Paul D. Roose
Arbitrator / Mediator
Golden Gate Dispute Resolution
510-466-6323
paul.roose@ggdr.net
www.ggdr.net
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FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODES 3590 - 3594

In the Matter of a Controversy Between	)	
University of California	)	
Employer	)	Collective Bargaining Impasse
and	)	Service Unit
AFSCME Local 3299	)	Factfinding
Union	)	PERB Case No: SF-IM-2997-H

APPEARANCES:

For the Employer:	Anthony DiGrazia, Associate Director – Labor Relations University of California, Office of the President 300 Lakeside Dr., 12th Floor Oakland, CA 94612
For the Union:	Claudia Preparata, Research Director AFSCME Local 3299 2201 Broadway, Suite 315 Oakland, CA 94612

FACTFINDING PANEL:

Appointed by the Employer:	Nadine Baron Fishel, Associate Director – Labor Relations University of California, Office of the President
Appointed by the Union:	Seth Newton Patel, Lead Negotiator AFSCME Local 3299
Neutral Chairperson:	Paul D. Roose, Arbitrator and Mediator Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under the Higher Education Employer-Employee Relations Act (HEERA), the University of California (UC), the California State University (CSU), and their unions have access to factfinding in the event they are unable to resolve negotiations over a collective bargaining agreement (CBA). Once released to factfinding by a mediator, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer and prior to the union conducting a strike. In accordance with the statute, each party appoints a member of the factfinding panel. A neutral chairperson is selected by the Public Employment Relations Board (PERB) unless the parties have mutually agreed on a neutral chairperson.

Unlike parallel statutes for school districts, community colleges, and local government agencies in California, there are no explicit criteria laid out in HEERA to guide the factfinding panel in reaching its recommendations. In this case, the factfinding panel determined that the panel would be "loosely guided" by the criteria spelled out in the Educational Employment Relations Act, which read as follows:

> (b) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:
>
> > (1) State and federal laws that are applicable to the employer.
> >
> > (2) Stipulations of the parties.
> >
> > (3) The interests and welfare of the public and the financial ability of the public school employer.
> >
> > (4) 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 and with other employees generally in public school employment in comparable communities.
> >
> > (5) The consumer price index for goods and services, commonly known as the cost of living.
> >
> > (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.
> >
> > (7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

The parties have a collective bargaining agreement that expired on January 31, 2013. Bargaining for a successor agreement began on October 23, 2012. There were sixteen bargaining sessions. After impasse was reached, there were three mediation sessions. On July 8, 2013, state mediator Yu-Yee Wu released the parties to factfinding. The parties immediately contacted the undersigned to notify him that he had been mutually selected to chair the factfinding panel. Four hearing dates were set for July.

The panel convened on July 18, 19, 29 and 30, 2013 in Oakland California. The panel took on-the-record evidence and argument from both sides concerning the issues in dispute, and heard from multiple witnesses. At the close of the fourth day of hearing, the panel adjourned to an off-the-record executive session and held discussions to attempt resolution of the matter. The panel reconvened on August 2 to continue confidential mediated discussions. Mediation efforts proved unsuccessful.

Due to a combination of circumstances – including statutory time limits, the number of hearing days, the number and complexity of the issues, and the availability of the parties' panel members – this report is being issued without the traditional indications of concurrence or dissent by the parties' panel members. It is also being issued without the benefit of any opportunity the parties may have had to correct errors of fact or mischaracterizations by the neutral chair of the parties' positions on the issues. The report solely and completely consists of the findings and recommendations of the neutral panel chairperson.

BACKGROUND TO THE DISPUTE

The University of California is the nation's largest public university, employing close to 100,000 staff employees. The Employer receives funding from a variety of sources – state and federal government, tuition, medical center revenues, and user fees, among others.

The Employer has a complex decision-making structure for labor relations issues. The Office of the President gives overall guidance. But each campus and medical center has extensive input into labor issues. There is no uniform systemwide wage schedule. Each campus and medical center maintains different rates, and even the number of steps varies from location to location. These variations are reflected in a 94-page wage schedule in the CBA.

AFSCME Local 3299 (the Union) is the exclusive representative for the service employees of the University of California (the Employer). The unit, known as SX, has approximately 8,200 members who work at the Employer's ten campuses, five medical centers, and the Lawrence Berkeley National Laboratory. Major job classifications include cook, custodian, food service worker, building maintenance

worker, bus driver, gardener and mechanic. Approximately 24% of the SX unit members work in the medical centers.

The parties have a dynamic and often contentious relationship. The parties reached impasse in 2008 and went through factfinding with both of the Union's UC bargaining units. The Union conducted a 5-day strike of the SX unit in July of that year. The parties went for a year without an agreement in place until they agreed in January 2009 on a four-year contract. The highlights of that agreement were:

1) Four across-the-board wage increases of 3% each

2) A new guaranteed step increase system, including initial placement and a 2% step in each of the last two years of the agreement

3) Establishment of a minimum wage for all represented classes of $12 per hour, escalating to $14.42 per hour by the end of the agreement

In a mid-contract reopener in 2011, the parties reached agreement (without strike or imposition) on modifying the health benefits and retirement sections of the contract. Highlights were:

1) Additional employee pension contributions of 1.5% each year phased in during the last two years of the CBA, plus a redirection of a 2% employee contribution from a defined contribution plan to the defined benefit plan

2) Negotiated caps on employee health benefit contributions for 2012 and negotiated percentages for 2013

The Employer has many other bargaining units. Most employees are in statewide bargaining units. Building trades and faculty units are organized by campus. One other systemwide unit, the patient care technical or EX unit, is represented by the Union. The EX unit consists of 13,000 members, concentrated at the five medical centers. The parties went through the factfinding process with the EX unit in the spring of 2013. Factfinding chair Robin Matt issued his Report and Recommendations on March 29, 2013, and the report was subsequently publicly released. In May 2013, the Union conducted a two-day strike at the Medical Centers, where the majority of EX unit members work. On July 24, 2013, the Employer unilaterally implemented terms on the EX unit. As of this writing, there is no collective bargaining agreement in place for that unit.

Other Employer bargaining units have agreements in place, while some are in various stages of negotiation. Where relevant, references will be made to these other units in this report.

THE ISSUES

Pursuant to PERB Regulation 32799, the parties sent to PERB on July 16, 2013 a Joint Statement of Issues for factfinding. The submission consisted of eleven issues. The parties had previously reached tentative agreement on four articles. Other issues were still unresolved, but the parties jointly determined that the remainder of the issues could be resolved by the parties without the assistance of the factfinding panel. The parties also identified, for each disputed issue, which party had initiated changes in that particular article, noted in parentheses after each item. Documentary evidence and testimony were presented in great detail to the panel. The eleven submitted issues are:

1) Contracting Out (Union)

2) Positions / Appointments (Union)

3) Staffing Committees (Union)

4) Layoffs (Union)

5) Hours of Work (Union)

6) Seniority: new article (Union)

7) Paid Time Off: new article (Employer)

8) Wages (Union)

9) Health Benefits for Current Employees (Employer)

10) Post-Employment Pension and Retiree Health Benefits (Employer)

11) Parking (Employer)

Within each of these issues, there are varying numbers of specific proposals from the parties. For the sake of presenting an orderly and coherent summary of these issues, the following format will be utilized. First, the current contract / status quo will be outlined. Then, the position of the party seeking changes will be presented, followed by the reasons given and particularly relevant or noteworthy witness

testimony and documentation. Next, the position of the other party's response on that issue, including any counterproposals, and the reasons articulated for their position, will be presented. Finally, the view of the neutral factfinding panel chair on that particular issue (s) will be presented.

It should be noted that the panel chairperson informed the parties' panel members at the outset of the proceedings that he is not inclined to recommend a resolution on any given issue that has not been advanced by one party or the other. In other words, the neutral is not inclined to "split the baby," or recommend some middle ground between two relatively extreme proposals. In interest arbitration, this method is known as "best offer" arbitration. In the experience of this factfinder, when the parties know from the outset that the neutral will select one proposal or the other, they are more open to modifying their own positions toward a middle ground, in the hopes that the neutral will be more inclined to support their proposal.

After hearing some of the early presentations and testimony in the hearing, the neutral indicated to the parties' panel members that he might also recommend current language or the status quo rather than either party's position on a given issue. Such a procedural guideline, while not necessarily moving the parties closer to each other, at least recommends a continuation of something that the parties, in a prior agreement, have already negotiated. In this way, the neutral builds off the parties' bargaining history and presents a recommendation that the parties are more likely to jointly embrace as part of a final agreement.

As noted earlier in this report, the panel agreed to use the EERA criteria as a guide to its recommendations. The Employer has stipulated that financial ability to pay is not an issue in this dispute. In other words, the Employer is not claiming that its rejection of Union proposals is based on inability to pay. So the panel will not reference the financial health of the Employer in its analysis of various proposals. Also, the EERA criteria refer to "public school employment" and "public school employer" as particularly relevant comparators. In this case, while public schools may be one appropriate comparison point, they do not rise to the same level of significance as they do in EERA factfinding.

The duration of the contract is not a disputed issue. The Union has proposed a four-year term. The Employer has stated that it is open to various contract lengths, depending on the terms of the agreement. For the purposes of this report, the panel chair will assume a four-year term.

For ease of digesting this report, the recommendations of the panel chair will also be summarized in a single section at the end of the document.

Contracting Out

Current Agreement / Status Quo: In the parties' current agreement, contracting out is prohibited if it results in layoff of employees. Contracting out is allowed for reasons such as the need for special services and equipment, and financial necessity. However, in the event that bargaining unit work is contracted out, the Employer must find another position of the same duration, percent time, and appointment type for workers who have been replaced. New work is explicitly excluded from any restrictions on contracting out. Certain sections of the article are exempt from grievance arbitration. However, the right to be placed in an alternative position is subject to grievance arbitration.

Union's Position: The Union proposes to modify the agreement to prohibit all new contracting out of bargaining unit work, and to end all existing contracts within thirty days. Violations of this provision would be subject to grievance arbitration. The Union argues that the SX bargaining unit is being eroded by subcontracting. The unit has grown by only 3% since 2009, while management ranks have increased by 16%. Custodial, foodservice, grounds keeping, and bus driving are contracted out on many campuses. Several AFSCME members testified at the factfinding hearing about the negative impacts of contracting out on their employment.

Employer's Position: The Employer counterproposes to incorporate an existing sideletter about new work into the agreement. Otherwise, the Employer proposes the status quo. The Employer argues that the right to contract out work is not a mandatory subject of bargaining. The Employer also contends that it has insourced into the SX unit many functions on many campuses that had previously been contracted out. The Employer must retain its right to manage its operations. The current language protects SX unit members from displacement in the event of contracting out.

Panel Chair Findings and Recommendations: The Union proposes a drastic change in the CBA. A total ban on contracting out of unit work, and bringing all existing contracts "in house" in thirty days, is something that few public sector unions have achieved in their agreements. The Union did not contend otherwise. The Employer asserted that many outside contracts have been insourced. The Union did not disagree, but attributed these changes to Union organizing efforts. Apparently, the Union has been quite successful in using methods outside of the CBA to induce changes in University employment practices. Even by the Union's figures, the bargaining unit has grown over the last few years. The existing contract and the parties' broader relationship seems to be working reasonably well to protect the Union's interests. On the other hand, the Employer's proposal to incorporate a sideletter into the contract is unnecessary and merely draws attention to that aspect of the agreement in a superfluous manner. Therefore, the neutral panel chair recommends current contract language / status quo on this issue.

Positions / Appointments

Current Agreement / Status Quo: There are two main issues at play in the dispute over this article. First is the issue of the time limit on the use of limited appointment employees. The current agreement defines a limited term appointment as one of 1,000 hours or less during a 12-month period. It also requires conversion of a limited term employee to a career assignment in the event the limited term employee works over 1,000 hours, with some exceptions.

The second issue in dispute is the overall ratio of limited term and per diem employees to career employees system wide. The current CBA requires that the ratio of per diem employees to career employees "will not grow by more than 12% over three years." The contract is silent on the ratio of limited term employees to career employees.

Union's Position: The Union proposes to reduce the permissible number of hours from 1,000 to 500 for a limited term assignment. The Union argues that reducing the hours threshold will require more conversions to career status. Limited term employees are not eligible for health benefits and other benefits.

In regard to the ratio, the Union proposes to change the agreement to state that the ratio of per diem employees to career employees will not grow during the life of the agreement. The proposed change also adds limited term employees into the ratio requirement. The Union contends that, between 2009 and 2013, the ratio of limited term unit members to career unit members has grown by 9% (from 7.8% to 8.5%). The ratio of per diem unit members to career unit members has grown by 3.8% (from 2.6% to 2.7%).

Employer's Position: The Employer proposes current contract language, the status quo. The Employer contends that current language is sufficient to protect employees' rights, while at the same time giving the Employer the flexibility to manage its workforce.

Panel Chair Findings and Recommendations: A core function of the Union is to negotiate for financial security for its represented members. While limited term and per diem workers are represented by the union, they are excluded from many of the benefits the union has negotiated. Clearly, the Employer has a legitimate need for temporary and per diem employees, under certain defined circumstances. However, when the percentage of these non-benefited employees creeps upward, it has the effect of undermining the Union and its core mission. The panel does not believe that the Employer has a deliberate strategy of substituting non-benefitted workers for benefitted ones. On the contrary, this trend

is more likely the result of decisions at each location that are based on departmental needs. However, added together these decisions create a systemwide problem for the Union, and arguably for the Employer as well.

The Union has put forward two key proposals to address this problem. The first is to lower the threshold hours for conversion. The panel does not believe that the lowering of the conversion hours to 500 will necessarily result in more career employees. It is more likely that the Employer, were this provision to be changed, would simply modify its practices to terminate limited term employees in many cases prior to their reaching 500 hours. Therefore, the panel chair does not recommend the language change on this item as proposed by the Union.

However, the other change proposed by the Union, modifying the ratio language, seems to get closer to the heart of the problem. The Union has met its burden in demonstrating that the ratios have been trending away from career employment. A continuation of this trend could undermine the Union's effectiveness and the Employer's status as a provider of good jobs with benefits. Moreover, the Union's proposal builds on an agreement already reached by the parties in prior negotiations. Apparently the Union was concerned about this same issue before, and bargained ratio language into the contract. The Union's proposal has the effect of freezing the ratio of per diem employees to career employees at its current level, and adding limited term employees into a separate ratio calculation. The Employer has presented no compelling argument about why it could not live within the restrictions of the current ratios. Therefore, the neutral panel chair recommends that the Union's proposal on appointment ratios be included in the CBA.

Staffing Committees

Current Agreement / Status Quo: The current agreement includes an article entitled Staffing Committee. The agreement allows for staffing committees to be established at each location. Meetings are held at the request of the Union. The current CBA outlines a process for those committees. It specifies that the University retains the right to make staffing decisions, and the Union reserves the right to bargain over the bargainable effects of those decisions. The article refers to a sideletter that contains a cleaning square footage conversion chart, suggesting that the parties may consider those guidelines in their committee deliberations.

Union's Position: The Union proposes two main changes to this article. First, the Union proposes that the existing square footage guidelines be made mandatory, if proposed by the Union. And that the parties "shall establish staffing levels to ensure safe staffing and quality student and patient

services." Second, the Union proposes that disputes arising from efforts to establish staffing levels be made subject to grievance arbitration.

The Union presented documentation showing that, from 2009 – 2012, the Employer's space has increased by 44% while the SX unit has increased by only 3%. The Union also presented testimony from several unit members about the negative impact of increased workload on their health and safety, and on their ability to keep the facilities clean according to reasonable standards.

Employer's Position: The Employer counterproposes the deletion of the square footage sideletter and incorporation of a broader and more flexible set of guidelines based on the Association of Physical Plan Administration and International Sanitary Supply Association guidelines**.** The Employer rejects the Union's proposal to mandate staffing level agreements, citing the Employer's need to manage the operation and ultimately set the standards for cleaning buildings. And the Employer rejects the proposal to arbitrate disputes under this article, citing the point that a third party neutral cannot be responsible for setting staffing standards that the Employer must implement.

Panel Chair Findings and Recommendations: The type of negotiated staffing levels proposed by the Union is typical only in two public sector occupations: firefighter and registered nurse. In those agreements, sometimes the parties agree to specific mandated staffing levels (in the form of number of firefighters per station or numbers of patients per nurse). These agreements derive from the intertwined nature of firefighter staffing with employee safety, on the one hand. Or they stem from the documented link between nurse staffing and patient safety, on the other. In all other agreements, it is generally established that the Employer has the right to set staffing levels. The Union did not prove otherwise.

SX unit members in general, and custodians in particular, are hourly employees. They have a right to work at a safe and reasonable pace for the hours they are on the clock. Whatever does not get done, if in fact there is unfinished work, is the problem of management rather than the employee. The Union presented no evidence that unit members are being disciplined for failure to keep up with an unreasonable workload.

While the panel chair is generally sympathetic to proposals to allow third party neutrals to adjudicate grievance disputes, this Union proposal in essence amounts to a proposal for interest arbitration. An arbitrator would presumably be charged with the responsibility to evaluate two staffing proposals and choose one over the other based on no criteria other than "safety" and "quality." The Union did not present evidence of similar provisions in other contracts. It is not an arrangement that has any basis in traditional labor relations.

The Employer's proposal to delete the sideletter and substitute more flexible staffing guidelines appears to make some sense. However, the current language is permissive enough that Staffing Committees are already empowered to use whatever guidelines are helpful in establishing staffing standards. The current language actually provides a pathway to accomplish what the union seeks – safe and equitable staffing standards. It will take a good faith effort on the part of both sides to make the existing language more useful.

Therefore, the neutral panel chair recommends current contract language on Staffing Committees.

Layoffs

Current Agreement / Status Quo: The current CBA requires the Employer to give the Union "such advance notice as is reasonable under the circumstances." There is no requirement for the Employer to meet with the Union prior to laying off bargaining unit members, unless there is an indefinite layoff affecting five or more unit members in a single layoff unit. In selecting bargaining unit members for layoff, the Employer can define a "department / division" as the layoff unit, and must then lay off in reverse seniority order. However, the Employer is permitted to lay off more senior employees in certain circumstances where special skills are possessed by more junior employees. The Employer may also retain per diem and limited term employees even when laying off career employees.

Union's Position: The Union proposes to modify the article in several ways. First, it proposes that the University "meet and confer over alternatives, dates, seniority, and effects prior to layoffs, curtailments, reductions in time, and furloughs." The Union also proposes that per diem and limited term employees be selected for layoff prior to career employees. The Union wishes to change the definition of a layoff unit to be a "medical center / campus." And, finally, the Union proposes that a more senior employee holding a position targeted for layoff may bump a less senior employee, provided that the senior employee can be trained for the new position in 60 days or less.

The Union argues that seniority becomes meaningless when the Employer can define a layoff unit any way that it wants. And the Union objects to the retention of less senior per diem and temporary unit members when career employees are being laid off. At the hearing, the Union cited as an example a recent layoff at the UCSF Medical Center, when career custodians were laid off indefinitely while per diems custodians were retained.

Employer's Position: The Employer counterproposes a change in the agreement that would allow for voluntary layoffs with severance benefits. Otherwise, the Employer proposes retaining the status

quo. The Employer rejects the Union's attempt to insert a meet and confer obligation prior to layoff, asserting that this change would deprive management of its right to determine the need for layoff. The Employer also rejects the use of a campus-wide layoff unit, indicating that this would require layoffs to go across cost centers and would not be operationally feasible. And, the Employer argues, it would place unqualified employees in positions through bumping.

Panel Chair Findings and Recommendations: The current system, allowing the Employer the sole discretion to define a layoff unit, is highly unusual in public sector labor-management relations. While it is generally conceded by unions that employers have the right to determine the size of the workforce, it is also conceded that unions have the right to establish a system of "first in, last out." This is one of the fundamental differences between a non-union and a unionized workplace. It is also generally conceded by employers, and affirmed by administrative labor law, that unions have the right to bargain over the effects of layoff.

The current CBA falls short in both regards. The limited right of the union to receive notice of proposed layoff and meet with the employer is overly restrictive. And the unfettered right of the Employer to define a layoff unit has the effect of undermining the seniority system. An example might be a senior custodian in a satellite clinic who would not have the right to bump a less senior custodian in the acute care hospital, depending on how the layoff unit is defined.

The Union's proposals to remedy these deficiencies conform more closely to the factfinding criteria than do the Employer's counterproposals. If implemented, the Union's proposals would provide it with an opportunity to meet with the Employer about a proposed layoff prior to the layoff taking place. They would redefine layoff units in such a way as to maximize the value of seniority. They would allow bumping only if the senior employee were qualified for the new position, or could be trained for the new position in 60 days or less. And they would require the layoff of per diem and limited term employees prior to layoff of career employees.

The panel chair therefore recommends the Union's proposal on layoffs. There are a couple of interpretive caveats that qualify this panel chair recommendation. First, a meet and confer process under this article should not be of unlimited duration and should not prohibit the Employer from proceeding with a proposed layoff after good faith meetings have been held. The EERA model of allowing parties to go to formal impasse over the "effects of layoff" might work here for the parties. Under EERA, the employer typically proceeds with the layoff, pending resolution of the impasse over effects bargaining.

Another caveat is that the language should be interpreted as defining the layoff unit as each campus or medical center. The concept of combining the very different functions of a medical center with its adjoining campus for the purpose of layoffs would be unwieldy from an operational standpoint. With these caveats, the neutral panel chair recommends the Union's proposal on layoffs be adopted.

Hours of Work

Current Agreement / Status Quo: The current CBA allows unit members to express a preference for shift assignment, but there is no provision for expressing a preference for work location. The Employer may consider seniority in assigning shifts. Shift assignment decisions are not subject to the grievance procedure.

Meal periods are defined as at least one half hour. When employees are authorized to work during meal periods, they are paid for the time.

Two 15-minute rest periods are "normally" granted during an eight-hour shift. However, current language is as follows:

> It is understood that operational requirements, work station coverage requirements, workloads, staffing levels, leave schedules, vacation schedules and/or the provision of services to patients, clients, public or University employees may require the uninterrupted presence of the employee(s). In such situations rest breaks will not be granted.

The Employer is not covered by state wage and hours laws pertaining to breaks and meal periods.

The current CBA also allows the Employer to assign mandatory overtime by rotation based on seniority in the event there are insufficient volunteers.

Union's Position: The Union proposes several changes in this article. First, it would require the Employer to use seniority to determine shift assignment and work locations. Next, the Union proposes that unit members who work during a meal period or during a break shall be paid one additional hour of pay. Finally, the Union proposes a ban on mandatory overtime.

The Union cites arbitrary assignments as the basis for its seniority proposal. Unit members testified at the hearing about senior employees having less desirable shift assignments and work locations.

The Union asserts that the absence of statutory break requirements leaves it up to the parties to negotiate remedies for missed meal periods and breaks. The Union presented testimony that a shuttle bus driver at UCLA routinely misses her breaks. One hour pay is, according to the Union, the standard

remedy awarded to employees in California for missed breaks. The Union contends that the current language leaves too much discretion to management on whether employees get their breaks.

Finally, the Union argues that mandatory overtime is abused at some locations. The Union suggests that the Employer hire more career employees in order to reduce the need for mandatory overtime.

Employer's Position: The Employer proposes, in relevant part, current contract language in this section. In regard to seniority-based scheduling, the Employer argues that management must be given the flexibility to select employees who have the particular skills and expertise for the assignment. The Employer asserts that the current language already provides for seniority to be utilized when employees have equal qualifications.

The Employer's position on breaks is that employees should take their breaks, not be paid for not getting breaks. The CBA already includes a remedy for missed meal periods. The Employer argues that the Union has not filed grievances about this issue, nor brought up the issue in labor-management forums.

The Employer contends that the current provision on overtime, requiring solicitation of volunteers first prior to assigning mandatory overtime, protects employees. It is not practical to ban all use of mandatory overtime.

Panel Chair Findings and Recommendations: The panel chair believes that the use of seniority to determine shift assignments and work locations is a core part of most collective bargaining agreements. The current language, despite the Employer's contention to the contrary, is not a seniority-based assignment system. Rather, it states the Employer may use seniority, but failure to do so is not subject to grievance. The Employer's concerns about qualifications can be addressed by interpreting the Union's proposal as granting an assignment to the senior qualified employee who expresses an interest. The neutral panel chair therefore recommends that the Union's proposal on seniority for shift assignment and work location be adopted.

The panel chair is largely in agreement with the Employer on the issue of breaks. The contract says that breaks should "normally be granted." The Employer says that it wants employees to take the breaks spelled out in the CBA. To insert a penalty for violating the break and meal period rule could have the unintended consequence of giving supervisors more leeway to cancel breaks, provided they agree to pay the penalty. Currently, the Union can go to arbitration on violations of this section, and seek (and probably get) a remedy awarded by an arbitrator that is equal to or more generous than that proposed by

the Union for this section. The language quoted above, concerning situations in which breaks may not be granted, does give management far too much discretion on cancelling breaks. It does not even require make-up breaks. The parties should consider revising that section. However, as a whole the panel chair favors retention of the current language rather than the insertion of built-in penalties. The neutral panel chair therefore recommends the adoption of the Employer's proposal on the issue of breaks.

Finally, the Union's proposal to bar the use of mandatory overtime is outside the norm of contractual agreements. One of the themes of the Union's proposals overall is to maximize the use of career employees to do bargaining unit work. The panel chair was not persuaded that the Employer would hire more career employees if mandatory overtime were discontinued. To the contrary, such a change could have the unintended consequence of the Employer making greater use of contract workers, per diems, and temps. Current contract language is seniority-based and utilizes volunteers before resorting to mandating overtime. The neutral panel chair therefore recommends that the Employer's position of current contract language be adopted on this issue of mandatory overtime.

Seniority: new article

The disputes over seniority have already been covered in detail in the sections on Layoffs and Hours of Work, above. Therefore, the neutral panel chair has no additional recommendations on the issue of the wording of a new seniority article.

Paid Time Off: new article

Current Agreement / Status Quo: In the current CBA, all eligible unit members are covered under the Sick Leave and Vacation Leave articles. Sick leave is accrued at the rate of eight hours per month of full-time service. It can be used for personal illness, medical appointments, and for the serious illness of specified family members. Unused sick leave may be used to enhance service credit at the time of retirement.

Vacation leave is accrued under the current CBA at the rate of 15 to 24 days per year. Maximum balances range from 240 hours for a unit member in the first ten years of service, to a maximum of 384 hours for a unit member with twenty of more years of service.

Employer's Position: The Employer proposes to remove unit members at the following medical centers from the sick leave / vacation leave provisions of the CBA: UC Davis, UC Irvine, UCLA, and UCSF. (It also reserves the right to implement this change at UC San Diego Medical Center at a later date without further negotiation). In its place, the Employer proposes a new article entitled Paid Time Off

(PTO). That article would simply incorporate existing PTO policies at those four institutions into the CBA. The article would also allow the Employer to unilaterally change the PTO policy upon 45 days' notice to the Union.

The Employer argues that this proposal is better for employees, since it takes the existing banks of sick and vacation leave and converts them to a single bank of leave that can be used for all absences. Employees who do not use their leave as often for illness can have more or longer vacations. Unlike some PTO systems, these PTO policies convert all of the unit member's existing leave, not a portion of it. The Employer also contends that PTO policies aid the Employer by reducing the frequency of unscheduled absences.

Union's Position: The Union proposes status quo in this area. The Union contends that PTO policies tend to encourage employees to come to work sick. The Union also objects to the fact that, under the Employer's proposal, PTO policies and leave accrual rates can be changed without negotiation with the Union.

Panel Chair Findings and Recommendations: The Employer puts forward this proposal as one that benefits unit members and the Employer simultaneously – a classic "win-win." However, it has failed to persuade the Union that this is the case. Perhaps the main reason for this is that the proposal removes paid time off from the realm of collective bargaining and puts it into the realm of management policy. Sick leave, vacation, and paid time off are cornerstones of any collective bargaining agreement, public or private sector. To propose to remove them from the contract, even at only a few of the Employer's locations, is extreme. The panel chair can see the benefit, in the abstract, of PTO systems, but cannot support this particular proposal. The panel chair therefore recommends the Union's position, that the current contract language be retained.

Wages

Current Agreement / Status Quo: The current CBA, which expired on January 31, 2013, contained wage adjustments as referenced above in the "Background to the Dispute" section. In sum, these included four annual 3% increases, a graduated increase in the minimum wage, and the implementation of a step increase system. A 2% step was provided on July 1, 2013 as part of the expired agreement.

Wage scales per classification, the number of steps, and shift differentials vary from location to location.

Currently, current employees earning over 2% less than new employees in the same classification in the same layoff unit are brought to within 2% of the new hire pay rate.

As a component of its unilateral implementation of terms for the companion EX unit, the Employer implemented a 1.5% wage increase, effective October 1, 2013.

Union's Position: The Union has several wage-related proposals:

1) A 6% across-the-board pay increase on October 1 of each year of the agreement.

2) A 2% step increase on July 1 of each year. Change step placement criteria to reflect not just UC work experience, but also prior work experience. Add longevity steps at 10, 15, 20, and 25 years of UC experience.

3) A 2% equity pool to be negotiated by the parties to address compression and market inequities. If no agreement is reached by January 31, 2014, then 2% to be distributed across the board.

4) Add $0.50 per hour to all shift differentials, and add a $1/hour minimum weekend shift differential to all titles.

5) Add $0.50 per year each year to the minimum wage.

6) Increase pay for current employees earning less than new hires to establish pay rate equity, by medical center / campus.

The Union argues that the Employer is capable of and should pay for the Union's economic proposal. Despite the gains of the prior contract, most unit members remain below the poverty line, and many are eligible for publicly-funded welfare benefit programs. While the last contract improved the situation, there were offsetting expenses that undermined the effects of the increases. Those were a 4% furlough reduction in 2009-10 (one-time), and ongoing additional pension contributions from 2% up to 5%. Rising healthcare premiums and parking fees also impacted many unit members.

The Union asserts that the CPI increased by 9.6% (CPI-Urban for UC City Average) over the life of the last agreement.

Employer's Position: The Employer declines to make a specific wage proposal, stating that any wage proposal is contingent on the Union's acceptance of the Employer's proposals on retirement and benefits.

The Employer asserts that it pays wages at or above market. It primarily bases its wage comparisons on 2013 data collected for the Employer by Mercer. Brad Chilcoat, Director of Compensation Projects and Strategies, testified at the hearing. He stated that the Mercer study focused

primarily on foodservice and custodial classes in higher education, public institutions, state employees and other private companies. He stated that the Mercer surveys are anonymous and that the Employer does not have access to the underlying data, so these data cannot be shared with the Union. To the extent that the Employer does have access to any underlying data, the Employer asserts attorney-client privilege as a reason for not being able to share the data with the Union.

The Employer also relies on comparisons with the California State University (CSU) contract with similar bargaining units, stating that UC wages compare favorably with its higher education counterpart.

The Employer also rejects certain specific Union proposals. The proposal to count prior work experience is rejected in part on the grounds of vagueness, with no criteria laid out for defining that experience.

Panel Chair Findings and Recommendations: The panel chair is faced with a dilemma in the area of wages. Both parties' proposals are outside the parameters of what the neutral chair can recommend. The Union's proposal of 6% across the board pay increases for four years is beyond the range of what other public employers and their unions in California have recently agreed to. It is also not based on systematic survey data. Compounding the impact of the Union's proposal are several add-ons: in addition to the continuation of the step increase agreement, the Union proposes longevity steps, increases in shift differentials, minimum wage and a separate equity pool. None of the new proposals (longevity steps, differential increases, and the equity pool) have been justified by the Union based on the panel's agreed-upon criteria.

On the other hand, the Employer's proposal is vague and incomplete. If one assumes that it is, in fact, a proposal for a four-year wage freeze, then this is not justified by the data presented – in particular the increase in the CPI. Reliance on a blind, non-disclosable wage survey is highly unusual, if not unheard of, in public sector bargaining. Analysis of comparison wages is difficult enough in a multi-classification bargaining unit with varying pay scales by location. Depriving the Union's representatives, let alone the Employer's bargaining team, of the opportunity to review underlying survey data is incompatible with positive labor relations. The Employer takes a good first step by considering the CSU contracts. However, this presents an incomplete picture at best.

Neither party presented information to the panel on wage settlements between the Employer and other bargaining units for comparison purposes. This type of information might have been useful for

shedding light on this dispute. The Union did present information about the increase to the CPI, indicating a substantial increase over the last four years. The Employer did not contradict this assertion.

Given the neutral's unwillingness to recommend either side's proposal, then the only other viable option is to recommend something that approximates as nearly as possible the status quo. The 2009 – 2013 agreement is, after all, one that both sides agreed to and were able to get ratified after a tumultuous and drawn out dispute.[1] Therefore, the neutral panel chair's recommendation is as follows:

1) Across the board wage increases of 3% on each October 1 of the four-year agreement.

2) Continuation of the funded step system put in place in the prior agreement, with 2% step increases on July 1 of 2014, 2015, and 2016 for eligible unit members.

3) No additional compensation in the form of increased shift differentials, longevity increases, minimum wage increases, and equity pools. Maintain current criteria for placing unit members on the step schedule.

Health Benefits for Current Employees

Current Agreement / Status Quo: In the 2011 reopener referenced above, the parties negotiated changes to health benefits for active employees. In that agreement, the Employer reserved the right to modify health plans. However, Employer contribution rates for calendar year 2013 were defined by a chart (Appendix H) that specified percentage of premium of two "value" plans (Health Net Blue and Gold, and Kaiser) that the Employer would pay. For the vast majority of SX unit members (in Pay Band 1), this percentage contribution ranged from 92% to 98.4%, depending on their plan and level of coverage.

For nearly a decade, the Employer has established pay bands for health benefit contributions. There are four pay bands. The first and lowest pay band is for employees with annual salaries of $50,000 or less and encompasses 7,858 of the SX unit's 8,125 benefit-eligible members. For lower wage employees, pay bands make a dramatic difference. In 2013, employees in pay band two (who earn $50,000 – $98,000 per year), pay $45.72 per month for Kaiser single coverage and $139.18 for Kaiser family coverage. But employees in pay band one (97% of SX unit members) pay only $9.67 and $28.04, respectively. If all UC employees were set at a single rate, everyone would pay the Pay Band 2 rates, the Employer's analysis shows.

[1] The minimum wage increases proposed by the Union, while building off of the 2009-2013 agreement, will not be included as part of this recommendation. Those increases were intended to be a one-time fix to a particular problem in certain classifications at certain locations. To continue to increase the minimum wage could undermine the integrity of the pay scales.

Employer's Position: The Employer proposes to retain the pay banding system. However, the Employer is proposing a "waiver" of the right of the union to bargain over any premium contribution changes, for the life of the agreement. Instead, the Employer proposes that the monthly contribution rates for SX unit members be the same as those for "staff employees" – in other words, non-represented employees. Appendix H, a set percentage contribution, is deleted.

The Employer contends that health care and health insurance is a rapidly changing area. The Employer must retain the flexibility to change plans, and contribution rates. Kaiser will be renewed for 2014, but the Health Net contract is up for bid. The Union's members are protected by the pay banding system.

Union's Position: The Union proposes that health insurance premium contributions by unit members be frozen at the 2013 dollar levels for the life of the agreement.

The Union argues that healthcare premium increases, especially for those who need family coverage, have been reducing the take-home pay of unit members. The percentage contribution for Pay Band I employees has been rising at a faster rate than that of other pay bands.

Panel Chair Findings and Recommendations: The panel chair applauds the Employer for its pay banding system. In comparison with other public employers in California, the University of California has a wider spread of salaries from the bottom to the top of the organization. Perhaps in an effort to partially correct for that gap, the Employer has developed pay banding for health benefits. This requires higher paid employees to contribute more toward their health insurance premiums and allows lower paid employees (such as the ones in the SX unit) to pay less. It is a highly progressive system, akin to a progressive income tax. It is a model that other public employers in the state might be wise to consider.

This progressive system is undermined by the Employer's current proposal. The proposal removes a core benefit, health insurance premium contributions, from the collective bargaining agreement and places it squarely in the hands of management to make unilateral decisions. Even the pay banding system is not protected under this proposal – the Employer could do away with it, and the Union would have no recourse to object under the contract. And, more realistically, under this proposal the Employer could unilaterally raise employee contribution rates within the framework of the pay banding system. Again, the Union would have no recourse under the CBA.

While it may offer the Union some protection that unit members would be treated no worse than unrepresented staff under this proposal, the fact is that the unrepresented staff is exactly that: unrepresented. Those employees have no official voice, no way of expressing their collective views.[2] The panel chair is aware that there is some history of negotiated waivers between the University and its unions. Nonetheless, the panel chair cannot recommend the Employer's proposal to negotiate a waiver in this instance.

The Union's proposal, while more in line with traditional collective bargaining norms, is also not one that the panel chair can recommend. To freeze employee contribution rates in the face of unknown and somewhat unpredictable rate increases over the next four years would require the Employer to bear the entire brunt of any health care cost increases. More importantly, a freeze in employee contribution rates would reduce any incentive that the Union might have in working with the Employer to hold down any potential overall premium costs.

The parties have already negotiated the solution to this dilemma. Appendix H, and the premium contribution percentage levels contained therein, is an agreement that would work well for the parties over the next four years. These percentage increases are in effect for calendar year 2013, and should be continued for 2014, 2015, 2016 and 2017. This is the status quo. Therefore, the neutral panel chair recommends the continuation of the percentage contribution levels specified in Appendix H of the recently expired agreement. The panel chair also recommends that, if Health Net Blue and Gold is replaced by another "value plan," then the same premium contribution percentages would apply to the new plan.

Post-Employment Pension and Retiree Health Benefits

Current Agreement / Status Quo: SX unit members currently contribute 5% of their pay toward a defined benefit pension plan. That plan, called the 1976 plan, has a minimum retirement age of 50, with an age factor of 1.1%. It tops out at a factor of 2.5% at age 60. At age 55, the formula is 1.8%. The compensation used for benefits calculation is the average of the highest three years.

The Employer was explicitly made exempt from the provisions of the Public Employees' Pension Reform Act (PEPRA) passed into law in California in 2012.

[2] Faculty members at UC are organized primarily through the Academic Senate. With the exception of the UC Santa Cruz faculty, these employees have no collective bargaining agreement and are considered part of the unrepresented staff. The Academic Senate participates in shared governance and consults with the Employer about compensation issues.

Current employees are also covered under a retiree health benefit. The Employer pays 83% of the premium for retiree health benefits, for life. However, there is no specific language in the agreement laying out the percentage of employer contribution for post-employment health benefits. The CBA merely lays out the various plans that the Employer maintains, and states that any alterations will be applied uniformly to SX unit members and other staff employees.

In 2010, the Employer's governing body, the Regents, passed a resolution to reduce the Employer's contribution to retiree health benefits. This reduction, to be phased in over a period of years, would apply to existing retirees as well as future ones. Beginning at 89%, the goal was to reduce it to 70%. Currently, employees with at least twenty years of service and a minimum age of 50 are eligible for retiree health benefits. Retiree health benefits, unlike benefits for active employees, are not based on pay bands.

Employer's Position: The Employer makes several proposals in the area of post-employment benefits. First, the Employer proposes an increase of 1.5% to the employee contribution to pension on July 1, 2013. This would bring the total employee contribution to 6.5%. The Employer also proposes a waiver of bargaining over any additional increase beyond this 1.5% increase. The Regents approved an 8% contribution rate for all UC employees beginning July 1, 2014. This increase, if implemented as authorized, would be allowable under the Employer's proposal.

Second, the Employer proposes a new pension tier (called the 2013 Tier) effective January 1, 2013 for all employees hired after that date. The new plan has the same factors as the 1976 tier, but all ages are shifted five years. Therefore, the minimum retirement age would be 55, with an age factor of 1.1%. The maximum would be 2.5% at age 65. With a few minor exceptions, the 2013 Tier is otherwise identical to the 1976 Tier. The contribution rate for the new tier is proposed to be 7%. The Regents have not approved any additional contribution rate increases for the 2013 Tier.

Finally, the Employer proposes a continuation of the existing waiver on retiree health benefits. Specifically, the Employer proposes that eligibility criteria for new employees and for some existing employees be modified. Under the new eligibility rules, the employer's contribution begins at 5% at age 55 and reaches its maximum at age 65. About half of the existing unit members would be grandfathered under the Employer's proposal, based on the combination of their age and years of service equaling or exceeding 50 as of June 30, 2013.

The Employer asserts that these retirement benefit proposals are critical to reaching agreement on a CBA. These are systemwide changes that have already been agreed to by several unions, including the

large clerical unit CX represented by CUE Teamsters. They have already been applied to non-represented employees, including faculty. The Employer has a $26 billion unfunded pension liability, and these changes are necessary. The Employer sees these moves as part of a statewide trend toward public sector defined-benefit pension reform. The passage of PEPRA by the California legislature is part of this trend. The Employer believes that its pension proposals, both in the area of employee contribution and in the plan design for a second tier, compare favorably with PEPRA.

UC submits its retiree health proposals for the same reason – an existing unfunded liability. The new tier also, the Employer claims, coordinates better with the ages in the 2013 pension tier.

Union's Position: The Union rejects the Employer's proposal and opts for the status quo. However, in July 2013, the Union presented a proposal to the Employer on behalf of its other bargaining unit. The proposal included a 6.5% contribution rate for all employees. It proposed a new pension tier that had a 2.5% at 62 formula, shifting the current 1976 tier schedule by two years rather than by five years.

The Union expresses concerns about the ability of its lower-wage workers being able to keep up with additional costs of pension and retiree health benefits. The Union, as part of a coalition that includes UPTE-CWA and the CA Nurses Association, commissioned William Fornia of Pension Trustee Advisors to do an actuarial analysis of the UC pension system (UCRP). The report, issued November 1, 2012, concluded that:

- The UCRP is among the better-funded plans in the country
- The UCRP employer contribution is relatively low
- UCRP has established a conservative funding policy
- UCRP does not contribute to the plan according to this conservative funding policy
- This results in plan costs which appear high in the short term
- This creates an inconsistency between purported costs of worker benefits and actual UC contributions

In sum, the Union contends that the two-tier pension, the proposed higher employee contribution and the two-tier retiree benefit and take-away of existing employees' retiree health benefits are not financially necessary.

Panel Chair Findings and Recommendations: The passage of PEPRA in 2012 has set a new benchmark for public sector pensions in California. The legislation, passed by a Democratic-controlled

legislature and signed by a Democratic governor, was the result of months if not years of discussions among the various stakeholders. The legislation had strong input from the unions. The legislation sets a standard that the miscellaneous (non-safety) employee pays no more than 8% toward pension. It also establishes a new tier, effective January 2013. That new tier bears considerable resemblance to the UCRP 2013 Tier. It sets a formula of 1% at age 52, rises to 1.3% at age 55, 1.8% at age 60, 2.3% at age 65, and tops out at 2.5% at age 67. What UC is proposing mirrors PEPRA in significant ways.

One main difference is that PEPRA caps pensionable income in its new tier at $113,000 per year. UCRP's 2013 tier uses the IRS cap (currently $255,000). While this may be understandably perceived as an issue of fairness by the Union and its members, this difference does not directly impact unit members.

Even without PEPRA, what the Employer is proposing is in line with the trend in collective bargaining for defined benefit retirement plans. The fact that the Employer is phasing in the higher contribution levels over a period of years is of benefit to existing employees.

The panel chair's view of "waiver" proposals has already been articulated. On pension, the Employer is once again asking for a waiver of bargaining, essentially allowing it to raise the employee share during the life of the agreement to any level. Despite the panel chair's misgivings about this aspect of the proposal, on balance the Employer's proposals on pension contributions and on the adoption of the 2013 Tier best meet the agreed-upon criteria. The Union's proposal of no contributions above 5% and opposition to the new tier are swimming upstream against the current of strong trends in public sector labor relations. The neutral panel chair recommends the adoption of the Employer's proposals on retirement contributions and a second tier.

From the panel chair's reading of the collective bargaining agreement, the Employer already has a complete waiver from the Union on bargaining over retiree health benefits. As much as this runs against the grain of traditional labor relations on this issue, it is something that the parties have agreed to in their most recent agreement. The changes suggested by the Employer seem unnecessary – a waiver already exists. The Union's proposal, on the other hand, blocks the Employer from making any changes to the contribution rate for retiree health benefits during the life of the agreement.

What tips the balance in favor of the Union on this issue is the portion of the Employer's proposal that changes the eligibility requirement for many current employees (half the unit) after they have already been in the current system. Some have been in that system for many years. It is generally understood that changes in fundamental characteristics of post-retirement benefits such as eligibility requirements and plan design should not be changed for current employees, but only for future hires. When employees are

hired, they are hired with at least an implied promise of benefits to look forward to. New employees will know what they are getting, and can accept the position with that understanding or look for something else. Existing employees generally do not have that option. In fact, the Employer correctly points this out in its defense of the introduction of the 2013 Tier. It seems inconsistent that the Employer is proposing retiree health benefits changes like this for existing employees.

For the reason of the inclusion of the current employees in the changed eligibility rules for retiree health benefits in the Employer's proposal, the neutral panel chair recommends the adoption of the Union's position on bargaining over retiree health benefits.

Parking

Current Agreement / Status Quo: Appendix F of the current agreement limits parking rate increases to set percentages. The allowable increases are spelled out in great detail by each location. At each location, rates vary substantially by the type of permit the driving unit member chooses to obtain.

Employer's Position: The Employer proposes that parking rates be increased by no more than specified dollar amounts. These increases vary from a low of $5 per month each year of the contract to a high of $12 per month. At three locations, the Employer proposes an increase of no more than 10% per year.

The Employer argues that it must periodically charge more for on-campus parking due to a mandate in the 1960 Master Plan for Higher Education that requires parking to be self-supporting.

Union's Position: The Union proposes that parking rates be frozen for the life of the agreement. The Union contends that the proposed rate increases are unreasonable, and impact the take-home pay of unit members.

Panel Chair Findings and Recommendations: The parties have an extensive history of bargaining over limits on parking increases. The Employer's proposal is consistent with that history, and does not seem out of line with prior agreements. The neutral panel chair therefore recommends the adoption of the Employer's proposal on parking.

SUMMARY OF RECOMMENDATIONS

The following are the recommendations of the neutral panel chair on each of the issues in dispute:

1) Contracting Out – Current language / status quo

2) Positions / Appointments

A) Hours threshold for conversion – Current Language / Status Quo

B) Ratio of Limited Term and Per Diem Employees to Career – Union's proposal

3) Staffing Committees – Current contract language / status quo

4) Layoffs – Union's proposal

5) Hours of Work

A) Seniority for shift assignment and work location – Union's proposal

B) Breaks – current language / status quo

C) Mandatory overtime – current language / status quo

6) Seniority: new article – No recommendation

7) Paid Time Off: new article - current language / status quo

8) Wages -

A) Across the board wage increases of 3% on each October 1 of the four-year agreement.

B) Continuation of the funded step system put in place in the prior agreement, with 2% step increases for eligible unit members on July 1 of 2014, 2015, and 2016.

3) No additional compensation in the form of increased shift differentials, longevity increases, minimum wage increases, and equity pools. Maintain current criteria for placing unit members on the step schedule.

9) Health Benefits for Current Employees – Continue status quo, as specified in Appendix H

10) Post-Employment Pension and Retiree Health Benefits

A) Employee pension contributions – Employer's proposal

B) Adoption of new pension tier – Employer's proposal

C) Retiree health benefits – Union's proposal

11) Parking – Employer's proposal

Conclusion

Both parties made professional and compelling presentations during the four days of hearing. They demonstrated courtesy to the neutral and to each other. The chair has enjoyed working with both sides and having an opportunity to hear the heartfelt and expert testimony of so many of the Union's and Employer's witnesses.

However, the extent of the parties' dysfunctional bargaining relationship is evident from the daunting task of the factfinding panel. Very few issues had been resolved through the bargaining and mediation processes leading up to factfinding. Many of the parties' positions have the look and feel of opening, or "educational" proposals, rather than proposals intended to actually lead to an agreement. It is indicative of the lack of trust between the parties that the Employer has not, even at this late stage, made a specific wage proposal.

There are ten overall categories of disputed issues, but within many of these categories are multiple specific and substantive subsidiary disputes. Arguably, the parties are tens of millions of dollars apart in their economic proposals. And, in the opinion of the neutral, each side is vigorously attempting to take away rights traditionally reserved to the other party.

The parties surely recognize that they are a few short steps away from a collision – in the form of a unilateral implementation and / or work stoppage – that will benefit neither side and will harm many other stakeholders in the University community. The parties have spent a lot of time and energy attempting to convince each other (and the wider community) that their positions are correct. In order for this dispute to get resolved, each side must move away from its positions in meaningful ways. In bargaining, movement begets movement. Hopefully, this factfinding process will begin to set the parties on a course toward settlement.

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Paul D. Roose, Neutral Chairperson

Date: August 21, 2013