

1 Andrea L. Dooley, Arbitrator
2 5111 Telegraph Avenue #273
3 Oakland, CA 94609
4 (510) 719-3089
5 andrealdooley@gmail.com

6 **IN THE FACTFINDING PROCEEDINGS**

7 **PURSUANT TO HIGHER EDUCATION EMPLOYMENT RELATIONS ACT**

8 AMERICAN FEDERATION OF STATE,
9 COUNTY AND MUNICIPAL EMPLOYEES,
10 LOCAL 3299,

11 Union,

12 vs.

13 UNIVERSITY OF CALIFORNIA,

14 Employer.

Case No.: PERB Case No. SF-IM-3175-H

**FACTFINDING REPORT AND
RECOMMENDATION FOR SETTLEMENT
AFTER HEARING**

15 Chairperson: Andrea L. Dooley, Arbitrator
16 Employer Panel Member: Nadine Fishel, University of California Office of the
17 President
18 Union Panel Member: Seth Newton Patel, AFSCME Local 3299
19 For the Union: Claudia Preparata, AFSCME Local 3299
20 For the Employer: Kevin Young, University of California
21 Hearing Date: June 25 and 26, 2018; July 9 and 10, 2018

22 **BACKGROUND**

23
24 The University of California (University or Employer) and the American Federation of
25 State, County and Municipal Employees, Local 3299 (AFSCME or Union) are parties to a
26

1 Collective Bargaining Agreement (Agreement or CBA) for the Patient Care Technical Unit (PCT
2 Unit¹). The term of the Agreement was March 28, 2014 to December 31, 2017. Joint Exhibit 1.²
3 The Union provided the University with bargaining proposals on the articles on or about
4 February 1, 2017. JX 3. The University timely provided its bargaining proposals on August 31,
5 2017, and the parties met for the first time in bargaining for this unit on October 12, 2017. Id.
6

7 The parties met nine (9) times between October 12, 2017 and February 1, 2018, for a
8 cumulative seventy (70) hours, bargaining about at least forty-five (45) economic and non-
9 economic issues. The parties reached tentative agreements on twenty (20) articles but twenty-
10 five (25) issues remain in dispute. JX 3.
11

12 AFSCME declared impasse pursuant to PERB Regulation 32792(a) on February 2, 2018
13 and filed a Request for Impasse Determination and Appointment of a Mediator on February 20,
14 2018. JX 3. Mediation was conducted on two occasions with appointed mediators.
15

16 The appointed mediator informed PERB that mediation was unsuccessful, and PERB
17 appointed Arbitrator Andrea L. Dooley to chair a factfinding panel concerning the dispute. JX 4.
18 The parties properly selected their panel members. The panel convened factfinding hearings on
19 June 25 and 26, 2018, in Los Angeles, California, and on July 9 and 10, 2018, in Oakland,
20 California. Both parties presented facts through their presenters (listed above) and additional
21
22
23
24

25 ¹ The parties referred to this unit as the EX unit, but to avoid confusion with the abbreviation for
26 Employer Exhibit (EX), "PCT unit" is used throughout this report

² Joint Exhibit will be abbreviated JX in this report. Union Exhibit will be abbreviated UX.

1 documents and testimony. After the submission to the panel and consideration of the arguments,
2 the Chair makes the following recommendations.

3 **FACTFINDING CRITERIA**

4 The parties have stipulated the Factfinding Criteria to be considered in this matter are the
5 criteria set forth in California Government Code Section 3548.2.³ The panel has considered and
6 been guided by the following statutory criteria.
7

- 8 1. State and federal laws that are applicable to the Employer.
- 9 2. Stipulations of the parties.
- 10 3. The interests and welfare of the public and the financial ability of the public schools.
- 11 4. Comparison of the wages, hours and conditions of employment of the employees
12 involved in the factfinding proceeding with the wages, hours, and conditions of
13 employment of other employees performing similar services and with other
14 employees generally in public school employment in comparable communities.
- 15 5. The Consumer Price Index for goods and services, commonly known as the cost of
16 living.
- 17 6. The overall compensation presently received by the employees, including direct wage
18 compensation, vacations, holidays, and other excused time, insurance and pensions,
19
20
21

22
23
24
25 ³ The Higher Education Employer-Employee Relations Act (“HEERA”) is silent on the specific
26 factfinding criteria a panel is bound to consider so the parties agreed to use the criteria set forth in the Educational
Employment Relations Act (“EERA”).

1 medical and hospitalization benefits, the continuity and stability of employment, and
2 all other benefits received.

- 3 7. Such other factors, not confined to those specified in paragraphs 1 through 6,
4 inclusive, which are normally and traditionally taken into consideration in making
5 such findings and recommendations.
6

7 State and Federal Laws Applicable to the Employer

8 The hearing was conducted in compliance with Government Code Secs. 3560 et seq.
9 (HEERA) and the time limits were met or waived by the parties. The panel was apprised of the
10 University's exemption from certain state labor laws.
11

12 Stipulations of the Parties

13 The parties stipulated to the joint exhibits, including the Agreement and the Joint
14 Statement of the Issues. JX 1-2.

15 The Interests and Welfare of the Public and the Financial Ability of the Employer

16 The University did not make an "inability to pay" argument or present evidence about
17 any financial inability to pay employees under any proposal by either party.
18

19 AFSCME presented several research studies in support of their proposals to demonstrate
20 that it is in the interest of the public to improve wages, benefits and working conditions for their
21 members. These studies included "Ready to Work, Uprooting Inequity: Black Workers in Los
22 Angeles County," by the UCLA Labor Center, the Los Angeles Black Worker Center and the
23 UCLA Institute for Research on Labor and Employment; "Pioneering Inequality: Race, Gender
24 and Income Disparities at the University of California," by AFSCME Local 3299; and "Still a
25
26

1 Better Bang for the Buck: An Update on the Economic Efficiencies of Defined Benefit Pension
2 Plan,” by the National Institute on Retirement Security. UX 4, 5 and 14.

3 AFSCME also submitted two state reports in support of their proposals, including the
4 California State Auditor Report 2016-125.1 concerning the University’s contracting practices
5 (UX 3), and “University of California Retirement Options Task Force Report to the President,
6 Released January 15, 2016.” UX 10. AFSCME also submitted a March 21, 2016 letter from Lt.
7 Governor Gavin Newsome to University President Janet Napolitano and the Board of Regents
8 concerning the proposed defined contribution plan. UX 12.

9
10 Comparability

11
12 The parties rely on different comparability measures to formulate their proposals. The
13 Employer relied on wage and compensation surveys conducted by Allied for Health, Integrated
14 Health and Mercer Survey at anonymous peer hospitals. Maure Gardner, Senior Director of
15 Healthcare Employee and Labor Relations, testified that these surveys show salary and total
16 compensation for job classifications similar to those in the PCT Unit. She said that although
17 survey participants are not identified, she believes that Cedars-Sinai, Kaiser, Providence, Dignity
18 and Children’s’ hospital systems all participate in the systems. In her analysis, PCT employees
19 are paid at market rate.

20
21 The University also presented data about healthcare costs gathered from anonymous peer
22 organizations gathered by Willis Towers Watson. EX 3. Susan Pon-Gee testified about that the
23 survey conducted by Willis Towers Watson likely included organizations such as Stanford
24 University, Notre Dame University, John Muir Health System, and Virginia Mason University.
25 The University asserts that their wage proposals were aimed at being competitive at mid-market,
26

1 and not to be a market leader in terms of wage rates and salaries. This principle informed their
2 proposals, based on the assessment of their market competitors.

3 The Union's proposals are based on a review of other bargaining units in the University
4 of California Health System, including employees covered by the agreements the Employer has
5 with the California Nurses Association (CNA) and the University Professional and Technical
6 Employees (UPTE). The Union also presented evidence about wages for comparable job titles at
7 Kaiser Permanente (KP). The Union selected KP because they have comparable locations in
8 Northern and Southern California, have a similar statewide healthcare system, and draw from the
9 same labor pool as UC.⁴ AFSCME prepared the table below to show the gap between UC
10 Medical Centers and the KP contracts in Northern and Southern California for the specific job
11 titles with the highest head count at each location.⁵

	Min Average	Mid Average	Max Average	Average
UC Davis	-18%	-14%	-10%	-14%
UCSF	-7%	-3%	4%	-2%
UCLA	-5%	-4%	-4%	-5%
UCSD	-9%	-12%	-11%	-11%
UC Irvine	-13%	-15%	-18%	-16%

18
19 The Union has also provided evidence about the agreements in other California hospital
20 systems which have unionized employees in similar job classifications, including Service
21 Employees International Union – United Healthcare Workers West (SEIU-UHW) and Tenet
22

23
24
25 ⁴ UX 2, pp. 95-98.

26 ⁵ UX 2, p. 97. This analysis is based on the Union's analysis of comparable job titles that they identified, and which have the highest head count at the UC facilities.

1 Healthcare Corporation, SEIU-UHW and Dignity Health, National Union of Healthcare Workers
2 (NUHW) and California Pacific Medical Center, Kaiser Permanente and the Coalition of Kaiser
3 Permanente Unions, as well as other SEIU-UHW agreements. UX 19.

4 Consumer Price Index

5
6 The Union presented evidence about the Consumer Price Index for Urban Wage Earners
7 and Clerical Workers (CPI-W), which was not disputed by the Employer, showing that the
8 forecasted increase in the CPI-W for California workers is projected to be 16.3% between 2017
9 and 2022. UX 2, p. 83. For workers in San Francisco, the projected increase is 17.1%. Id.

10 Overall Compensation

11
12 Neither party presented evidence about the cost of the total compensation package they
13 proposed. Therefore, the panel reviewed the wages and benefits proposals in concert with one
14 another but do not make recommendations based on an overall compensation model.

15 Other Factors

16
17 The panel considered all the facts and arguments presented at the hearing by both parties.

18 **ISSUES AND RECOMMENDATIONS**

19 After a review of the facts and arguments presented by both parties, the Chair
20 recommends the following terms for settlement of the Agreement. These recommendations have
21 been crafted to achieve parity with other hospital systems in the industry. The University's
22 representative at the hearing on July 26, 2018, said: "What everyone else gets, AFSCME gets."
23 This principle has been applied to both parties in these recommendations. Both the Union and the
24 Employer could take measures to gain parity with other unionized healthcare employers in
25 California.
26

1
2 Article 1 – Access

3 There are a number of different issues in both parties’ proposals that relate to Union
4 Access. AFSCME wants expanded access to member data and new employee orientation. The
5 University wants to stop printing paper copies of the Agreement.
6

7 AFSCME’s request for access to employee information exceeds what many individual
8 employees may be willing to share on an individual basis as a matter of privacy, and also
9 exceeds what might be considered demographic information about the bargaining unit. **A**
10 **reasonable settlement of this issue would be for the University to agree to provide the**
11 **demographic information about the bargaining unit at each facility without disclosure of**
12 **individual employee personal information beyond what is already provided.** This
13 demographic information will help AFSCME better understand the needs of its members and
14 will improve their ability to represent their interests.
15

16 The University proposed to end printing physical contracts on the basis that doing so is
17 costly and unnecessary. However, many people still rely on and prefer the printed version of the
18 Agreement (including the Chair), and it is less susceptible to error and hacking. **The Chair**
19 **proposes that the University print a small number of Agreements for distribution to union**
20 **and labor relations staff at each location; that the parties agree on a secure website where**
21 **the electronic copy will be posted; and the University and AFSCME will distribute a joint**
22 **communication about the website in electronic and postcard form to all bargaining unit**
23 **members and management staff who supervise or work with the bargaining unit.**
24
25
26

1 The scope of Union Access during New Employee Orientation is in dispute. The
2 Employer's proposal is a compromise between the existing language and the Union's more
3 expansive request. Fifteen-days' notice and thirty minutes of presentation during new employee
4 orientation are appropriate under the circumstances. However, the Union should not have to
5 request information about scheduled employee orientations more than once. As a matter of
6 practice, the responsible department who schedules new hire orientation should provide notice to
7 the Union. This recommendation may be superseded by the agreement of the parties or an
8 arbitrator's award. If contract language is needed to achieve that outcome, the Chair proposes:

- 9 **1. The University shall notify AFSCME no less than ten (10) days in advance of**
10 **scheduled campus-wide/medical center-wide/laboratory-wide employee**
11 **orientations, if any.**
- 12 **2. At the Employee's new employee orientation, if any, packets of information**
13 **supplied by AFSCME shall be distributed to new bargaining unit members.**
- 14 **3. AFSCME shall be permitted to meet with the new bargaining unit members for**
15 **not less than thirty minutes immediately after new employee orientation**
16 **sessions, if any, for the purpose of sharing information with the new bargaining**
17 **unit members. Locations are not required to convene new employee orientation**
18 **if they do not already do so, although they are permitted to do so if they choose.**
19 **By mutual agreement, AFSCME may present information at some other time**
20 **besides the thirty minutes following employee orientation if the parties' agree**
21 **that it is more convenient and efficient to do so.**

1 Article 2 – Agreement

2 The University’s proposal on this article is status quo, plus a proposed sixty-day notice to
3 the Union when the Employer wants to abolish classifications. The Union proposes to add two
4 paragraphs about student employees “undermining” the bargaining unit and proposes to add a
5 sixty-day notice on changes to classifications. The Union also seeks to add language about new
6 technology.
7

8 The Union bears the burden of persuasion to demonstrate the impact of student
9 employment on the overall bargaining unit but did not present any evidence about the scope of
10 student employment. The recognition clause of the Agreement explicitly excludes students from
11 the bargaining unit. Obviously, the Union has an interest in maintaining its bargaining unit.
12 However, there was no evidence that students are eroding the size or scope of the bargaining
13 unit. The University averred that student employees are often members of the bargaining unit,
14 but there was no evidence of this either. Based on a lack of evidence in this area, **the Chair**
15 **recommends the status quo on language about student employees.**
16
17

18 The Union proposes to add language about the adoption of new technology and its impact
19 on the bargaining unit. The Chair recommends that New Technology be addressed in the
20 Development and/or Lay-off sections of the Agreement, rather than in the recognition clause.
21 The impact of technology on the bargaining unit will vary substantially in each instance and
22 should be handled in the appropriate manner. The Chair addresses New Technology
23 recommendations in each of those sections.
24

1 The parties have reached a Tentative Agreement on 60-day notice with respect to the
2 abolition of classes. **The Chair recommends applying that language to subsection E –**
3 **Reclassification to ensure consistency of process.**

4 Article 4.a. – Health and Welfare

5
6 The positions of the parties on Article 4.a. are best found in the Joint Issues Statement:

7 The University proposes language which eventually requires AFSCME members
8 to provide the same employee premium contributions for Health Net Blue and
9 Gold and the Kaiser Plans for pay bands 1 and 2, as similarly situated employees
10 within the University system. The rates for the above listed plans have been
11 frozen for AFSCME at rates which were effective for the 2014 plan year. The
12 University further proposes to include language in the Agreement which clarifies
13 and defines employees’ right and obligations under the Family Medical Leave
14 Act, the California Family Rights Act, and the Pregnancy Disability Leave Act.

15 AFSCME has rejected the University’s proposed waivers and has proposed to
16 maintain employee premium contribution rates and co-pays at their current levels.

17 **JX 2.**

18 Currently, unit members, like all other employees, contribute to the cost of their medical
19 coverage. The amount they contribute is based on two factors: the rates in the Agreement
20 (currently the 2014 rates) and their pay band. EX 3, p. 7. 93% of PCT unit members fall under
21 Pay Bands I and II. There are four pay bands, and they are adjusted annually based on CPI. Id.

22 Healthcare coverage for the PCT unit is largely subsidized by the University. In 2018,
23 93% of the annual premium is paid by the Employer. Ex 3, p. 9. Overall, healthcare costs are
24 lower for the University relative to other employers, and as a result, employees pay lower
25 contributions than employees at similar employers. On average, UC employees (as a whole) pay
26 an average of \$1,100 per year less than Market. EX 3, p. 10.

1 The University does not propose to dismantle the current system of subsidizing employee
2 health coverage by pay band. Rather, the University wants to use updated rates and increase cost-
3 sharing in this unit to be commensurate with other employees in the same pay band. In the view
4 of the Chair, given the overall high costs of health coverage, the heavy subsidies in place and the
5 fact that employees already contribute to their coverage, this is not an unreasonable proposal.
6

7 Along with retirement and wages, health and welfare benefits are a significant issue
8 between the parties. While the parties did not present evidence about total compensation, it's
9 clear that any settlement of health and welfare benefits will depend on the settlement of the other
10 two issues. **The Chair recommends that the party adopt the Employer's Health and**
11 **Welfare Benefit proposal but accompany that with a larger wage increase in the year it is**
12 **implemented.** For example, if the Employer elects to implement for the 2018-2019 Plan Year,
13 then a higher wage increase should be paid at the same time. If the Employer defers to 2019-
14 2020, the wage increase can also be deferred.
15

16 The Employer did not present any evidence about the change in coordinating leave
17 benefits, therefore **the Chair recommends the status quo on the issue of leave benefits.**
18

19 Article 4.b. – Retirement and Savings Plan

20 The University proposes dramatic changes to the retirement plans available to PCT unit
21 members and healthcare costs for unit retirees. These will be addressed separately.
22

23 *Retirement Choice Program – DC Choice*

24 The University proposes to expand the UC defined contribution plan, called DC Choice,
25 to the PCT Unit. DC Choice, also called Savings Choice, became available in 2016 to other
26 faculty and staff. The University contends that DC Choice might be more appropriate for “the

1 younger, more mobile portion of UC's workforce who don't plan on working for UC for five
2 years." EX 2, p. 8. The University notes that 32% of PCT Unit employees leave UC within three
3 years and 41% leave before vesting in the defined benefit plan. EX 2, p. 9.

4
5 The University proposes to add DC Choice to the Retirement Choice Program, whereby
6 newly hired employees could opt-in to the DC Choice Plan, vesting after one year of
7 participation. If the new employee fails to opt-in, they would default after 90 days to the defined
8 benefit plan. The University is also seeking approval from the IRS to permit employees who
9 initially select DC Choice to switch to the defined benefit plan at five years of service.

10
11 The Union objects for a number of reasons. First, AFSCME already agreed to a pension
12 structure in 2013 in order to preserve pension benefits, paying 9% instead of 7% in employee
13 contributions in order to preserve certain benefits. The University's proposals amount to another
14 attempt to cut pension benefits for unionized employees who have made it clear that this is a
15 priority to maintain. The proposed system was not recommended by the University Task Force
16 but is the President's proposal. The DC Choice model benefits higher paid employees and short-
17 term employees. AFSCME argues that the DC Plan is costlier, shifts the risk to employees,
18 jeopardizes the defined benefit plan and was already rejected by the state legislature.

19
20 Because the DC Choice plan has not been available for very long, it's very hard to
21 forecast its impact on the existing defined benefit plan, its value as a recruiting tool or whether
22 PCT unit members would benefit from and invest wisely through the DC Choice plan. AFSCME
23 has demonstrated, through its actuarial consultant and the report they provided, that the DC
24 Choice plan is not without risks to the PCT unit. AFSCME has also made sacrifices in previous
25 contracts to preserve the pension benefit, and for good reason: it benefits their members, the
26

1 University's long-term employees. The University is concerned with relatively short-term
2 employees, but the Union is the bargaining representative for its members, not the University.
3 What AFSCME has heard from its members is that they want benefits that favor longevity,
4 retention and long-term employees.
5

6 **Given the value of the existing defined benefit plan to the PCT unit, measured**
7 **against the risks and uncertainties associated with the DC Choice plan, the Chair**
8 **recommends the status quo on the Retirement Plan benefits.**

9 *Retiree Health Benefits*

10 The University proposes to unfreeze retiree health benefit costs paid by retirees by
11 eliminating Article 4.b (B)(4), which froze the premium rate for the term of the Agreement.
12 AFSCME opposes this change on the basis that retirees already move automatically into Pay
13 Band II at retirement for the calculation of benefit costs but live on a fixed income for the
14 duration of their retirement.
15

16 As noted in the discussion of Article 4a, it is reasonable to expect some increase to
17 healthcare benefit costs when the costs are already shared and subsidized. Given that low-income
18 retirees may be particularly harmed by premium increases, **the Chair recommends that the**
19 **rates be unfrozen, but that the shift from Pay Band I to II should be based on actual**
20 **income, and not be done automatically. Therefore, lower income retirees may see a**
21 **reduction in or greater subsidy to their premium. The Employer can reasonably request**
22 **tax information to confirm placement in the Pay Band to ensure it is being applied**
23 **appropriately.**
24
25

26 Article 5 – Contracting Out

1 The University’s proposal on “contracting out” maintains the status quo. The Union
2 proposes to eliminate contracting out and to “insource” work that is currently contracted out.
3 Because the Union proposes to change the status quo, they bear the burden of demonstrating that
4 the status quo is unworkable, and they have presented ample facts in support of that position.
5

6 The Union demonstrated that contracting out is a system-wide problem which has been
7 criticized at the state level. In a report dated August 22, 2017, the California State Auditor
8 concluded that, “the Office of the President has not ensured that university locations follow its
9 policy for justifying their decisions to displace university employees and it needs to ensure that
10 university locations comply with its policy when contracting for services.” UX 3. Although the
11 UCOP policy has not been followed, it stands to reason that the existence of the policy means
12 that the Employer is aware that there should be limitations on contracting out if it impacts
13 University employees.
14

15 It is also clear that limiting “contracting out” is a healthcare industry standard. The Union
16 presented collectively bargained language from six other California-based hospital systems that
17 prohibit or limit contracting out, with clear exceptions for temporary staffing through registries.
18 UX 19.
19

20 It is difficult to infer the scope of contracting out at the University’s facilities because the
21 University did not provide documents responsive to the Union’s information request about its
22 contractors at all locations. Per the State Auditor, University locations also failed to give
23 information to the Office of the President for review. UX 3.
24
25
26

1 Based on the information provided, however, it is clear that contracting out is pervasive
2 and may have an impact on the bargaining unit. Therefore, **the Chair recommends adopting**
3 **the Union’s proposal along with the following caveats:**

- 4 **1. The Employer may subcontract for registry employees to augment staffing on a**
5 **temporary basis or when no qualified individual has applied for a posted**
6 **position and the position remains vacant.**
- 7 **2. The Employer may subcontract for Special Services where there are no qualified**
8 **bargaining unit employees to perform the work.**
- 9 **3. The time period for in-sourcing should be extended to permit existing contracts**
10 **to expire so that the Employer won’t incur any special costs, and so that the**
11 **parties can meet and confer at each location about how to implement the change**
12 **to returning work to the bargaining unit and/or identifying whether each**
13 **contract meets an exception to the new sub-contracting rule.**
- 14 **4. If it does not already do so, the grievance procedure shall apply to Article 5 –**
15 **Subcontracting.**

16
17
18
19 Article 6 – Development

20 The University proposes to maintain the status quo on Article 6. AFSCME proposes the
21 following changes to the Article:

- 22 1. Reimburse staff for the cost of licensure/professional association membership.
- 23 2. The Employer cannot deny an employee’s request for leave unless there is
24 “operational necessity.”
- 25 3. Employees are permitted to accumulate unused leave.

- 1 4. The University will provide a reduction in student fees for employee dependents.
- 2 5. The parties will create a Training Fund.
- 3 6. The parties will create a career ladder program.

4
5 The Union presented witnesses to testify about the current state of workforce
6 development and how difficult career mobility and taking education leave are for bargaining unit
7 members. The University did not present evidence about its current training and career
8 development programs.

9 It is the Chair's observation that professional development is an important shared interest.
10 If the parties worked jointly to develop training programs and career ladders for bargaining unit
11 members, it would have the effect of increasing trust between the parties while also deepening
12 staff skills and capacity, which benefits both the Employer and employees.

13
14 AFSCME's training fund proposal is ambitious and forward-thinking. However, given
15 the costs and operational hurdles associated with implementing such a program on a statewide
16 basis, the parties would be better served at this juncture by **a joint workforce development**
17 **committee that identifies career ladders, hard-to-fill positions, new technology, and**
18 **educational resources, while doing forecasting and engagement (for example, working with**
19 **Workforce Investment Boards, schools of allied health and other healthcare workforce**
20 **development organizations). The findings of this committee could be implemented mid-**
21 **contract and would better prepare the parties for negotiating next steps in Development.**

22
23
24 The Chair recommends that the parties draft language to achieve the proposal above. In
25 addition, the parties should agree to **permit accumulation of educational leave for one year,**
26 and that the Employer agree to **limit denial of educational leave to operational necessity for**

1 **education related to employees’ obtaining or maintaining their required licensure or**
2 **certification.**

3 Article 8 – Duration of Agreement

4
5 The previous agreement was for a 3-year, 9-month term. The Union proposed a three-
6 year term, effective January 1, 2018 through December 31, 2020. The Employer proposed a five-
7 year term for the Agreement. The Employer’s argument in favor of a five-year agreement is that
8 it will promote labor peace and will eliminate the need to return to bargaining less than two years
9 from now.

10
11 Labor peace and stability are noble goals in an industry as in-flux as healthcare is, but
12 bargaining serves as an outlet for resolving issues and disputes that have built up over the life of
13 the contract. Other outlets for resolving disputes are the grievance and arbitration procedure and
14 joint committees to resolve issues mid-contract. In concert with the recommendations throughout
15 this report to extend grievance and arbitration and to create and empower joint committees, I
16 recommend the following five-year term of the Agreement:

17
18 **The terms and conditions of this Agreement shall be in full force effective January**
19 **1, 2018 through December 31, 2022, unless the University and AFSCME mutually agree in**
20 **writing to extend any or all of the terms and conditions of this Agreement.**

21 Article 10 – Health and Safety

22
23 AFSCME has proposed to that employees have the right to refuse unsafe work
24 assignments, that all health and safety provisions be subject to grievance and arbitration, and
25 “proposed that compliance and correction shall not be based on whether or not funds have been
26 budgeted. JX 2. The University proposes that an employee can refuse a work assignment which

1 they reasonably believe is abnormally hazardous while it is being investigated and that
2 Environmental Health & Safety Department (“EH&S”) staff will make the determination as to
3 whether the assigned task is safe, but it will not be subject to the grievance procedure.
4

5 AFSCME introduced some evidence about health and safety issues and contends that
6 staffing levels fall firmly within the purview of safety. Notably, neither party referred to the
7 many health and safety regulations that both employees and employer are legally obligated to
8 follow. In addition, employees are already permitted to call California or federal Occupational
9 Safety and Health Administration (Cal-OSHA and OSHA), can refuse unsafe work assignments
10 until they can be investigated, and cannot be retaliated against for filing a complaint or
11 requesting an investigation. The University, meanwhile, is required to provide safe and healthy
12 working conditions, to maintain an EH&S Office for purpose of investigation and compliance
13 and prohibited from retaliating against employees who make a good faith refusal based on safety
14 problems. This is a statement of existing law. The Agreement could be strengthened to make
15 these matters clearer, but it isn’t in dispute that legal compliance is required.
16
17

18 Two issues stand out: (1) neither party feels that the Health and Safety Committees are
19 effective and (2) whether staffing levels constitute a safety issue is hotly disputed by the parties,
20 and unlikely to be resolved by collective bargaining. **The Chair recommends that Health and
21 Safety Committees meet regularly, perhaps every month or every other month, rather than
22 at the request of the Union, and EH&S at each facility should participate in the H&S
23 committee meetings to clarify what is not only legally required but also what industry
24 standards are around a particular task or department. Labor and management from each
25
26**

1 **department should participate in the committee.** For example, the lab manager and their staff
2 will both be able to speak about lab safety issues.

3 With respect to the question of what is subject to the grievance and arbitration procedure,
4 it is customary that violations of the Agreement are arbitrable, including whether the Committee
5 is being properly convened and concerning disciplinary matters that arise from a refusal to
6 perform an allegedly unsafe act, while Health and Safety issues should be adjudicated by
7 regulatory authorities, and overseen by EH&S. **Therefore, the Chair recommends a narrower**
8 **prohibition on grievance and arbitration of Section 10 disputes.**

9 Article 11 – Holidays

10 The University proposes to maintain the status quo on Article 11 - Holidays. The Union
11 proposes to increase the number of holidays for which premium pay is paid by two, adding
12 Martin Luther King, Jr. Day and December 24.

13 The Union bears the burden of demonstrating that the change in the status quo is
14 warranted but did not put on evidence to support the need for change. Therefore, **the Chair**
15 **recommends the status quo for Article 11.**

16 Article 12 – Hours of Work

17 Both parties propose changes to Article 2- Hours of Work. The Joint Statement of Issues
18 (JX 2) summarizes their proposals in this way:

19 AFSCME has proposed language to improve scheduling notice and rights, to
20 require additional pay for missed rest and meal breaks, and to clarify overtime
21 procedures.

22 The University proposes language which defines planned and unplanned
23 overtime. Furthermore, the University seeks to only allow senior qualified
24 employees who have not been subject to any disciplinary action for the prior
25
26

1 eighteen (18) months to apply for a lateral shift assignment change. The most
2 senior qualified shall not be offered the position when any of the following
3 exceptions occur: (1) near relative conflict; (2) reasonable accommodation
4 requires otherwise; or (3) the individual has been in the shift assignment for less
5 than 12 months.

6 JX 2.

7 Both parties presented evidence about missed rest and meal breaks. AFSCME
8 demonstrated that employees miss rest and meal breaks because of staffing or workload issues,
9 and that the University is exempt from the state law requiring breaks that applies to all other
10 healthcare employers. The University demonstrated that local staffing committees and
11 management are empowered to deal with staffing and missed breaks issues, and that the state law
12 does not apply to them.

13 The state law governing missed rest breaks and meal periods, California Labor Code
14 226.7, is commonly understood as a penalty against an employer, rather than a windfall to the
15 employee. The state law is intended to ensure that employers provide their employees with the
16 rest breaks, meal periods and recovery periods, with the understanding that the penalty will
17 encourage employers to staff accordingly rather than incur the additional cost associated with
18 failing to do so.

19 It is undisputed that the University benefits from their exemption from Labor Code 226.7,
20 in that it saves them money and provides a financial advantage that their competitors do not
21 have. It's also clear that the Agreement, in Article 12 (F) and (G), requires the Employer to
22 provide meal and rest breaks. The Union seeks to have the penalty automatically applied.
23 Unfortunately, the scope of the problem is unknown, and resolution of the issue has been
24 delegated to a staffing committee process that seems unnecessarily cumbersome.
25 Unfortunatly, the scope of the problem is unknown, and resolution of the issue has been
26 delegated to a staffing committee process that seems unnecessarily cumbersome.

1 Therefore, the Chair **recommends that disputes about missed meal periods and rest**
2 **periods be subject to the grievance and arbitration procedure** so that these disputes can be
3 resolved more quickly at the local level. It will also aid both parties to learn about the scope of
4 the problem for future negotiations.

5
6 The University bears the burden of demonstrating the need for their proposed changes
7 and no evidence was presented about the issue of lateral shift change assignments. The Union did
8 not present evidence about their other proposed changes, either. Therefore, **the Chair**
9 **recommends status quo on all other matters related to Article 12.**

10 Article 15 – Layoffs and Reduction in Time

11
12 Based on a review of the proposals provided by the parties, it appears that both AFSCME
13 and the University have proposed changes to Article 15. The University proposes to add D.
14 Emergency Layoffs. The parties summarize AFSCME’s proposed changes in the following
15 manner:

16
17 AFSCME has proposed that the University make every effort to avoid layoffs,
18 including offering the laid off employees vacant positions for which they can be
19 trained. AFSCME has also proposed that the University agree to strengthen recall
20 and rehire rights, honor seniority for temporary layoffs, and that seniority for
21 layoffs be assessed based on larger, fixed departments, rather than smaller,
22 changeable layoff units.

23 **JX 2.**

24 There was testimony from two witnesses about a layoff that occurred. Monica DeLeon,
25 an employee at the Irvine facility, testified about a layoff that occurred in October 2016 that
26 affected a large number of employees in the PCT unit.

 Paul Kronheim, a Labor Relations manager at Irvine, also testified about the layoff, as
well as the need for the Emergency Layoff provisions. Kronheim said that, of the 175 employees

1 who received layoff notices, the actual number of employees who lost their job was much lower.
2 According to him, there were 68 people in the PCT unit affected, none in the Service unit, and
3 that most layoffs applied to management employees. Kronheim said that a recall process was
4 utilized and that only six employees who wanted to return were unable to do so. He further
5 testified that the emergency layoff language was needed to deal with fluctuations in census, and
6 that the need for such language was “fairly rare.”
7

8 The evidence presented did not demonstrate that there is much need for changes to this
9 provision. Layoffs are always traumatic, and employers typically avoid them because of the
10 damage to employee morale, staffing uncertainty and the cost associated with the overall
11 operational changes. **The Chair recommends that the parties negotiate “call-off” language**
12 **instead of “emergency lay-off” language, because it better reflects the actual practice of**
13 **sending home or cancelling staff when the census falls well below expected levels.** Typical
14 call-off language includes seniority, other work/project assignments and requests for volunteers
15 before people are sent home. Second, the Chair recommends that the Layoffs and Reduction in
16 Time language be subject to the grievance and arbitration procedure, where the Union cannot
17 challenge the decision itself but can grieve whether the contract has been followed for a
18 particular layoff. Beyond that, the parties have not demonstrated via the factfinding process that
19 other changes are needed.
20
21

22 Article 16 – Leaves of Absence

23 AFSCME proposes extensive changes to Article 16 which would result in the provision
24 of paid parental leave and allow employees to use accrued sick leave for additional parental
25
26

1 leave. The University objects to this proposal. Both parties agree that the article should be
2 amended to provide for further legal compliance.

3 AFSCME’s proposal, while admirable, would come at a considerable cost to the
4 University and should be considered as a part of total compensation. Without having any facts
5 about the cost or impact of this proposal, or how AFSCME proposes that it be funded, it is
6 impossible to assess the viability of such a program. Notably, California State Disability does
7 cover a portion of the bonding time associated with the birth or adoption of a child. Therefore,
8 **the Chair recommends the status quo.**

9
10 Requesting the use of accrued sick leave for additional bonding time with a newly born
11 or adopted child is a reasonable request. The University is already able to account for the amount
12 of accrued sick leave that needs to be dealt with in budgeting and staffing, and the use of sick
13 leave in this way can be coordinated with Family Medical Leave and state Pregnancy Leave. **The**
14 **Chair recommends that the University consider the merits of permitting this use of sick**
15 **leave.**

16 Article 17 – Leaves of Absence for Union Business Leave

17
18 Both parties have proposed changes to Article 17. Neither party presented any evidence
19 about this provision of the agreement and therefore it is difficult to evaluate the purpose or
20 impact of the proposed changes. This matter is also under consideration in the California state
21 legislature (SB 1085) and therefore subject to change. Therefore, **the Chair recommends the**
22 **status quo.**

23 Article 22 – Non-Discrimination in Employment

1 Both parties have proposed changes to Article 22. The proposals fall into three
2 categories: expanding the non-discrimination/lactation support language, sexual harassment
3 dispute resolution procedures and whether the University will comply with Immigration and
4 Customs Enforcement (ICE) actions against employees. All three of these categories have public
5 policy considerations that are not limited to the PCT bargaining unit. While there are strong
6 arguments in favor of all these proposals, the University can and should consider their
7 application to the entire University community, and then bargain over the effects of these
8 policies with their employees' bargaining unit representatives.

9
10 The exception to this analysis is the question of whether grievances must be held in
11 abeyance while a sexual harassment matter is being investigated. **The grievance procedure is**
12 **solely within the purview of the Agreement (and not available to the larger University**
13 **community) and the Union should not have to waive their right to use this procedure while**
14 **the University exhausts its own legal obligation.** No examples were provided about this matter
15 and it is unclear what "legal standard" the University relies on to support their argument for
16 automatically putting grievances in abeyance.

17
18 **The Chair recommends that the language of the Agreement, including the Side**
19 **Letter, be status quo, unless the parties agree to change the existing language.** For example,
20 expanding the categories of individuals covered by the non-discrimination language, and the
21 lactation support language, are both beneficial to PCT unit members as well as other employees.

22 Article 25 – Parking

23
24 AFSCME proposes to freeze parking rates at all facilities for the duration of the
25 Agreement and seeks an increase in the subsidy for public transit. The University argues that
26

1 they are prohibited from using taxpayer money to fund parking because it is an auxiliary benefit
2 for which all staff, students and guests pay the same amount depending on the rates charged at
3 each facility.

4
5 While there was some evidence that parking is an expense that impacts the lower paid
6 unit members, there was no evidence about why this unit should receive this benefit as a part of
7 their total compensation. No doubt parking costs also impact students and visitors who are
8 obligated to pay the same rates as the PCT unit at each facility.

9
10 There was also evidence that at least one facility (Davis) subsidizes public transit at a
11 higher rate than the one requested by AFSCME, and no evidence about public transit options and
12 subsidies at other facilities.

13
14 Parking is an ancillary benefit, the cost of which is governed by local factors, including
15 space availability and local laws. AFSCME should consider the cost of parking as a part of a
16 total compensation proposal, but the University is not obligated to freeze rates for this bargaining
17 unit alone. **The Chair recommends the status quo.**

18 Article 27 – Payroll Deductions

19
20 AFSCME proposes to update dues deduction and organizational security language and to
21 establish voluntary dues deductions for retirees. The University proposes to maintain the current
22 contract language. Neither party presented any evidence about this Article, so **the Chair**
23 **recommends the status quo.**

24 Article 30 – Positions and Appointments

25
26 According to the Joint Issues Statement,

1 AFSCME has proposed that the University offer full-time work to current
2 employees prior to hiring new employees. AFSCME has proposed that the
3 University hire an additional 1,200 career employees, create a local hire program
4 for disadvantaged workers, and follow 'fair chance' hiring and background check
5 procedures. AFSCME has also proposed language to facilitate conversion of
6 limited appointment and per diem employees when they work 1000 hours and
7 proposed to update language to prevent the University from transferring career
8 work to limited appointment or per diem positions.

9 The University proposes to maintain the status quo.

10 JX 2.

11 It is unclear from the evidence how big a problem non-conversion of per diem and
12 limited appointment employees is throughout the University system. Several employees testified
13 about having limited appointments, and for some, having fewer hours was not by choice, while
14 for others, it was preferable. Employees who want to work more hours, when the work is
15 available, and no overtime will be incurred, should be able to do that work. The University,
16 meanwhile, does need some flexibility in scheduling in order to deal with expected fluctuations
17 in patient census and demand.

18 As with subcontracting, the reliance on limited appointment and per diem employees
19 when full-time work is available should be corrected when employees are available and
20 interested in full-time work. The Union did not demonstrate that this is a system-wide problem
21 but should be permitted to do so by filing grievances when employees are not being converted,
22 or where per diem employees are having hours cut to prevent conversion, where work is still
23 present. The evidence presented did not meet the standard that the Union must meet to change
24 the status quo at this time. Therefore, the Chair recommends strengthening the language through
25 enforcement measures available in the grievance procedure.
26

1 As for hiring quotas and local hiring programs, those are admirable, but evidence was not
2 submitted to support their implementation. The Chair notes that “ban the box” is state law, and as
3 with other labor laws, the University should not unfairly benefit even if they are excluded from
4 its application. As expressed by the legislature, public policy in California strongly favors “ban
5 the box.” Whether additional language is needed to implementing existing law or hiring practices
6 is best left to the parties to decide, and **the Chair recommends the status quo in the absence of**
7 **agreement.**

8
9 Article 38 – Sick Leave

10 AFSCME proposes that employees may only be required to submit documentation of
11 illness only after the second consecutive day of sick leave usage, and the University proposes to
12 maintain the current contract language. Neither party presented any evidence about this Article,
13 so **the Chair recommends the status quo.**

14
15 Article 39 – Staffing Committee

16 According to the parties’ Joint Issues Statement, “AFSCME has proposed that the
17 University provide notice of and the opportunity to meet and discuss significant increases in
18 employee workloads, proposed that staffing committee disputes be subject to the arbitration
19 procedure, and proposed to bring square footage cleaning guidelines up to date.” JX 2. The
20 University proposes to maintain the current contract language and replace paragraph A.8.

21 AFSCME presented extensive individual testimony about the challenges facing staff who
22 believe that their departments are understaffed, over-staffed with sub-contractors, or preventing
23 staff from taking meal and rest break periods. The University is correct that there is an existing
24
25
26

1 local process for dealing with those problems. The University expects that the Union should be
2 advised to take advantage of the existing process.

3 The Chair recognizes that staffing is an issue that will vary from facility to facility and
4 department to department, based on the services provided and the patients served. Therefore, any
5 deviation from the status quo of management’s right to govern staffing must be justified. At a
6 minimum, the University must follow the terms of the Agreement, and be subject to the
7 grievance and arbitration procedure when the Union believes they have not. The University has
8 already agreed that questions about the Staffing Committee should be subject to grievance and
9 arbitration, even if the staffing decisions are not. For example, the Union can allege a facility has
10 failed or refused to convene or participate in a staffing committee but cannot dispute a staffing
11 decision.
12
13

14 **The Chair recommends that missed meals/breaks and subcontracting be subject to**
15 **the grievance and arbitration procedure, and that staffing committee be convened at least**
16 **two times each year (not solely at the Union’s request and more often if necessary) at each**
17 **facility to review staffing issues.**

18
19 Article 40 – Transfer/Promotion

20 AFSCME proposes to strengthen seniority as a factor in transfer and promotion
21 decisions. The University proposes to maintain the status quo.
22

23 At hearing, the Union put on extensive evidence that long-time employees are
24 constrained in their career mobility because factors beyond their members’ control govern hiring
25 and promotion decisions and because they don’t have access to training opportunities needed to
26

1 advance in their careers. Management decides unilaterally who is more qualified and can rely on
2 other factors, like favoritism, to promote employees.

3 Management argues “the University must retain its management right to make hiring
4 decisions based on the qualifications of the applicants, not the length of service s/he has with the
5 University.” JX 2.

7 The University misstates AFSCME’s position. It is clear that the Union only seeks to
8 have seniority play a role in determining who is given a vacant position when choosing from
9 among qualified candidates. Article 40 B(1)(c)(3). states, “By qualified internal career applicant,
10 in seniority order in accordance with Section A of Article 35 – Seniority.” JX 1. The proposals
11 for the remainder of the section also call for “qualified” candidates. At hearing, the University
12 referred to hiring the “most qualified” candidate; however, “most qualified” is a subjective
13 standard which does not occur in the Agreement. If the University wants a “more qualified”
14 candidate, then they should institute a career ladder with job descriptions which require higher
15 qualifications, skills or experience.

18 The principle of seniority is a cornerstone of the union’s value to its members. Seniority
19 promotes long-time service, deeper skills and experience and a more loyal workforce. All these
20 factors benefit the Employer, as does increased career mobility. **The Chair recommends that**
21 **the parties agree to include seniority as the tie-breaking factor when two qualified internal**
22 **applicants are being considered for the same position. Further, for the reasons stated in**
23 **other sections, the University should agree to remove limitations on the grievance and**
24 **arbitration procedure.** The University contends, “If there are problems, the Union can raise
25 them at a Labor-Management Committee meeting, which they underutilize.” JX 2. The Chair
26

1 notes that labor-management committees should be joint committees; their failure to function as
2 intended is the responsibility of both parties.

3 Article 44 – Wages

4 The parties' wage proposals are best summarized as follows: AFSCME proposes 6%
5 annual, across-the-board increases (for three years), to maintain the current step system, to add
6 longevity pay for employees at the top step, to increase differentials and to create a 1% market
7 equity pool. The University proposes a 2% lump-sum payment for 2018 after ratification, and
8 subsequent on-step within-range increases and lump-sum payments for employees above-range
9 in the subsequent four years, for a five-year contract. This amounts to a 2% per year increase.
10 The University also wants to discretion to individual wage rates for selected classifications at
11 selected locations.
12
13

14 For a five-year agreement, the University would need to provide annual increases of
15 3.26% to track the California projected CPI of 16.3% over the same time period. **The Chair**
16 **recommends that the parties agree to 3.25% increases in each year of the Agreement,**
17 **except for the year in which healthcare premium costs to employees are increased. That**
18 **year, the University should pay an increase of 4.25%. The Union, and not the Employer, is**
19 **the bargaining representative for its members, and therefore the University should not**
20 **have sole discretion to grant wage increases for select groups or locations but can make**
21 **bargaining proposals to the Union to create that outcome. An equity pool might be another**
22 **way to have the desired effect of compensating employees who have been traditionally**
23 **undercompensated. Differentials should remain status quo, and the University should**
24
25
26

1 **consider lump-sum payments for employees who have been above-scale for three years or**
2 **more.**

3 With respect to step increases, the Chair makes three proposals. Proposal A would be to
4 include the step increases as part of wage increases to reach the overall recommended increases,
5 and also increase differentials, create an equity pool and agree to a longevity payment. Proposal
6 B is that they continue to be paid as they have in the past, as a separate increase from the annual
7 wage increase but other wage enhancers such as differential and longevity remain status quo as
8 well.
9

10 Other Issues

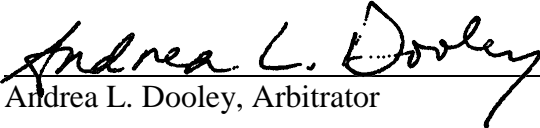
11 All matters not addressed herein should remain status quo, unless the parties mutually
12 agree to other terms.
13

14 //

1 **CONCLUSION**

2 It is the hope of the Chair that these recommendations will be used by the parties to
3 negotiate a settlement to the current impasse. The Panel Members' Position Statements are
4 attached to this Report.
5

6
7 Dated: August 6, 2018

8 
9 _____
10 Andrea L. Dooley, Arbitrator
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

AFSCME RESPONSE TO FACTFINDING REPORT

The factfinding panel chair's recommendations endorse substantial changes consistent with AFSCME Patient Care Technical (PCT) proposals to: end widespread contracting out; reject the University's risky 401(k)-style opt-out scheme; maintain the retirement age at which employees receive the maximum defined benefit; pay band retiree health care rates based on income; provide for substantial annual across-the-board wage increases; maintain the guaranteed, experience-based step system, with additional compensation for employees who reach the top of pay ranges; and make numerous non-grievable, non-arbitrable provisions of the agreement subject to grievance and arbitration procedures.

With respect to contracting out, the panel chair finds that, "The Union demonstrated that contracting out is a system-wide problem which has been criticized at the state level...it is clear that contracting out is pervasive and may have an impact on the bargaining unit." On retirement, the chair writes, "Given the value of the existing defined benefit plan to the PCT unit, measured against the risks and uncertainties associated with the DC Choice plan, the Chair recommends the status quo on the Retirement Plan benefits."

Recommendations fall notably short, however, on a few major fronts. The instant report fails to support: maintenance of longstanding protections against calling off career employees from scheduled shifts; improved job security through additional alternatives to layoffs; solutions to address chronic, statewide understaffing while protecting against discrimination; enhance non-discrimination protections related to work authorization; concrete steps to enhance employees' access to education and development opportunities; updated payroll deductions language consistent with the law; and continued freezing of active employee and retiree health care premiums. As the preeminent public University system, and largest employer in California after the State and Federal government, the University of California must set an example when it comes to job security, social mobility, non-discrimination protections, pay equity, and retirement security provided to its PCT employees.

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

LAYOFFS AND REDUCTIONS IN TIME

Whether termed "emergency lay-offs" or "call-offs", giving the University sweeping new power to send career employees home with little or no notice would be a blow to PCT employees' already tenuous job and income security. Career employees have already faced mass layoffs at a University system that is uniquely positioned to avoid such extreme measures. The employer does not need additional avenues to lay off career employees—it needs to offer additional alternatives to layoffs. AFSCME strongly dissents on a recommendation to bargain call-off language, as well as on the absence of recommendations to: create additional alternatives to layoffs, enhance the significance of seniority for layoffs, as well as to improve provisions covering recall and rehire rights.

POSITIONS & APPOINTMENTS

As testified to by numerous witnesses, often through tears, University medical centers and campuses are severely understaffed across the state, employees suffer workload-related injuries, and many long-term employees are denied a path to full-time, career positions. AFSCME dissents on the absence of a recommendation that the University offer part-time employees the right of first refusal for full-time positions, improve limited and per diem employee conversion rights and ratios, and make meaningful hiring and non-discrimination commitments via a targeted local hire program.

NON-DISCRIMINATION

While the panel chair recommends against the University's proposal to limit access to the grievance and arbitration procedures in sexual harassment cases, AFSCME dissents on the absence of a recommendation to extend contractual immigration and sexual harassment-related protections consistent with State law and other University agreements, respectively. As the chair notes, "there are strong arguments in favor of all these proposals."

DEVELOPMENT

While the panel chair recommends provisions to improve employees' access to education and development leave, and recommends that the University participate in identifying career ladders, hard-to-fill positions, and educational resources, AFSCME dissents on the absence of a recommendation for more concrete mechanisms to advance career development—such as University training fund contributions and a meet and confer process for career ladders.

HOURS OF WORK

AFSCME dissents on the absence of a recommendation to provide pay for missed meal and rest breaks, consistent with State law and the University's agreement with CNA-represented nurses, as well as the absence of a recommendation to improve scheduling seniority and security.

PAYROLL DEDUCTIONS

AFSCME dissents on the absence of a recommendation to update payroll deductions language consistent with current law.

HEALTH CARE & RETIREE HEALTH CARE

AFSCME dissents on the absence of a recommendation to control employees' substantial health care costs by maintaining freezes on employee premiums for Kaiser and Health Net Blue & Gold for pay bands I and II. And while the panel chair recommends pay banding retiree health care rates based on income, AFSCME dissents on the absence of a recommendation to freeze retiree premiums.

WAGES

While the panel chair takes a significant step in the right direction toward bridging the great divide between the parties' wage proposals by recommending annual across-the-board increases that range from 3.25% to 4.25% per year, maintenance of experience-based 2% steps, and additional compensation for employees on top steps, AFSCME dissents on the absence of a specific recommendation for across-the-board increases sufficient to guarantee PCT employees a living wage that can support their families, additional step increases for employees at the top step, and increases to shift and weekend differentials. PCT witnesses lined up to give the panel

detailed and emotional accounts of the painful decisions they are forced to make in order to make ends meet on what UC pays.

Dated: August 3, 2018

A handwritten signature in blue ink, appearing to read "Seth Newton Patel". The signature is fluid and cursive, with the first name "Seth" being the most prominent.

Seth Newton Patel

AFSCME Panel Member

University of California's Panel Member Position

Addendum to the Panel Chair's Report

The University has reviewed the Panel Chair's Report and submits the following concurrences and dissents to each finding and recommendation at issue in the UC-AFSCME 3299 Patient Care Technical Bargaining Unit Impasse.

Article 1 – Access and Union Rights – The University concurs with the Panel Chair's Finding and Recommendation with respect to providing information, as long as such information is required under California state law Assembly Bill 119. The University dissents in part with the Panel Chair's Finding and Recommendation regarding printing of the contract. It is well settled that contract printing is not a mandatory subject of bargaining. The University could agree to provide a "blue line" copy to the Union for printing as well as distribute a joint communication for the bargaining unit and supervision in both email and paper form regarding the electronic location. The University and AFSCME are bargaining language for inclusion in a successor agreement reflecting the Edna Francis Decision regarding New Employee Orientation.

Article 2 – Agreement - The University concurs with the Panel Chair's Findings and Recommendations with respect to continuing the status quo for student employees. In the context of a full negotiated Agreement, the University could concur with the Panel Chair's Findings and Recommendations for a 60 day notice in Subsection E – Reclassifications.

Article 4A – Health and Welfare Benefits – The University concurs with the Panel Chair's Findings and Recommendations with respect to the Health Benefits rates. The University shall address the Wage increase associated with the change under Article 44 – Wages.

Article 4B – University Retirement and Savings Plan – The University dissents with the Panel Chair's Findings and Recommendations regarding continuing the status quo and only offering the bargaining unit a defined benefit plan. The employees in the bargaining unit ought to have the option of making up their own mind on the value and type of retirement plan they want to select. The DC Choice Plan offers options. The Union could advise the employees on the options, but to not provide the opportunity for making the choice is problematic. The Panel Chair's recommendation did not discuss the adoption of the PEPR cap. The University reiterates its position that the cap must be included in any settlement. The University dissents with respect to the recommendation on retiree health premiums. In the last round of bargaining, UC agreed to a retiree health freeze for one contract cycle ("the life and duration of the Agreement") in order to get a settlement. This clause had a defined sunset period. The freeze on retiree health premiums does not apply to any other group of University employees, represented or non-represented. Thus, while the Panel Chair's recommendation to actual income may have merit, with respect to fairness, there are many University retirees paying the current rates and not getting an additional subsidy. Retiree health is not a vested right. The cost of retiree

health is determined by the Regents who remain the fiduciaries of the plan. The proposal would leave the plan short. To provide the Patient Care Technical bargaining unit a benefit no other University employees enjoy is simply unfair, especially when 60% of the bargaining unit is in pay band 2 and an additional 10% is in pay band 3. Moreover, as the Panel Chair concedes, the University would need to monitor the post-retirement income levels of PCT unit retirees to determine what premium they should pay. This requirement would be extremely cumbersome and simply unrealistic.

Article 5 - Contracting Out – The University dissents with the Panel Chair’s Findings and Recommendations, which outline when contracting out would be permissible. The list is too restrictive and does not allow for the same level of flexibility in the current contract language. The University also dissents with respect to allowing its decisions to contract out to be grievable and arbitrable. Article 5 already contains a dispute resolution mechanism in 4.c. - Complaint Procedure, which AFSCME has failed to use properly, filing only half a dozen complaints over the three and a half year term of the Agreement. Contrary to AFSCME’s assertions, the University is not violating the substantive contracting out provisions.

Article 6 – Development - The University concurs with the Panel Chair’s Findings and Recommendations generally and will consider whether to adopt the finding of the establishment of a Workforce Development Committee process to provide for further progress during the life of a full negotiated agreement. The University, however, dissents from the Panel Chair on permitting the accumulation of educational leave for one year or any limit on operational necessity denials. The employees in the bargaining unit must maintain required licensure and/or certifications and the University assists them in maintaining those licensures/certifications. The University encourages employees to use their educational leave time. While a joint committee may provide an avenue to create career ladders and open opportunities, employees are provided ample time to ensure required licensures and/or certifications stay current and active.

Article 8 – Duration – The ultimate duration of the contract will be determined by the parties based on the overall economic package; however, the University concurs with the Panel Chair’s recommendation for a longer agreement providing for labor peace and stability.

Article 10 – Health and Safety – The University concurs with the Panel Chair’s Findings and Recommendations with respect to the involvement of EH&S in safety committees. However, like much activity at the University, drilling down to safety issues must be controlled at the departmental level based on the function performed. Committees do meet regularly at some locations. The University has held committees when requested by the union and the union has failed to show otherwise. The arbitration procedure is not in need of revision. Few health and safety grievances are filed at all, let alone go to arbitration. Nevertheless health and safety is everyone’s concern and responsibility and the University concurs with the concept of improvements, where necessary.

Article 11 – Holidays - The University concurs with the Panel Chair’s Findings and Recommendations.

Article 12 – Hours of Work - The University concurs with the Panel Chair’s Findings and Recommendations, provided all the recommendations are adopted as a whole for the entire article and in the context of a full negotiated agreement.

Article 15 – Layoffs and Reduction in Time - The University concurs with the Panel Chair’s Findings and Recommendations.

Article 16 – Leaves of Absence - The University concurs with the Panel Chair’s Finding and Recommendation to amend the article for legal compliance and continue the status quo. However, the University dissents with respect to the Panel Chair’s recommendation that the University provide the use of sick leave for baby bonding. Clearly, sick leave and vacation leave may be used to pay salary for leaves. Baby bonding leave is covered via vacation leave already and the University insists that remains appropriate.

Article 22 – Nondiscrimination in Employment – The University concurs with the Panel Chair’s Findings and Recommendations for continuing the status quo with the additional proposals on all gender restrooms and lactation support, which the University already proposed. However, the University dissents from the Panel Chair’s recommendation on how grievances are handled. The University has enacted a comprehensive Sexual Violence Sexual Harassment Policy that must be consistent for the organization as a whole. The Employer should not have to engage in two investigations – one through the Title IX process and one through the grievance process. The Title IX investigators are the experts on both the Policy and the law and should be the investigators when such claims are raised. Following the investigation, if there is an arbitration, an arbitrator will have the authority to determine whether, given the established facts, there was a contract violation. The Title IX Office investigation should be the exclusive means of establishing the relevant facts.

Article 25 – Parking – The University concurs with the Panel Chair’s Findings and Recommendations to continue the status quo, which includes the Parking Appendix and its capped percentage or dollar increases per year.

Article 27 – Payroll Deductions – The University concurs with the Panel Chair’s recommendation. The University and the Union will continue to meet to discuss the effects of the Janus decision and other state regulations in order to update the Payroll Deduction article appropriately.

Article 30 – Positions/Appointments – The University concurs with the Panel Chair’s recommendation to keep the status quo and revert to current contract language.

Article 38 – Sick Leave – The University concurs with the Panel Chair’s recommendation to keep the status quo and revert to current contract language.

Article 39 – Staffing Committee - The University dissents with the Panel Chair’s Findings and Recommendations regarding staffing committees, mainly because these committees are locally based and convened usually on a departmental level. To hold two per year per department at each UC location is burdensome and unnecessary. However, the University supports convening such committees at the union’s request, including more than twice per year, if requested.

Article 40 – Transfer/Promotions - The University partially concurs with the Panel Chair’s Findings and Recommendation to use seniority as a tie-breaking factor when two equally qualified internal applicants apply for the same position. However, the University must maintain the current contract language with respect to the non-grievability of managerial hiring decisions.

Article 44 – Wages – The University partly concurs and partly dissents with the Panel Chair’s Recommendations and Findings on salary increases:

The 3.25% a year recommendation could be part of an overall negotiated agreement, if all other terms were resolved. While adding an additional 1% in the year in which the health care rates are increased may or may not be agreeable, the University understands how the Panel Chair arrived at such a conclusion.

With all due respect, the Panel Chair relied excessively on the Kaiser rates. While Kaiser is an important health care comparator in California, it is only one of many of the University’s competitors. The other problem with relying on Kaiser is its organizational commitment to be the industry leader and pay top wages. While the University does compete with Kaiser, the compensation philosophy (as expressed by UC witnesses) is to define market within a range with a 10% variance either above or below the surveyed titled. Using Kaiser as the sole comparator, as the Chair’s report does, only skews the results and adds a false factor into market rates.

The University continually surveys the market using external compensation data from reliable health care industry specialists, such as Allied for Health, to ensure salaries remain competitive. The University’s wage proposal is fashioned from reviewing market data in each of the markets where the five health systems are located throughout the state. Using benchmark classifications in the bargaining unit, the University can compare its salaries to other hospitals.

The Panel Chair agreed with the union’s reliance upon the Consumer Price Index (CPI) for California to support the argument that the University’s proposed increases were insufficient to keep pace with inflation. However, CPI is only one indicator and it has never been the sole factor

for the University in presenting wage proposals. Rather than focusing on the cost of living, the University's compensation program focuses on the cost of labor.

With respect to steps, the University respects the Panel Chair's position that the step structure should continue, provided it is a recommendation and not a right, as the union asserts. If the University were to accept the Panel Chair's recommendation including steps, it would raise the recommended increase to 5.25% per year and 6.25% in the year of the health care increase. The market nor the union's evidence supports or justifies such high increases.

The Panel Chair's recommendation regarding an equity pool may have merit in addressing undercompensated classifications, if needed; however, the parties have agreed to equity pools in the past which proved difficult to administer.

The University concurs with the Panel Chair's recommendation to keep differentials status quo and compensate above scale employees with lump sums.

Respectfully Submitted,

Nadine Baron Fishel
Employer Panel Member
University of California, Office of the President

Date