

IN FACT FINDING PROCEEDINGS PURSUANT TO CALIFORNIA  
GOVERNMENT CODE SECTION 3592

CALIFORNIA NURSES ASSOCIATION,	]	
	]	RECOMMENDATIONS
	]	
Union, ]		of
and	]	
	]	FACT FINDING PANEL
	]	
UNIVERSITY OF CALIFORNIA,	]	John Kagel, Neutral Chair
	]	Joe Lindsay, Union
Employer.	]	Gayle Cieszkiewicz, Employer
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Re: Successor to 2005-2007 Agreement	]	

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APPEARANCES:

For the Union: Beth Kean, CNA, Oakland, CA

For the Employer: Paul Krohnheim, Irvine, CA

INTRODUCTION:

The Parties presented five days of evidence and a further day of final argument on a great many proposals from each of them for their successor Agreement, involving five independent Medical Centers and six campus and laboratory sites for a Bargaining Unit of over 10,000 Nurses.

The Panel has deliberated on five occasions and had determined to proceed as follows:

Except as otherwise indicated the recommendations herein are those of the Neural Chair. If a provision or proposal is not mentioned the recommendation is to retain the language in the 2005 Agreement, except where the Parties have otherwise reached agreement. As to some proposals, as noted below, the Union and Employer Panel members have agreed to formulate the language of an amended provision. The Panel has

further agreed that summary statements as to each recommendation is appropriate for this report.

A number of proposals were made to move or edit existing language as a matter of clarity, as opposed to substance. The Panel recommends that the Parties establish a subcommittee to deal with such changes which can be adopted if agreed to during the life of the Agreement.

The evidence, which included comparisons to both Union-represented and non-represented hospitals throughout California, the testimony of witnesses for both Parties as to comparisons and matters that were internal to the Medical Centers and other materials, was carefully considered. The overriding purpose of these recommendations is, after consideration of the transcript of the proceedings and that evidence proffered by both Parties, is to not necessarily reflect the personal preferences of the Chair. Rather, the recommendations are made for the Parties' consideration as to what it is likely that their Agreement could be—if not as desired by each Party at least acceptable to them for the recommendations have sought to take into account the institutional benefits that both Parties have indicated they respectively need and desire from their Agreement.

In their consideration of the recommendations they should keep in mind that this negotiating process has dragged on for months and may continue for many more unless decisions are taken now. It is hoped that the recommendations below are viewed as balanced and may represent the best bargain that may be reachable by both Parties at this time.

#### ARTICLE 1, RECOGNITION:

The Union has proposed broad restrictions to preserve Bargaining Unit positions. The University maintains that this issue is a permissive subject for bargaining. After consideration of both Parties' positions the principal issue is that for those facilities where Charge Nurses are in the Bargaining Unit that they remain in the Unit. Given that the University has acknowledged that there is no intention to move that position out of

the Bargaining Unit on a wholesale basis a simple statement in the Agreement should suffice to resolve this issue.

RECOMMENDATION AS TO ARTICLE 1:

A provision should be added, without prejudice to the University's position in future negotiations at the conclusion of this Agreement, that the University has no intent on a wholesale basis or at a location in particular to make a change to Charge Nurse Bargaining Unit status. On a case-by-case basis, if a unit changes its dynamic in such a manner that an individual nurse who happens to be a Charge Nurse would get an assignment of additional duties so that she becomes a legitimate supervisor over and above what a Charge Nurse there does, that may affect the Bargaining Unit status of that particular nurse. No such change should occur until after notice to the Union.

ARTICLE 6, EDUCATIONAL/PROFESSIONAL DEVELOPMENT LEAVE

One issue concerning carryover of unused educational leave is not recommended given the high number of unused educational leave indicating that the current leave allocation is sufficient

Another issue concerning how to reconcile the shift hours of a nurse with the educational hours does require attention.

A final issue concerns educational leave being denied on a Nurse's day off.

RECOMMENDATIONS AS TO ARTICLE 6:

Add as Article 6.B.2.e that if the educational program occurs on a day the Nurse is scheduled to work, and the educational program provides a credit of at least 6 CEU's, the deduction from the Nurse's accrued educational leave shall be equal to the Nurse's normally scheduled shift."

Add Article 6.B.3.e: "Educational leave will not be denied if the educational program occurs on a Nurse's day off."

ARTICLE 7, PROFESSIONAL PRACTICE COMMITTEE:

Justification for additional release hours for the PPC chair was not apparent.

The proposed technology provision of the Union should be adopted but be modified as the proposed first paragraph is both too broad and too vague.

**RECOMMENDATION AS TO ARTICLE 7:**

The following provision should be added to Article 7 or appear in a stand-alone Article with wording to be worked out by the Parties' Panel members to include that with respect to new technology, the manner in which technology is used shall guarantee patient confidentiality; that it is to complement but not degrade nursing skills and provide information and options for clinical decision-making but not replace Nurse accountability clinical decision-making.

**ARTICLE 8, STAFFING:**

The Union seeks incorporation of a BRN advisory about floating to a new position or patient care unit. This is not recommended given that such advisories, among other things, can be changed during the life of the Agreement.

A Union proposal to deny floating between hospital locations maintained by the same medical center is also not recommended given the limited situations shown when such floating has been mandated. For similar reasons a sought-for float differential is not recommended.

The current Agreement provides for meeting and conferring regarding units to which Nurses are required to float. Given that there has been very limited use of this language in the last two Agreements a provision for arbitration of any disagreement is not recommended, although a negotiating reopener concerning any specific disagreement if the provision is activated is.

A Union proposal that the physical presence of a supervisor be required "in an emergency situation where there is a potential danger to patients" is not recommended given that standards of nursing care are already in place generally and at each location.

A University proposal regarding release time is not recommended as it does not appear to be necessary.

**RECOMMENDATIONS AS TO ARTICLE 8:**

Add to Article 8.E a provision that if the Parties fail to reach agreement, the matter will be subject to bargaining between the Parties at their next Agreement reopener under Article 38.

#### ARTICLE 9: PROBATIONARY PERIOD:

A University provision for a probationary period extension is not accepted but may be modified as follows below.

##### RECOMMENDATION AS TO ARTICLE 9:

Add to Article 9: “Probationary periods may be extended by mutual agreement of the Parties.”

#### ARTICLE 13: JOB POSTING

The Union seeks that internal applicants for a job should receive preference over outside applicants and that a position should be awarded to the most senior qualified internal applicant. The University seeks to award positions to the “most qualified” applicants regardless of whether they are internal or from the outside.

Equity dictates that internal applicants should receive positions if qualified before outside applicants. Since the statement of what qualifications are needed for a given position are within the control of the University if an internal applicant meets those standards there can be no complaint from the University. If no internal applicant applies or is not found to meet the qualifications for the job the University is free to hire anyone it wants to for the job who does meet them.

Given this change the seniority proposal is not recommended at this time.

##### RECOMMENDATIONS AS TO ARTICLE 13:

Article 13.B.2.c should be modified to read: “By any other qualified internal applicant.”

Article 13.B.3 should be modified to read: “When ‘other qualified internal applicants’ are substantially equally qualified the University in making its decision shall include consideration of their licensure, certification, seniority, experience and any discipline issued within the last two (2) years.”

#### ARTICLE 14: HOURS OF WORK

University proposals to address clarity in the existing language should be referred to the subcommittee process recommended above except that the word “return” should be changed to “report” in Section J.2 first sentence.

On call pay at San Diego should track that of the HX unit there. All other Nurses should receive on-call pay as proposed by the University.

A proposal to limit rotating shifts where they have existed as of January 1, 2007 is a major issue to void the disruption in the lives of nurses who do not volunteer for them. For such Medical Centers the need to have a variety of experience and skill mixes on each shift has also been established. It is recommended that Nurses with ten or more years of seniority shall not be required to rotate unless the University, at the time of such an assignment to such Nurses, provides written justification of the reasonable basis for such an assignment.

#### RECOMMENDATIONS AS TO ARTICLE 14:

The recommendations are as stated in the immediately preceding section under Article 14.

#### ARTICLE 15: BENEFITS

Retirement and medical benefits for 2008 are currently in place. For subsequent developments see the duration provision below.

#### ARTICLE 16: HEALTH AND SAFETY

While both Parties have presented their views, including whether a Union proposal is properly within the scope of bargaining, no recommendation is made to change this provision.

## ARTICLE 17: VACATION

The Union proposes no changes. The University changes concerning Paid Time Off (PTO) are discussed in detail below.

## ARTICLE 18: HOLIDAYS

An issue has emerged as to whether the University is using the proper proration formula for those working less than a 100 percent shift. It is recommended that the proper proration be used and that if any issue remains it be subject to the grievance and arbitration procedure of the Agreement. No recommendation is made concerning paying full shift holiday pay for 90% nurses.

## ARTICLE 19: SICK LEAVE

No changes are proposed by the Union; the Employer's PTO proposal is discussed below.

## ARTICLE 20: LEAVES OF ABSENCE

Two unagreed-to provisions deal with disaster relief and UCLA jury duty. The former is dealt with below. The latter is urged to be retained because a ten-day limit is useful in the Los Angeles courts to be excused from jury duty. That is not a good reason to retain the restriction given no such limits at other UC facilities, no evidence of what the Los Angeles courts' current practices are nor the integrity of the jury system.

## RECOMMENDATIONS AS TO ARTICLE 20:

1. Eliminate the restriction on UCLA jury duty.
2. Add Article 20.G.5: "Disaster Relief. The University will make reasonable efforts to provide unpaid release time to Nurses who request up to two (2) calendar weeks off to provide disaster relief and medical assistance. Nurses may also use vacation time to do so."

## ARTICLE 23: LAYOFF AND REDUCTION IN TIME

A proposal concerning daily cancellations should not be recommended given the infrequency of cancellations. A concern about offering training programs to Nurses subject to layoff is dealt with below. Party Panel members will provide language with respect to layoffs in CN IV, AN 1 and NP III classifications. Other proposals are not recommended.

### RECOMMENDATIONS AS TO ARTICLE 23:

Article 23.E.1.d, alternatives to indefinite layoff should be amended to read:

“Offering career Nurses existing Medical Center based training programs, including those offered to new-hired Nurses, as long as minimum requirements are met.”

Special skills training should be allowed for those subject to indefinite layoff as set forth in the HX Unit agreement.

## ARTICLE 27: GRIEVANCE PROCEDURE:

A University proposal to require the Union to move a grievance to the next level when the University fails to respond timely lacks merit. While the University’s request to add the Office of the President is meritorious, it does extend the time for a grievance to get to arbitration. Accordingly, time limits should be compressed to not change the overall time for that to occur.

### RECOMMENDATION AS TO ARTICLE 27:

The time limits in the grievance procedure should be compressed so that on adoption of the inclusion of the Office of the President in the grievance process, which is recommended, does not extend the time it takes for a grievance to reach arbitration, if necessary.

## ARTICLE 28: ARBITRATION

Again, the requirement that the Union alone has responsibility to move a case deadlocked at the Office of the President state to arbitration is not recommended; that should be the responsibility of both Parties.

## ARTICLE 29: ASSOCIATION RIGHTS.

An additional twelve hours' release time and an additional meeting for Chief Nursing Representatives, and release time credit for off duty Nursing Representatives were not shown to be justified. The use of four hours' release time for Nurse Representative meetings at medical center facilities was, as were proposals concerning per diem and student health center Representatives. The Parties' Panel members will resolve issues concerning notice for Representatives' use of release time and contacts by Association representatives.

With respect to University proposals, updating proposals will also be worked out by the Panel members.

### RECOMMENDATION AS TO ARTICLE 29:

Add to Article 29.3 that Nurse Representatives and the Chief Nurse Representative shall be authorized to use up to four (4) hours of their release time to attend monthly Nurse Representative facility meetings.

Then add:

“For per diem Nurse Representatives, any hours for which release time is granted shall not count towards the required minimum per diem scheduling requirements.”

“For Nurse Representative in the Student Health Centers (SHC), participation in the SHC procedure and/or furlough scheduling meetings shall be considered part of their 12 hours release time per month.”

## ARTICLE 31: NURSE LISTS AND DISTRIBUTION OF MATERIALS

The Parties' Panel members will work out mutually acceptable provisions.

## ARTICLE 35: NO STRIKES

### RECOMMENDATION AS TO ARTICLE 35:

Add 35.C: "Any discipline up to and including discharge arising out of the violation of this provision shall be in accordance with Article 26, Corrective Action, Discipline and Discharge."

A side letter concerning this provision should be eliminated if the above language is adopted.

## ARTICLE 38: DURATION:

The Union's proposal for a twenty-seven month Agreement is impracticable given University-wide determinations concerning its views regarding retirement and health benefit negotiations. The University has deferred its position on any retirement changes, if any. Health care providers, while locking themselves in to some form of a second year commitment, have not done so in a way to provide any certainty as to what the University will seek to offer on that topic. Accordingly, although not ideal, the Parties need to proceed annually in negotiating these topics. In addition, given the quick movement of the "market rates" for Nurses, generally upwards, wages should be reopened annually as well.

There is no question but that negotiations have been protracted, leaving the Parties with uncertainty and long delays. To alleviate that problem the following is recommended:

### RECOMMENDATIONS AS TO ARTICLE 38:

1. "The duration of the Agreement shall be from July 1, 2007 to September 30, 2009."
2. "The subject of wages and benefits and one other subject by each Party shall be reopened on September 1 of 2008."

3. “The Parties shall begin their negotiations with written proposals on September 1 and conclude them by September 14, 2008. Failing agreement, the post-impasse process of mediation and fact finding as required by the California Government Code shall commence on September 15, 2008 with Fred Horowitz as the mediator/fact finder. Mr. Horowitz will be asked to schedule such dates on the ratification of this Agreement.”

#### ARTICLE 39: RELEASE TIME FOR BARGAINING:

No justification for a change in the number of Bargaining Unit members released for bargaining was shown. Other changes sought are grammatical in nature and for the subcommittee to deal with if that recommendation is accepted.

#### ARTICLE 40: WAGES

With respect to wages two general issues have emerged. First, the University opposes any retroactive pay increases on a wholesale basis on several grounds while the Union believes it to be appropriate. Secondly, there is a marked disagreement with respect to how to gauge market wage conditions. The University relies on HASC surveys of hospitals which are voluntary contributions of information from member hospitals which self-survey themselves. The Union relies on Union-represented hospitals where collective bargaining agreements are available to check comparisons.

While the HASC surveys may give trends there is no way to verify their underlying information. The University asserts that each member, for its own purposes, would have motivation to be truthful and/or complete, there is no way to check that faith while the Union agreements are verifiable from their contents. In addition, the UC facilities are unionized and comparisons with their peers in this respect are valid. And the Union has presented evidence on this point based on proposals by it and the University at each facility including showing where they fall with respect to each year of a Nurse’s longevity.

Nonetheless, particular elements in wage recommendation necessarily include whether wages paid keep pace with the cost of living and impact on the ability of the Employer to recruit and retain Nurses. Notably, several of the UC facilities, which maintain their own budgets and do not share revenues with each other, have offered to increase wages. Significantly. One, Irvine, has lagged in this respect, citing, among other matters, that its revenues are depressed by the large mix of its Medical and Medicare patients. Yet, at Irvine, there is no claim of inability to pay wage increases in the sense that it has opened its financial books to the Union to so show.

A principal issue at Irvine is that the increases in most longevity steps lag behind the universal two percent increases between them at all other Medical Centers; there is no basis shown why that gap should not be begun to be closed.

#### RECOMMENDATION AS TO WAGES:

While there are different “market” conditions for the services of Nurses at each Center this market is constantly moving upwards over time. The record indicates that the current range of such movement is about six percent from October 1, 2007, the date of the last wage increases for Nurses, to September 30, 2008. Accordingly it is recommended that six percent new monies be allocated to each Medical Center wage schedule for all classifications as that market dictates, to include increases or other compensation to October 1, 2007. At UC Irvine the longevity steps should be adjusted upward using some of such monies to move step increases towards the two percent level. At UCSF the market is moving greater than six percent which should be taken into account there. Campuses and Lawrence Berkeley Lab should also take the foregoing into account.

#### ARTICLE 41: PARKING

The University presented evidence based on each facilities’ parking department in putting forth caps on parking increases. It is recommended that they be accepted.

#### RECOMMENDATION AS TO ARTICLE 41:

“For FY 2008-2009, the University shall limit the parking rate increase over and above the 2007-2008 rates to no more than \$12/month; or equivalent for other than monthly permits.

“For FY 2009-20010, the University shall limit the parking rate increase over and above the 2009-2008 rates to no more than \$16/month; or equivalent for other than monthly permits.”

#### PROPOSED ARTICLE 42: PAID TIME OFF AND LONG TERM SICK LEAVE

The University has proposed covered employees except those not employed by and on behalf of the UC Medical Centers be eligible for PTO and Long Term Sick Leave (LTS) as of July 1, 2008 unless a Medical Center seeks to delay implementation.

According to the proposal currently-employed Nurses could annually elect to join the program but it would be mandatory for any newly hired eligible Nurses. Once in the program a Nurse would stay in it.

The crux of the PTO program would be that half of the current sick leave, averaging 44 hours per year, would be available for Nurses to take time off as they wish which could include increasing their vacation time, for illness or injury of themselves or dependents, for medical appointments or for simply personal time off. If to be scheduled it would be subject to department approval which would not be unreasonably denied based on specified criteria. Unlike the present Agreement which has a “use it or lose it” impact on vacation, the proposal includes an annual payment for hours over 75 percent of the maximum accrual.

The remainder of the current sick leave would be, according to the proposal, be put into a LTS bank which could be used for illness extending beyond 24 consecutive scheduled work hours or FMLA or other uses with varying restrictions on such uses.

The University urges the adoption of this proposal for the purpose of controlling replacement costs of nurses who take time off using current sick leave on an unscheduled basis. It has implemented this program for non-Union personnel and it has been successful in lessening such costs. It points to the fact that the Union has many hospital

collective bargaining agreements which contain PTO and LTS banks as do a vast number of non-Union hospitals. It also is concerned that the Union will disparage the program at newly-hired Nurses' orientations so that it should be mandatory that such Nurses join the program.

The Union, at this point, has maintained that the imposition of this program is strongly unacceptable to it. However, on further analysis its rationale for this position that it forces Nurses to use vacation for sick leave to avoid that they come to work sick has not been supported empirical evidence. There was no showing that this has in fact occurred even at the hospitals where it has agreed to PTO programs. The Union maintains the PTO programs it has agreed to were in effect grandfathered at the time those facilities were organized but, nonetheless the Union has either not tried to bargain those programs away or has been unsuccessful if it has tried to do so.

While the University has presented the agreement provisions of CNA-represented hospitals it is noted that those provisions vary from hospital to hospital. The University particularly points out that PTO extended sick leave banks have taken the place of separate provisions concerning vacation and sick leave as well as in some instances other forms of paid time off such as holidays and bereavement leave; that the extended sick leave banks at these locations require longer periods of illnesses or injury where the Nurse is not hospitalized for their use than that proposed by the University. It also maintains that PTO, being as universal as it has become at hospitals, is expected by new Nurses and is therefore a requirement for successful recruiting.

When analyzed, the principal objections to the program which appear to have validity are two. First, the program being mandatory for new hires, and second, that there is a take-away by potentially restricting use of half of the current allocation of sick leave.

A principal compromise given these objections are to allow the program to be voluntary. The disparagement issue, if it occurs, will be alleviated over time as Nurses determine for themselves which program is more advantageous if they are allowed to opt in to it if they did not join on being employed. Offering a voluntary program would eliminate the issue of not having one to offer as a recruiting incentive.

The Union's bottom line position, with respect to the University (as opposed to its objections to PTO and its efforts to eliminate it nation-wide), is that a PTO program is divisive in that it pits Nurses who like the program against those who do not. The Union has not demonstrated that this would be the case in that improvements in vacation or sick leave can be converted to PTO for those in the program. Necessarily, because of the University's structure, all Nurses in the Bargaining Unit cannot even be offered PTO but this factor does not withstand analysis that a voluntary program would have the adverse effects the Union presupposes.

Second, with respect to the second half of the sick leave being restricted as proposed, if the program is voluntary, a Nurse does not have to be subject to the restriction.

A further Union concern deserves notice. If the program is voluntary to join, the Union maintains, a Nurse should, having selected PTO, should have an option to revert to the prior system. There is at least limited merit to this view but the system would be undermined if this could occur willy-nilly. Accordingly a limited right to move out of PTO should be considered.

Finally, while the proposal requires scheduling PTO for other than illness, discussion with the Parties shows that PTO, if available, can also be used where the need to us it is reasonably unforeseeable.

#### RECOMMENDATIONS AS TO PTO:

That the PTO program be adopted with the modification that it not be mandatory for newly hired Nurses. A Nurse who selects PTO should have a one-time opportunity to opt-out of it.

#### NEW ARTICLE: DISCLOSURE OF PERSONAL INFORMATION

RECOMMENDATION AS TO DISCLOSURE OF PERSONAL INFORMATION:

“The University will not disclose Social Security numbers and individual financial information to third parties unless either agreed to by the Nurse or as required by law.”

Respectfully submitted,

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Fact Finder

February 28, 2008