

IN FACTFINDING PROCEEDINGS PURSUANT TO
CALIFORNIA GOVERNMENT CODE SECTIONS 3592 AND 3593

In the Matter of a Dispute between

University of California

and

**American Federation of State,
County & Municipal Workers, Local 3299.**

**REPORT OF
FACTFINDING PANEL**

April 19, 2008

PERB Case No. SF-IM-2767-H

FACTFINDING PANEL:

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APPEARANCES:

On behalf of AFSCME:

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I. BACKGROUND

A. Employer Description

The University of California is a public higher education employer within the meaning of Section 3562(g) of the Higher Education Employer-Employee Relations Act. The University operates five medical centers and several student health centers.

The University employs approximately 11,400 patient care technical employees represented by AFSCME Local 3299, which has been recognized as the exclusive representative of the unit under HEERA.

B. Procedural History

The University and AFSCME are parties to a collective bargaining agreement, effective July 2, 2004 through September 30, 2007. After compliance with the public notice provisions of the Government Code, the parties began negotiations for a successor contract in early August 2007. They declared impasse in December 2007. Sessions with a mediator were unsuccessful, and the matter was certified for factfinding.

The factfinding hearing was conducted on March 25 and 26, and April 1 and 9, 2008. The parties had a full opportunity to introduce relevant data and exhibits, and present oral testimony and argument. The parties agreed to present testimony on wages; overtime; paid time off; seniority for scheduling, layoff, and transfer and promotion; health benefits, and pension, but relied solely on written evidence in binders given to the panel for the remainder of the issues. The panel met in executive session on April 9 and 10, and by conference call on April 15, 2008.

II. ANALYSIS AND RECOMMENDATIONS

The panel has based these recommendations on some of the factors commonly used in factfinding and similar to those listed in Government Code Section 3548.2 for consideration in factfinding in the public schools. Primary among those are 1) state and

federal laws that are applicable to the employer, 2) 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 for comparable employers, and 3) The overall compensation presently received by the employees, including direct wage compensation, leave, pensions, medical benefits, the continuity and stability of employment, and all other benefits.

At least two members of the panel join in a particular recommendation unless it is described as the Chair's recommendation.

A. DURATION OF AGREEMENT

This article is discussed first because of its relation to the economic proposals of the parties.

The parties both have proposed that the contract be effective for a three-year term. However, this is not as simple as it sounds. As discussed below, the parties may have been able to reach contracts without reopeners in the past because the Union, like other UC unions, largely waived its right to bargain over benefits changes. This time, however, the Union is unwilling to agree to any waivers, as discussed below. The University, for its part, administers benefit plans that have yearly changes and steadily rising costs. As the costs of health benefits are not known until a few months before they go into effect, the University is unwilling to agree to maintain either the same benefit plans or the same levels of employee contributions. UC is also anticipating that it will need to make changes to pension contributions in the near term, and is unwilling to guarantee that it will not require employees to begin contributing to their pensions again as they did in the past.

Nevertheless, the panel has attempted to make recommendations that would provide labor peace after months of contentious negotiations. The recommendations provide for a three-year agreement with reopener negotiations only if certain conditions arise.

B. WAGES

AFSCME Proposal: For the 2007-08 year, AFSCME proposes a \$15.00 per hour minimum wage (\$16.00 per hour for licensed titles), 10 percent market increase to all employees, who are currently on open pay ranges, and conversion of the current pay range system to a step system as follows:

Divide new range into steps that are 2.5% apart (10 steps or more if the range is larger)

Recognize Years of Service:

i. An employee moves one step per completed two (2) years of service for experience in the same job classification/series outside of UC up to the midpoint of the Steps Range of their classification.

a. Records now being used for determining hiring grids (for example job applications) by the Medical Centers for determining years of relevant experience will be used for this purpose.

b. A local labor management meeting within a month of ratification shall be set up to review any disputes regarding proper credit for outside experience. The University and the Union may mutually agree to extend the timeline

c. If the dispute is not resolved at the local level, within two months of ratification the University and AFSCME shall pick an arbitrator who will review all disputes over a full day of hearings. The arbitrator's determination shall be binding. The cost of the arbitrator will be equally split between AFSCME and the University. The University and the Union may mutually agree to extend the timeline.

ii An employee moves one step per completed year of service for experience in the same job classification/series since original hire date at UC. (Each employee will receive a minimum of 10% market adjustment pay increase.)

For the second and third years of the contract, AFSCME proposes 6.5% increases as well as the following step language:

Effective on the anniversary date of hire within the classification/series a worker will move to the next step on the wage scale.

For new employees, AFSCME proposes:

- i. An employee hired by UC under this Agreement shall start at the Start Step of the Step Range. However, if an employee has experience in the classification/series they shall be credited with one step per two (2) years of completed service or experience in the same job classification/series outside of UC, up to the midpoint of the Step Range of their classification
- ii. By mutual agreement between UC and the Union, employees may be hired at a wage rate above the midpoint of the Step Range in their classification.

University Proposal: The University did not claim an inability to pay higher wages. UC proposes maintenance of the open range system for the 2007-08 year and a variety of range increases from a minimum of 3.5% to as high as 15%, depending on the market conditions at each location of a medical center/campus. It also proposes some individual increases. UC's proposal would make increases effective on the date of agreement.

In the second year of the contract, UC proposes a transition to a step structure consisting of 2 % steps and a range width of approximately 24 percent. Employees would be placed on the structure on the closest step to their then-current rate of pay, or the next-higher step if there is no matching pay rate. At UCSF, where there already exists a step structure, that structure would remain with employees on their then-current steps. Based on market conditions, it would provide increases by title and location. Those at campus student health centers would be paid consistent with increases from the state budget act.

In the third year of the contract, UC proposes market-based increases at the medical centers, increases consistent with funding increases from the state budget act at the campuses, and a minimum one-step movement only to those employees who earned a rating of satisfactory or better on the most recent performance evaluation.

1. Steps

The current contract contains no step structure except for employees at UCSF; even at UCSF there is no language that requires progression from one step to another on any basis. The only language that governs where on the range an employee is paid is recent language that attempts to provide a remedy for employees who find that a newly hired employee in the same classification in the same hiring unit doing the same duties is being paid at least 5 percent more. Only if the difference is at least 5% higher can the

employee file a pay equity grievance. Equity issues are decided on the basis of such factors as years of experience, education, work history, knowledge, skills and abilities, appointment type, and assigned duties.

Despite contract language that requires the University to use the criteria listed above when setting the salaries of initial hires, AFSCME contends that UC uses no system for hiring into the range or moving people through the range.

In negotiations in 2005, the parties agreed to a sideletter to study the feasibility of a transition from the current open-range system to a step-system. The UC-AFSCME Step Committee worked with a mediator from the Federal Mediation and Conciliation Service. They conducted a survey using a methodology developed through consensus. They agreed upon a list of comparators “based on organizations to which the University loses employees, and organizations that UC and AFSCME identified as competitors.” They were able to collect data from 38 organizations on four benchmark patient care classes. Their findings in general were that 94 % of respondents had step systems. Of those, 88% provided for step movement based on time in the step.

UC, however, argues that movement through the step structure should be based on satisfactory performance on the most recent evaluation. It points out that health care professionals represented by UPTE have a performance-based step system.

AFSCME counters that below standard performance should be handled through the disciplinary system and that management can manipulate evaluations to control budgets. It asserts that, without automatic movement, employees have been hired at the bottom of the range and remained there throughout their careers, even when a new employee with no experience is hired at a rate 4.9 percent higher.

AFSCME presented some evidence that this has happened. Among Central Sterile Technician II employees at UCSF, one employee with 3 years of experience is currently making \$17.66 per hour even though the minimum hourly rate of the classification is \$17.01, and the only other person earning a lower rate is an employee with 1 year of experience at UC. An employee with seven years of experience is making \$18.10 hourly

while the only other employees at or below this rate are employees with one or two years at UC.

UC points out that the years of experience at UC could include years in another classification, but AFSCME explained that it could not obtain from UC a better set of data that would pinpoint start dates within a series or classification. While that might explain the discrepancy in a technician position, it less likely explains such differences in a less-skilled or entry-level position. At UCLA, the service partner classification has one of the five or six lowest starting salaries. A service partner with 5 years at UC is making \$10.61, while the range minimum is \$10.07 and other service partners making that rate have only 2 years experience.

AFSCME notes that UC nurses represented by CNA have had a step system with at least 2% steps and at least 10 steps per class since 2002. Nurses automatically advance one step per year of experience, not based on performance evaluations.

AFSCME proposes that employees be given credit for external experience when being placed on the proposed step structure. When the UC nurses moved from an open-range to a step structure, nurses were placed according to their years of relevant experience. UC counters that the determination of what constitutes relevant experience is more difficult in this unit, which has many classifications, some with no counterpart in other hospitals, or where the relevancy of experience is not clear.

The panel finds that the step placement system proposed by UC locks in any inequities that have occurred in hiring or salary administration. For example, among the service partners at UC, all three employees hired in the last year are already earning \$13.77 hourly, above the \$12.09 midpoint of the range. Only one service partner with five years at UC and employees with more than 11 years at UC are earning a higher wage. The two employees with 10 years at UC are making \$13.28 and \$13.14, respectively. The likelihood that all three of the employees came in with exactly the same experience relevant to being a service partner, that was equivalent to 10 years of experience at UC, is very low. It is more likely that the hiring manager was contending with market pressures when hiring the most recent employees and offered them higher

than midpoint pay, even though it is still paying others much less. The University's proposal would extend this inequity throughout the employees' tenure with UC.

Calculating relevant years of UC experience should not be too difficult. The panel agrees, however, that calculating relevant *external* experience for 11,400 employees would require for some classifications hours of research of past employment and hours of decision-making concerning the relevance of that experience. It would not be practical to expect that placement on the schedule could be accomplished any time soon; and it is likely more beneficial to most employees to begin moving up the steps soon rather than waiting while a complicated placement process is implemented. For employees who were hired above the minimum in recognition of their experience, a provision that retains an employee's higher rate of pay than would result from credit for years within a UC classification works to address this problem.

New employees should obtain credit for relevant experience in initial step placement. While the process will still require time, essentially the same decisions are being made during the hiring process when determining qualifications.

The industry standard, as found by the UC-AFSCME step committee, is for employees to progress through the steps based on length of service rather than performance.

With respect to the step system, the panel recommends:

- 1. The University shall, effective July 1, 2008, place employees on a step structure with an approximately 25 percent range, with 2 percent increments between the steps. Placement shall be determined by the employee's number of years in the classification at UC, with one year of service earning one step on the schedule.**
- 2. If the resulting placement is less than an employee's current salary, the employee shall be placed on the next-highest step closest to current salary.**
- 3. Beginning in 2008, for the duration of the collective bargaining agreement, on October 1, employees shall move one step for a year of experience.**

4. **New employees will be placed on the step schedule based on years of relevant experience up to the seventh step, unless the Union agrees that a new employee can be hired at a higher step.**

2. Market Wages

AFSCME contends that unit members need a 24 percent wage increase to reach market level. It reached this conclusion based on a comparison of the weighted average salary of the employees in the five largest classifications at each medical center with the weighted average of its estimate of what each UC employee in the classification would be earning if working at Kaiser Permanente. It estimated the Kaiser pay from employee experience, Kaiser pay schedules, and contract language concerning step placement. Calculated in this way, individual classifications show market lags ranging from 11% for a Pharmacy Technician II at UCSF to 58 percent for ___ Hospital Assistant I at UC Davis.

While AFSCME's method does attempt to compare apples (actual UC employees) to apples (the same employees if at Kaiser), it shows both the effect of automatic step movement and market salary rates. It therefore is not an accurate measure of market lag. AFSCME also provided another measure of market lag, however. It charted the minimum rate paid to an actual UC employee in each of the five largest classifications at each medical center to the published starting rate for similar classifications at Kaiser. The market lags ranged from 17 % for Senior Nursing Aides at UC San Diego and Patient Biller IIIs at UCI to 50% for Medical Office Service Coordinator IIIs at UCD and ___ Hospital Assistant IIIs at UCLA. The lowest pay for a Hospital Assistant I at UCD lagged the Kaiser rate by 70%. The major problem with this data, however, is that it is based on only one competitor system.

AFSCME provided testimony from several employees at different locations who described losing a significant percentage of staff over the recent past. In the UCSD operating room, five surgical technicians left over a three-year period and were not replaced. A respiratory therapist at UC San Francisco described how her classification has been short-staffed for 10 years. Traveling therapists hired for three months at a time

have constituted 1/3 to 1/2 of the respiratory therapists, except for a brief period of time after some wage increases in 2005. A radiologic technologist from UCLA described how 10 coworkers have left in 2 years. The department is sometimes staffed with half registry and traveler employees who are not familiar with the department.

UC contends that its wage increase proposal is based on market pay for particular classifications at each location. It gauges market rates based on an Allied for Health survey conducted by Future Sense, which is sponsored by four hospital associations in California. The AFH survey utilizes a questionnaire that has matching job positions in the same geographic area. A steering committee, including representatives from UC and other participating hospitals, establishes specifications and definitions for industry-recognized job positions, creating "benchmark jobs" that allow for a consistent analysis of data.

The resulting information is provided in the form of blind, weighted averages;¹ it does not break out information by each responding entity. In accordance with US Department of Justice and Federal Trade Commissions guidelines, where an average is reported, it is based on a minimum of five (blind) organizations. This requirement ensures that one employer cannot determine what another specific employer is offering, thereby preventing anti-competitive conduct. UC asserts that none of the participating employers have any influence or control over which employers choose to participate in the AFH survey.

The University requests salary data for facilities that have matching job positions in the same geographic area. It compares the midpoints of the salary ranges and the weighted average salaries. Using the survey data and such factors as recruitment and retention, UC makes its proposals for market raises. It contends that the differing markets and recruitment/retention issues call for different raises for different classifications in the various locations ranging from 3.5% to 15% for 2007.

¹ Use of Weighted Averages ensures that organizations have proportional representation based on the number of employees surveyed. The information provided by larger employers with more employees affects the reported data to a greater degree than the information provided by small employers with fewer employees.

The survey's results are different for some of the titles highlighted by AFSCME. For example, while AFSCME's calculations show a wage lag of 18% for Senior Vocational Nurses at UCLA, the survey shows a wage gap of only 2.3%. While AFSCME's calculations for a Medical Assistant I at UCD show a lag of 38 percent, the survey indicates that UC is paying 8.8% higher than the market.

AFSCME contends that the difference comes from the survey's definition of the market, which often includes hospitals that are not comparable to UC's medical centers. For example, the market for the survey results for Medical Assistant I at UCD include eight hospitals that are at least 150 miles from UCD Medical Center, such as hospitals in Eureka and in Crescent City, as well as two Kaiser facilities in the Sacramento area. To see how this affects the market data as defined by minimum pay rates, a comparison of UC's minimum pay rate of \$13.53 for a Medical Assistant I at UCD is somewhat lower than the survey minimum of \$16.29, but is much lower than the \$19.46 rate at the nearby Kaiser hospital.

UC points out that the market for patient care workers is much broader than the hospital systems that AFSCME likes to compare it with: Kaiser, Catholic Healthcare West and Sutter. However, in its Step Committee, it acknowledged the major relevance of the three systems to its market. At least 15 of the 38 employers the Step Committee surveyed were hospitals in one of the three systems.

AFSCME also points out that the survey provided to the panel is based on data collected in March 2007. Since that time, wages in Kaiser, Sutter, and CHW have risen, and step increases in all three systems have occurred. Data available to the panel chair indicates that raises of 4% to nearly 20% have occurred in various locations. Northern California Kaiser locations have raised pay about 7%. There are some exceptions, such as a 52% increase for CHW cardiology techs in the West Bay. UC acknowledges that Future Sense has estimated that the overall market has risen approximately 4% in the last year.

AFSCME also contends that, as a result of the blind data, the results of the UC survey are not verifiable. In fact, for any particular classification in a location, it cannot be guaranteed that the nearby Kaiser, Sutter or CHW facility responded to the survey, a

possibility that could greatly skew its results. There is evidence that this occurred in the survey. For example, for many classifications at UCD, including common positions such as surgical technician, the market was defined to include areas far beyond the Sacramento-Sierra area. A UC witness testified this indicates that the minimum five responses were not obtained in the immediate area. Yet there are 10 hospitals affiliated with Kaiser, Sutter or CHW in the immediate area. AFSCME also pointed out an instance in which the survey's weighted *average* was \$14.10 and the survey range *midpoint* was \$14.68, whereas the *starting* wages at the three systems were \$16.82, \$17.21, and \$20.95, higher than the averages. In addition, some survey markets are based on extremely broad areas. The survey figures for Patient Escorts at UCLA are based on data from all of Southern California, including the Inland Empire and Santa Barbara.

In sum, neither party's data is sufficient for the panel to calculate an overall market lag for this workforce. It is clear, however, that as the market has moved 4% in the last year, a minimum 3.5% increase would be inadequate to even keep up with market pay rates. UC contends that the 4% increase does not take into account the varying growth in market rates for different titles even in the same location. In some, UC contends, it is above the market average. The Chair finds that this assertion is difficult to verify, given the limitations of the survey discussed above. Moreover, even using the AHS survey, while 7 of the 26 surveyed titles at UCSF may be paid above the market average, another seven are lagging the market by more than 10%. At UCLA, only 9 of 22 surveyed titles are paid above the market average; the rest are below. At UC Irvine, the survey shows only 11 of 38 titles paid above the market average. At UCSD, only 13 of 32 are paid above the market average; eight are paid more than 10% below average.

UC contends that it is offering market-based increases where necessary. In fact, it has proposed some double digit increases in several titles at UCD and UCSD. But, it has offered nothing larger than a 5% increase at UCSF, where its own data show that 7 titles lag the market by more than 10%, and nothing higher than a 9% increase at UCI, where 10 titles lag the market by more than 10%. It must be emphasized that the number of titles that lag the market and the size of those lags would undoubtedly be higher if the survey were updated to reflect the increases that have occurred in the last year.

UC also contends that other aspects of compensation should be considered when looking at market rates. As discussed below, however, AFSCME has shown that other large hospital systems have free parking and offer a free health plan alternative that UC does not offer. UC's rich pension system is extremely valuable, and will benefit employees when they retire; but employees, especially those in lower wage jobs, need cash in hand to contend with increases in parking and health benefits. Also, to the extent that UC foresees the need to restart pension contributions, the weight of its rich pension in total compensation will begin to lessen, and its total market compensation will compare even less well to the market for this workforce.

The evidence indicates that, in general, an increase greater than 5 percent would be necessary to make a dent in the market lags that exist throughout most of the patient care workforce. However, in light of the panel's proposal to transition employees to a step system, which is likely to cost much more than the equivalent of 1% in salary increases, the Chair has limited her recommendation in this area.

UC contends that the raise should not be retroactive to October 1, 2007, because the parties should share the financial burden caused by protracted negotiations. It points out that, despite the expiration of the collective bargaining agreement, it has been paying for released time for Union negotiators while the Union has not had a financial incentive to reach agreement quickly. The panel believes that employees who do not receive regular raises share the burden of protracted negotiations. The Chair will make the raise retroactive to January 1.

For the second and third years of the contract, the panel recognizes that comparator's salary increases have not yet been determined in most cases. Information presented to the panel indicates that in the Southern California Kaiser system, salaries will have increased approximately 7% from October 2007 to October 2008, and another 3% on October 2009. In the Northern California area, salaries will increase 3% to 5% in October 2008 and another 3% in October 2009.

AFSCME contends that UC has plenty of revenues to meet its demands. Hospital revenues are the funding source of compensation for 95% of the patient care technical workforce. AFSCME contends that the medical centers' net income from 2003 to 2007 has grown from \$164.7 million to \$321.1 million.

UC does not dispute this financial status, but contends that its continued growth is unlikely and that its purposes and practices are different from other hospitals' business models. UC runs leading-edge medical centers with a broader scope of services than other large hospital systems. It is expensive to run these pre-eminent programs. Its medical centers have academic purposes as well as patient care functions, including teaching future health care professionals. At the same time, it is the safety net for those without insurance, unlike many of the other private systems. In addition, its patients are much sicker on the average than those in other systems.

Some of UC's funding comes from Medicare and Medicaid. However, the reliability of the source for the future is uncertain, since proposed federal rules would decrease the amount of Medicaid funding the university will receive.

For these reasons, the Chair will not recommend the raises that might be necessary to reduce the market lags that exist for most of the patient care workers. However, failure to raise rates at least as fast as the market will only exacerbate UC's retention and understaffing problems, as well as their reliance on expensive staffing alternatives such as short-term "travelers." The Chair's recommendations take into account these factors, as well as the recommendations below to implement overtime and on-call call-back pay.

UC has indicated that in future years it would bargain the cost of step movement when bargaining general salary increases or range increases. While this may make sense from a purely financial point of view, it does not recognize the different purposes for different types of raises. Step increases recognize increased experience that would likely be compensated in the market by a higher pay offer. Range increases recognize changes in market pay, and other salary increases may compensate for increases in the cost of

living. The panel will recommend that the step increases occur annually, and remain separate from other compensation considerations.

The Chair recommends that UC increase all ranges and the salaries for each employee by a minimum of 5% effective January 1, 2008. UC should implement higher increases in titles where it has proposed them.

The Chair further recommends minimum increases of 3.5 % on October 1, 2008, and 3% on October 1, 2009.

3. Minimum Wage

AFSCME's proposal for minimum wages of \$15.00 is based on a study by the California Budget Project that calculates the wage rates necessary for a modest standard of living for a single parent with two children. That study shows that the wage earner needs an hourly income ranging from \$23.03 in Sacramento to \$27.53 in San Francisco to live modestly without public assistance or charity. AFSCME contends that more than 9,000 unit members earn less. More than 2,400 patient care employees earn less than AFSCME's proposed \$15.00 minimum wage.

UC points out that the living wage ordinances enacted in several cities around the state do not approach the \$15.00 mark. The highest is \$11.03 in San Francisco for employers that provide health benefits.

The Chair finds that, unfortunately, none of UC's competitors have a minimum wage of \$15.00, although Kaiser may reach that point in 2009. While a decision to increase minimum wages is something that UC could agree to implement, this panel is limited in the criteria it can use for its recommendations.

The Chair leaves to UC's discretion whether to implement a \$15.00 minimum hourly wage.

C. BENEFITS

AFSCME-PCT employees participate in the University's systemwide health benefits program, which covers approximately 108,000 participants and 33,000 retirees. Currently, all eligible participants receive the same health and welfare benefit options at the same cost. Premium costs are determined based on salary level, choice of health plan and type of coverage (for example, employee-only coverage or employee and family coverage.) Historically, the University and each of its unions have negotiated language that allows UC to make annual changes to health and welfare plans and costs as well as changes to its pension plan. There have been meet and discuss obligations created by the prior agreements that have resulted in changes in employee contributions over the years and in the creation of four tiers (pay bands) for employee medical contributions, with those in the lowest pay band making the smallest contributions to health plan premiums.

In recent years, as health premiums have risen and the University has contemplated reintroducing employee pension contributions, the unions have begun to move away from the waiver language that was in each of their contracts. AFSCME's proposals reflect this change.

1. Health Benefits

AFSCME proposes that UC offer a comprehensive quality health plan for which the University will pay all premiums. It also proposes that the benefits of the existing plans be maintained and that employee contributions to the plans not increase through the life of the contract.

UC proposes no substantial change to contract language, which requires the University to treat AFSCME-PCT employees the same as other similarly situated employees and waives the Union's right to bargain over changes to health benefits. Alternatively, the University proposes to reopen the agreement solely to bargain over health benefits for calendar years 2009 and 2010.

AFSCME points out that Kaiser, CHW and Sutter each provide a free family health plan to their workers. UC notes that the Union has already agreed to the plans in

effect and the employee contributions for 2008. As it does not yet know the premium rates for 2009 and beyond, it is unwilling to agree to pay the full premium for any plan.

The University asserts it is unable to make a commitment to maintain current 2008 rates for the entire term of the proposed multi-year agreement because complex negotiations with health plan vendors occur annually for benefits to be provided in the next calendar year. Negotiations with plan vendors for 2009 premiums and the status of the state budget will not be known until late summer or early fall. Until negotiations with plan vendors conclude, the University does not know the terms of the benefit plans to be offered or the gross premiums that will be charged. While the University strives to maintain its current health plan vendors, the University or the vendor may choose to terminate its relationship with the University because of performance, vendor acquisition or other unforeseen circumstances. Without knowing for certain which plans will continue to be available or how much it will cost UC to maintain a health plan benefits structure similar to the 2008 plans, premiums, and the unknown state budget funding situation, the University is unable to make the types of commitments proposed by the Union.

UC asserts that maintaining waiver language would benefit both the University and AFSCME-PCT employees. It would serve to reinforce the University's philosophy to treat all similarly situated employees the same. It would ensure AFSCME-PCT's continued participation in the health benefits system, which is important both to the University and AFSCME's members because of the large number of participants in the system. It is also important in providing a uniform array of health and welfare benefit choices to all University employees for both recruitment and retention purposes. In the event the University decides to increase the costs or decrease the benefits available to AFSCME – PCT employees *only*, the current language gives the union the right to meet and confer over the proposed changes.

UC notes that in its recently concluded negotiations with California Nurses Association (CNA), the parties agreed to reopen the contract for 2009 and 2010 health benefits.

Pay band one covers the lowest-paid employees, and provides coverage to those employees who currently pay an average of approximately seven percent (7%) of the policy premium. Pay bands are indexed so that, in 2008, pay band one extends to \$45,000. The current employee contribution rates for a Kaiser family plan are \$18.86, and for a Health Net family plan are \$82.83. In pay band 2, the respective rates are \$100.88 and \$162.

The panel understands AFSCME's anxiety over its lack of control of health benefit costs — which rose dramatically in 2006 — and plans, as UC dropped Pacificare coverage last year. However, it appears to the panel that it is in the interests of the employees that UC be able to negotiate for all of its employees during benefit negotiations with the carriers. If units break away, they will have less clout in negotiations with the insurance carriers to design the most beneficial plans at the lowest cost. On the other hand, more protection from major changes to health plans and costs would allow the union more say in the eventual benefit program.

The panel recommends that the parties adopt language to the effect that:

There shall be no change in the health benefit plans or employee contributions for 2008.

The exceptions language in the current contract be amended to read: "The sole exceptions to the above shall be 1) any alterations proposed by the University which affect only bargaining unit employees, 2) any alterations proposed by the University which increase employee contribution rates by more than 10%, and 3) in the event that UC is considering not entering into contracts with Kaiser or Health Net. In such cases, the University agrees to meet and confer with respect to the proposed change.

2. Pensions

a. AFSCME proposes that UC continue the current pension and defined contribution retirement plans with the current benefit levels. It would add language that would require UC to make any necessary contributions to fund the pension plan. It would also require

UC to maintain the current level of retiree health benefits and add language that limits the payments toward retirement health benefits for employees in pay band one.

UC proposes continuation of current contract language that waives the Union's right to bargain over alterations in the pension unless the alterations would reduce retirement benefits of bargaining unit employees. As an alternative, UC proposes that the parties reopen the contract to bargain employee pension contributions.

As explained by UC, the University of California Retirement Plan (UCRP) is a defined benefit retirement plan that provides lifetime monthly income and other retirement and survivor benefits. UCRP participation is mandatory for all eligible faculty and staff; all of whom participate in the same plan. Generally, in order to qualify for monthly retirement income, a person must have at least five years of UCRP service credit and be at least 50 years old at the time of retirement. The monthly retirement income is determined by a formula based on the retiree's age, years of service credit, and the highest average salary during 36 consecutive months. The formula does not factor in the amount contributed to the Plan over the years.

The UCRP historically has been funded through contributions from the University and employees, as well as from investment returns. In about 1990, contributions to UCRP were suspended because of a funding surplus. At the same time, employee contributions of approximately 2% were redirected to The University of California Defined Contribution Plan (the DC Plan.) The Regents reserved the right to resume employee contributions to the UCRP if they determined such contributions were necessary. To date, UCRP members with coordinated benefits have had a 17-year UCRP contribution "holiday." UC also has not made any retirement plan contributions on behalf of employees during that time.

UC points out that the Regents are the UCRP's fiduciaries, and are required by the terms of the plan and by law to act in the exclusive interest of the members and beneficiaries of the plan. In 2006, the Regents notified employees that it would be necessary to restart contributions to the pension fund within the next few years as its surplus was dwindling. As of July 1, 2007, however, the fund was 105% funded based on

actuarial value of assets, and 116% funded based on the market value of its assets. UC asserts, however, that the Regents have concluded that contributions will soon resume since the UCRP is expected to fall below the Regents' targeted funding policy of 100% in the next several years. Reinstatement of contributions will be necessary in order to keep the UCRP strong. It has committed that contributions will not start before September 30, 2008.

AFSCME asserts that Kaiser, Sutter and CHW have fully employer-paid pension plans, but only the Kaiser language was in evidence. AFSCME contends that UC should not shift the costs of pensions onto its employees, as the University already pays below-market wages.

UC asserts that the UC pension plan is much more generous than its competitors' plans. For example, the normal retirement age, after which benefit factors do not increase, is 60 years of age at UC, but 65 years of age at Kaiser, Sutter and CHW. UC's plan pays a factor of 2.5 percent of the highest 3-year average, while Kaiser's plan factor is 1.45 of the highest 5-year average.

The panel recommends that the parties amend Article 4 to separate the language regarding pensions from the language relating to other benefits. The language from Section 4.A.1 relating to pensions should read:

The University may, at its option during the term of this Agreement, alter its retirement system plans. In the event the University makes such alterations, the changes will apply to employees eligible for benefits within the unit in the same manner as they apply to other eligible staff employees at the same campus. The sole exceptions to the above shall be 1) any alterations proposed by the University which affect only bargaining unit employees, 2) any alterations proposed by the University which reduce retirement benefits of bargaining unit employees, and 3) any alterations in employee retirement contributions proposed by the University.

b. Joint Pension Governance – AFSCME proposes that the UC Board of Regents delegate its authority over the UCRP to a UC Retirement System Board of Trustees, which would perform trustee and administrative functions currently performed by the Regents. To

accomplish joint pension governance, the board would include six members elected by various employee groups and one elected retiree representative. The Union proposes various transparency and accountability requirements such as open meetings, disclosure of financial ties with investment or benefit professionals, and fair elections.

UC has rejected the proposal, asserting that it is not a mandatory subject of bargaining.

AFSCME points to several events that have eroded the trust of employees in the UC Regents to properly manage the pension fund. They allege that meetings are closed; a regent and an advisory committee member have had conflicts of interest; and detrimental personnel and investment decisions have been made which have contributed to current decline in funding status. They charge that the Regents' consultants did not follow actuarial best practices when recommending a restart of pension contributions. They point out that elections were not held as required for the current pension investment advisory board. They emphasize that many public sector and private sector employees have pensions from funds governed jointly by management and labor.

AFSCME provided the panel with the text of Senate Concurrent Resolution 52, which recommends that UCRP be run by a board of trustees that includes employee representatives.

UC points out that HEERA specifically excludes from the scope of representation "consideration of the merits, necessity or organization of any ... activity or program established by law or resolution of the regents, ... except for the terms and conditions of employment of employees who might be affected by them." Government Section 3562 (q)(2).) It asserts that AFSCME's proposal for joint governance goes even further than simply seeking to influence or prevent management decisions. It seeks to actually become a part of the management decision-making process for a large number of participants who are not represented by AFSCME.

As there is a dispute over whether this subject is a mandatory subject of bargaining, the panel refrains from recommending joint governance of the UCRP.

D. OTHER COMPENSATION ITEMS

Article 12 – HOURS OF WORK

1. AFSCME proposes addition of the following language to Section 12.G - Assignment of Overtime:

There shall be no mandatory overtime except in a University-declared emergency, including responses to local, state or federal emergency situations. The University shall decide when voluntary overtime is needed.

It proposes retention of the language that requires UC to assign voluntary overtime, when practicable, by rotation based on seniority among those employees on the same shift who normally perform the work involved. It proposes deletion of contract language that governs the assignment of mandatory overtime.

UC proposes retention of the right to assign mandatory overtime, deletion of the current language that prescribes the method of assignment of voluntary and mandatory overtime, and addition of the following language:

Overtime shall not be assigned except after the University has attempted to fill the assignment by:

- a. soliciting volunteers, who are competent to perform the work, within the job classification; or
- b. soliciting Per Diem employees who are competent to perform the work within the job classification.

If the University must assign overtime, the University shall notify the least senior employee on duty, who is competent to perform the work, that overtime must be worked. Such employee will be required to work the overtime as assigned.

AFSCME points out that UC has agreed to its proposed language in its recent contract with CNA. UC responds that it is more difficult to avoid mandatory overtime of patient care technical employees because their classifications, skills and certifications vary. Nurses are more interchangeable and are more available from registries. They also work 12-hour shifts, unlike the standard 8-hour shift worked by most AFSCME unit

employees. UC contends that it must be able to respond to unpredictable changes in acuity or patient census. It asserts that it maintains the right to assign mandatory overtime in all its contracts except the CNA contract.

Comparators' rights to assign mandatory overtime are severely restricted by their labor agreements. The Kaiser contract for Northern California allows mandatory overtime only in government-declared emergencies. The Sutter contract allows mandatory overtime in emergencies declared by the government or Sutter's senior management. The Kaiser contract for Southern California allows mandatory overtime in cases of emergency, and the CHW contract allows mandatory overtime when an administrator on duty declares an emergency. All consider seniority when assigning voluntary overtime.

Testimony at the hearing indicated that many departments at UC's medical centers are severely understaffed, leading to large amounts of overtime for the existing employees. It appears to the panel that it would be difficult to staff the medical centers appropriately at this point without mandatory overtime. It is hoped that implementation of other panel recommendations will increase staffing and voluntary overtime and lessen the need for mandatory overtime.

The panel recommends retention of the current language in section 12.G.1 and that the parties adopt the following language in Section 12.G.2 and 3.

- 2. Overtime shall not be assigned except after the University has attempted to fill the assignment by:**
 - a. soliciting volunteers, who are competent to perform the work, within the job classification. When practicable, the University will assign overtime work by rotation based on seniority among those employees on the same shift who normally perform the work involved and have requested to work overtime.**
 - b. soliciting Per Diem employees who are competent to perform the work within the job classification.**
- 3. If the University must assign overtime, the University shall notify the least senior employee on duty, who is competent to perform the work, that overtime must be worked. Such employee will be required to work the overtime as assigned.**

2. AFSCME proposes deletion of current language regarding overtime compensation and insertion of the following language:

1. 8 hour shifts

a. When an employee works in excess of eight hours in any workday, the employee shall be paid overtime at the rate of time and one half the regular rate of pay for the hours over eight.

b. When an employee works in excess of eighty hours in a fourteen day pay period, the employee shall be paid overtime at the rate of time and one half the regular rate of pay for the hours over 80.

c. However, employees who work in Departments or Units that are only open Monday through Friday and who are regularly scheduled to have every weekend off shall be paid overtime at the rate of time and one half the regular rate of pay for hours worked over 40 in a workweek.

d. When an employee works in excess of twelve hours in any one workday, the employee shall be paid double times the regular rate of pay for the hours over 12.

2. 10- and 12-Hour Shifts

When an employee is working 10 or 12 hour shifts she/he shall be paid overtime at the rate of time and one half the regular rate of pay for the hours over forty in a workweek. When a 10 hour shift employee works in excess of ten hours in any workday, the employee shall be paid overtime at the rate of time and one half the regular rate of pay for the hours over ten and double time the regular rate of pay for the hours over twelve in a workday.

When a 12 hour shift employee works over 12 hours in any workday, the employee shall be paid overtime at the rate of double time.

AFSCME proposes deletion of much of the current section defining overtime, as follows

~~Except as provided in Section 1.3 below, overtime is time worked which exceeds the hours of a full-time employee's regular daily schedule on pay status or exceeds forty (40) hours on pay status in a workweek. Pay status includes time worked and paid leave such as sick leave, vacation leave, holidays, military leave, compensatory time off and administrative leave with pay. Overtime hours do not count toward accumulation of sick leave, vacation, holiday or retirement system credit. Overtime hours at one and one-half (1-1/2) times the straight time rate unless the conditions described in section I below are met.~~

UC proposes retention of current contract language.

AFSCME argues that the industry standard is to pay overtime for hours worked beyond an employee's shift. UC points out that private hospitals are required by state law to pay daily overtime if an employee works beyond his or her shift, and contends it need not do so because it is exempt from state overtime laws. Federal overtime laws, to which UC is subject, only require overtime pay after 40 hours in a week for employees on a 40-hour workweek.

AFSCME notes that UC does pay nurses overtime for hours beyond their shift, and that it pays its patient care workers at UCSF daily overtime even though they are on 8-hour shifts. UC counters that its nurses already work 12-hour shifts. UCSF workers have different conditions, in part because of their now-defunct merger with Stanford Medical Center a decade ago.

The panel has considered this Union proposal in conjunction with the Union's demand to restrict mandatory overtime. As payment for daily overtime would likely encourage volunteers, it should decrease the need for mandatory overtime. The panel notes that a significant decrease in mandatory overtime may not occur, however, while the current conditions of understaffing exist. Since a new obligation to pay overtime beyond the hours of a shift will impose significant cost considerations in a year in which the panel is already making other costly recommendations, the panel is suggesting a delay in its recommendation that UC begin to pay overtime in accordance with the Union's proposal.

It appears to the panel that AFSCME's deletion of portions of the overtime definition section makes the remainder of the language confusing. Section H also may be necessary to interpret the previous section on assignment of overtime.

The panel recommends that the parties alter the current language in Section 12.H that defines overtime as follows:

Overtime is time worked which exceeds the hours of a full-time employee's regular daily schedule on pay status or exceeds the hours of a full-time employee's schedule on pay status in a workweek. Pay status includes time worked and paid leave such as sick leave, vacation leave, holidays, military leave, compensatory time off and administrative leave with pay. Overtime

hours do not count toward accumulation of sick leave, vacation, holiday or retirement system credit. Overtime hours are compensated at the straight time rate unless the conditions described in section I below are met.

The panel recommends that, effective January 1, 2009, the parties adopt AFSCME's proposed language to replace current language in Section 12.I .1, 12.I.2, and 12.I.3.

3. AFSCME proposes the following language relating to rates for on-call status:

1. An employee who is scheduled to be on call shall be paid 50% (1/2) of their normal hourly rate for the duration of the scheduled on-call shift.
2. An on call shift that is scheduled during contractual holidays shall be paid 75% of their regular rate of pay for the duration of the on-call shift.
3. Any pay that is accrued during on-call status at the reduced rate of normal hourly pay shall not be used in the calculation of overtime rates.

UC proposes retention of current contract language.

AFSCME notes that all comparators' contracts provide for 50 percent pay while on call, except the Kaiser contract for Southern California, which provides 50 percent pay to a maximum of \$12. All provide for 75 percent pay on holidays, except for the Kaiser contract for Southern California.

The current contract calls for a variety of on-call rates for those classifications that are assigned call. Only patient care employees at UCSF have a set 50% on-call rate. Others are fixed rates that vary from about 20 to 40 % of the hourly minimum for the classification.

The Chair recommends the parties adopt the following language:

Effective October 1, 2008, an employee who is scheduled to be on call shall be paid a minimum of 25% of the minimum hourly rate for the classification for the duration of the scheduled on-call shift. Current on-call rates that are above 25 % shall not be reduced.

4. AFSCME proposes the following language for employees who are called back to work from on-call status:

1. An employee who is called back to work while in on call status and is required to return to the workplace, shall be paid a minimum of 3 hours or for hours worked, whichever is greater, at the rate of time and one half (1 1/2 x) the employees regular rate of pay.

2. If an employee is scheduled to work the same day as the scheduled call shift the call shift begins at the end of the department's regularly scheduled department hours of operation.

3. Employees that are called in to work while in on call status shall receive the on call minimum guarantee of 3 hours, or time worked which ever is greater, at the rate of time and one half, and shall not have any time or pay deducted from the start of their regularly scheduled shift

UC proposes retention of current contract language, which states that an employee in on-call status is not eligible for the 3-hour minimum call back payments that are made to employees who are called to work while not on call.

Comparators' contracts have a variety of provisions. All contain at least a two-hour minimum call back pay. The Kaiser contract for Northern California and Sutter's contract provides for a 3-hour minimum at time and a half pay. The Kaiser contract for Southern California and the CHW contract provide a 2-hour minimum and time-and-a-half pay.

UCSF pays the patient care employees in 35 classifications a 3-hour minimum if called back while on call, and pays at time-and-a-half. Radiology technologists at UCD are paid a minimum of 3 hours. UC pays its nurses the greater of pay for two hours at straight time or pay for the actual hours worked at time-and-a-half, except at UCSF where the nurses receive time-and-a-half for a minimum of two hours.

The Chair recommends that, effective October 1, 2008, employees called in from on-call status be paid a minimum of two hours pay, but does not recommend reducing the minimum pay currently in effect on some campuses.

5. The contract currently calls for rest breaks, but acknowledges that “operational requirements, work station coverage requirements, workloads, staffing levels, leave schedules, vacation schedules and/or the provision of services to patients, clients, the public, or University employees may occasionally require the uninterrupted presence of the employee(s). In such situations rest breaks will not be granted.”

AFSCME proposes a monetary penalty for missed rest breaks.

The University proposes addition of the following language as Article 12.E.2.A.

The University will make every effort to ensure that an employee has the opportunity to take a rest period(s) in accordance with Section E.1. above. As soon as an employee determines that s/he is unable to take a rest break, s/he must notify his/her supervisor (or designee). The University will make every effort to ensure the employee is offered the opportunity to take an alternative rest period(s) during his/her shift.

AFSCME appears to accept this language as it proposes the following language as 12.E.2.B:

When the University cannot offer rest break(s) for the employee, the University shall pay the employee an additional fifteen minutes of pay at the employee's base rate for each rest break which the University cannot offer.

During the hearing, a Senior Surgical Technician at UCSD explained that her department has too few surgical technicians because five have left for other employers. As a result there is often no one to relieve her for breaks during her 8-hour shift. There was no data to show that the problem is occurring regularly at all locations. The University points out that its proposal is a proactive way to ensure that employees have their breaks without exacting a penalty from the employer.

The CNA contract has both the language proposed by UC and a provision that requires the University to pay the nurse 15 minutes of pay at the base rate for each missed break, as long as the nurse notified the supervisor of the missed break. The Kaiser contract requires the employer to pay an hour penalty for a missed break. Other hospitals presumably are subject to state law requirements and penalties relating to breaks. UC asserts it is not subject to the break requirements or penalties of state law.

The panel suggests that the parties implement wage recommendations that may alleviate the understaffing that leads to missed breaks. In light of the panel's other compensation recommendations, it will not recommend the missed break penalties.

The panel recommends that the parties adopt the University's proposed language.

Article 24 – PARKING

UC has proposed parking fee increases during the life of the contract.

AFSCME proposes that parking rates not increase for employees for the life of the contract.

The University points out that, pursuant to the 1960 Master Plan for Higher Education in California, parking is operated as an auxiliary. The 1960 Master Plan states, "Taxpayers' money should not be used to subsidize, openly or covertly, the operation of such (ancillary) services." It asserts that, because parking structures are a self-supporting operation, fees must support the locations' transportation and parking system. Parking fees are different based on the differing types of access, proximity to various building locations, use patterns, etc. However, the University states it has an established custom of charging the same parking fees to all staff for the same type of access.

UC asserts that AFSCME's proposal to freeze rates at the 2007-08 costs could compromise the University's ability to fund the necessary expenses to cover expenses such as: 1) Transportations and Parking (TAPS) related capital development; (2) TAPS security program; (3) TAPS dept payment; (4) Parking enforcement; Alternative transportation programs; (5) Full cost of operating the parking system; (6) TAPS related maintenance.

AFSCME provided evidence that Kaiser provides free parking to its employees. It asserts that CHW also provides free parking. The Union contends that, especially as employees' wages are below market, UC should provide free parking to its patient care technical employees. Employees already pay up to \$106 per month for parking.

AFSCME points out that for any employee making under \$13 per hour, this amount constitutes a full day of pay.

UC has proposed caps on increases. In Berkeley, though, the increases could amount to another \$612 annually by the third year of the contract. Parking increases at other locations are proposed to be capped at \$60 per year.

The Chair recommends that parking fee increases be limited to \$10 per month in 2008-09 and 2009-10, and \$12 per month in 2010-11.

Article 35 - SHIFT DIFFERENTIAL

AFSCME proposes a statewide differential of 5 percent for work on weekends, in addition to differentials for evening and night work.

UC proposes to retain the market distinctions for each medical center. The University proposes instead to increase the night and evening shift differential rates at UCD and UCLA by \$.20.

Weekend shift differentials of \$.60 are paid at UCLA, \$1.05 to \$1.40 at UCD, and \$1.00 to \$3.75 at UCSF. UC pays its registered nurses shift differentials a minimum of \$1.00 per hour at each medical center.

Sutter pays a weekend shift differential of \$1.35, and CHW pays a weekend shift differential of 8 percent.

The panel recommends a statewide minimum weekend shift differential of \$.60 effective October 1, 2008.

E. OTHER ARTICLES

Article 1 - ACCESS

1. The University proposes limiting the number of union representatives in each campus/medical center and within a department designated for grievance handling on paid release time as follows:

For purposes of receiving paid release time as provided in Article 18 – Miscellaneous, AFSCME may designate four (4) unit employees as “AFSCME designated employee representatives” at each campus/hospital. Additionally, in the event a campus/hospital has more than two-hundred (200) employees, AFSCME may designate one (1) additional AFSCME-designated employee representative for each additional one hundred (100) bargaining unit members thereafter, up to a maximum of seven (7) AFSCME-designated employee representatives. AFSCME shall not designate more than one (1) AFSCME designated employee representative per department of 100 employees or less. For each additional 100 employees, or fraction thereof, in a department, AFSCME shall be allowed one (1) additional representative in that department.

The contract currently allows one regular and one alternate grievance representative in defined jurisdictional areas. According to the University, the parties have agreed to delete language concerning jurisdictional areas, making limits on the number of representatives per campus/center and department necessary. AFSCME provided no explanation of its opposition to this proposal. Without new language there would appear to be no limit to the number of representatives that AFSCME could designate for paid time for processing of grievances.

The panel recommends that the University’s proposal concerning grievance representatives be adopted.

2. AFSCME proposes to delete provisions that allow the University to expel non-employee representatives, discipline employee representatives, suspend union posting privileges, and suspend union access to facilities for violations of local campus/center access rules and regulations.

AFSCME asserts that the collective bargaining agreements the University has with CNA, the University Professional and Technical Employees (UPTE), and the Coalition of University Employees (CUE) do not contain the punitive access language.

The University asserts that the rules are enforced in the same manner systemwide and across all units. It contends that the rules, which prohibit conducting union business in patient care areas and during work time, are necessary to conduct an effective business and maintain high patient care satisfaction. Specific problems with two representatives at UCLA were identified. The University asserts that it has not had access rule violation problems with other bargaining units to the same extent as with the AFSCME unit and that it must be able to enforce the rules with the language AFSCME proposes deleting.

The Stanford contract contains language allowing the hospital to enforce rules by denial of access to non-employee representatives, but its decision is grievable and subject to immediate arbitration. There was no evidence that contracts of comparable employers contain sanctions for rule violations similar to those in subsections 1.g.3 and 4.

The panel recommends that subsections Article 1.G 3 and 1.G.4 be deleted.

2. AFSCME proposes the following language with respect to access to new employees during new employee orientations:

During the new hire orientations for new employees, the Employer will allow a representative of the Union thirty minutes during the lunch period of such program, to discuss the Union and the terms of this agreement. For new hire orientations that are 4 hours in length, the Employer will allow a representative of the Union fifteen minutes during the period of such program to discuss the Union and the terms of this agreement.

The University proposes the following language:

AFSCME shall be permitted a minimum of 15 minutes to meet with the new bargaining unit employees according to campus/hospital timetables and practices for the purpose of sharing information with new employees. The University may provide meeting times during non-work time, such as lunch period, break times, or at the

conclusion of the orientation session. The University shall have no obligation to require any employee to participate in AFSCME's meeting.

The current language allows AFSCME to meet with new employees according to local campus/center timetables and practices immediately after orientation sessions during non-work time such as lunch or break time. Comparable employers Kaiser, Sutter and Catholic Healthcare West allow a union representative to meet with new employees on work time for 15 to 30 minutes either during the orientation or during the first three months of employment.

The panel recommends the language of Article 1.Q. 3 be replaced by the following:

During the new hire orientations for new employees the employer will allow a representative of the Union at least 15 minutes during a lunch or rest break to discuss the union and the terms of this agreement.

Article 5 - CONTRACTING OUT

AFSCME proposes deletion of current contract language that restricts the University from contracting out services provided by bargaining unit employees unless 1) the University needs to obtain special service and equipment that are not available internally, 2) the University needs to obtain special expertise or efficiencies that are better provided through an outside contractor, or 3) financial necessity calls for contracting out, after the University has sought funding from the legislature in applicable situations. The decision is not grievable or arbitrable, although the union can file a complaint with the UCOP Office of Labor Relations.

AFSCME proposes to add the following language:

Neither new work or existing work shall be contracted out if such work is typically performed by employees in AFSCME bargaining unit titles.

All bargaining unit work currently contracted out shall be brought in house within 90 days.

The University proposes to maintain current contract language.

UC asserts that subcontracting of certain work is not a mandatory subject of bargaining and that only the effects of subcontracting are negotiable. AFSCME cites PERB decisions that indicate that the employer's decision to contract out work performed by unit employees is subject to bargaining if the work is to be performed in the same manner under the same circumstances, and notes that the current contract language already restricts subcontracting.

The university argues that it sometimes provides unique medical services on such an infrequent basis that it would not be logical to hire an employee to perform them. It also contends with sudden employee leaves of absence or temporary increases in patient census.

The contracts from comparators demonstrate that the issue is hotly contested everywhere. The CHW contract prohibits on-site subcontracting of work performed by unit employees and off-site subcontracting based on the decision to reduce labor costs. The decision to subcontract remains bargainable, and the union can strike over subcontracting disputes. The CPMC contract appears to allow subcontracting with 30 days notice to the union to bargain effects, but the appendix shows that the parties agreed to ban subcontracting during the life of the 2005-08 agreement. The Kaiser agreement for Southern California prohibits subcontracting that would result in layoffs, but provides for 30 days notice otherwise. The Northern California agreement requires the employer to offer the work internally if the subcontracting is to last less than 90 days, makes the decision arbitrable, but otherwise provides only for effects bargaining. The Stanford agreement maintains the union's right to bargain over the decision and effects to the extent required under the National Labor Relations Act. There was no evidence that any of the comparators have contracts that required them to cease contracting for services already contracted out.

The current language of the contract provides that the University will make another position available at the same facility and base rate of pay to employees who are laid off due to subcontracting.

The Chair recommends that the parties maintain the language in A, C and D and change the language in B as follows:

- 1. Except for the use of registry employees, the University will not contract out services currently performed by bargaining unit members. The University may contract for services when:**
 - a. it needs to obtain special services and equipment that are not available internally or**
 - b. its decision to contract out is not based on labor costs.**
- 2. When the University has determined to contract for services it will provide AFSCME's Local 3299 Director or Designee with a copy of any RFP as soon as feasible after it is issued. Such notice shall demonstrate the appropriateness for the contract, in accordance with section B above.**
 - a. If AFSCME asks to meet with the University about the proposed contract for services, such a meeting will occur as soon as practicable following the University's receipt of the request. The meeting will not delay the commencement of the contract.**
 - b. If AFSCME believes that the University failed to comply with the provisions of Section B above, it can file a formal complaint with the Office of the President, Office of Labor Relations. The Office of the President shall make the final determination as to whether the contract meets the conditions in Section B. The Office of the President decision is not grievable or arbitrable.**

Article 6 - DEVELOPMENT

1. AFSCME proposes an increase in the hours of paid professional development and education leave from 24 to 40 hours per contract year.

The University proposes to maintain the current 24 hours.

AFSCME notes that many unit employees need continuing education to maintain their certification. The University contends it is not obliged to pay for employees to maintain their certifications, but has provided 24 hours of leave that can be used for that purpose. It also allows unit employees to take university courses at 2/3 of the fee for two or three courses per term. The University acknowledges that it allows other employees to

take up to 40 hours of paid educational leave, such as the nurses represented by CNA, but does not explain why it believes 40 hours is not appropriate for this unit.

Comparators' contracts indicate that 40 hours is provided at Kaiser and Sutter and at the West Bay locations of CHW. Other CHW locations provide only 16 hours of leave, but provide up to \$3,000 in educational reimbursements per year. All the comparator employers provide some kind of tuition reimbursement for career-related coursework, provisions which appear to serve the same purpose as the University's reduced fee provisions for university courses.

The panel recommends an increase in paid leave to 32 hours.

2. AFSCME proposes that if an employee's request for leave is denied twice in succession, the third request shall not be denied.

The current language allows a request for educational leave to be denied only for operational reasons. The University points out that the union did not identify any problems employees have had obtaining requests for leave. It offers to add language currently in its CNA contract: "the University shall make reasonable efforts to accommodate leave requests."

Comparators' contracts do not require that leave requests be granted. Kaiser's language is the strongest; it provides that the employer will exercise every effort to grant requests for education leave. Sutter's contract provides that the leave "shall not interfere with staffing" and "will not be unreasonably denied." The CHW contract also provides that leave cannot interfere with staffing requirements or patient care.

The Chair recommends insertion of the language proposed by the University.

3. AFSCME proposes that the University shall reimburse educational programs required for licensure. Only the CHW contract clearly requires reimbursement for courses required for licensure.

The panel recommends retention of the contract language in Article 6.A.2.

Article 12- HOURS OF WORK

1. AFSCME proposes adding the following language

When a vacancy occurs on a shift where current department career employees who have substantially equal qualifications have expressed a preference the University shall use length of service to make a shift assignment.

This language would follow an existing paragraph that allows employees to file a shift preference, and that continues, “The University shall also consider length of University service and the skills, knowledge, and abilities of the employees who normally perform the work involved prior to deciding on the shift assignment.

The University proposes to retain the current contract language.

At the hearing, a radiology technologist explained that she has been required to work the entire weekend every other weekend while more junior employees were not mandated to work every second weekend.

U.C. argues that it must maintain its management right to schedule employees based on the needs of individual departments to best meet the needs of the patients. It must be able to consider the “skill mix” of those employees being scheduled. Senior employees possess knowledge of the particular department. Ironically, its greatest objection to the proposal is that it will not be able to move a *less-experienced* employee into a coveted week-day job when it needs leads or other experienced employees to orient new employees to a department or to work nights or weekends when there is less supervision.

UC’s need for employees with department knowledge is not placed in jeopardy by AFSCME’s proposal, which is confined to department employees. The Union’s proposal continues to allow consideration of skills, knowledge and abilities of the employees who perform the work involved. AFSCME’s proposed language only comes into play when two substantially equally qualified employees in the same department have filed a preference for the shift on which the vacancy occurs. It is not clear how this language would work with current or proposed language in the Transfer and Promotion article of

the contract. Presumably, AFSCME intends to provide a preference to employees in the same department who wish to change shifts and require UC to post the job only if there is no qualified employee in the department who wants the position, but, read together, AFSCME's proposed language in the two articles does not clearly lead to that conclusion.

AFSCME points out that the Kaiser, Sutter and CHW contracts allow seniority to govern among qualified employees in the same department when a vacancy is posted. This indicates that UC's practical suggestions are not insurmountable. However, in light of the ambiguity in how the proposed language would work with the Transfer and Promotion article, the panel cannot recommend AFSCME's proposed language.

The panel recommends retention of current contract language in Article 12.C.

Article 13 – LAYOFF

1. AFSCME proposes deleting language that limits application of seniority to those within a department or division when an indefinite layoff is made.

UC proposes retention of current contract language.

AFSCME essentially proposes applying seniority by location/facility during layoffs. It explains that during the last layoff, UC changed department definitions in ways that affected "department seniority." UC contends that it needs to consider an employee's ability to work with unique patient populations, such as pediatrics or geriatrics, when making layoff decisions.

Comparators' contracts at Kaiser and CHW define departments in the contract and layoff by inverse seniority by classification within a department. Only Stanford appears to retain the discretion to determine layoff units. When departments are defined in the contract, UC would be required to give notice and an opportunity to bargain before changing them.

The panel recommends that the parties retain the current language including “departments/divisions” and incorporate current lists of departments into the contract. The University may change the departments during the term of the agreement only after giving the Union notice and an opportunity to bargain.

2. AFSCME proposes deletion of the language that limits grievability and arbitrability of UC’s use of exceptions to seniority.

UC proposes retention of current contract language.

UC contends that in Section C.4, the University recognizes the right of AFSCME to file a grievance if AFSCME alleges that the “qualifying skills provision of this Article are alleged to have been misapplied,” at which time the parties would be subject to final and binding arbitration. It acknowledges that if the University were to use any of the special considerations outlined in Section C of this Article, the burden would clearly be on the University to justify the use of such consideration in making its non-seniority based decision. It asserts this is an acceptable means to balance the University’s inherent management rights while protecting the rights of bargaining unit employees. The difficulty with this assertion is that there is a limitation on grievability in Section C.4 that is ambiguous. It must have been meant to prohibit grievability of some part of Section C.4, despite what UC now asserts. The non-grievability of selection of classes for layoff is already preserved in Section C.2. There was no evidence that comparators have limits on grievability and arbitrability.

The panel recommends AFSCME’s proposal to delete limitations on arbitrability and grievability in Section 13.C.4.

Article 15 - LEAVES FOR UNION BUSINESS

1. AFSCME proposes addition of the following language:

UC shall not interfere with the democratic choice of the Union membership to elect their leadership. Union officers shall be granted indefinite union leave.

The current contract language allows paid leaves for union business up to three years, reimbursed by the union. UC proposes the following language

The University will consider subsequent requests for release of statewide union officers of president, statewide patient care technical unit vice-president, executive vice president, recording secretary, and secretary-treasurer.

Among comparators' contracts provided to the Chair, the longest leave required by the collective bargaining agreement is one year.

The panel recommends the parties adopt the following language:

The University shall not unreasonable deny subsequent requests for release of statewide union officers of president, statewide patient care technical unit vice-president, executive vice president, recording secretary, and secretary-treasurer.

The panel also recommends addition of the language proposed by the University in Section 15.B.1.b.3.

2. The current language limits the use of leave to one employee per department per leave and a maximum of two employees per campus/center. AFSCME proposes deletion of that limit and insertion of the following language:

In Departments larger than 40, UC will release at a minimum one employee for every 40 employees for union leave.

UC proposes to retain current contract language. It argues that even in departments of 80 employees, it is difficult to schedule around vacation, FMLA, and unscheduled absences.

The Sutter and CHW contracts limit union leave to one employee per facility.

The panel recommends the parties retain current contract language.

3. UC proposes alteration of the language that describes the Union's reimbursement obligations, including a provision that would allow it to deny additional union leave if reimbursement is not timely paid.

The language already allows UC to terminate the leave if reimbursement is not timely paid. UC did not point to any reimbursement failures.

The panel recommends the parties adopt the following language proposed by UC that clarifies their respective obligations:

The Union shall submit payment to the University within 30 days of receipt of the University's bill and confirmation of payment to the employee. The University will bill AFSCME at least once per quarter.

4. UC proposes changing the notice required for requesting one-day leaves of absence for union business from 7 days to 14 days. UC asserts its goal is to enable it to approve requests without creating an undue hardship on operations. The CHW contract requires two weeks notice and the Kaiser contract requires notice of one month.

The panel recommends that the parties adopt language that requires 10 days notice for union leaves of one day.

Article 21 - NONDISCRIMINATION

AFSCME proposes an extensive addition to this article of the contract to address the rights of immigrant workers. AFSCME asserts it has modeled its language after provisions accepted in the hotel industry.

UC asserts that that the entire proposal is outside the scope of bargaining.

The current contract protects against discrimination based on ancestry, national origin, and citizenship. The Chair notes that there are proposed federal regulations that might change UC's obligations with respect to instances when an employee's name and/or social security number does not match records of the federal Social Security Administration.

In light of the uncertain nature of the federal law, the panel will refrain from recommending additional language except the following:

In the event that an employee who has completed his or her probationary period has a problem with his or her right to work in the United States of America, or upon notification by the INS that an immigration audit or an investigation is being initiated the Employer shall immediately notify the Union in writing, and upon the Union's request, agrees to meet with the Union to discuss the nature of the problem or investigation to see if a resolution can be reached.

Article 28 - PERSONNEL FILES

The current contract has a two-year limitation on retention of letters of warning and disciplinary records when there have been no further disciplinary actions of a similar kind for two years. The University proposes that an exception be made for letters and actions that involved sexual harassment, workplace violence, discrimination and/or actions adversely affecting patient care. It proposes to add the following language:

The University may retain for an indefinite period, counseling memorandum, written warnings or other disciplinary actions pertaining to criminal violations, workplace violence, sexual harassment, discrimination and/or actions adversely affecting patient care.

AFSCME opposes this provision.

The panel proposes that the parties adopt the following language:

The University may retain for an indefinite period, counseling memorandum, written warnings or other disciplinary actions pertaining to criminal violations, workplace violence, sexual harassment, and/or actions adversely affecting patient care.

Article 29 - POSITIONS AND APPOINTMENTS

AFSCME proposes deletion of language in the current contract that allows the percentage of per diem employees to grow by 12 percent. It proposes addition of the following language to the contract:

- a. Per diem employees who are working a regular schedule of forty hours per pay period or more for ninety (90) days or more in the same Department and same classification shall cause the reclassification of the position to a career position and the applicable regular work schedule.
- b. The career position and applicable regular work schedule will be posted as a vacancy in accordance with Article 38 Transfer/Promotion. A per diem employee shall not be reduced in hours solely to prevent his/her advancement to benefited status.
- c. A Per Diem employee working regular hours and receiving higher pay in lieu of benefits may request reclassification when eligible, or may continue to work in such position at the employees request subject to approval by the Union that such job will not be posted.

UC proposes the retention of current contract language.

AFSCME contends that UC should not be able to use per diem employees to replace career employees rather than supplement the career workforce. UC asserts that it needs a way to address both short-term staffing issues and long-term leaves without having to post a position and then potentially lay off an employee when the first employee returns. It notes that the current contract language has arbitrable provisions that require conversion of per diem employees who have provided the University with a written statement of interest in becoming a career employee under the following conditions:

1. Qualifying Per Diem employees are those who:

Have been employed at least twelve (12) months at the campus or hospital;

Have worked 80% of full time, with no less than 50% time worked in any given month or quadri-weekly period, including overtime, during the preceding contract year;

Have satisfactory work performance;

Have provided the University with an annual written statement of interest in a career appointment.

2. The University shall provide qualifying Per Diem employees who meet the criteria in §D.7.a and §D.7.b, above, career appointment as follows:

The appointment shall be made no later than nine (9) months from the date on which the employee meets the criteria set forth in §D.7.a and D.7.b, above.

The appointment shall be a variable career appointment of at least 50%, provided the University first complies with the recall and preferential rehire procedures in Article 13 - Layoff and Reduction in Time.

The appointment shall be in the same or substantially similar job at the same classification at the same campus/hospital, provided the employee is qualified for that appointment.

The appointment shall be at the appropriate pay rate according to the applicable hiring guidelines for career appointments at the employing campus or hospital.

Kaiser, Sutter and CHW provide for conversions of per diem employees when they have worked 40 hours per pay period for 90 to 120 days. Only CHW's contract calls for posting of the position. At Kaiser, it is at the employee's discretion as to whether or not to be converted. Additionally, Kaiser has a list of ineligible hours, including, 1) in training, 2) in special projects, or 3) in relieving employees for leaves of absence and/or replacement of an individual's sick leave of two (2) days or more. At Sutter, employees are not converted to a regular part-time or full-time position but, rather, to a float employee.

The panel finds that the timelines for eligibility for conversion and for effective date for conversion in the current contract language are longer than those in comparators' contracts. In addition, the terms of Article 29.B.5 appear to allow the University the flexibility to use limited term employees to replace employees on long-term leave.

The Chair recommends that the parties retain current contract language with the following changes to Sections 29.D7.b.1 and 2, and 7.c.1:

Have been employed at least six (6) months at the campus or hospital;

Have worked 80% of full time, with no less than 50% time worked in any given month or quadri-weekly period, including overtime, during the

preceding six months; OR have worked a regular schedule of 40 hours per pay period or more for six months in the same department and classification.

The appointment shall be made no later than three (3) months from the date on which the employee meets the criteria set forth in §D.7.a and D.7.b, above.

Article 32 - RELEASE TIME FOR UNION NEGOTIATIONS

1. AFSCME proposes increasing the number of negotiating team members eligible for paid release time for negotiations from 5 to 10.

UC proposes retention of the limit to 5.

AFSCME points out that it has only 5 negotiators with paid release time in a unit of 11,400 with 150 titles whereas CNA has 8 negotiators with paid released time in a unit of 9,000. UC contends that no other collective bargaining agreement allows for more than one team member from a medical center. However, the CNA agreement indicates that no more than one team member can be from a location. It lists UCLA Westwood as a separate location than UCLA Santa Monica.

2. UC proposes addition of the following language:

University payments for released time for negotiations as outlined in this article shall only apply during the life of the contract. Once the contract has expired, AFSCME will be required to reimburse the University for the release time of its Patient Care Technical bargaining team members. Reimbursement will be handled in accordance with the provisions of Article 15 – Leaves for Union Business.

UC argues that it would not only have to pay double the number of employees, but double the number of replacements for negotiators on the days the negotiators are released. It proposes AFSCME bear the burden for paying for its negotiators' released time.

Comparators California Pacific Medical Center allows release of 4 negotiators, but it is not clear that the time is paid. Within CHW, two negotiators from each facility may receive paid released time for negotiations.

The panel recommends that the number of negotiators provided paid released time be increased to 10, but that no more than one be released from each location as defined by the parties.

Article 33 - RESIGNATION

UC proposes deletion of several sections relating to job abandonment and replacement with the following language in a separate section:

The University may treat failure to report to work for five (5) or more consecutive scheduled work days without notice as an employee's abandonment of, and resignation from, her/his University position.

In the case of such job abandonment/resignation, the University shall provide the employee with written notification of its intent to separate her/him. This notification shall include the reasons for the separation, the employee's right to respond to the University within fourteen (14) calendar days, and a Proof of Service. The notification shall be sent to the employee's last known mailing address.

The employee shall have fourteen (14) calendar days from the mailing of such notice to respond to the University prior to her/his separation.

At the option of the employee, her/his response may be written or may be a meeting with a designated University official who has the authority to effectively recommend reinstatement of the employee.

Following the employee's timely response, or if no response was provided within the fourteen (14) calendar days, the designated University official shall issue a final decision. This decision is not subject to the grievance and/or arbitration provisions of this Agreement.

AFSCME proposes the retention of contract language.

UC asserts that it has negotiated this language with several other bargaining units to clarify rights and responsibilities. It also contends that the language is more generous than the industry standard. No comparators' contracts were provided.

The panel recommends no change in contract language in the resignation article.

Article 36 - SICK LEAVE

1. UC proposes replacing the current vacation and sick leave accrual and use provisions with the paid time off policies that are in effect for senior managers and other unrepresented employees at four of the five medical centers. San Diego Medical Center does not currently have a PTO program in place; however, it is proposed that they could do so with 30 days' notice to AFSCME.

AFSCME proposes retention of the sick and vacation leave provisions in the contract.

Currently, Paid Time Off is offered at four of the five medical centers across the UC system. Each of the policies in place at the four medical centers is slightly different. However, the fundamental elements are the same.

UC explained that Paid Time Off is a bank of hours that can be used for vacation, sick or other planned or unplanned absence from work. Often, because vacation hours and PTO are combined, these hours can exceed the hours that would be otherwise available through traditional vacation. Hence, the locations have special accommodations in place to address the enhanced balances. For example, each of the four medical centers will annually provide monetary payouts at the employee's current rate of pay where the PTO balance exceeds the cap in place. Additionally, at UCLA Medical Center, the maximum accrual in the PTO bank is extended by 80 hours, equivalent to two years' vacation plus 80 hours.

Extended Sick Leave, or ESL, is a bank of hours that accrue at the rate of six days per year. ESL can be used after the deductible of two or three (depending on location) consecutive shifts of unplanned sick leave.

PTO accrual rates are the same as under traditional vacation policies. They are based on years of service and percentage of full-time status. If UC and AFSCME were to agree to implement PTO today, employees' vacation balances would be transferred into the PTO bank. Sick leave balances would be credited in the separate Extended Sick Leave bank. Subsequently, sick leave would be allotted half to Extended Sick Leave and half to the PTO bank.

Under the PTO program, employees have available an extra six days that can be used toward vacation and other planned or unplanned absences. Furthermore, in the event there is an annual payout for hours accrued above the cap indicated, this amount is paid at the employees' base rate and can be used toward funding a vacation, for example, or other types of foreseen or unforeseen expenses. UC asserts that this feature that makes PTO very attractive to employees for purposes of recruitment and retention.

Under the proposed ESL policies, there is no cash value to the ESL balance, just as the traditional sick leave policies do not allow hours to be cashed out. However, just as under sick leave, available hours can be applied toward UCRP service credit under the terms and conditions of the UCRP. However, credit for sick leave "is not included in determining eligibility for UCRP benefits or in calculating the lump sum cashout." These same rules apply to the Extended Sick Leave balances except that the key distinguishing feature is that half of what would have been the balance under sick leave (6 of 12 days) can be cashed out under PTO. Just as under traditional vacation, an employee may convert his or her PTO balance into cash upon retiring or otherwise leaving the University.

UC asserts that PTO programs are the standard in the marketplace for hospitals. Stanford, CHW and CPMC have PTO in their contract with patient care bargaining representatives. Currently, all unrepresented and management staff at UC's four medical centers is covered by PTO provisions. Additionally, at UCLA Medical Center, the represented UPTE unit of Health Care Professionals is also covered by the UCLA PTO policy.

AFSCME points out that the nurses have adamantly refused to agree to PTO policies in place of sick and vacation leave. Because patient care workers earn fewer vacation hours for full-time work than senior management employees, PTO is not as advantageous for them. The Union, like CAN, fears that employees will come to work sick to avoid using PTO they are trying to save for vacations. AFSCME points out that sick employees are a danger to patients in hospitals.

It is not clear from the presentations of the parties whether Kaiser has a PTO provision in its contract covering patient care workers.

The Chair recommends that the PTO program be optional for employees.

2. AFSCME proposes deletion of contract language that gives UC non-grievable discretion to establish attendance standards on a location-by-location basis for which employees can be disciplined regardless of the amount of sick leave accrued. It proposes adding the following language:

No patient care technical employee shall be disciplined for legitimate use of sick leave.

UC proposes retention of current language.

AFSCME argues that, because its unit members work with sick people who may have compromised immune systems, they should not have to come to work sick to avoid consequences of attendance standards. UC argues that unscheduled absences create the greatest service disruption and have a significant impact on patient care. It points out that its attendance standards have been found reasonable in previous arbitrations. Whereas AFSCME argues that the legitimate use of accrued sick leave should not be subject to discipline, UC argues that sick leave is for continuation of pay. Its attendance standards contain exceptions for scheduled medical appointments and various types of approved leave.

The contract between the parties for service workers contains the proposed AFSCME language, but it is not clear to the Chair that regular attendance is as uniformly necessary in their non-patient care workplace. The agreements for CPMC and CHW indicate that an employee can be disciplined for more than five unscheduled absences within 12 months. Multiple consecutive days of an absence count only as one.

The panel recommends no change to current contract language.

Article 37 - STAFFING COMMITTEE

AFSCME proposes deletion of nearly every section of Article 37 pertaining to a staffing committee, and proposes adoption of a new Safe Staffing Committee and Joint Practice Committee. Its proposed language is that used in the CHW contract to resolve disputes that are not resolved in the committee, as follows:

At the request of either party, a difference of opinion between the representatives of the Safe Staffing Committee shall be referred to the Joint Practice Committee. This committee will be the exclusive means for resolving any such differences of opinion and shall be composed of: a. The President of the Union or designee and one Union member of the Safe Staffing Committee. b. Two members of the Hospital's Management Team

A meeting shall be held within ten days of the referral, unless the committee mutually agrees otherwise. The purpose of the meeting will be to jointly review the original problem presented by the Safe Staffing Committee, together with a summary of the information exchanged between the parties on the problem since its original presentation and to begin joint explorations leading to resolutions of the matter. The recommendation of the Joint Practice Committee shall be reached within thirty days of the committee's last meeting regarding the issue....

In the event the Joint Practice Committee is unable to reach agreement on the recommendation, a mutually agreed upon third party neutral may be brought in to join the Committee. In the event the Joint Practice Committee remains unable to resolve the issue, the third party neutral shall decide the final resolution which will be implemented. In reaching resolution, the third party neutral must take into account area standards regarding staffing, state and federal laws, physician recommendations regarding quality of care business needs and any other relevant information presented by the parties. In making the final decision on the issue presented to the Joint Practice Committee, based on the information presented by the parties, the neutral third party will be acting as a labor arbitrator, and the decision will be treated as final and binding by the parties. Either the Union or the Employer may seek to vacate the decision pursuant to applicable state and federal law.

The University proposes retention of the current contract language.

AFSCME presented several representatives from different medical centers who testified about the staffing problems within their various departments. In some cases, staff testified that procedures were not performed or available equipment not used because of a lack of staff. There was testimony from both parties that the acuity levels are higher on

average than at comparator hospitals. AFSCME asserts that this fact strongly militates in favor of a staffing committee process that culminates in binding arbitration. Sutter's agreement has a process similar to CHW.

UC is adamant that it is responsible for staffing decisions and will not have staffing decisions made by an outsider. It points out that there is a process for labor management meetings concerning staffing issues in the contract, and that the agreement it has with UPTE does not lead to decisions binding on the University. The agreement it has with CNA does lead to a binding decision on staffing levels. However, there is a crucial difference, since there are state staffing regulations for registered nurses. AFSCME has pointed to no external standard that would guide a neutral decision-maker in patient care technical staffing disputes.

The panel recommends no change to the staffing committee article.

Article 38 – TRANSFER AND PROMOTION

1. AFSCME proposes substantial alteration of this article. Its first proposal would require the University to restrict eligible applicants for a vacancy to current UC employees, including those with recall and rehire rights, and retains current language that seniority is a tie-breaker when two internal candidates are equally qualified. It deletes portions of the article that require only "consideration" of internal candidates.

UC proposes retention of current contract language.

The contract currently allows UC "at its sole non-grievable discretion" to restrict applicants to current employees. It also requires that employees with recall and rehire rights be hired before "any other qualified applicant." Best-qualified candidates in a department are guaranteed an interview. The University must give consideration to internal candidates when their qualifications are essentially equal with an external candidate. If two internal non-probationary career candidates are equally qualified, seniority is a tie-breaker.

AFSCME contends that seniority rights reward and encourage dedication and loyalty, and that fair opportunities for advancement increase workforce stability. Seniority rights inhibit the use of favoritism, which causes morale and retention problems.

UC contends that it must retain the discretion to hire the most qualified employee for a particular vacancy. It contends that its other labor contracts retain its right of choice, except for the recently negotiated CNA contract, which mandates that UC hire an internal candidate before an external one as long as the internal candidate is substantially equally qualified based on a long list of criteria.

The major difficulty with AFSCME's proposal is that it does not recognize the possibility that there may be no qualified internal candidates for a particular position.

The comparator employers' contracts establish an order of preference with department employees having first preference and seniority governing within each level of preference. Department employees generally have first preference. External applicants are last in the preference order. The Sutter contract is the only one that provides a nearly-absolute seniority right for the most senior employee in the department who meets the qualifications for the position. In the Kaiser contract for Southern California, seniority governs if merit and ability are approximately equal. In the Kaiser contract for Northern California, the employer can choose from among the three most senior qualified applicants for lead positions. Only the CHW contract allows the employer not to post a position in order to change skill mix. Once posted, seniority governs.

The Chair recommends deletion of Section 38.B.1.a and current sections 38.B.1.d) and f). It recommends insertion of the following language in the current Section 38.B.1.c:

3) By a qualified internal applicant, provided s/he is substantially equally qualified with the applicants receiving final consideration, based on their licensure, certifications, experience, seniority, skills and abilities, performance evaluation and job references, including discipline issued within the last two (2) years.

4) By any other qualified applicant.

2. AFSCME proposes making alleged violations of the Transfer and Promotion article subject to the grievance and arbitration procedures.

UC proposes the retention of language in several parts of the article that exempt decisions from the grievance and arbitration articles. UC contends that subjecting its decision-making to grievance and arbitration erodes its management rights.

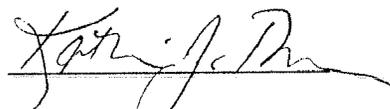
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The panel recommends that all limitations on grievability, but not arbitrability, in Article 38 be deleted.

F. CONCLUSION

These recommendations are made with the goal of improving compensation sufficiently that conditions of understaffing in the medical centers will be alleviated and that working conditions, such as the ability to take breaks and avoid the disruption of mandatory overtime, will improve. While the panel has recommended implementation of several economic items such as overtime pay in the second year of the contract, in the event that the parties are unable to reach an agreement of at least two years' duration, the Chair recommends that the items be implemented in the first year.

DATED: April 18, 2008.



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AFSCME

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UC Office of the President

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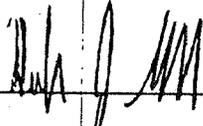
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Shelley Nielsen

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AFSCME

UC Office of the President

Dissent to Report of Factfinding Panel

In addition to many of the areas in which the recommendation is made only by the Chair, I dissent from the panel's recommendations in the following articles: Wages, Hours of Work, Development, Layoff, Release Time for Negotiations, Resignation and Transfer/Promotion.

DATED: April 18, 2008.

A handwritten signature in cursive script that reads "S. Nielsen".

Shelley L. Nielsen

UC Office of the President