

<b>IN THE MATTER OF THE</b>	)	
	)	<b>FACT FINDING</b>
<b>FACT FINDING</b>	)	
	)	<b>REPORT</b>
<b>BETWEEN</b>	)	
	)	<b>AND</b>
<b>CALIFORNIA STATE</b>	)	
<b>UNIVERSITY</b>	)	<b>RECOMMENDATIONS</b>
<b>(The University)</b>	)	
	)	
<b>AND</b>	)	<b>PERB IMPASSE NO. LA-IM-3385-H</b>
	)	
<b>CALIFORNIA FACULTY</b>	)	
<b>ASSOCIATION</b>	)	
<b>(The Union)</b>	)	

**HEARING DATES:** February 9, 15, and 28, 2007

**HEARING CLOSED:** March 1, 2007

**FACT FINDING PANEL**

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**BACKGROUND**

The California State University (hereafter “the University” or “the CSU”) and the California Faculty Association (hereafter “the Union” or “the CFA”) are parties to a collective bargaining agreement which expired on June 30, 2005. This matter came before the fact finding panel (hereafter “the Panel”) pursuant to California Code Section 3591. As provided in California Code Section 3592, the Panel met with the parties within 10 days after its appointment to consider their respective positions. The Panel met with the parties on February 9<sup>th</sup> and 28<sup>th</sup>, 2007 in Los Angeles, California and on February 15<sup>th</sup>, 2007 in Sacramento, California. At the meetings the parties had full opportunity to make opening statements, introduce documents, and make arguments in support of their positions.

The Panel met in Executive Session as needed throughout the hearings and for a full day on March 1, 2007 in Los Angeles. The Panel also met on March 12, 2007 via conference call.

**STATUTORY CRITERIA**

Pursuant to California Code Section 3593 (a):

If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are

made public. The panel, subject to the rules and regulations of the board, may make those findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public.

### **CONTEXT OF THE DISPUTE**

California State University provides higher education to approximately 417,000 students across twenty-three campuses and employs approximately 25,500 faculty and over 26,500 support staff employees. It is the nation's largest university and offers courses in a wide range of disciplines. The University is publicly supported and receives financial support from the State of California through the appropriation process.

The California Faculty Association has been the exclusive representative of the Faculty bargaining unit, Unit 3, since March 1, 1983. Unit 3 includes professors, lecturers, librarians, counselors and coaches. The CFA is affiliated with Service Employees International Union (SEIU Local 1983), the American Association of University Employees (AAUP), the National Education Association (NEA), and the California Teachers Association (CTA).

Annual appropriations to the University as well as other state agencies are contained in the budget act of the state of California. The state and CSU fiscal years run from July 1<sup>st</sup> through June 30<sup>th</sup>.

On May 11, 2004 the University announced that it had entered into a six year compact with the Governor of the state of California which would provide the University with a 3 percent state fund increase in 2005/06 and 2006/07. Beginning in 2007/08 through 2010/11 the state will provide an increase of 4 percent to the prior year's base budget for basic needs. (Un. Ex. XVII-1)

The California Faculty Association and the University are parties to a collective bargaining agreement which expired on June 30, 2005. It has been extended by mutual

agreement of the parties since that time and remains in effect until the end of this fact finding process.

The parties began negotiations on a successor collective bargaining agreement on May 19, 2005. After fourteen months of negotiations followed by five days of mediation the parties were unable to reach agreement. An impasse was declared and the parties proceeded to this fact finding process.

According to the submissions presented by the parties to the fact finding panel there are a minimum of 16 articles that remain unresolved. Within the unresolved articles are several outstanding issues. Both parties provided the fact finding panel with well prepared and thoroughly documented notebooks which provided their respective positions on each of the issues. The Panel's recommendations are based upon the information provided in the submissions and the additional information provided by the parties at the fact finding hearings.

### ***ANALYSIS AND RECOMMENDATIONS***

#### ***The San Francisco Agreements***

During the week of July 24-28, 2006 the parties met in San Francisco and with the assistance of C. Richard Barnes, the former head of the Federal Mediation and Conciliation Service, they were able to reach agreement on several articles. Unfortunately they were unable to reach agreement on matters related to compensation and benefits and therefore they left San Francisco with all matters left unresolved. The agreements that had been reached were never mutually accepted by the parties as "tentative agreements". The Panel recognizes however that significant work went into the development of those agreements and the Panel would be remiss in its responsibilities if it ignored the hard work put forward by the parties in San Francisco. These agreements represent a "meeting of the minds" on several significant issues. The Panel further recognizes that face-to-face discussions and facilitated discussions that lead to an "unofficial" agreement represent mutually agreeable solutions that have not yet been memorialized. In this case, mutually agreeable solutions were reached on the outstanding

issues in Articles 3, 4, 5, 6, 9, 14, 17, 24, 26, 27, 35 and 36. It is the opinion of the Panel that the best agreements are those that have been negotiated directly by the parties and it will not presume to revisit any of the articles that were satisfactorily resolved in San Francisco. The Panel hereby recommends that the parties adopt those mutually agreeable solutions as tentative agreements to be incorporated into the successor collective bargaining agreement.

### **Agreements during the Fact Finding Process**

The parties continued their efforts to reach mutually agreeable solutions to the outstanding issues in several of the articles during the fact finding process. They are to be commended for reaching agreement on the issues in Article 1 as well as the issues presented by the Union's proposal for a new article on Contracting Out. Neither of these matters will be addressed by the Panel.

### **Unresolved Issues**

#### **Article 10** **Grievance Procedures**

The Parties have continued their negotiations on this article throughout the fact finding process and advised the Panel on March 7<sup>th</sup>, that agreements had been reached on most of the outstanding issues. The Panel therefore recommends that the agreements reached by the parties as of March 7<sup>th</sup> be incorporated into the agreement. Two major outstanding issues were identified by the parties to be addressed by the Panel. Those two issues are discussed below.

### ***Arbitrator's Authority***

#### **University Position**

The University is proposing to continue the status quo regarding the arbitrator's authority in faculty status cases. Status quo limits the arbitrator's authority to grant appointment, reappointment, promotion or tenure unless: the final campus decision was not based on reasoned judgment; but for that, it can be stated with certainty that appointment, promotion, or tenure would have been granted; and no other alternative except that remedy has been demonstrated by the evidence as a practicable remedy available to resolve the issue.

## Union Position

The Union is proposing that the full range of arbitral authority established under the State Education Code, Section 89542.5, be incorporated into the article.

## Recommendation

This section has been one of the most contentious areas between the parties since the enactment of Senate Bill 1212 codified at Section 89542.5 of the Education Code in 2001. In December 2001 the parties initiated negotiations seeking to harmonize the provisions of Article 10 with the requirements of Section 89542.5. The parties were unable to reach a negotiated resolution and the Union filed a complaint with the State of California Public Employment Relations Board (hereafter “the Board”) alleging that the University failed to participate in the impasse procedure in good faith by insisting to impasse on a grievance procedure that did not maintain contractual restrictions on arbitral authority in certain disputes involving faculty<sup>1</sup>. The proposed decision of the Board’s Administrative Law Judge (ALJ) stated the question to be decided as “...whether SB 1212 established minimum statutory rights not subject to negotiation because they derive from preemptive provisions of the Education Code.” (Un. Ex. V-3, p. 14) The Board’s proposed decision concluded:

...that section 3572.5(b) (1) and Education Code section 89542.5(a) (4), read together, establish statutory rights that may not be waived or insisted upon to impasse. Education Code section 89542.5(a)(7)(b) defines a “grievance” as “an allegation by an employee that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, assignment, or the like.” Education Code section 89542.5(a)(4) provides in *mandatory* terms that “[i]f there is a disagreement between the faculty hearing committee’s decision and the state university president’s decision, the matter shall go before an arbitrator whose decision *shall be final*.” [Italics supplied.] And section 3572.5(b) (1) provides that Education Code section 89542.5 establishes a “minimum level of rights or benefits” that may be superseded by an MOU only if it provides “more than the minimum level of benefits or rights set forth in that section.” The plain language of these sections is that an employee, at minimum, has the right to a final decision by an arbitrator on the merits of the particular grievance.

Presumably, the Legislature was fully aware of the grievance procedures in the various MOUs and executive orders when it passed SB 1212. If the

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<sup>1</sup> *California Faculty Association v. Trustees of the California State University*, Unfair Practice Case No. LA-CE-784-H.

Legislature intended to incorporate specific aspects of these grievance procedures as part of the statutory floor, it could have done so. Instead, the Legislature in SB 1212 established a statutory minimum right to a final decision by an arbitrator (unless a greater benefit is negotiated) and it must be presumed that the Legislature intended as much. A proposal to limit the arbitrator's authority would create a lesser, not a greater, benefit or right than the right to a final decision by an arbitrator. To conclude otherwise would reduce the adoption of the minimum rights concept in SB 1212 to an idle act, changing nothing in the area of grievance and arbitration rights.

It is true, as CSU contends, that in prior negotiations, the parties agreed to limit the authority of the arbitrator and CSU issued executive orders with similar restrictions. However those events took place prior to SB 1212, when an MOU could supersede rights in Education Code section 89542.5. Because section 3572.5(b) (1) mandates that the arbitrator's decision shall be final, it sets a so-called "statutory floor," and the arbitrator's authority may not be restricted, as was the case in prior MOUs.

Under SB 1212, an MOU may supersede Education Code section 89542.5(a)(4) "only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights set forth in that section." A proposal that includes fewer rights or benefits, (such as limitations on the authority of the arbitrator) would run counter to the express terms of SB 1212. As CFA argues, if the requirement that an arbitrator's "decision shall be final" is not a statutorily protected minimum right, there would be no minimum level of rights, and the CSU would be free to eliminate or erode any statutory due process right by limiting the arbitrator's authority to the extent that the underlying right is rendered illusory. Adoption of the position advanced by CSU would mean the statutory right to an arbitrator's decision which "shall be final" could be "replaced, set aside or annulled" by an agreement, clearly impermissible under relevant case law dealing with preemptive Education Code provision. (See e.g., San Mateo at pp. 864-865; Freemont.) (Un. Ex. V-3, pp. 16-18)

On February 23, 2006 the Board found "...the proposed decision of the ALJ to be free of prejudicial error and adopt[ed] it as the decision of the Board itself". (Un. Ex. V-4, p. 2) The Board further stated at page 3 of its decision:

It is clear from the legislative history and plain language of the statutory changes brought about by that legislation that it caused a change and established that a heightened standard of review cannot be imposed on the arbitrator by the parties in their collective bargaining agreement or memorandum of understanding. We, therefore, find that the ALJ correctly determined the new legislation set minimum statutory rights that were not subject to negotiations and correctly decided the case.

Throughout the fact finding process CSU has continued to insist on language that limits arbitral authority. In the face of the determination of the governmental administrative agency, the Public Employment Relations Board, its insistence is unreasonable. During the fact finding hearings, the University offered to abide by the outcome of its most recent challenge to the Board determination at the appellate court level. The continuation of the status quo until such time however fails to acknowledge that a governmental administrative agency has rendered a decision that favors the Union's position on arbitral authority. The Union has been more than patient for the past five years while the University presses its status quo position at the bargaining table and in litigation. The Union has had to live with limitations on the arbitral authority during this time period even though it has prevailed before a governmental administrative agency. At this point, it is not unreasonable to require the University to live with the ruling of the governmental administrative agency. If a court of competent jurisdiction or governmental administrative agency having authority over the provisions of the agreement holds that the University's position is not contrary to law then the University may request to meet and confer with the Union regarding a substitute provision.

For all of the foregoing reasons, it is recommended that the Union's position on arbitral authority as found within its February 12<sup>th</sup>, 2007 proposal at Section 10.6, items g and h, be adopted.

### ***Sanctions***

During the fact finding process, the parties met to discuss the other outstanding issues within Article 10. By emails dated March 5, 2007, the Panel was advised that there were only two issues it needed to address: the authority of the arbitrator addressed in the preceding section of this document and sanctions. Within the Union's proposal of February 12, 2007, there were sanctions provided at Section 10.27 that could be imposed by an arbitrator on any party that:

1. Refuses to provide relevant evidence to the other party in a timely manner in response to a request from the other party;

2. Refuses to participate in arbitration and is subsequently compelled to arbitrate through court action of the other party;
3. Seeks to relitigate a question of contract interpretation that has already been decided by an arbitrator for the duration of the agreement.

The presentations at the fact finding sessions suggested that there have been some significant problems in the processing of grievances through the arbitration stage. None of the presentations however suggested that there were flaws in the process itself but rather that elements within the process have not been utilized to their fullest potential. For example, it appears that the parties have not fully implemented Section 10.6 of the current agreement which provides for the selection of a panel of arbitrators. Nor have the parties fully utilized the role of the arbitrator in the determination of pre-hearing matters particularly in the scheduling of a hearing date. Additionally there is a well defined mediation process at Section 10.12 that has not been utilized by the parties. It has been well documented that mediation prior to arbitration helps to resolve in a satisfactory manner disputes that would otherwise proceed to arbitration<sup>2</sup>. Rather than impose sanctions on the parties, it is hereby recommended that the parties make a concerted effort to implement all of the language within Article 10, including the mediation process and that the parties utilize the arbitrators to assist them in the scheduling of hearing dates, review of postponement requests, and any other matters related to the scheduling and convening of the arbitration hearing. Furthermore, the parties are encouraged to utilize the resources of the various arbitrator oversight organizations to address the problem of arbitrators who do not render timely decisions. The two year delay in the issuance of a decision by an arbitrator is unconscionable and should be reported to the appropriate organizations.<sup>3</sup>

The purpose of a grievance procedure is the resolution of disputes in a time effective and cost efficient manner. Evidence that might contribute to the resolution of a dispute should be provided at the earliest possible step of the proceeding. Failure to

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<sup>2</sup> Ury, William L., Jeanne M. Brett and Stephen B. Goldberg, *Getting Disputes Resolved*, Program on Negotiation at Harvard Law School, copyright 1993.

<sup>3</sup> For example, if the arbitrator is a member of the National Academy of Arbitrators, or has been selected from an FMCS or AAA panel of arbitrators, then his or her failure to issue a timely award should be jointly referred to those organizations.

provide the evidence does nothing but delay a resolution and increases the costs of a resolution. It is not unusual for a grievance procedure to include language that requires the full disclosure of all evidence prior to the arbitration proceeding. The matter of the refusal or failure to provide relevant evidence to the other party in a timely manner in response to a request from the other party is best addressed by the inclusion of a general provision that states:

When a party has made a request for data or documents which it is legally entitled to receive, and if the responding party failed to provide such data or documents in a timely manner, then the party failing to provide the materials shall be prohibited from introducing or relying upon that material in the arbitration hearing.

Among the factors to be considered in determining whether such data or documents were provided in timely manner is availability of the data or documents, the form in which the material is available, the amount of labor involved in producing the materials, as well as, the cost of such production. Production shall include providing access to data and documents readily available on line.

It is therefore recommended that the parties include the above language under the heading *General Provisions*.

## **Article 12** **Appointment**

Substantial progress had been made on Article 12 during the facilitated discussions in San Francisco. That progress is reflected in Union Exhibit VI-2. During the fact finding sessions, the parties agreed to modify Union Exhibit VI-2 in the following manner:

- Insert “and other student employees” after “teaching associates” at Section 12.30 of Union Exhibit VI-2;
- Teaching Associate (TA) Employment at Section 12.32, Insert “GAs and ISAs” prior to “Employment” and add new section:

Effective with the commencement of academic year 2007/2008 the total FTEF of GAs and ISAs who are teaching shall not increase by a percentage greater than the increase of FTE teaching faculty employed in the system. The “base line” for the calculation of such percentages shall be academic year 2005/2006.

Insert “GA and ISA” after “TA” in 2<sup>nd</sup> paragraph of section 12.32.

The parties were unable to reach agreement on Section 12.30, subsection *Preference for Available Temporary Work*, item 8, b and c and subsection *Assignment Order During the Academic Year*, item 8, b and c. The University proposed that the items read as follows:

- b. Next, offer work to the best qualified from amongst all other part-time temporary faculty offered appointments pursuant to paragraphs 4 and 5 above up to and including a 1.0 timebase; and any other qualified candidate.
- c. ~~Last, offer work to any other qualified candidate.~~

The Union proposed that the language read as follows:

- b. Next, offer work to all other part-time temporary faculty offered appointments pursuant to paragraphs 4 and 5 above up to and including a 1.0 timebase; and
- c. Last, offer work to any other qualified candidate.

Through a careful reading of the Article 12 language that has been resolved by the parties either through the facilitated discussions in San Francisco or during their discussions at the fact finding sessions one finds that the parties have paid careful attention to providing a preference for available work to existing employees who have fulfilled the requirements stated within the article. There is a clearly established order as to who has the preference for available work beginning with 3-year full-time appointees and continuing through multi-year full-time appointees, three-year part-time appointees, multi-year part-time employees, visiting faculty, and so on. If there is any remaining temporary work then that work will be assigned as “new or additional” work to three-year, part-time appointees. Up to this point in the language, there is no mention of “the best qualified amongst all”. It is only at the final step in the process, the offering of appointments to “all other part-time temporary faculty offered appointments pursuant to paragraphs 4 and 5 above” that the University insists that the work be offered to “the best qualified” individual regardless of whether the individual is a current temporary faculty. The University has not offered any plausible explanation as to why it desires the language at the final step of the appointment process. As emphasized by the Union, a lecturer is considered “qualified” for assignment to available temporary work based on simple tests: having previously taught the course in question satisfactorily based on evaluations, or

being otherwise qualified based on such things as experience, academic training, and so on. When there are several lecturers with the same rank in the order of hiring who are found to be “qualified” then the selection of the person to perform the work in question is left to the department chair. Language in the previous collective bargaining agreement did not bypass current temporary faculty and there was no showing by the University that the language had created any insurmountable problems. Therefore there has been no showing of a need to provide such a bypass in the new agreement and the recommendation is that the parties adopt the language proposed by the Union.

### **Article 20** **Workload**

In 2001/03 the CFA, the CSU’s Statewide Academic Senate, and the CSU Administration studied the workload increase phenomenon and issued a joint report that identified the workload problem and made recommendations for the hiring of additional tenure-track faculty (Un. Ex. X-4) Recognizing that additional funding would be required to accomplish the recommendations, the CFA sponsored, with support from the CSU Academic Senate and the CSU Administration, Joint Legislative Resolution ACR 73. (Un. Ex. X-6)

In a letter addressed to the honorable Virginia Strom-Martin of the California State Assembly from Executive Vice Chancellor David Spence, Academic Senate Chair Jacquelyn Kegley and CFA President Susan Meisenhelder, the authors correctly identify that the successful implementation of ACR 73 is a joint responsibility of the CSU administration, the CSU faculty and the state of California. (Un. Ex. X-7) As of today, no funding has been appropriated by the state for the implementation of the resolution.

There are times in public sector negotiations where difficult decisions must be made due to the limited amount of resources available. The fact finder notes that Section 20.3 of the agreement contains language that provides a protection from “an excessive number of contact hours ...an excessive student load... [and]...an unreasonable workload or schedule...” While not a specific workload guarantee, the language does allow for

challenges by individuals or the Union. It is recommended that the limited language of Section 20.3 should be expanded to include a new section d.:

d. The parties agree to jointly request from the Legislature the amount of monies necessary to fully implement the jointly developed response to ACR 73<sup>4</sup> in each fiscal year of this agreement. The request shall be given priority status in the University's budget submission to the State for each of the fiscal years of this agreement.

### **Article 21** **Summer Session**

The parties have made progress on the matters related to the Summer Session and it appears that some of the outstanding matters will be resolved as other portions of this agreement which are addressed in this fact finding report fall into place. For that reason, the recommendation on this article is limited to those areas that have not been addressed elsewhere.

#### **Recommendation**

- Article 21 should not provide distinctions among faculty working in the State-funded summer programs based on the use of quarters rather than semesters. The parties should negotiate the practical implications of the interpretation of this recommendation. Summer terms on all campuses should be treated the same.
- Provide a health benefits stipend of \$400 per month for temporary faculty who were employed the preceding Spring term, were appointed for and worked at least six (6) WTUs during the Summer Session, and would not otherwise be health benefits eligible.
- For purposes of the CalPERS retirement benefits, the University shall define the summer sessions<sup>5</sup> as a semester or a quarter, as appropriate. Eligibility for CalPERS retirement benefits is determined by CalPERS.

The above recommendation is not intended to encourage the use of special sessions as replacement for work taught traditionally in summer semesters, summer quarters or standard summer extension programs.

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<sup>4</sup> Union Exhibit X-7.

<sup>5</sup> Does not include special sessions.

**Article 23**  
**Leaves of Absence With Pay**

**Paid Maternity/Paternity Leave**

**Union Position**

The Union is proposing that the language of this section be revised to increase the length of maternity/paternity leave from thirty (30) to sixty (60) days and that the leave shall commence within ninety (90) days rather than the current sixty (60) days of the arrival of a new child.

**University Position**

The University proposes no change to this section.

**Recommendation**

The current language provides thirty days of paid leave for a faculty member within sixty days of the arrival of a new child. Additionally, a faculty member is allowed to use an additional ten days of paid sick leave which may be extended with a physician's verification of disability. Options for leave without pay that may be taken for parenting purposes are provided at Article 22 of the Agreement. When compared with the private sector the leave may not fall within the *Best Family-Friendly Corporate Practices* cited by the Union at its Exhibit XII-2 however such a comparison fails to take into consideration the differences between the public and private sector, the most notable difference being that private sector companies have the ability to raise resources, both human and fiscal, that are not necessarily available in the public sector. When compared with the University of California (Un. Ex. XII-3), the current language does not fall short. The UC provides that *Leave for childbirth and recovery normally will be for at least 6 weeks; more time may be necessary for medical reasons* which is identical to the thirty days of paid leave provided at CSU with the possibility of extension with verification of disability. At UC an employee may take additional leaves without pay that have an aggregate duration that does not exceed one year which is similar to the options for leave without pay that are provided at Article 22. There is no reason to modify the existing language through the fact finding process. This recommendation is not meant to discourage the parties from discussing the best use of the time that is provided through the introduction of flexibility in the use of the days provided in the agreement but rather

is meant to recognize that the current language is not unreasonable and compares favorably with the University of California.

**Article 29**  
**Faculty Early Retirement Program**

The Faculty Early Retirement Program (hereafter “FERP”) has been available to faculty prior to collective bargaining. It was incorporated into the collective bargaining agreement in the first negotiations between the parties in 1983. The program has always been limited in its duration from a maximum of seven years of FERP employment to the current maximum of five years of FERP employment. The program enables tenured faculty employees and tenured librarians who have reached the age of fifty-five to elect to continue their employment on a part-time basis as they transition into retirement. FERP participants are required to perform normal responsibilities and their share of normal duties and activities. Participants are deemed to be tenured faculty employees and are eligible to serve on governance committees whose assignments are normally completed during the period of employment. Participants draw 50% of their salary which is paid by the University. They also receive their PERS pension which is no cost to the University and the state of California takes over the cost of the FERP participants’ health care premiums.

**University Position**

The University is proposing that the FERP program be reduced in duration from five to four years.

**Union Position**

The Union is proposing that the duration of the FERP program be maintained at its current level of five years. The Union is further proposing that Counselors be given access to the FERP program on the same basis as teaching faculty.

**Recommendation**

A review of the materials provided by the parties indicates that the FERP program may result in an overall annual savings to the University of approximately 7.2 million dollars. According to the University’s document provided at the February 28<sup>th</sup> fact finding session if the average number of faculty retirements per year is 500 and if faculty

salary at retirement is \$89,500 and if 62% of the average number of faculty retirements per year (approximately 310) opt for FERP then there is a potential savings of \$23,067 per FERP participant which yields the overall savings of 7.2 million dollars. To its credit the University is not contending that this is a money issue that needs to be resolved but rather has focused its attention on its perceived diminishment of faculty duties including participation in committee work and other related assignments such as advising students. The University also claims that departments are not able to hire full-time faculty due to the duration of FERP and that it is becoming increasingly difficult to coordinate the needs of active tenured professors who may desire to exercise their rights to sabbaticals, professional leaves, and personal leaves. The University's contentions however were not supported by anything other than anecdotal commentary. The same can be said of the Union's contentions that without the FERP many faculty members would delay their retirements thereby increasing the overall costs to the University. The Union's emphasis on the benefits of retaining "institutional memory" and the expertise of senior faculty while certainly worth consideration are also supported by nothing more than anecdotal commentary.

In making a determination on this issue, the overall compensation package was taken into consideration. As noted in the LAO's *Analysis of the 2007-08 Budget Bill: Education* regarding the California Postsecondary Education Commission that was provided by the University at the February 28<sup>th</sup> fact finding session, "Faculty typically receive various other forms of compensation as well, including retirement and health benefits, sabbaticals, housing allowances, and bonuses". (At page 3 of the Analysis) The Analysis is putting forth recommendations for change in the determination of the parity figure. The parity figure as it exists today stands at 16.8% for 2006 representing a considerable gap or lag. It is unknown to what extent that gap or lag would be reduced if the FERP were included in the determination of compensation however for purposes of this fact finding session, it cannot be denied that the FERP represents a significant benefit to the tenured faculty members as they transition into retirement. While it is true as emphasized by the University that the FERP participants actually receive more annual compensation during their participation in the FERP the fact remains that the bulk of that

compensation is the retirement benefits to which they would be entitled even without the FERP. It is unknown what effect the FERP has on an overall compensation package and it is also unknown what effect the FERP has on the recruitment and retention of faculty. What is known however is that the University has not put forward a compelling argument based upon any tangible evidence that would lead to a change in the status quo of the language of the agreement.

Nor has the Union put forward a compelling argument to include Counselors in the program. Counselors do not hold the traditional faculty ranks nor do they hold traditional tenured teaching positions. It is unclear how the Counselors would function within the FERP. While there may be an argument that Counselors could continue to provide their services on a part time basis while they transition to full retirement, at this time there was not sufficient evidence that would lead to a change in the status quo of the language of the agreement.

Based on all of the foregoing, it is hereby recommended that there be no changes to the language of Article 29 of the agreement.

### **Article 31** **Salary**

Underlying the discussions and presentations on salary matters has been the agreement entered into by the CSU Chancellor and the Governor of the state of California that provided the CSU with a 3 percent state General Fund increase in 2005/06 and 2006/07 and a 4 percent increase to the prior year's base budget for 2007/08 through 2010/2011. (Un. Ex. XVII-1) The Union views the agreement or "Compact" as a massive unfair labor practice that has restricted negotiations between the parties to a pre-determined budgetary amount. Of particular concern to the Union is the fact that the agreement was reached independent of CFA and collective bargaining. Adding to the Union's frustration is the perception that all of the monies put on the table by the University have closely paralleled the amounts provided through the Compact. The Union believes that the end result of the Compact has been that the University has removed salary negotiations from the collective bargaining process. The University

believes that it entered into a good faith agreement with the Governor to guarantee a minimum amount of funding for the University. The fact finder appreciates the Union's concerns but must also acknowledge that the University, when faced with ongoing budget dilemmas at the state level, took steps that it believed would best serve the University. That is not to say however that the fact finder believes that the Compact amounts must serve as a ceiling in these negotiations. California Code 3572(a) anticipates that negotiations at California State University may result in budgetary or curative action:

No written memoranda reached pursuant to the provisions of this chapter which require budgetary or curative action by the Legislature or other funding agencies shall be effective unless and until such an action has been taken. Following execution of written memoranda of understanding, an appropriate request for financing or budgetary funding for all state-funded employees or for necessary legislation will be forwarded promptly to the Legislature and the Governor or other funding agencies.

In reaching a recommendation on compensation matters, including salary, FERP, and benefits, the fact finder took note of the report issued in March 2006 by the California Postsecondary Education Commission (hereafter "the Commission") entitled *Faculty Salaries at Public Universities, 2006-2007*. On its website, [www.cpec.ca.gov](http://www.cpec.ca.gov), the Commission states:

The 1960 Master Plan for Higher Education recognized that critical to the success of the State's tripartite system of public higher education was a central body responsible for coordination and planning for higher education. The California Postsecondary Education Commission was established in 1974 as the State planning and coordinating body for higher education by Assembly Bill 770 (Chapter 1187 of the Statutes of 1973), Education Code Section 66900-66906. The Commission serves a unique role in integrating policy, fiscal, and programmatic analyses about California's entire system of postsecondary education; "to assure the effective utilization of public postsecondary education resources, thereby eliminating waste and unnecessary duplication, and to promote diversity, innovation, and responsiveness to student and societal needs through planning and coordination."

The Commission provides the legislative and the executive branches of government with advice and information about major policy and planning issues concerning education beyond high school. This comprehensive, statewide planning for postsecondary education in the State is perhaps the most significant of the Commission's multiple responsibilities.

### **Composition**

The Commission consists of 16 members, nine of whom represent the general public, five who represent the major systems of California education (the California Community Colleges, the California State University, the University of California, the independent colleges and universities, and the State Board of Education), and two student representatives.

The Commission appoints its executive director who coordinates the agency's staff to carry out the day to day work of the Commission. Its external affairs staff interacts on a daily basis with legislators and their staff, administrative offices, governmental officials, and media representatives. Its research staff prepares analyses, briefs, and numerous reports approved and published by the Commission. They also engage in various continuing activities such as reviewing proposed academic programs, new campuses or centers, conducting data analysis of student flow, and responding to requests of the Legislature and Governor.

As stated in its March 2006 report on *Faculty Salaries* the Commission conducts a regular study on faculty salaries in California's public universities and compares the salaries with faculty salaries at comparable institutions throughout the United States. "The study presents estimates of the percentage changes in faculty salaries that would enable California faculty to attain parity with their comparison groups in the coming fiscal year. The analysis is based on data from six of the eight University of California comparison institutions and all 20 California State University comparison institutions". The parity figure for CSU for 2005-2006 was 16.8% and the projected parity figure for CSU for 2006-07 is 18%.

As illustrated on University Exhibit 11-4, the Commission projections have not been far from the actuals. A review of the columns under the heading *Modified Weighted Average Salary Lag* on the exhibit finds that the 2004-05 projection of 12.7% was slightly under the actual of 13.1% and the 2005-06 projection of 16.8% was slightly above the actual of 14.4%. While there was much discussion during fact finding as to how the various figures should be viewed, there was no dispute that no matter how the figures were viewed, the faculty at CSU were lagging in the double digits behind their comparable institutions. There was also no dispute that the faculty at CSU were falling in the rankings amongst its comparable institutions as evidenced at Displays 4 and 5 of the Commissions' *Report on Faculty Salaries*. Recognizing that it was unlikely that this

round of negotiations was going to eliminate the gap, the challenge was to shape a recommendation that would make progress toward closing the gap while recognizing that there was not an infinite amount of money available.

The fact finder took into consideration the University’s references to the need to revise the methodology for the Commission’s determinations. She does not dispute that other means of compensation when compared with the compensation at the comparable universities may yield a different result. It is for that very reason that she has not recommended changes in FERP and has recommended only a modest change in the parking fee benefit. If those items were included in an overall compensation analysis with comparable universities, the lag might not be as great. But until such time as the Commission modifies its methodology, the fact finder must take into consideration the Commission’s finding that there is a double digit parity discrepancy at the University. It is important to note that the Commission is not a creation of the Union, nor is it a function of the University, but rather has been established by the Legislature to focus on higher education and policy issues. Its findings represent the best evidence available on faculty salaries at California Public Universities which cannot be ignored by the fact finder.

**University Position**

2006-2007 (Effective 7/1/06)

General Salary Increase (GSI)	4.0%
Service Salary Increase (SSI)	Fund from GSI Increase

2007-2008 (Effective 7/1/07)

GSI	5.53%
SSI	Fund from GSI Increase
Merit Salary Increase	1.00%

2008-2009 (Effective 7/1/08)

GSI	5.84%
SSI	Fund from GSI Increase
Merit Salary Increase	1.00%

2009-2010 (Effective 7/1/09)

GSI	6.50%
SSI	Fund from GSI Increase
Merit Salary Increase	1.00%

1.00% of the above offer is contingent upon receipt of a joint request for an additional 1.00% increase for compensation for all CSU employees in the CSU budget for fiscal years 2007/08, 2008/09 and 2009/10, and CFA's support for the total CSU budget. If no augmentation is achieved, the GSIs will be reduced by 1.00% for fiscal years 2007/08, 2008/09 and 2009/10.

**Union Position**

2006-2007 (Effective 7/1/06)

General Salary Increase (GSI)	4.0%
Service Salary Increase (SSI)	As per current requirements
Equity Program	.5%

2007-2008 (Effective 7/1/07)

GSI	4.25%
SSI	1.25% (remove SSI maxs.)
Equity	.5%
Post Promotion Increase (PPI)	.5%

2008-2009 (Effective 7/1/08)

GSI	4.5%
SSI	1.25%
Equity	.5%
PPI	.5%

2009-2010 (Effective 7/1/09)

GSI	5.25%
SSI	1.25%
Equity	.5%
PPI	.5%

Neither party's proposal will eliminate the double digit salary lag but both parties' proposals will make progress toward its elimination. The Union has put forward a compelling argument that the Service Salary Increases are not an additional cost to the University and in fact, there may be savings to the University due to the fluctuations within the bargaining unit as faculty retire or resign resulting in a lower overall cost of

the salary schedule. The University has put forward an equally compelling argument that the savings realized by the University due to the fluctuations should not automatically be provided to the bargaining unit members. Neither party brought forward any hard budget numbers or calculations for the Panel to review and the University confirmed for the Panel that it was not contending that it did not have the “ability to pay”. The dispute over the SSIs appears to be philosophical in nature with one party contending that SSIs are a “no cost” item to the University and the other party contending that cost savings realized through faculty fluctuations do not necessarily yield additional monies to be used for salaries. A review of the language that describes the granting of an SSI at Sections 31.12 through 31.20 finds that SSI increases are not automatic but rather are dependent on satisfactory performance. Unlike other step salary schedules that require nothing more than an additional year of service, the SSI requires a review by the administration of a faculty member’s performance. It is anticipated that a Service Salary Increase may be denied at Sections 31.17 through 31.19. Given the University’s stated interest in pay for performance its resistance to fund the SSIs is puzzling. Unlike the General Salary Increase, the SSI is not automatically provided to all faculty. Nonetheless, the University has remained firm in its resistance to funding and has emphasized that if the SSIs are to be funded, it must come from the General Salary Increase monies. In order to bring this long protracted round of negotiations to a close, it is recommended that salary monies be distributed as outlined in the recommendation below. The savings realized by distributing the monies at different times of the year should help to offset the monies required to fund the SSIs.

**Recommendation**

2006-2007 (Effective 7/1/06)

General Salary Increase (GSI)	3.0% retroactive to 7/01/06; 1% retroactive to 1/01/07
Service Salary Increase (SSI)	As per current requirements

2007-2008 (Effective 7/1/07)

GSI	4.53% effective 7/01/07; 1% effective 1/01/08
SSI	As per current requirements
Equity* <sup>6</sup>	.5%
PPI* <sup>7</sup>	.5%

2008-2009 (Effective 7/1/08)

GSI	4.84% effective 7/01/08; 1% effective 1/01/09
SSI	As per current requirements
Equity*	.5%
PPI*	.5%

2009-2010 (Effective 7/1/09)

GSI	5.50% effective 7/01/09; 1% effective 1/01/10
SSI	As per current requirements
Equity*	.5%
PPI*	.5%

\*The granting of PPI and Equity is not subject to the grievance procedure however it shall be subject to a faculty appeal/review process to be developed by the parties.

.50% of the above offer is contingent upon receipt of a joint request for an additional .50% increase for compensation for all CSU employees in the CSU budget for fiscal years 2007/08, 2008/09 and 2009/10, and CFA's support for the total CSU budget. If no augmentation is achieved, the GSIs will be reduced by .50% for fiscal years 2007/08, 2008/09 and 2009/10.

**Eligibility of Librarians and Counselors for PPI and Equity**

There was no evidence or discussion put forward that would support a conclusion that Librarians and Counselors should not be eligible for PPI and Equity increases.

**CSU/CFA Salary Structure Committee**

As the fact finding process unfolded it became clear that there are many flaws in the current compensation structure. The Union was seeking a removal of the lid on the

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<sup>6</sup> Pursuant to Union Exhibit XVII-42.

<sup>7</sup> As presented in Union document entitled *Senior Faculty Recognition Program* with figures modified as follows: 2% for "meets expectations"; 3-5% range for "exceeds expectations".

SSIs to enable long term faculty to enjoy the service salary increase that junior employees receive. The salary schedules found in Appendix C of the agreement illustrate that the SSI maximum step is not consistent for all faculty. Further exploration of the reasons for this inconsistency resulted in the revelation that several years ago the parties revised the salary structure to allow for flexibility in salary placement. Additional revisions have taken place over the years leading to salary schedules that defy logical explanation. To remove the lid on the SSIs would serve no purpose other than to further confuse the salary schedules. There was not sufficient time however through this fact finding process to do a thorough review of the salary schedules and make a well reasoned recommendation as to how they should be revised. This is a task that will take a considerable amount of work by the parties and will only be accomplished with the assistance of outside parties. It is therefore recommended that the parties establish a joint Salary Structure Committee to be chaired by a mutually agreeable neutral third party.

No later than September 1, 2007, each party shall submit the names of three individuals and their respective resumes to the other party for consideration to be named as the neutral third party. The submissions shall include the names of individuals who have a background in higher education and the design of compensation issues. The parties will attempt to agree on the selection of one individual to serve as the neutral third party. If they are unable to agree on a neutral third party, then each party will select one individual from their lists to be their representative on a tri-partite panel. The two representatives will then compile a list of recently retired individuals who have a background in higher education and the design of compensation issues. These individuals could include but not be limited to, recently retired university vice presidents for academic affairs (often called "provosts" or something similar).<sup>8</sup> From the compiled list, the representatives will select, through a striking process, a neutral to serve as the chair of the panel. The tri-partite panel will review, analyze the current salary structure and make recommendations for changes. The starting point for the review by the tri-partite panel shall be the work completed under Section 31.29 of the agreement entitled *CSU/CFA Salary Structure Study Committee*. The panel will have the authority to convene meetings with the parties. The panel's review will be completed within 120 days of their initial meeting. The panel will issue its recommendations within 90 days of the conclusion of its review.

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<sup>8</sup> "These of course are the people who really know the workings of the teaching side of the university, and who are the key people in setting faculty compensation guidelines. Two outstanding recent provosts at the University of Michigan are Paul Courant and Edward ("Ned") Gramlich, who served briefly as an interim provost after service on the Board of the Federal Reserve System. Both are economists." (Comments from NAA member Theodore St. Antoine at the University of Michigan who the fact finder contacted for guidance in the identification of potential neutrals.)

Recommendations of the Committee shall be brought forward no later than September 1, 2008 and submitted to the parties' respective governing bodies for ratification. If the recommendations are ratified then the Committee's recommendations will supersede this Agreement in the area of Salary for 2009-2010. If the recommendations require budgetary action by the Legislature, then the necessary legislation will be forwarded promptly to the Legislature and the Governor and the recommendations will not be effective until budgetary action is taken.

The costs of the neutral third party shall be borne equally by the parties. The costs of each party's representative on the tri-partite panel shall be borne by the appointing party.

### **Article 32** **Benefits**

#### **Parking**

##### **University Position**

The University is proposing that parking fees for faculty unit employees be allowed to increase to the level paid by students and the administration. The increase would occur over a three year period so that by the end of the third year faculty unit employees would be paying parking fees at the same amount as paid by students and administrators. The CSU proposes to phase in the increases beginning with fiscal year 2007-2008.

##### **Union Position**

The Union is proposing that a consumer-based parking authority be established that would be given functional control over all CSU parking matters including when (and if) new construction of parking structures should take place, rates set for parking, and the disposition of all parking fees collected.

#### **Recommendation**

It is worth noting that parking fees are a subsection of the article that is entitled *Benefits*. A review of that article finds that all of its subsections focus solely on benefits to be provided to the faculty as part of an overall compensation package. The benefits contained within the article include: Health Plan; Rural Health Care Stipend; Dependent Care Reimbursement Program; Dental Plans; Vision Care; Flex Cash Program; Retirement Benefits; Recreational Facilities; Travel Reimbursement; Parking Fees; Life Insurance, AD&D Plan and Disability Benefits; 403 (b) Programs and Optional Retirement Plan; and Enhanced 1959 Survivor Benefits. Presumably these are the benefits that the University is encouraging the Panel to take into consideration when it is

reviewing the overall salary packages being presented by the parties. As noted in the previously cited LAO Budget Analysis:

Faculty typically receive various other forms of compensation as well, including retirement and health benefits, sabbaticals, housing allowances, and bonuses. Several studies commissioned...have found that nonsalary benefits provided to US and CSU faculty are worth considerably more than the average of their comparison institutions. In fact, when all forms of compensation are considered, UC and USC appear to be at or above their comparison averages.

Indeed it is not unusual for unions and employers to negotiate benefits as part of an overall compensation package. The fact that the faculty are paying less than the students for parking is not an accurate comparison. Students have not negotiated a compensation package that includes reduced parking fees. They have not participated in the give and take of negotiations that resulted in benefits that represent a total compensation package. Nor have the students been subjected to the salary lag that has negatively affected the faculty over the past several years. If one were to review the costs incurred by the students one would find that in comparison to other universities throughout the nation they have enjoyed considerably lower tuition and fees than other similarly situated student populations. The overall costs to the students at the USC, including their parking fees, are well below the norm. Unfortunately, the salary of the faculty at USC, is also well below the norm and the fact that the faculty have negotiated parking fees to offset some of the salary gap should not open the door to comparisons with students who are not similarly situated. A similar analysis can be made for the administrators who are also paying the same parking fees as the students. As indicated at Union Exhibit XVII-37, executive compensation increases have been awarded for not only salary but also for housing and car allowance. While administrators may be paying the same as the students for parking, presumably their overall compensation package represents an acceptable distribution of the monies available. It is that same concept of acceptable distribution of the monies available that must be taken into consideration when reviewing the faculty parking fees. There is no dispute that salary increases that may result from this round of negotiations will not close the CPEC gap. It is therefore important that the overall compensation package not contribute to a further decline in the financial benefits received by the faculty. The placement of the subsection Parking within the Benefits

section of the Agreement makes it clear that any modification of that benefit will alter the overall compensation package. For that reason, any changes must be made in concert with other modifications in the compensation package. It is therefore recommended that parking fees be increased by the same percentage increase as the General Salary Increase for each year of the agreement however at no time shall the faculty parking fees exceed the student parking fees.

**New Article**  
**Extension for Credit Employment Issues**

During the fact finding process, the parties continued to negotiate on the inclusion of a new article that would address benefits and rights for extension for-credit faculty. An email update provided to the Panel dated March 5, 2007 stated that the parties "...have no agreement on the issue of the assignment of extension work on a priority basis to lecturers who have failed to receive their entitlement." From that statement, the Panel concludes that all other matters within the new article have been resolved. Due to the ongoing discussions between the parties which have apparently resulted in significant progress, the Panel has not had the opportunity to review the status of the agreed upon language nor has it had the opportunity to hear from the parties their respective positions regarding the remaining issue. It would therefore be presumptuous of the Panel to make a recommendation without adequate information. The parties are hereby directed to continue their discussions on the remaining issue and reach a resolution prior to the conclusion of the fact finding process. If they are unable to reach a resolution within that time frame, then they may submit their respective positions with accompanying rationale to the Panel for a recommendation.

**Article 41**  
**Duration**

The Union has argued strongly that it has been placed in a difficult position due to the Chancellor's Compact with the Governor. While the University maintains that it has established a funding floor through the Compact, there is no guarantee that the floor is nothing more than a false ceiling that perhaps can be removed but not without peril. There is also the risk, albeit hopefully minimal, that the Compact funding will not be

provided as promised. The fact finder believes that the Compact was entered into as a good faith effort to obtain some budgetary increases however she finds it unfortunate that California State University, one of the top universities in the nation, has been placed into a position of begging for dollars. Rather than recognize the University as a treasure to be preserved for the benefit of the public, the elected officials have simply made it another budgetary item to be allocated a portion of the remains. As provided in California Code 3572:

The Governor shall appoint one representative to attend the meeting and conferring, including the impasse procedure, to advise the parties on the views of the Governor on matters which would require an appropriation or legislative action, and the Speaker of the Assembly and the Senate Rules Committee may each appoint one representative to attend the meeting and conferring to advise the parties on the views of the Legislature on matters which would require an appropriation or legislative action.

While some elected officials may view this provision as a right to be exercised at will, it should more properly be viewed as a responsibility through which they would obtain first hand knowledge regarding the difficulties facing the University. Such first hand knowledge would enable them to make a reasoned determination regarding the University budget which in turn could lead to the development of good public policy.

Given the fact that there has not been any attendance by the elected officials at the negotiation sessions, given the possibility that the University may be reluctant to aggressively pursue funding beyond what it has negotiated in the Compact, and given the possibility that the Compact may not be fully funded, the Union has cause to be concerned that perhaps monies will not be forthcoming through the duration of this agreement. While past agreements have limited re-openers to economic items only, the fact finder recognizes that the dynamics have shifted through the introduction of the Compact. The Compact may make the University reluctant to pursue any additional monies that might be needed to support the agreement throughout its duration. California Code 3572 provides the preferred solution to the failure to fully fund the agreement by remanding the entire agreement back to the parties for further negotiations. Underlying such remands is the belief that the negotiating parties will do their very best in the initial

negotiations to reach a reasonable agreement without excessive monetary demands and that the elected officials will be unwilling to unravel an entire agreement due to their failure to provide the necessary monies. To adopt the provisions of California Code 3572 however would require a substantial move from prior agreements between the parties which have provided for re-openers on economic issues only. That is not to say however that there should not be a modification to the language particularly in light of the new dynamic introduced through the Compact. For that reason the fact finder makes the following recommendation:

- Current contract language at Section 41.1 shall be modified by deleting “2005” and inserting “2010”.
- Current language at Section 41.2 shall be modified by deleting “2004” and inserting “2009” in the first sentence. Delete the second sentence from the section.
- Section 41.3

Modify to read as follows:

Any term(s) of this Agreement that carries an economic cost shall not be implemented until the amount required therefore is appropriated and made available to the CSU for expenditure for such purposes. If less than the amount is needed to implement this Agreement is appropriated, in any given year of this Agreement, and made available to the CSU for expenditure, the term(s) of this Agreement that carry economic cost and two additional non-economic articles selected by the CFA and CSU (for a potential total of four non-economic articles) shall automatically be subject to the meet and confer process.<sup>9</sup>

Respectfully submitted on the 14<sup>th</sup> day of March, 2007 by,

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Sylvia P. Skratek, Panel Chair

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<sup>9</sup> This provision does not apply to the .50% contingency money that is contained within Article 31, Salary.