institution open.

Both parties acknowledge that wages for many classifications within the Union's bargaining unit have fallen well behind that of comparable healthcare facilities. The Union highlights the fact that this bargaining unit has not received several 1% wage increases granted to another unit represented by Public Employees Local One in recent years. However, the Employer points out that the same increases were offered to this unit, but were rejected.

The Union's proposal of a 4% increase over eighteen months, while consistent with comparability and consumer price index increases, does not sufficiently take into account the Employer's dire current financial position.

The formal position of the Employer presented to the panel is the 1% wage increase plus a possible bonus based on unspecified metrics. This bonus proposal seems ill-defined and fraught with possible complications in its interpretation. The other Employer proposal, presented at the beginning of the factfinding process, is more in line with traditional labor relations norms. While the second 1% increase is contingent, it is contingent on a clearly definable "yes or no" vote on the parcel tax. The Employer acknowledges that passage of this tax would significantly improve the medical center's financial health. And, by the parties agreeing to such a provision, there would be an extr incentive for all members of the Doctors Medical Center community to work hard for the passage of the tax.

Therefore, the chairperson's recommendation is to adopt the proposal as put forward by the Employer in its February 17, 2014 last best and final offer: 1% increase first payroll after ratification, and 1% increase January 1, 2015 if the parcel tax passes[1].

4. **Categories of employees**

Currently, unit employees who are regularly scheduled to work twenty hours per week or more are eligible for benefits. The Employer proposes to raise this threshold to thirty hours. The Employer argues that it can no longer afford to pay benefits to employees who work between twenty and thirty hours per week.

The Union proposes the status quo on this issue. The Union argues that every single comparable jurisdiction has a twenty-hour threshold for benefits.

**Recommendation:** The chairperson recommends the status quo on categories of employees, as proposed by the Union. As serious as the financial condition of the Employer is, this permanent deviation from the industry norms might place the Employer at a critical disadvantage in regard to recruitment and retention of vital part-time employees in the NUHW-represented classifications. The Union has offered a concession under the health benefits section that is a positive step toward acknowledging the perceived inequities in part-time employees receiving the same benefits as full-time employees. The adoption of higher premiums for certain categories of part-time workers will begin to address the Employer's concern in the this area.

5. **Health benefits**

Currently, the Employer offers a PPO to all unit members eligible for benefits. Full-time employees pay $10 per month for coverage. Part-time employees receive pro-rated employer contributions, except that part-time employees with three or more years of service receive benefits at the same level as full-time employees.

The parties have agreed to plan design changes in the PPO. They have also agreed to the addition of two Kaiser plan options as an alternative for employees. The

[1] The Union has also proposed the implementation of a pay scale for a newly-represented classification, sleep technicians. The Employer did not agree to this pay scale, but the reasons for its rejection are not evident from the record. The chairperson suggests the parties meet again to attempt to reach agreement on the implementation of a sleep tech pay scale.

remaining dispute is over employee premium share. The Employer proposes the following monthly unit member contributions:

**PPO:**
Employee only: $100
Employee plus one: $200
Employee plus two or more: $300

**Kaiser Low (Deductible Plan)**
Employee only: $25
Employee plus one: $50
Employee plus two or more: $100

**Kaiser High**
Employee only: $50
Employee plus one: $100
Employee plus two or more: $150

The Union proposes the following monthly unit member contributions:

**PPO:**
Employee only: $100
Employee plus one: $200
Employee plus two or more: $300

**Kaiser Low (Deductible Plan)**
Employee only: $10
Employee plus one: $15
Employee plus two or more: $20

**Kaiser High**
Employee only: $20
Employee plus one: $30
Employee plus two or more: $40

While the Union's proposal for PPO co-premiums is the same as the Employer's, the Union's PPO co-premium increases sunset with the expiration of the agreement. The Employer's do not. In addition, the Union proposes that for employees regularly scheduled to work between 20 and 28 hours per week, employee contributions for Kaiser plans be as follows:

**Kaiser Low (Deductible Plan)**
Employee only: $25
Employee plus one: $35
Employee plus two or more: $45

**Kaiser High**

**<u>Kaiser High</u>**

Employee only: $50
Employee plus one: $75
Employee plus two or more: $85

In the Union's proposal, these part-time workers would pay the same employee contribution for the PPO plan as full-time employees pay.

The Employer argues that health care costs have been spiraling out of control in recent years, and driving the Employer's compensation costs to unsustainable levels.

The Union asserts that it acknowledges that the Employer needs relief from benefit costs, and has made a proposal that would save the Employer about one million dollars per year. The Union also proposes that the PPO increase sunset because that was agreed to by the Employer with the Local One unit. Finally, the Union argues that it has made a large step toward addressing the Employer's concern about part-time workers' benefits by proposing higher employee premium share for these unit members.

**Recommendation:** The chairperson recommends the Union's health benefit proposal. It is understandable that the Employer is seeking to raise employee contributions from the current $10 per month. However, the out-of-pocket employee contribution increase the Employer is seeking, even for the most affordable plan, is too drastic. The Union's proposal makes significant concessions on health benefits, including taking a step toward correcting an inequitable structure that currently favors part-time employment.

The one portion of the Union's health benefit proposal the chairperson does not recommend is the sunset provision. If this clause were to be agreed to, the Employer would not be able to budget these attained savings going forward past July 2015. And the Local One sunset provision was no doubt attained in exchange for other concessions not contemplated in this package recommendation.

**6. Retiree medical benefits**

The parties currently have a side letter on retiree health that establishes a Medical Reimbursement Account. The employer contributes 1% of payroll annually into this account for eligible unit members.

The Employer proposes to phase this out and substitute a $75 per month contribution toward a Medicare supplement for eligible retired unit members. The Union agrees with this proposal subject to legal review, but proposes that any employee who has retired and met the criteria of the previous retiree health fund will be able to access the funds allocated for them.

The record of the factfinding hearing was not sufficient for the chairperson to make a recommendation on this issue. Therefore, the chairperson recommends that the parties continue to explore the transition of their retiree health plan with the assistance of legal counsel.

**Conclusion**

The parties worked hard during the factfinding process to attempt to reach an agreement. The undersigned urges the parties to continue these efforts. These are a critical few months for the Employer and its employees. Having a labor agreement in place could serve as the basis for further cooperation between the parties in their efforts to save this important community healthcare facility. The chairperson hopes that this report assists the parties in reaching this goal.

Respectfully submitted,
Jerilou H. Cossack
Factfinding Panel Chairperson

Submitted this th Day of March 2014
Lafayette, California

James Boatman
On Behalf of the Employer

I concur_____
I dissent_____

Date:________

Fred Seavey
On behalf of the Union

I concur_____
I dissent_____

Date:________

DOCTORS
MEDICAL CENTER

Doctor's Medical Center and NUHW
Case No. SF-IM-137-M

Doctors Medical Center Representative to the Factfinding Panel
James Boatman

Concurring and Dissenting Opinion to the Findings of Fact and Recommended Terms of Settlement:

As a representative for Doctors Medical Center to the Factfinding Panel, I concur with some portions of the recommendation and dissent with others. I am providing the following opinion.

**Concurrence:**
I concur with the recommendations of Panel Chairperson Cossack on the following matters:

1) All previous tentative agreements will be honored.

2) The term of the agreement will be effective upon ratification and will expire July 31, 2015.

3) **Wages:** The wage recommendation of 1%increase the first payroll after ratification and 1% increase January 1st 2015 if the parcel tax passes.

**Dissent:**
I respectfully dissent from the following recommendations and make the following recommendations:

4) **Categories of employees**: I recommend that the employer move to the same program that it has instituted for its two other unions represented by Local One and for its non-union employees. For employees hired before April 1st, 2014, the threshold for benefits would be 28 hours with the understanding that on a one-time basis, the employer would work with the union if the department budget permits, to raise employees who choose to work more hours up to 28 hours. After April 1st, the threshold for benefits would be 30 hours.

5) **Health Benefits**: I recommend the employer's last best and final offer. The employer is offering a low cost plan which includes dental and vision for those employees that cannot afford Cadillac benefits. The Kaiser High plan offers very similar benefits as the PPO plan at one /half the cost to the employee. The employer's premiums have doubled over the last five years and the amount of employee contribution may not even cover the increases in premiums over the next two years. Both units of Local One have voluntarily accepted the new rates in February, 2014 and all non-union employees pay the same rates. I agree with Chairperson's Cossacks recommendation that there should be no sunset provision.

6) **Retiree Medical Benefits:** I recommend that we follow the agreement worked out at the mediation session by the parties at the first day of Factfinding. The language of the agreement would be the employers last best and final language with the additional language recommended by the union that the employer would send a letter to the last known address of any employee who qualified as being retired, and met the criteria of the fund, that they could access the remaining funds in the fund that may be allocated to them.

Respectfully Submitted,

James Boatman

James Boatman
March 19, 2014

April 4, 2014

Jerilou H. Cossack, Arbitrator
3231 Quandt Road
Lafayette, CA 94549

James Boatman, CFO
Doctors Medical Center San Pablo
2000 Vale Road
San Pablo, CA 94806

RE: FACTFINDING REPORT IN THE MATTER OF DOCTORS MEDICAL CENTER SAN PABLO AND NATIONAL UNION OF HEALTHCARE WORKERS (NUHW)

Dear Ms. Cossack:

I am the NUHW-appointed member of the Factfinding Panel that met on February 17-18 to consider the above-referenced matter. I have reviewed your draft Factfinding Report dated March 18, 2014 and am submitting the following opinion that both concurs and dissents with recommendations contained in your report.

**Items 1, 2 and 4:**

I concur with your recommendations on Items 1, 2, and 4.

With respect to Item 4 ("Categories of Employees"), you recommended that the parties maintain their current contractual standard that specifies that employees who are regularly scheduled to work 20 hours per week or more shall be eligible for benefits. As your report notes, every single comparable jurisdiction has a similar twenty-hour threshold for benefit eligibility.

**Item 5:**

With respect to Item 5 ("Health Benefits"), I concur with the bulk of your recommendation and urge you to reconsider your position on one issue. Specifically, I concur with your recommendation that the parties adopt NUHW's health benefit proposal regarding plan design. As you noted, this proposal represents a significant sacrifice on the part of NUHW's members who will face increasing costs and reduced accessibility of services. Due to the changed benefit design and cost structure, NUHW's members will not only experience an increased cost burden but will lose access to the facilities and doctors from whom they and their families currently receive care. The impact of these changes cannot be overemphasized.

I dissent with, and ask you to reconsider your recommendation on, the sunset provision as it relates to the changes in the DMC Health Plan. You argue that a sunset provision would be burdensome for the Employer. However, the Employer has already accepted an identical sunset provision in a recently adopted Collective Bargaining Agreement (CBA) with a second union that also represents employees at Doctors Medical Center San Pablo: namely, Public Employee Union Local 1. Given this circumstance, NUHW's proposal for a sunset provision would not be overly burdensome to the Employer and, furthermore, would serve to create more equitable circumstances and compensation among the Employer's employees. I urge you to reconsider your position on this matter.

**Item 3:**

With respect to Item 3 ("Wages"), I dissent with, and ask you to reconsider your recommendation on, wage increases.

While all of the parties recognize the Employer's challenging financial circumstances, it also is important to consider (a) the financial circumstances of employees and their families, (b) the Employer's practices with respect to providing wage increases to other units of employees at the hospital and (c) the comparability of the Employer's wages with those of other public-sector hospitals in the region.

As the Union noted in its presentation, NUHW's members have received a total pay increase of only 1.7% during the past five years. When adjusted for inflation, NUHW members' wages have declined by 9.2% during this period. Meanwhile, the Employer's financial circumstances have been sufficiently sound to enable it to provide much larger pay increases to two other units of the Employer's employees. Specifically, the employer provided pay increases of at least 8% and 11.5% to members of Local 1 and the CNA, respectively, during this same time period.

Additionally, NUHW presented data during the factfinding process indicating that NUHW members' wage rates are far below those of other area public-sector hospitals. For example, NUHW members' wage rates are as much as 16% lower than the average wage rates for identical classifications at nearby public-sector hospitals. NUHW also noted that when total compensation is considered (that is, including health benefits, retirement, retiree health benefits, etc.), they Employer is even further behind the existing compensation levels of other public-sector hospitals in the region.

In its presentation, NUHW noted that it does not seek to bridge the entire wage gap during these negotiations due to the hospital's challenging financial circumstances. Instead, NUHW's wage proposal is modest and seeks a 2% pay increase in January 2014, 1% in July 2014, and 1% in January 2015.

The Employer will achieve substantial financial savings from benefit changes and other changes that you have recommended. I urge you to consider the economic impact of these changes on employees and their families and to distribute some of the Employer's savings to employees by recommending improved wage increases.

Your recommendation for a 1% wage increase in January 2015 that's contingent upon the passage of a parcel tax is certainly better than the Employer's initial proposal of an ill-defined bonus. However, it is important to note that the passage of a parcel tax would generate an estimated $20 million a year in additional revenues for the Employer, thereby providing sufficient resources to provide much more than a 1% raise.

For these reasons, I dissent with your recommendation regarding wages.

**Other Items:**

You may recall that there are three additional contract language issues where the parties were in dispute at the commencement of the factfinding process. These issues were not discussed at length during the presentations but were discussed in the beginning of the factfinding process. As I recall, the Employer indicated a willingness to accept the Union's proposals in these areas during informal discussions but did not formally amend its proposals. These issues were not addressed in your Factfinding Report and I would like to know what, if any, recommendation you have on them.

These three contract language issues are;

> The Union's proposal to add the following language to Section 6 (Hours of Work) in order to codify what has been the Employer's long-standing practice: "Employees who are regularly scheduled to work 12-hour shifts will receive overtime for all hours worked in excess of 36 hours in a work week."
>
> The Union's proposal to remove the following statement from Section 6 (Hours of Work): "Any remedy for violation of this Section shall be prospective only." Both the Union and the Employer appeared to agree that this language is confusing and is not intended to prevent a remedy to a grievance filed over a violation of this section. I think the parties believed that this sentence was a remnant from when language was crafted several decades ago and was intended to mean prospective from the date the language was accepted.
>
> The Union's proposal to add the following language to Section 23 (Seniority), Subsection B (Posting and Filling of Vacancies): "For the purpose of this section, an employee who is on a layoff or has had their FTE status reduced as part of a reduction in force will be treated at the status they occupied before the layoff/reduction provided that such employee meets the qualifications of the classification."

Finally, the Union proposed that it have the right to take any outstanding grievances that have occurred since the expiration of the contract to final and binding arbitration upon settlement of the contract. This issue was not addressed in your Factfinding Report and I believe this is another issue over which the parties were in agreement informally but for which the Employer did not formally amend its position. I request that you inform the parties of what, if any, recommendation you intend to make on these contract language issues.

I thank you for your time and your consideration of my aforementioned recommendations.

Sincerely,

Fred Seavey