

**FACTFINDING REPORT AND RECOMMENDATIONS**

In the Matter of Factfinding:	)	
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<b>UNIVERSITY OF CALIFORNIA, IRVINE</b>	)	
Employer,	)	PERB IMPASSE
	)	NO. SF - IM - 2914 - H
and	)	Skilled Crafts Unit
	)	
<b>STATE EMPLOYEES TRADE COUNCIL –</b>	)	DATE ISSUED:
<b>UNITED</b>	)	
	)	February 10, 2012
Union.	)	
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**Factfinding Panel:**

Impartial Chairperson:

\_\_\_\_\_ **Walter F. Daugherty**, Arbitrator/Factfinder  
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Employer Member:

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Union Member:

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**Appearances:**

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## **BACKGROUND AND PROCEDURAL HISTORY**

The State Employees Trade Council – United (“SETC” or “Union”) is the certified exclusive bargaining representative for employees in the Skilled Crafts Unit at the University of California, Irvine (“UCI” or “Employer”). This Unit totals some 150 employees in various skilled craft classifications including carpenters, electricians, mechanics, locksmiths, masons, painters, plumbers, sheet metal workers, and steam operating engineers.

On March 16, 2011, the parties reached agreement on a successor Memorandum of Understanding (“MOU”) to the October 1, 2008 to September 30, 2010 MOU (J. Ex. 2 and J. Ex. 1, respectively).<sup>1</sup> The proposed tentative agreement was not ratified by the Union membership. Therefore, pursuant to Section 3590 of the Higher Education Employer-Employee Relations act (“HEERA”) an impasse was declared and the matter was referred to mediation. Mediation sessions were held on June 27 and July 11, 2011. Since the impasse persisted, it was subsequently referred to factfinding. The parties jointly selected Walter F. Daugherty as the neutral Chairperson of the Factfinding Panel. Samuel Strafaci was designated as the Employer’s Panel Member and the Union selected Patrick Hallahan as its Panel Member. The parties submitted six disputed contractual provisions to the Factfinding Panel.

At the request of the Chairperson, both parties waived the statutory time limits for the hearing and the completion of the factfinding process. A pre-hearing meeting was held on November 4, followed by factfinding hearings on November 7 and 8, 2011 at the Employer’s facility in Irvine, California. Both parties were afforded full opportunity to present evidence and

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<sup>1</sup>Joint, Union, and Employer exhibits are referenced as “J. Ex.\_\_\_\_,” “U. Ex.\_\_\_\_,” and “E. Ex.\_\_\_\_,” respectively.

argument regarding the contractual provisions at impasse. The Factfinding Panel met in an executive session on December 16, 2011 at the Employer's facility. The panel members also participated in two joint conference calls. On February 1, 2012, the Chairperson by U.S. mail and e-mail forwarded copies of the Report and Recommendations to the Panel Members for review. The Panel Members were given until the close of business February 9, 2012 for the submission of any concurring and/or dissenting opinions. Any such opinions timely submitted are attached.

### **ISSUES AND RECOMMENDATIONS**

At the outset, it is to be noted that the Chairperson subscribes to the view that factfinding is an integral component of the negotiation process and that compromise is an essential element of this process. Here, the parties in reaching a tentative agreement in March 2011 exchanged multiple proposals and either dropped or made substantial modifications to their respective positions. The compromises and concessions made by both parties, a critical component of the negotiations process, led to a tentative agreement. However, this tentative agreement was rejected by the Union membership. Thus, the Panel is here tasked not only with crafting an agreement that is acceptable to the parties' bargaining representatives but one that will be ratified by the Union's membership as well. The following recommendations are offered with these principles and concerns in mind. In such regard, rather than detailing the positions of the parties and their respective proposals advanced during negotiations, this information will be provided in a summary manner as it specifically relates to each disputed issue. It is noted further that the Employer in its presentation during the hearing asserted that the Union in making new demands regarding the language of Article 44, Benefits, and Article 20, Layoff and Reduction in

Time, was engaging in regressive bargaining violative of its statutory obligation to bargain in good faith.<sup>2</sup> These allegations, however, are outside the jurisdiction of the this Panel and, as such, will not be considered or addressed here.

#### **Article 46 – Wages and Article 2 – Duration**

The recommended wage increases in no small part influence and informs the duration of the negotiated agreement. These articles will therefore be addressed jointly.

During mediation, the Employer “repackaged” its salary offer made prior to mediation and proposed the following:

- A 3.66 percent across the Board (“ATB”) salary increase effective October 1, 2011.
- A 2.0 percent ATB salary increase effective July 1, 2012.<sup>3</sup>

The Union’s proposal made during factfinding was as follows (U. Ex. 21):

- A 3.0 percent ATB salary increase effective October 31, 2010.
- A 4.0 percent ATB salary increase effective July 1, 2011.
- A 3.0 percent ATB salary increase effective March 1, 2012.
- A 2.0 percent ATB salary increase effective July 1, 2012.
- A 4.0 percent ATB salary increase effective October 1, 2013.

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<sup>2</sup>Regarding any changes in the language itself of Article 44, it was clarified during the hearing that the Union was not proposing any changes in such regard (RT, Vol. II, pp. 252-254).

<sup>3</sup>The Employer’s proposal on which tentative agreement had been reached before mediation was for a 2.0 percent ATB increase effective July 1, 2011, a 1.0 percent ATB increase effective January 1, 2012, a 2.0 percent ATB increase effective July 1, 2012, and a 1.0 percent ATB increase effective July 1, 2013. This offer also included market equity increases of 1.5 percent on January 1, 2012 for some 15 bargaining unit classifications.

- A 1.5 percent market equity increase effective January 1, 2012 for those classifications for which such increases were provided in the Employer's last, best, and final offer before mediation.
- A salary reopener in 2012 and 2013 with discussions beginning on or about July 1 of each year.
- The parties agree to conduct a joint wage equity survey

The UCI asserts that its salary offer reflects that the bargaining unit employees have in the past received more generous salary increases than non-represented employees, that the proposed increases exceed the increases provided in the recently concluded negotiations between the UCLA campus and its SETC bargaining unit, and that the Union's salary demands would require the reduction of expenditures in other areas. While acknowledging that salaries for some classifications are below that paid by other comparable employers, it points out that turnover is low and that it has experienced no difficulties in filling bargaining unit positions.

The Union argues that salary increases given to other University of California ("UC system") bargaining units far exceed UCI's salary proposal, that bargaining unit employees' wages substantially lag behind salaries paid by comparable employers, and that the Employer's financial position is not as poor as it alleges and that its salary demands can reasonably be met.

The Panel's deliberations regarding recommended salary increases cannot ignore the fact that the Union's membership rejected the tentative agreement and while no basis was stated for the employees' vote, the Panel members are all cognizant of the significance of economic matters in the contract ratification process. Thus, it is not unreasonable to conclude that the rejection of

the tentative agreement manifested employee dissatisfaction with the salary increases offered by the Employer.

Two basic forces or elements influence employee salary demands and expectations. One may be considered as the “absolute value” of wages; i.e., the standard of living afforded by one's salary, and the extent to which this standard may have eroded because of external factors such as inflation. The second element involves comparisons, both as to the wage increases received by other bargaining units in the organization and the wage levels of and increases received by employees in similar occupations paid by comparable employers.

Turning first to the external comparability issue, the survey information submitted by the Union shows that for every bargaining unit classification for which data was available the wage rates of SETC represented employees at the UCI are lower than those paid by other comparable employers (See, U. Ex. 2 through U. Ex. 8). As an example, the salaries for trade classes paid by the County of Orange effective July 2011 ranged from some 3 to 14 percent higher than the comparable bargaining unit classification's October 2009 wage rate (U. Ex. 8).<sup>4</sup> Using a multi-employer sample set, the 2008 Skilled Trades Compensation Study sponsored by the California State University (the “Mercer” survey) also demonstrates that UCI bargaining unit employee wages are less than the surveyed employers (J. Ex. 1 and U. Ex. 6, p. 21). In such regard, comparison of the average median base salary paid by the 19 participant employers with the top

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<sup>4</sup>It should be noted that any salary increase received by the bargaining unit employees after October 2009 would reduce these observed disparities.

step (Step 6) of the UCI comparable trades classes shows that except for the facilities mechanic and operating engineer classes, the wages at UCI are lower by a range of some 2 to 15 percent.<sup>5</sup>

As pointed out by the Employer, market wage comparisons are only one element in the salary determination process and such comparisons ignore other factors such as fringe benefit packages and working conditions. Further, as the Employer notes, it does not appear to have problems in either recruiting or retaining bargaining unit employees as turnover is low and vacancies do not remain open for an inordinate period. However, market wage comparisons comprise some evidence supporting the Union's position that the bargaining unit employees should receive a higher salary offer than that proposed by the UCI.

In support of its wage proposal, the Union points to recently concluded negotiations with other UC systemwide bargaining units and the salary increases provided in these MOUs.<sup>6</sup> In reopener negotiations for the Patient Care Technical Unit represented by AFSCME concluded in October 2011, the parties agreed to a 3 percent increase effective November 1, 2011 with a lump sum payment retroactive to January 1, 2011 and a 3 percent increase effective January 1, 2012 for patient care employees (U. Ex. 23).<sup>7</sup> The MOU negotiated for the Registered Nurses Unit by the California Nurses Association provides for a 3 percent increase "following ratification" for 2011, a 4 percent increase effective February 1, 2012, and a 4 percent increase effective February 1,

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<sup>5</sup>It is to be emphasized that most bargaining unit employees are not on the sixth step of their respective six-step salary range.

<sup>6</sup>Unlike the Skilled Crafts Unit here, these bargaining units are all university systemwide units.

<sup>7</sup>Service employees also received two 3 percent raises but the effective dates of the increases were less favorable than the implementation dates for the patient care employees.

2013.<sup>8</sup> The Union also noted the agreement reached during March 2010 reopener negotiations with the UPTE for the systemwide Professional and Technical Employees Unit. This agreement specified ATB salary increases of 2.5 percent effective October 2010, 3 percent effective October 2011, and 3 percent effective October 2012. The Panel is also aware that CUE Teamster Local 2010 has recently reached a tentative agreement for its systemwide unit. This tentative agreement provides for a one-time lump sum payment equal to 3 percent of salary retroactive from July 2011 until a 3 percent salary increase becomes effective in early 2012, successive 3 percent increases effective July 2012, July 2013, and July 2014, and a 2 percent increase effective July 2015 over its five-year term. It also provides annual salary step increases for eligible bargaining unit employees, the number of steps and whether a step is given is contingent on the employee's length of service.

While the ongoing difficulty of recruiting and retaining registered nurses is acknowledged, it does not appear that the other bargaining units that received more generous settlements than that offered here have experienced recruitment and retention problems. It is noted that the Skilled Crafts Unit at UCLA, also represented by SETC, recently settled for a 3 percent increase effective October 1, 2011 and a 2 percent increase effective October 1, 2012 (E. Ex. 1-6). The salaries at UCLA, however, are significantly higher than those paid the Skilled Crafts Unit employees at UCI, eroding the efficacy of this settlement as the pattern for this bargaining unit.<sup>9</sup>

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<sup>8</sup>The date this MOU was ratified is not in the record.

<sup>9</sup>Wage rates at UCLA then in effect ranged from some 5 to 15 percent higher for comparable classes than the UCI step 6 rates effective as of October 1, 2009. Bargaining unit employees at UCLA are on a flat rate whereas most UCI bargaining unit employees are not at Step 6, the top step.

Although the Employer has not raised an inability to pay argument concerning the Union's salary demands, it asserts that the reduction in State funding over the last several years and the strong likelihood of further reductions in this revenue source preclude a more generous salary offer than currently proposed. Review of the various budget documents presented during the hearing shows that some of the reduction in State funding has been offset by increases in revenue generated by student tuition and fees. Moreover, that the UC system agreed to the ATB salary increases described above suggests that its financial position, albeit one facing future uncertainty, is not as bleak as it portrays. In any event, the Chairperson is not persuaded that UCI's financial position precludes it from offering larger salary increases than heretofore offered the Union, particularly when an additional year is added to the proposed duration of the MOU.

Upon consideration of the settlement agreements reached with various UCI systemwide units and his assessment of the Employer's fiscal position, the following wage increases are recommended by the Chairperson:

- A 3.75 percent ATB wage increase effective July 1, 2011. Bargaining unit employees are to receive a lump sum payment representing the increase retroactive to July 1, 2011.
- A 3 percent ATB wage increase effective July 1, 2012.
- A 2 percent ATB wage increase effective July 1, 2013.
- A 2 percent ATB increase effective January 1, 2014.

The Union's arguments and evidence regarding its proposed salary inequity increases have been fully considered. However, the Skilled Crafts Unit does not have any comparatively significant low wage employees nor were any classifications identified as having recruitment

and retention problems, factors that frequently lead to inequity increases. While comparison of the UCI wage scale with comparable employers shows that some Unit classifications lagged behind the market rate more than other classes, the Chairperson is not persuaded in consideration of the above-recommended ATB increases that additional inequity increases are warranted. The Chairperson therefore does not recommend any market equity wage increases.

During negotiations the parties also reached agreement on a new pay equity provision to be included in Article 46, the MOU's wage article. The Chairperson recommends that this language be included in the final agreement. Lastly, it is noted that the unresolved issue of the Union's request for a parity agreement with the salary increases for non-represented employees has been resolved to some extent. For the increases recommended for fiscal year 2011-2012 for the Skilled Crafts Unit are greater than the 3 percent merit-based compensation pool established for non-represented employees (E. Ex. 1-4). In any event, and in consideration of the recommendations made herein regarding salaries and the implementation dates for employee health plan contributions discussed below, the Chairperson does not recommend the inclusion in the MOU of the parity language at issue.

Regarding the duration of the MOU, in light of the recommended wage increases and their respective effective dates, it is recommended that the term of the MOU run from October 1, 2010 until June 30, 2014.

### **Employee Retirement Contributions**

Bargaining unit employees are covered by the University of California Retirement Program "UCRP"). For some time both the State and employees had contributed to the retirement fund. Because of a surplus in the fund in 1990, both State and employee contributions

then ceased. The 2008 recession that reduced the fund's asset portfolio resulted in a some \$21 billion unfunded liability for the UCRP, requiring that both the Employer and covered systemwide University employees again contribute to the fund. In July 2010, employees began to contribute 2 percent to the UCRP.<sup>10</sup> As of July 2010, the Employer began to contribute 4 percent to the plan, this contribution increased to 7 percent effective July 1, 2011 and will increase to 10 percent effective July 1, 2012.

During negotiations the parties reached tentative agreement that the bargaining unit employee contribution rates to the retirement plan would be increased by 1.5 percent effective January 1, 2011 and 1.5 percent effective January 1, 2012, raising the employee contribution rates to 3.5 and 5 percent effective January 1, 2011 and January 1, 2012, respectively (U. Ex. 20(B)).<sup>11</sup>

At the factfinding hearing, the Union clarified its current position as that it would agree to both 1.5 percent increases but the effective date of these new employee contribution rates was contingent on the overall wage package (RT, p. 187). The Employer's position remains consistent with its last best and final offer, to wit, employee contribution increases of 1.5 percent effective July 1, 2011 and 1.5 percent effective July 1, 2012.

The Employer has put forward a sufficient and sound fiscal basis for the proposed increases in the employee contribution rates to the UCRP and, as noted, the Employer's contribution share will also be increased. These increases were agreed to in negotiations with

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<sup>10</sup>Employees for an unspecified period had been paying 2 percent into a deferred compensation plan. Beginning on July 1, 2010, this money was redirected into the retirement plan (RT, pp.181-182).

<sup>11</sup>A new funding policy for the retirement plan adopted by the Board of Regents led to the increased contributions for both employees and the University system (J. Ex. 26).

most of the systemwide University bargaining units and, as such, the increases are not inappropriate here. A dispute, however, centers on the date that these increases will become effective for the Unit employees. The Union's position that the implementation dates are dependent on the total wage package is noted. However, with respect to the 1.5 percent increase targeted for July 1, 2012, the Chairperson believes that this is a reasonable implementation date and, as noted above, sufficient fiscal reasons support the need for this increase.

As to the initial 1.5 percent increase, it is noted that the proposed July 1, 2011 effective date contemplates and requires a retroactive payment of this increase by the bargaining unit employees. In such regard, the Chairperson notes that the agreement reached between the University of California and AFSCME provides that the 1.5 increase in employee retirement contribution is to be retroactive to July 1, 2011 (U. Ex. 23). Although any such retroactivity for the Unit employees here will be for a substantially longer period, employee retirement contributions are not money lost to employees because in a sense it is returned when the employee begins drawing on his retirement. Further, the pay increases recommended above will offset the retroactive implementation of the initial 1.5 percent retirement increase and its financial impact can be further reduced by extending the recovery period over multiple pay periods.

For the foregoing reasons, the Chairperson recommends that the parties agree that employee contributions to the University of California Retirement Plan be increased by 1.5 percent effective July 1, 2011 and increased by 1.5 percent effective July 1, 2012. It is further recommended that the recovery of the retroactive increases be spread over multiple pay periods as agreed to by the parties. Further, given the recommended term of the MOU as discussed

above, it is recommended that the MOU include a reopener provision to allow for negotiations should it be determined that additional increases in employee retirement contributions after July 1, 2012 are required.

### **Employee Health Premium Contributions**

Seven health insurance plans are currently provided by the UC system for its employees, with the costs varying from plan to plan and for the range of coverage selected. Employee and Employer contributions to the costs of the various health insurance premiums are arrayed in four banded tiers, with the higher paid employees paying higher contribution rates. All Skilled Trades Unit employees are in the second tier – an annual salary rate of \$47,001 to \$93,000 for 2011(E. Ex. 3-4).

The health insurance premiums are established on a calendar year basis, with new rates becoming effective January 1 of the calendar year. Health care total premium costs for calendar year 2011 increased substantially over the prior calendar year, the increases ranging from about 6 percent to 17 percent (E. Ex. 3-4 and E. Ex. 3-6).<sup>12</sup> Although the UC system increased its contributions to the various plans, bargaining unit employee costs increased more on a percentage basis than did the UC system's costs. For calendar year 2012, the UC system's health care plan contribution for employees in the second tier increased by a maximum of some 8.8 percent while the percentage increase for employees ranged from about 1 percent to 8.9 percent with the employee costs for the Anthem Blue Cross PPO plan decreasing by more than 30 percent (E. Ex. 4 and J. Ex. 29).

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<sup>12</sup>The Cigna Choice plan was dropped and two new plans were added, which, according to the Employer, afforded comparable benefits and coverage at a reduced cost to employees.

Although the health insurance plan rates for calendar year 2011 became effective on January 1, 2011, by virtue of the operation of MOU Article 44 A. 4, bargaining unit employees are still paying their prior contribution rates.<sup>13</sup> In the tentative agreement reached in March 2011, the Union agreed to the employee health care contribution rates for calendar years 2011 and 2012. The dispute here centers on when these new rates are to become effective, specifically the Union opposes any retroactive application of the 2011 rates as such would comprise a significant out-of-pocket loss to the bargaining unit employees. The Employer's position is that the employees are to begin paying the higher contribution rates retroactive to January 1, 2011 and January 1, 2012, respectively.

As noted previously the 2011 health care premium rates have been in effect since January 1, 2011 but bargaining unit employees, unless they opted into one of two then newly created plans, have continued to make their health plan premium contributions at the lower 2010 rates. The retroactive application to January 1, 2011 of the employee contribution rates for calendar year 2011 would, depending on the particular plan and coverage, result in the recovery of substantial sums from some bargaining unit employees, for the amount owed would range from about \$25 to \$1970 (E. Ex. 4 and E. Ex. 6). For many bargaining unit employees the retroactive application of the 2011 employee health care premium rates would swallow up a not insignificant portion of the recommended July 1, 2011 wage increase. As such, the Chairperson believes the retroactive application of the higher employee health plan premium contributions to January 1,

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<sup>13</sup>This provision states "In the event the Current Memorandum of Understanding (MOU) expires, the parties agree that the items of this Article, University Benefits, preserves the status quo and will continue in full force and effect unless otherwise expressly modified by mutually agreement of the parties."

2011 and the recovery of the monies owed would comprise the proverbial “deal breaker” with respect to the membership’s ratification of any tentative agreement. The Chairperson therefore recommends that the parties agree to the health care contribution rates for calendar year 2011 and further agree that bargaining unit employees will not be required to make any retroactive payments in such regard.

As to the health care premium rates for calendar year 2012, the employee contribution rates, as previously discussed have increased for most of the available plans and these new rates were effective January 1, 2012. While it is speculative when these negotiations will end, the Chairperson is not prepared to conclude that the implementation of the calendar year 2012 health care premium rates back to February 1, 2012 imposes a too onerous burden on bargaining unit employees. It is therefore recommended that the parties agree to implement the 2012 calendar year health care premium rates effective February 1, 2012. Given the recommended duration of the MOU, it is further recommended that reopener language be included to reopen negotiations on health care premium rates for calendar year 2013.

#### **University Benefits – Article 44**

At the hearing, the Union Representative stated that the Union was not proposing any change in the language itself of Article 44, University Benefits. Therefore, no recommendations are needed or warranted in such regard.

#### **Layoff and Reduction in Time – Article 20**

Incorporated in the tentative agreement reached in March 2011 were various changes in the current language of Article 20. These included language requiring the Employer’s review of the “necessity” of limited appointments before implementing bargaining unit layoffs, adding the

assistant supervisor class to each respective craft for layoff purposes, and increasing the advanced notice period for a temporary layoff from 15 to 30 days and the advance notice period for an indefinite layoff or reduction in time from 30 to 45 days. The parties also had agreed that the Employer would give the Union 45 days written notice before the effective date of an employee(s) layoff and that severance pay of up to 16 weeks pay based on length of service would be provided. As previously noted, the tentative agreement was rejected by the Union's membership; no new proposals regarding Article 20 were made by either party during mediation.

During factfinding the Union proposed several additional changes and/or modifications to Article 20 (U. Ex. 19). These included the elimination of the Employer's contractual right to effect reductions in time, the elimination of all limited positions before laying off bargaining unit employees, and an increase in the notification time to employees targeted for layoff and the Union to 60 days. The Union also proposed new language allowing it to meet and confer on the impact of layoffs of bargaining unit employees and providing employees subject to layoffs the option voluntarily to reduce to a lower class or a reduction in work hours and pay through participation in the UCI system Employee Reduction in Pay Program (ERIT). At the hearing, the Union verbally proposed to change the contractual seniority definition to the employee's date of hire.

The Chairperson has carefully considered the Union's proposals proffered during factfinding. In such regard, it is first observed that an arbitration award involving the UCLA Skilled Crafts Unit has been issued holding that UCLA had violated similar language in making the reductions in time ("RIT") in dispute before the arbitrator (U. Ex. 27). The award did not prohibit UCLA's use of the RIT process but held that UCLA had failed to comply with the

applicable seniority provisions in implementing the contested reductions in time. The Chairpersons's review of the award and the current language of Article 20 regarding the RIT process fails to persuade that the Employer's right to implement a RIT in compliance with the MOU's terms as an alternative to layoffs should be rescinded. It is therefore recommended that Article 20 not be modified to eliminate the Employer's right to implement reductions in time consistent with the relevant contractual requirements.

As previously summarized, a number of modifications were made during negotiations to the current provisions of Article 20. In the opinion of the Chairperson, these were not insignificant and reflected good-faith compromises made by the parties to secure an agreement. The Chairperson believes that the changes and modifications made to the existing provisions of Article 20 during negotiations preceding impasse comprise a sufficient basis for settlement. Therefore, it is recommended that these be included in the successor MOU with one additional modification. In such regard, the Union's proposal that seniority should be defined by hire date appears to both simplify and expedite the process of determining order of layoffs and is consistent with the definition of seniority commonly found in collective bargaining agreements. It is therefore recommended that the definition of seniority included in Article 20 be modified to define seniority as date of hire in a bargaining unit classification.

Respectfully submitted,

Walter F. Daugherty  
Factfinding Panel Chairperson

Dated: February 10, 2012  
Los Angeles, California