(PERB Case No. SF-IM-148-M)

BARRY WINOGRAD
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IN ARBITRATION PROCEEDINGS PURSUANT TO

AGREEMENT BETWEEN THE PARTIES

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| In the Matter of a Controversy Between: | |
| CALIFORNIA NURSES ASSOCIATION | Arbitrator's File No. 15-110-FF |
| and, | |
| SALINAS VALLEY MEMORIAL HEALTHCARE SYSTEM | FACTFINDING REPORT AND RECOMMENDATION (April 19, 2015) |
| [Re: Factfinding] | |

Factfinding Panel: Barry Winograd, Neutral Chair; Ernie Gonzales for the California Nurses Association; Michelle Childs for the Salinas Valley Memorial Healthcare System.

Appearances: Damian Tryon, Labor Representative, for the California nurses Association; Rob Hulteng (Littler Mendelson), for the Salinas Valley Memorial Healthcare System.

## INTRODUCTION

This Factfinding Report and Recommendation is issued under California Government Code Section 3505.4(d). At issue are proposals advanced by the California Nurses Association (Union) and the Salinas Valley Memorial Healthcare System (Hospital) in negotiations over the past year.

The undersigned was selected to serve as a factfinder to review the differences between the parties and to issue a report and non-binding recommendations. The selection was made in a proceeding administered by the California Public Employment Relations Board (Case No. SF-IM-148-M). The Union, in participating in this proceeding, has restated its objection that the parties are not at an impasse in bargaining, as the Hospital contends. (Tr. 6-7.) The factfinder offers no opinion on that issue. Initially, the parties participated in mediation on March 3 and March 4, 2015, but a resolution was not reached. Subsequently, after last proposals were exchanged on March 20, 2015, a factfinding session was conducted on April 1, 2015. A transcribed record of the proceeding was prepared. The dispute was deemed submitted for determination on April 8, 2015 upon official receipt of the transcript.

## RELEVANT GOVERNMENT CODE PROVISION

California Government Code Section 3505.4(d)

In arriving at their findings and recommendations, the factfinders shall consider, weigh and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interest 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.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(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 specific in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

## FACTUAL ANALYSIS AND DISCUSSION

### 1. Employment Setting

The Salinas Valley Memorial Healthcare System (or, Hospital) is a first-rank, non-profit healthcare organization in Salinas.[1] The primary facility is a 269-bed hospital with a daily in-patient census ranging from 120 to 130 patients. A clinic also is operated. The Hospital is constituted as a special district under California law and is governed by a five-member elected board. About 250 physicians are on the medical staff, providing emergency and other acute, speciality care.

The geographic range of the Hospital reaches from Moss Landing to the north, and to Greenfield in the south. Agriculture is the dominant industry in the area. Thousands of patients are treated by the Hospital each year, the large majority of whom are of Hispanic descent. Two other hospitals in the region are major healthcare providers. Natividad Hospital in Salinas is operated by Monterey County. Another hospital, Community Hospital of the

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[1]Background information has been drawn from the presentations of the parties and from the Hospital's website at: www.svmh.com.

Monterey Peninsula, is a non-profit organization in Monterey.

The Hospital's revenue is derived for the most part from fees and insurance reimbursements for patient care. Medical funding also is received. Non-operating revenue is derived from property tax payments and investment income.

As a workplace, the Hospital has nearly 1,600 employees. Of these, about 600 are on the nursing staff represented by the Union. Of the 600 nurses, approximately 480 are regular staff; the balance are per diem employees. The regular nursing staff includes roughly 75 percent working part-time; the remaining 25 percent are full-time. Both receive full health benefits. About 70 percent of the Hospital's nurses have worked there for 10 years or more. Many of the per diem nurses are employees drawn from the staffs at Natividad and other health care facilities.

Other employees at the Hospital include about 700 workers in a variety of service and technical classifications. They are represented by the National Union of Healthcare Workers (NUHW). A small number of craft employees are represented by Stationary Engineers Local 39. About 300 employees in managerial, supervisory, and administrative positions are unrepresented.

The labor agreement between the Hospital and the Union originally was set to expire in March 2013, but was extended for a year. Bargaining for a successor agreement took place throughout 2014, with an emphasis later in the year on a restructuring proposal advanced by the Hospital. Major issues in bargaining included wages, health benefits, and paid time off (PTO).

Healthcare is of particular concern to the parties because Salinas is in a geographic market without a traditional health maintenance organization, such as Kaiser, as a provider. As a result, coverage and treatment has been encouraged at the Hospital itself, at little or no cost to an employee and dependents. However, treatment occasionally is required in the nearby San Francisco Bay Area, with the Hospital picking up some or all of the cost, depending on the availability of medical services.

The Hospital's restructuring proposal, strongly disputed, has several parts. These include a reversal of the proportion of staff working full-time versus part-time, elimination of the assistant head nurse position and nearly all charge nurse assignments within the bargaining unit, and creation of a new nurse supervisor position outside the unit that would perform

administrative functions as well as some duties previously performed by assistant head nurses and charge nurses.

In the background to current labor relations are financial issues that have affected the Hospital's operations over the past several years. These issues have been reviewed and summarized in a March 2012 report issued by the California State Auditor. (SVM Exh. 8.) The report was highly critical of executive compensation and related practices, including the payment of several million dollars to a former chief executive and past vice-presidents. The Hospital experienced operating losses between 2009 and 2011, and efforts were made, with significant success, to reduce the deficits. As stated in the report:

> After a period of strong financial growth - its operating revenues increased by almost $79 million between fiscal years 2005-06 and 2008-09 - the Health Care System reported operating losses during fiscal years 2009-10 and 2010-11, sustaining an operating loss of $7.4 million in fiscal year 2010-11 alone. Some of the reasons for its declining financial situation are, according to management, high unemployment rates that resulted in fewer people seeking medical care, decreases in insurance reimbursements, and increases in the amount of income lost due to providing charity care.
>
> The Health Care System hired a consultant to review its operations and make recommendations for improvement. Subsequently, by offering incentives to resign and imposing involuntary separations, the Health Care System reported reducing staffing by 341 positions form July 2010 through October 2011. The Health Care System also reported estimated labor savings of nearly $44 million annually as of December 2011 and the implementation of 93 other cost-saving initiatives valued at $7.4 million as of September 2011, some of

> which are expected to be recurring. Our analysis of data for patient complaints and other measures of quality of care with either the Health Care System or the California Department of Public Health found no indication that the Health Care System's staffing reductions affected patient quality of care as reflected by such measures. (Id., p. 3; also see pp. 49-53.)

The State Auditor Report, while focusing on executive compensation, insufficient public disclosures, contracting procedures and conflicts, and other payment practices requiring reform, also considered employee benefits. In doing so, the Report reviewed healthcare and PTO in the following passages:

> The Health Care System provides all of its employees with generous health care and paid time off benefits. Employees are granted medical, dental, and vision coverage at no cost. Health Care System employees also have the option of receiving 100 percent free coverage for inpatient and outpatient medical services provided at the Health Care System hospital and urgent care clinic. In addition, employees' prescriptions are covered at 80 percent of the cost. According to a consultant's assessment of its operations in May 2010, the Health Care System's costs for its employees' health insurance are above the 75th percentile compared to other health care providers in California, and its employees' contributions are estimated to be only 3 percent of health plan costs. (Footnote omitted.) In addition, the majority of employees' medical claims are reimbursed at 100 percent of billed charges, and pharmacy benefit costs are above the national benchmark. The consultant's assessment included several recommendations to restructure the Health Care System's employee medical coverage. These recommendations included modifying the employee contribution strategy toward health and prescription plan costs and reviewing health plan designs for employees, such as vendor options for health care coverage.

> The Health Care System also provides its employees generous amounts of paid time off....The [consultant's] assessment recommended that the Health Care System review its paid time off practices and align them with standard industry practices. (Id., pp. 27-28.)

Evidence offered in the factfinding proceeding is consistent with the State Auditor Report. At the managerial level, under new executive leadership, the Hospital has rebounded in the past few years from a period of fiscal decline, increased its operating gains, started planning for capital infrastructure improvements required over the next decade or more, and trimmed staff, many through early retirements. The Union contributed to the Hospital's improvement by negotiating mid-term concessions, including partial deferral of wage increases. The parties aolso agreed to extend the bargaining agreement for a year.

The evidence demonstrates, however, that wages and benefits for employees remain an issue for the future well-being of the organization. At the Hospital, nurses rank in the 90th percentile of average pay compared to nurses at other hospitals in Salinas and elsewhere in northern California, including nurses at the University of California, San Francisco. (SVM Exh. 7, pp. 1-2.) This leading position also applies to step improvements in wages. (Id., p. 3.) At least until recent years, nurses have received negotiated wage increases that are comparable to or better than

other Hospital employees. (SVM Exh. 10.) A Hospital nurse at the Staff II level, which includes the largest group of nurses, is paid an average of $145,000 on a full-time, annualized basis. (SVM Exh. 9.) When overtime and other premiums and differentials are taken into consideration, nurses have comprised at least half of the 20 highest paid employees at the Hospital between 2012 and 2014. (SVM Exh. 11.)

Consistent with the favorable wages for Hospital nurses, they also have secured PTO, vacation, holiday, and sick leave accruals that outpace other northern California hospitals. (SVM Exh. 12.) Not surprisingly, given the relatively favorable employee wage and benefit package, the turnover for nursing staff is low and the number of applications for open positions far exceeds those available. (SVM Exhs. 13-14.)

2. Recommendations

After reviewing the record as a whole, and taking into account the factors identified under Section 3505.4(d) of the Government Code for bargaining disputes of this nature, the recommendations set forth below are provided for the parties. The recommendations are intended to enhance operational efficiency and fiscal stability for the Hospital while also

insuring that the professional, patient-centered nursing staff is fairly compensated. In this respect, special weight has been given to the interest of the public, the financial status of the Hospital, and comparative and overall wages, benefits, and other terms and conditions of employment.

The recommendations that follow are drawn from the last proposals submitted by the parties, although modifications have been made in keeping with the factfinder's perspective and evidence on the subjects in dispute. References to specific articles track provisions in the most recent bargaining agreement.

Several proposals by the parties seeking major changes are *not* recommended as they would amount to significant departures from the status quo without a showing that they are customary features in the field of labor relations or that they are tied to a comparable pattern in other bargaining units, internally or externally. Some aspects of the Hospital's restructuring proposals fall in this category, as do proposals by the Union that would expand or pyramid elements of compensation. Also, for some subjects, a mixed or compromise view is appropriate. For example, employee payments for health benefits, largely flat for several years, should be gradually increased in keeping with

rising costs for such benefits, but the Hospital's proposal for a major redesign of the health plan is more appropriately a subject for joint resolution. A suggestion about how to approach that prospect is included in the recommendations.

a. ***Term***

Under Article 47, the agreement should have a duration of five years, from March 15, 2014 through March 14, 2019.

b. ***Wages***

1. Under Article 10, for year one, there should be no increase on base pay. After the first year, cost of living raises are appropriate for base pay on the anniversary dates of the agreement, as follows: for year two, a 1.50 percent increase upon ratification; for year three, a 1.75 percent increase; for year four, a 2.00 percent increase; and, for year five, a 2.25 percent increase.

2. The Hospital's proposal for a new pay scale, viewed by the Union as a type of two-tier wage structure, is rejected.

c. ***Healthcare***

1. Under Article 22, the employee contribution for the lowest cost employee-only coverage should be fully paid by the employer. For other types of coverage, for employee-plus one and

for employee-plus two (or more), employee contributions should be increased 25 percent from current levels upon ratification of the agreement; 30 percent from current levels for the third year; 35 percent from current levels for the fourth year; and, 40 percent from current levels for the fifth year. Current contribution levels as of 2014 are $43.33 per month for employee-plus one, and $86.67 per month for employee-plus two.

2. The employee share for physician, professional and major medical costs should be increased from the current 80-20 percent allocations for the Hospital and for those covered, to 75-25 percent allocations, effective the third year of the agreement in March 2016.

3. Healthcare plan deductibles, currently at $100 per person, should be increased by 25 percent form the current level upon ratification of the agreement; 30 percent from the current level for the third year; 35 percent from the current level for the fourth year; and, 40 percent from the current level for the fifth year.

4. Upon ratification of the agreement, the parties should establish an eight-person Joint Labor-Management Benefits Committee (JLMBC), with four members appointed by each party. The JLMBC should meet at least quarterly to review health-related benefits and plan design, and to propose cost-saving measures. The JLMBC should recommend, for adoption by the parties, any

changes for the subjects covered in the paragraphs above and for other potential changes for out-of-pocket maximums, prorated employee contributions tied to FTE status, in-patient and out-patient services, and other professional care. Based on these recommendations, for healthcare savings to the Hospital for unit employees that exceed $1.0 million in a year, unit employees should receive a non-pensionable, taxable annual bonus of 10 percent of the excess savings, prorated on the basis of an employee's FTE status and paid by April 1 of the year following the savings.

5. No other health plan changes are recommended.

d. ***Paid Time Off***

1. Under Article 20, there should be no change for tiers 1 though 3. For other tiers, upon ratification of the agreement there should be a 10 percent reduction in the PTO accrual rate and a 10 percent reduction in the PTO cap.

2. Upon ratification of the agreement, employees who are within 100 hours of the PTO cap should have an option to cash out those hours at the employee's current rate of pay in lieu of using the hours.

3. Upon ratification of the agreement, employees who are within 100 hours of the PTO cap, but who, through no fault of the employee, are denied by management a requested opportunity to

use those hours in order to avoid exceeding the cap, should be permitted to bank the requested hours for future use, without regard to whether the employee exceeds the cap.

e. ***Restructuring***

1. The Assistant Head Nurse (AHN) and Charge Nurse (CN) positions should be merged into a combined assignment, but without layoffs, without a change in current duties, and without a loss of pay for the affected employees. Those holding the AHN position should be afforded the option of retaining that title or accepting a CN title.

2. Within 60 days of ratification of the labor agreement, and following a resumption of meetings at the department level, the Hospital should implement bidding for scheduling and assignment changes to provide for 75 percent of its nursing staff to work as full-time employees (.9 FTE or more), and 25 percent to work as part-time staff (.5 FTE to .8 FTE, except for employees holding a .4 FTE position covered by prior agreement of the parties). This should apply to the ICU, ER, and Outpatient units, and to other operations deemed appropriate by the Hospital.

3. The Hospital should expand upon the existing Float Pool, with an hourly premium as proposed by the Hospital, subject to retention of employees currently carrying out those

assignments, and cross-training those employees and others, to the extent necessary, to serve in the Float Pool.

4. Operational nursing divisions (for example, the Observation unit) and non-bargaining unit classifications (for example, Unit Shift Supervisors) may be formed, renamed, or relocated based on management's rights under Article 5, subject to 60 days notice to the Union, and, if requested, further negotiations over the impact of such managerial decisions.

f. ***Successorship***

Due to the length of the agreement and ownership turnover in the healthcare field, the labor agreement should include the successorship provision adopted by the Hospital and the NUHW in their most recent agreement.

g. ***Sympathy Strikes***

Under Article 37, in keeping with the important public service provided by the Hospital, the Union's "no strike" commitment in the labor agreement should include an express ban on sympathy strikes.

h. ***Professional Performance Committee***

1. Under Article 3, to more fully recognize the contribution of nurses to patient care, the Union's proposal for

arbitration should be adopted, although with advisory arbitration, not final and binding arbitration.

2. Nursing staff may submit "assignment despite objection" (ADO) forms to the committee for its consideration. No other recommendation is made regarding ADO's in the labor agreement.

i. ***Other Payment Provisions***

1. Under Articles 12, 19, and 29, the Hospital's proposals for a "when working" limitation should apply for certain employee pay and benefits; for example, for entitlement to overtime and shift differential, and for PTO and sick leave accrual.

2. Under Article 15, an employee who is working after being on-call should be paid 1.5 times regular pay, not double-time for time at work.

3. Under Article 27, the employee waiting period for the new retirement plan, otherwise agreed upon by the parties, should be eliminated, assuming it is legally permissible under the plan.

4. Under Article 13, there should be no "penalty pay" for missed rest periods.

j. ***Seniority***

Under Article 32, to maximize the contributions of available and experienced personnel, there should be no change to eliminate all previously accrued seniority for unit employees who accept assignments in non-unit Hospital positions and who subsequently return to unit positions.

k. ***Lift Teams***

To promote employee well-being by reducing the risk of workplace injuries, the Hospital should designate and train sufficient staff to serve on Lift Teams to be available for handling mechanized and other patient lifting devices.

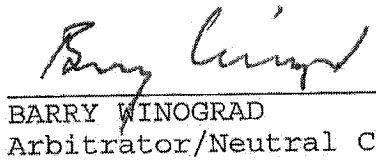
l. ***Other Terms***

1. All tentative agreements should be confirmed.

2. All other proposals should be be withdrawn, and previous terms continued, except as recommended.

3. All unfair practice charges with the Public Employment Relations Board should be withdrawn with prejudice.

Dated: April 19, 2015



BARRY WINOGRAD
Arbitrator/Neutral Chair

On the recommendations in the Factfinding Report:

ERNIE GONZALES
CNA
(Concur in part,
dissent in part)

MICHELLE CHILDS
SVMHS
(Concur in part,
dissent in part)