

IN THE FACTFINDING PROCEEDINGS
PURSUANT TO HIGHER EDUCATIONAL EMPLOYMENT ACT

CALIFORNIA FACULTY ASSOCIATION

Union,

&

CALIFORNIA STATE UNIVERSITY

Employer

Case No.: LA-IM-4143-H

FACTFINDING REPORT AND
RECOMMENDATIONS FOR
SETTLEMENT

Chairperson:	Najeeb N. Khoury
Employer Panel Member:	Joseph J. Jelincic III, Assistant Vice Chancellor, Collective Bargaining
Union Panel Member:	Kevin Wehr, CFA Bargaining Chair
For the Union:	Kathy Sheffield, CFA Director of Representation and Bargaining/Interim General Manager
For the Employer:	Timothy Yeung, Sloan, Sakai, Yeung & Wong

BACKGROUND

The California State University (CSU) is one of the largest public university systems in the world, educating over 450,000 students across twenty-three campuses. CSU provides an indispensable service to the people of California. It goes without saying that the CSU and indeed any university system cannot accomplish its essential tasks without dedicated faculty. The California Faculty Association (CFA) is the exclusive representative for the CSU's faculty bargaining unit. Specifically, the CFA Bargaining Unit includes instructional faculty on the tenure line, lecturers (who teach on a contingent basis and earn three-year contracts after six years of service), librarians (including those on the tenure line and those who teach on a

contingent basis and earn three-year contracts after six years of service), counselors (including those on the tenure line and those who teach on a contingent basis and earn three-year contracts after six-years of service), and coaches who work from year to year.

The partes have a three-year collective bargaining agreement (CBA) that expires on June 30, 2024. The CBA provides for a limited reopener for the 2023-2024 year. The parties opened five articles for the 2023-2024 year, but they have been unable to reach agreement on any of these articles. On August 9, 2023, CFA declared an impasse in the negotiations. As the first step in the impasse process, the parties engaged in mediation, which failed to produce a settlement. The parties then advanced the process to factfinding, and they agreed to have me serve as the chair of the factfinding panel. At the factfinding hearings, both parties advocated for their positions through verbal presentations and supporting documents.

ANALYTICAL FRAMEWORK

Unlike interest arbitration, where a third-party neutral sets the terms of a new contract, a third-party neutral in a Higher Education Employer-Employee Relations Act (HEERA) factfinding simply provides recommendations. This in essence makes factfinding an extension of bargaining. Ultimately, the parties must persuade one another of their positions, and the neutral factfinder simply provides an outside perspective to help the parties along.

Neutral factfinders have typically required the party seeking a change to the *status quo* to carry the burden of persuasion, and I will follow that convention. HEERA provides no statutory criteria for factfinders to consider; however, HEERA factfinders have often looked to the criteria laid out in the Educational Employment Relations Act (EERA). As set forth in California Code Section 3548.2, EERA lays out the following factfinding criteria:

1. State and federal laws that are applicable to the Employer.

2. Stipulation of the parties.
3. The interest and welfare of the public and the financial ability of the public school employer.
4. Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.
5. The Consumer Price Index for goods and services, commonly known as the cost of living.
6. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.
7. Any other factors, not confined to those specified in paragraphs 1 through 6, inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

ISSUES AND RECOMMENDATIONS

Article 20—WORKLOAD

CFA seeks to make three changes to Article 20. It seeks to create strict course caps that can only be waived by agreement of the faculty member; it seeks to improve counselor ratios and to allow counselors to be on different work calendars; and it seeks to allow faculty who are appointed to temporary positions to receive credit for performing service work.

a) Course Caps

Issue: CFA states that courses have been increasing in size and that these increases create an unfair workload for faculty members. CFA describes this as class size creep, whereby class sizes gradually increase year over year until the number of students in a class greatly exceeds what is pedagogically sound and places great pressure on the faculty teaching those classes.

CFA notes that in a 1976 document entitled EP&R 76-36, the CSU system laid out its general understanding of what normal limits should be for various types of classes. CSU also points out that faculty senates will often approve classes with an understanding of the appropriate size of those classes. There is no concrete mechanism by which to enforce either the EP&R 76-36 or the faculty senate numbers. Therefore, CFA proposes the addition of the following language to the CBA: “The parties agree to use EP&R 76-36 to set course caps when a campus’s academic senate has not standardized course caps. These caps may only be waived on a case-by-case basis, and only when agreed to by the faculty member assigned a particular course.”

CSU responds that the EP&R was created in 1976 and has been unmodified since that time despite advances in pedagogy and technology. It also notes that guidelines on course enrollment have never been used as “caps;” that CSU makes 60,000 workload decisions annually; that under the current CBA, bargaining unit members can and do grieve allegations that their workloads are “unreasonable;” that workload assessments must be holistic with enrollment being just one factor in the assessment; that classes with enrollment above the guidelines are often used to balance against those classes with enrollment below the guidelines; and that the adoption of CFA’s proposal would hamper a campus’s ability to provide necessary courses to students.

Recommendation: I agree with CSU that creating firm caps could have unintended consequences for course offerings. I also note that the current CBA language already provides for a consultation process:

The instructional assignments of individual faculty members in the classroom, laboratory, or studio will be determined by the appropriate administrator after consultation with the department chair or designee and/or the faculty member. The department or other appropriate unit’s overall instructional or course assignments shall be consistent with department and student needs.

CBA Section 20.2 b.

Moreover, there is CBA language that states “members of the bargaining unit shall not be required to teach an excessive number of contact hours, assume an excessive student load or be assigned an unreasonable workload or schedule.” CBA Section 20.3 a. The CBA also provides a list of factors to be considered when determining an appropriate workload.

CFA provided two arbitration decisions that found violations of this language. These arbitration decisions demonstrate that CFA has a mechanism to ensure workload is not excessive. I believe this approach is better than creating a hard cap. I especially find the following analysis of Arbitrator Fredric Horowitz to be compelling:

Certain conclusions . . . may be drawn from a review of the arbitration decisions cited by the parties. 1) The Course Classification System’s standards for instruction are merely guidelines and, as argued by CSU, do not per se establish a ceiling on reasonableness. 2) Article 20 has not been intended by the parties to impinge on the flexibility of each campus to determine how workload is constructed. 3) Past practices of each campus and department are to be weighed heavily in a determination of excessive contract hours or unreasonable workload. 4) In close cases, arbitral deference will be given to a department’s determination of reasonableness because management is better positioned to evaluate the myriad of factors impacting faculty workload in any given class or term than a third-party neutral labor arbitrator. 5) By design or otherwise, no clear standards for determining what constitutes an unreasonable workload have been established by the parties. Rather, the parties have allowed the resolution of disputes over the excessiveness of contact time or unreasonableness of any given workload to be determined on a case-by-case balancing the department’s interest in the program and a faculty member’s interest in a non-oppressive workload in light of all the facts and circumstances presented.

CSU Northridge and CFA (Horowitz 2022, pg. 10)

With this said, I believe that the parties can benefit from adding another step in the grievance/arbitration process to help resolve or address workplace concerns consistent with the above analysis. I, therefore, recommend that the parties add the following sentence to Section

20.2 b. “If a faculty member is assigned a course size that exceeds the EP&R 76-36 or academic

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approved senate number, the faculty member during the consultation process may ask the appropriate administrator to provide in writing the reasons for the deviation from the EP&R 76-36 or academic approved senate numbers. Where appropriate and/or applicable, this explanation shall include a description of the past practice at the campus and/or department and what balancing was done in determining the appropriate class size.”

b) Counselors

Issue: CFA argues that counselors in the CSU are overworked and overwhelmed. CFA posits that this is due to the very large and unacceptable ratios between counselors and students at most of the CSU campuses. CFA, therefore, proposes the following additional language for the CBA:

- a) Counselors may be assigned direct services as part of their workload not to exceed 65% of their time. Such direct service shall include, but not be limited to individual, couples, family, and group therapy; intern training and supervision; referral and follow-up; triage and assessment; crisis intervention; and outreach and prevention activities;
- b) adequate time should be allocated for non-direct activities;
- c) every effort should be made to maintain minimum staffing ratios in the range of one FTE member (excluding trainees) for every 1,000-1,500 students.

CFA also seeks to allow counselors to work on a ten month calendar instead of a twelve month or academic calendar, and argues that this extra flexibility will help attract and retain counselors.

CSU responds that “direct service” is not strictly defined and it would be impossible to implement language that states counselors’ direct services are not to exceed 65% of their time. It also notes that it is unclear whether this 65% figure refers to a counselor’s daily time, weekly time, monthly time, or some other time period. CSU points out that counselors have some days

where they may provide more direct services than other days. It also argues that strict ratios are blunt instruments that do not account for all the variables involved in providing counseling services; that ensuring campuses are meeting the mental health needs of their students and communities involves more than just hiring counselors; and that CSU has been attempting to hire counselors, but there is a shortage of qualified counselors. CSU also notes that CFA's proposal regarding allowing counselors to be on ten-month calendars leaves no discretion to campuses.

CSU countered with the following language: "A counselor faculty unit employee who is employed on a twelve (12) month basis may request to be employed on an academic year basis. A counselor faculty unit employee shall provide written notice to the appropriate administrator of such a request, at least six (6) months prior to the start date of the requested effective academic year. Approval of the request is at the discretion of the appropriate administrator, and the academic year assignment may be discontinued (converted back to 12-month basis) based on the operational needs."

Recommendation: I remind the parties that they will be back at the bargaining table in a few months' time. I agree that the proposal regarding direct service time not to exceed 65% needs to be better developed to determine whether it would be feasible. The parties also acknowledge that hiring counselors is challenging. Therefore, it is not clear that the CSU could comply with contractual language that requires a ratio of one FTE counselor per 1,000-1,500 students. It is also clear that some campuses, like San Diego State, have done a good job of adding counselors and reducing their ratios. I recommend that the parties create a working group to study both the feasibility of a cap on direct service time and the best practices for hiring counselors and reducing ratios. The findings of this working group will inform the bargaining teams for the next CBA.

On the issue of counselors being able to switch calendars, I recommend adopting CSU's approach of making it at the discretion of the appropriate administrator. However, I would amend CSU's proposed language to make clear that a counselor may request either an academic year appointment or a ten-month appointment. I also recommend adding language that would require an administrator denying a request to provide a written rationale within a specified period.

c) Service Time For Temporary Faculty

Issue: Temporary Faculty earn "entitlements" to future assignments based on their current teaching workload. At the same time, temporary faculty are often asked to perform service work that falls outside of teaching, such as serving on academic senates. This service time does not count towards their entitlement, and so temporary faculty members who take on service assignments either have to increase their workload in order to keep the same level of entitlements or must lose some level of entitlement in order to maintain the same workload while providing services to the CSU. The parties agree on contractual language to help address this problem. Specifically, the parties agree to the following language: "For each fiscal year of this agreement, CSU campuses will collectively provide a pool of 500 WTUs for each academic year, allocated based on campus full-time equivalent students (FTES), to provide assigned time to Temporary Faculty Unit Employees who perform institutional service that support the CSU's priorities."

Where the parties disagree is whether such awards shall be counted towards a faculty member's entitlement or whether such awards can be used to satisfy but not enhance a time base entitlement. Put differently, under CFA's proposal, a faculty member who has 9 units of entitlement and adds 3 units of service work would have a future entitlement to 12 units;

whereas, under CSU's proposal, a faculty member with 9 units of entitlement who adds 3 units of service work can drop down to teaching 6 units without having his/her/their 9 units of entitlement reduced. CSU points out that entitlements apply to departments, and service work often cuts across departments. Therefore, it would be difficult to award additional entitlements based on service work.

Recommendation: Given that this is a new idea that will be implemented for the first time, I recommend adopting CSU's approach, whereby service work can be used to meet preexisting entitlements but cannot serve to add to an entitlement base. In future bargaining, the parties can revisit how this new approach is working and whether it would make sense to add to entitlements based on service work.

Article 23—Leaves of Absences

CFA seeks to make two changes to Article 23.¹ It seeks to increase the amount of parental leave from the current “maximum of thirty (30) days” to a “minimum of one semester or two quarters” and to a “minimum of 16 weeks” for “12-month employees.” CFA also seeks to create a “Crisis Leave” section of Article 23 that would read: “A faculty member shall be entitled to five (5) days of leave to attend to/care for an ‘immediate family’ member in a health or natural disaster crisis.”

a. Parental Leave:

Issue: CFA asserts that the 30 days of parental leave provided in the CBA has remained stagnant for many years. It also argues that this benefit is much more generous at other

¹ CFA had also proposed expanded the definition of “immediate family” to include a sibling’s child. However, CFA did not focus on that in its materials, and I will, therefore, recommend the status quo for this issue.

institutions such as the State University of New York (SUNY) where faculty can take up to 24 weeks of leave with half of the leave paid at 100% and half paid at 67% and the University of New Mexico which provides for a full semester of leave, which is approximately 16 weeks. CFA also notes that the University of California faculty members receive 8 weeks fully paid which runs concurrently with family leave and that Rutgers University and the University of Illinois, Chicago provide 6 weeks of paid leave plus 8 weeks release time from teaching duties or one semester of modified teaching duties.

CFA notes that new parents face many challenges, including difficult and complicated childbirths, unpredictable nursing and sleeping schedules, and the need for parent-child bonding. CFA costs its proposal at \$1,153,860, which it asserts is modest given the size of the bargaining unit and the CSU budget. As a matter of policy, CFA notes that outside of the United States paid parental leave averages 18 weeks and that maternal mortality rates are higher in the United States than in other countries and largely occur postpartum and disproportionately impact Black women. CFA also notes that making a leave a semester long makes pedagogical sense as leaves for less than a semester are disruptive for students.

The CSU responds that the current language is in some ways more generous than what is provided at other institutions. CSU currently provides the option between 30 working days of paid parental leave (which is six weeks), or a workload reduction of 40% for 1 semester or 60% for 1 quarter at 100% pay (the vast majority of CSU campuses are on semester systems). CSU does not require employees to be FMLA/CFRA eligible in order to utilize this benefit, and about fifty percent of employees who utilize this benefit are not FMLA/CFRA eligible. CSU calculates the cost of CFA's proposal to be \$6.3 million for the bargaining unit and \$21.9 million if the benefit were expanded for all of CSU's employees.

CSU has proposed that the parties consider having the CSU system participate in the State Disability Insurance (SDI) program, which provides a paid parental leave benefit. CFA responds that participating in SDI would come at a cost greater than what it believes the cost of its proposal is, and that it economically does not make sense to participate in SDI.

The stark difference in costing out the proposal is due to different assumptions made by the parties, including CSU's assumption that more employees would utilize the benefit if it were enhanced.

Recommendation: I agree with CFA that it makes sense to update the 30-day parental leave language, especially in light of other systems providing more robust parental leave benefits. However, it is also important to note that the parties will be back at the bargaining table to negotiate a successor CBA within months. This fact encourages an incremental approach. The parties can take modest steps now at improving the benefit, which would allow them to determine the actual cost of improving the benefit even further. I, therefore, propose that the parties increase the benefit from 30 working days (six weeks) to 40 working days (eight weeks) and that those bargaining unit members who work on a semester system and utilize the workload reduction option be given a workload reduction of 60% for 1 semester (up from 40%).

b. Crisis Leave

Issue: CFA seeks to create crisis leave language that it believes would operationalize the lessons learned from the COVID-19 pandemic and from other crises that faculty have faced. Such examples of crises for which this language would have been utilized include the catastrophic fires near the Chico and Sonoma campuses and the recent earthquake which struck near Cal Poly Humboldt. Under CFA's proposal, the crisis leave language would also apply

when faculty need to provide elder care. The crisis leave proposal is meant to cover scenarios which are not covered by bereavement or sick leave.

CSU points out that such language does not exist in CBAs at other academic institutions and no other unit in the CSU has such a benefit. It also notes that the terms “health or natural disaster crisis” are not defined in CFA’s proposal.

Recommendation: I recommend that the parties allow bargaining unit members to use their sick time to address health or natural disaster issues that are impacting their immediate families. I also note that Article 23.19 has language that provides “an emergency leave with pay may be granted to a faculty unit employee by the President in the event of a natural catastrophe or an emergency situation that places the health or safety of the faculty unit employee in jeopardy. The President may also grant emergency leave to faculty unit employees who require leave due to violent crimes, domestic violence, and/or sexual assault.” There is no reason why a faculty unit employee should not be allowed to ask for discretionary leave when there is a health or safety issue impacting the bargaining unit member’s immediate family. I recommend the parties agree to amend the language of Article 23.19 to allow for that possibility.

Article 31—SALARY

CFA seeks a General Salary Increase (“GSI”) of 12% effective July 1, 2023; CSU has offered a 5% GSI. CFA also proposes increasing the lowest salary amount for the Instructor A and Instructor B positions by \$10,000 and \$5,000, respectively. The parties appear to agree that the minimum department chair monthly salary should be increased to \$160 from \$80 with chairs of large departments receiving an additional \$80 instead of \$40.

Issue: CFA argues that faculty need to keep up with other educators, including educators in K-12 and community colleges. It notes, by way of example, that UTLA and LAUSD recently

negotiated a 21% increase from July 1, 2022 to January 1, 2025, and that the State Center Community College system, which encompasses community college campuses in the Fresno area, has provided a 6.56% increase in 2022-2023 and an 8.22% increase in 2023-2024. CFA further argues that its 12% GSI proposal is reasonable due, in part, to inflation as the CPI-Urban index was 4.7% in 2021, 8% in 2022, and is projected to be 4.2% for 2023. CFA notes that bargaining unit members only received a 3% GSI in 2022, meaning their purchasing power decreased by 5% in the face of 8% inflation.

CFA also proposes increasing the Lecturer A and B entry level salaries by \$10,000 and \$5,000, respectively, as it argues that these entry level salaries are especially not keeping up with other educators. CFA further justifies this proposed increase by noting that the parties have historically bargained for general GSI increases, and that general GSI increases alone result in fewer dollars for lower wage earners (by way of example, a 3% increase of \$100 is \$3 but a 3% increase of \$200 is \$6).

CFA calculates its total salary proposal to cost \$364 million. It believes CSU can afford this cost for the following reasons: it argues that CSU failed to disclose \$1.5 billion in surpluses and has overstated restrictions on its ability to spend reserves; that CSU has increased cash investments from \$5.1 billion to \$8.6 billion in the last five years; that CSU's financial health is strong as reflected in its credit ratings; and that CSU has, in recent years, invested heavily in capital outlay projects and should refocus its investments on its faculty and other staff. CFA also notes that the salaries of campus presidents have greatly increased in recent years.

CFA also hired Howard Bunsis, a Professor of Accounting at Eastern Michigan University, to conduct an analysis of CSU's financial health and to provide his opinion on whether CSU could afford CFA's proposals. Bunsis's main conclusions were as follows:

The CSU System is in very strong financial condition. This conclusion is supported by a high level of reserves, and annual operating cash flow surpluses.

- Significantly, this conclusion is supported by the high bond ratings of Moody's (Aa2) and Standard and Poor's (AA-). The bond agencies refer to the liquidity and annual margins to support their ratings.
- The largest revenue source, the state appropriation, has increased in recent years and is expected to increase solidly through 2025.
- The marginal cost of the CFA proposal over the CSU administration offer can be met by the significant annual operating cash surpluses that CSU has generated for many years. The CSU system has significant reserves, but these reserves will not have to be accessed in order to meet the CFA request; the request can be satisfied by existing annual surpluses.

CSU strongly disputes CFA's views of its financials. CSU argues that the amount of money it has available to spend on salaries and benefits is much less than what CFA asserts. CSU points out that it seeks to have reserves of 3-6 months of expenditures with 3 months equaling approximately \$2 billion, and that, contrary to CFA's assertion that CSU has large reserves, CSU's unrestricted reserves have not historically exceeded that amount. CSU further asserts that many of the funds which CFA identifies as counting as reserves are not funds that can be used for salaries but are statutorily restricted.

CSU notes that there is a multiyear compact with the Governor whereby CSU will receive five annual increases of 5% from the State's General Fund; that it is offering a 5% GSI despite the fact that the 5% funding increase does not cover CSU's projected operating cost increases; that CSU's biggest cost by far is personnel; and that CFA's proposal costs more than all the compact money received from the State in 2023-2024.

CSU further states that it desires to spend portions of the compact money on other priorities; that other bargaining units have already agreed to 5% GSIs for 2023-2024; that providing CFA with a greater GSI would trigger "me-too" language for other bargaining units;

and that CFA received a 4% salary increase in 2021-2022 and a 3% increase in 2022-2023, which are figures that are roughly equivalent to what other CSU bargaining units received during that same timeframe.

Moreover, CSU points out that, in collaboration with CFA, it hired the Mercer Consulting Firm to do a market study, and that the Mercer study showed that the faculty unit was roughly at or slightly above the market median. CFA responds that the Mercer study was flawed in part because it excluded as comparators the majority of schools in Massachusetts and New York.

CSU finally argues that campuses will have to absorb additional costs of salary increases, and that tuition increases will not occur until 2024-2025. Therefore, it asserts that even if CFA were to accept the 5% offer, campuses will have to make difficult decisions in deciding how to pay for the increases.

To conclude, CSU believes its offer is fair and reasonable because the offer is consistent with what other bargaining units have received, because CSU faculty compensation is comparable to similar institutions, and because CSU's anticipated revenues will not cover the 5% increases in salaries, which makes even CSU's 5% offer a financial stretch.

Recommendation: For the department chair issue, I note that the parties are in conceptual agreement, and I recommend that the parties memorialize this conceptual agreement (which should make clear that the new minimum rates are retroactive effective to July 1, 2023). I do not recommend CFA's proposal regarding increasing the entry level Lecturer A and B salaries by \$10,000 and \$5,000 respectively. This proposal may create compaction issues, and it potentially could lead to a scenario where the entry level salaries exceed the salary levels of higher steps on the salary table.

Regarding the GSI proposals, I note that it is very challenging for a factfinder to make recommendations when the parties have such radically different views of the employer's financial situation. CFA argues that its 12% proposal should be easily absorbed given CSU's finances, and CSU argues that even its 5% proposal will create economic pain on campuses. I also note that the parties have been unable to agree on a list of comparator institutions, as evident by the disagreements over the Mercer report.

My below recommendation is designed to balance CFA's concerns about the low level of pay for entry level Lecturer positions, CFA's demand that faculty wages keep track with inflation, and CSU's concerns about triggering "me-too" language.

The combined CPI-U for the three-year period of the CBA is 16.9%. The CFA bargaining unit has received 7% for the first two years of the CBA, meaning a 9.9% increase would be needed to keep pace with inflation. I accept that a 9.9% GSI increase for one year would be difficult for the CSU and its campuses to absorb. But I also believe a 5% GSI given the pace of inflation for the past two years will not adequately maintain the purchasing power of bargaining unit members. Therefore, I recommend a 7% GSI with other economic enhancements that will not count as across-the-board bargaining unit increases.

I note that the parties have bargained for Salary Service Increases (SSI) for 2023. This means that those faculty unit members who are below the SSI Max line on the salary tables have already received a 2.65% increase in 2023-2024. I do not believe anything would preclude the parties from agreeing to a second SSI increase for 2023-2024. The parties have not negotiated for a Post-Promotion Increase (PPI) of 2.65%. PPIs are increases that would impact certain tenured faculty. It is important to note that SSI and PPI increases are not across-the-board increases and would not trigger "me-too" clauses.

With this in mind, I recommend that the parties agree to a PPI for those faculty members who qualify; that the parties agree to a second SSI increase for 2023-2024 that would go into effect on June 30, 2024; and that the parties make clear that all faculty who teach in 2023 and are below the SSI max line would receive the second SSI increase on June 30, 2024.

If my recommendation is accepted, it will mean that by the end of 2023-2024 the lowest paid faculty will have received slightly more than the 12% increase sought by CFA (7% plus 2.65% plus 2.65%) and faculty who are entitled to PPI increases will have received a 9.65% increase (7% plus 2.65%), essentially keeping up with inflation for the three years of the CBA. While my recommendation will trigger the “me-too” clauses, they will only be triggered for an additional 2%.

I recognize that my recommendation means that some faculty will only receive a 7% GSI, which would place their cumulative three-year increase below inflation. Therefore, I also recommend that faculty who receive neither an SSI nor a PPI for the 2023-2024 year receive a pro-rated lump sum of \$3,000 (e.g., a .5 FTE would receive \$1,500).

Article 32—BENEFITS

CSU seeks to allow campuses the discretion to increase the monthly parking rates for faculty bargaining unit members by a maximum of \$2. CFA seeks to increase at no cost to employees the supplemental life insurance plan from \$50,000 to \$500,000, and to increase the accidental death and dismemberment insurance from \$50,000 to \$100,000. CFA also seeks to increase the Flex Cash Program so that employees who waive benefits would receive \$700 instead of \$140 per month for waiving medical and dental, \$660 instead of \$128 per month for waiving only medical, and \$40 instead of \$12 per month for waiving only dental. CFA also seeks to eliminate the “nominal fee” used to cover costs for using recreational fees. Finally, CFA

seeks to mandate the creation of alternative transportation funds and seeks to include bike and micro-mobility rental passes as a form of transportation covered by those funds.

a. Parking

Issue: CSU seeks to have the ability to raise monthly parking rates by \$2. CFA seeks to have no increases in parking rates. Per the existing CBA, there were no parking increases for the 2021-2022 year, and parking increases could increase by no more than the percentage of the General Salary Increase for 2022-2023. CSU points out that parking services are self-funded and paid for in pre-tax dollars. CSU notes that students and other community members must pay for parking, and if CSU faculty pay a smaller amount than a larger amount will be borne by the rest of the community. CSU also notes that reduced usage has impacted revenues. CFA counters that a \$2 monthly increase in parking amounts to a 15-17% increase at some campuses, which is much greater than the 5% salary increase that CSU is offering.

Recommendation: Given that the parties will be at the table again shortly and given that the parties had an agreement on how to deal with parking in 2022-2023, I recommend that the parties adopt the same agreement for 2023-2024, namely that parking increases can increase by no more than the percentage of the General Salary Increase.

b. Supplemental Life Insurance and Accidental Death and Dismemberment Insurance

Issue: CFA seeks to increase the no-cost supplemental life insurance and accidental death and dismemberment insurance to \$500,000 and \$100,000 respectively. CFA points out that the current figures have not changed for decades, and that some faculty would have difficulty obtaining insurance on the open market due to pre-existing conditions. CSU responds that these benefit levels are consistent with what other bargaining units receive. CSU also notes that IRS rules generally allow employers to provide up to \$50,000 in group term life insurance

coverage without tax consequences, and that the cost of increasing the life insurance coverage to \$500,000 would be approximately \$9 million.

Recommendation: Group policies normally allow employees to purchase additional life insurance above the employer provided insurance at reasonable rates without needing a medical exam. I recommend that the parties work together to get quotes from the group life insurance carrier so that they can offer this added option to the bargaining unit employees.

c. Flex Cash Program and Recreational Facilities

Issue: CFA seeks to increase the amount employees receive for waiving health and/or dental insurance. CFA argues that this is a win-win proposal as CSU saves money when employees waive coverage and increasing the amounts will incentivize bargaining unit members to waive coverage if they can receive coverage from their spouse/domestic partner.

CSU responds that 1,500 bargaining unit members receive some form of flex cash, placing the cost of CFA's proposal at approximately \$10 million a year. CSU also notes that all bargaining units receive the same Flex Cash Benefit amounts, and that these amounts are identical to those offered by the State of California to its employees. CSU acknowledges that higher amounts may make sense if it encourages more employees to opt out, but there is no current data to suggest what amounts might maximize savings.

CFA also seeks to eliminate language that allows CSU to charge "a nominal fee" for the use of recreational facilities. CFA argues that eliminating the fee will encourage bargaining unit members to take advantage of recreational facilities, thereby creating a healthier workforce. It also argues that some recreational fees are more than nominal. CSU notes that recreational facility fees are self-supporting.

Recommendation: I recommend the *status quo* on the waiver amounts and on the recreational facility fees language, but I also recommend that the parties create a working group to study the potential economic savings of raising the waiver amounts and the feasibility of reducing or eliminating recreational facility fees for bargaining unit members. The findings of this working group will inform bargaining for the next CBA on these issues.

d. Alternative Transportation

Issue: CFA seeks to amend current contractual language which allows campus presidents the ability to establish transportation benefits programs which encourage the use of alternative transportation methods. CFA seeks to make this language mandatory and not leave it to the discretion of campus presidents. CFA also seeks to add “bike or micro-mobility rental passes” to the types of benefits that such programs should support. CSU is amenable to adding the “bike or micro-mobility rental passes” language but insists on keeping the creation of the programs at the discretion of the campus presidents.

Recommendation: Given the diversity of campuses, I agree that the campus presidents should retain discretion over the programs. But I recommend including “bike or micro-mobility rental passes” as types of alternative transportation benefits that should be supported by such programs.

Article 37—HEALTH And SAFETY

CFA seeks to address the following three issues in the Health and Safety article: gender-inclusive restrooms and changing rooms; lactation and milk storage space; and on-campus policing.

a. Gender Inclusive Restrooms

Issue: The parties agree that gender inclusive restrooms should be easily and

conveniently accessible on all campuses. CFA provided some scenarios where faculty members must walk several minutes in order to access gender inclusive restrooms. In order to remedy this problem, CFA proposed the following language: “There shall be at minimum one accessible, lockable, single-occupant gender-inclusive restroom per building, including gymnasias, pools, or other athletic facilities.”

CSU responds that this proposal is impractical and cost prohibitive. It notes that it has increased the number of gender-inclusive bathrooms on its campuses and continues to assess the need for and feasibility of constructing additional gender-inclusive bathrooms, especially during construction of new buildings and remodeling of existing buildings. However, it argues that given the size and nature of the CSU system it is simply not feasible to guarantee a gender-inclusive restroom in every building. CSU also notes that the term “building” is not defined. CSU proposed the following language in its counter proposal: “In an effort to support an inclusive campus environment, the CSU has increased access to restrooms and other facilities that is consistent with employee’s gender identities and gender expression. Campuses maintain websites that list the locations of gender-neutral bathrooms. The CSU will continue to assess the need for, and feasibility of, constructing additional all-gender facilities on an ongoing basis, and will continue to work with campus partners to address equity and inclusion for transgender and gender nonbinary campus community members, including employees.”

Recommendation: I recommend adopting CSU’s proposal but with two additions. First, I recommend that CSU place information at its non gender-inclusive bathrooms explaining where the nearest gender-inclusive bathroom is located. Second, I recommend the parties agree to a process whereby CFA can report to CSU locations where bargaining unit members do not have access to convenient gender-inclusive restrooms. Once CFA reports such an issue, CSU

should inform CFA within sixty days of either its plans to add a gender-inclusive restroom in the reported area or explain to CFA why such an addition is not feasible.

b. Lactation Spaces

Issue: The CFA rightly wants to make the workplace as accommodating as possible for lactating parents. It therefore proposed the following language: “The CSU shall provide adequate and accessible (i.e., must contain a surface to place a breast pump and personal items, contain a place to sit, and have access to electricity or alternative devices and a food-grade sink), private, and lockable space for lactation needs and milk storage in close proximity to the employees’ workspace, at minimum in the same building.” The CSU counters that it does provide adequate and accessible lactation spaces and is required to do so by Labor Code 1031. CSU points out that CFA’s proposal goes well beyond what the law requires (such as by requiring a food-grade sink) and would be impractical.

Recommendation: Given that CSU is required to provide lactation spaces per the labor code, I do not recommend adding CFA’s language. However, as with the gender-inclusive restroom recommendation, I recommend the parties agree to a process whereby CFA can report to CSU locations where bargaining unit members are having issues with adequate lactations spaces. Once CFA reports such an issue, CSU should inform CFA within 60 days of its plans for addressing the issue or an explanation for why it believes adequate lactation spaces are already being provided.

c. Policing

Issue: CFA provided examples of faculty, especially Black and Brown faculty, having negative experiences with CSU police. CFA stated that its members have expressed reluctance to call campus emergency services for student mental health incidents for fear that armed police

would respond with lethal outcomes. CFA noted that a Black faculty member on the bargaining team had been profiled and scrutinized by campus police, and that another Black faculty member had the police called on him when another faculty member wanted him removed from a meeting with students.

For these reasons, CFA proposed the following language:

To ensure the well-being of faculty who have and continue to suffer negative consequences (e.g., brutality, repression, violence, racial profiling, and harassment) of over-policing in the United States:

- a. The CSU shall not dispatch the police on a member of the bargaining unit unless the CSU is required to do so by law or by state agency regulations.
- b. If the CSU police seek to interview an employee at the worksite, the employee shall be provided the opportunity to be accompanied by a union representative or legal counsel of their choosing, a private location for the interview to take place, and the police shall be unarmed.
- c. The CSU shall make every effort to ensure the wellbeing of all employees during any workplace interactions with the police.
- d. A joint committee of labor and management whose composition includes a full representation of members of the bargaining unit shall adopt policies around engagement and support of members with mental health and wellbeing concerns.
- e. If CFA presents a concern regarding the behavior of University police, the CSU shall facilitate a meeting between the police department and CFA to address the concern and seek a mutually agreeable solution.

CSU responds that issues of policing are outside the scope of bargaining, and that the actions taken by police in their law enforcement capacities are not actions taken by the University as an employer. Moreover, CSU asserts that CFA's language is unworkable. It notes that there is almost no legal requirement to ever "dispatch" police; therefore, CFA's proposal would essentially bar CSU from making police reports. CSU also notes that parts of CFAs proposal would impact the working conditions of CSU police officers who have independent

bargaining rights. CSU finally notes that there is a complaint procedure in place for issues related to policing.

Recommendation: I agree with CSU that general questions about policing and how policing should occur on campuses fall outside the scope of bargaining. PERB, in finding that bargaining over a vaccine mandate did not fall within the scope of bargaining, noted that the “decision to require influenza vaccinations in response to a public health hazard that affects not just employees, but also students and the general population . . . was not amenable to collective bargaining.” *Regents of the University of California* (2021) PERB Decision No. 2783-H, pg. 24. The logic is straightforward: where an issue impacts the entire community, the entire community should be able to provide input, and discussions about such issues should not be limited to two bargaining parties at the expense of receiving input from other stakeholders. The questions of policing and the methods of policing on CSU campuses impact the CSU community as a whole. It is important for all impacted parties to be able to provide input in this important debate about policing; therefore, it does not make sense to limit the discussion to the bargaining table between CSU and only one of its bargaining units.

With that said, CFA raised a concern that many faculty do not want to be interviewed by armed police in their classrooms or workplaces. As CSU points out, CSU police would normally not interview CFA represented employees for employment related issues. However, this might not be clear to CFA represented employees, as the CSU police are an arm of CSU. CFA represented employees, like all citizens, have certain rights when police want to interview them. If a CFA represented employee is being placed in custody, then Miranda rights would apply. If the police are asking to interview a CFA represented employee, the employee has no obligation to agree and can demand that a union representative or attorney be present as a condition to

agreeing to do the interview. I, therefore, recommend that the parties make clear in the CBA that CFA represented employees have certain rights when CSU police seek to interview them in non-employment related matters.

CONCLUSION

I discussed the issues that the parties focused on at the hearing. I recommend that the status quo remain for any issues on which the parties did not present and on which I did not comment. I sincerely hope that these recommendations assist the parties in reaching a negotiated settlement.

Date: November 21, 2023



Najeeb N. Khoury

In the matter of California State University and California Faculty Association, factfinding proceedings pursuant to the Higher Education Employer-Employee Relations Act

Case No.: LA-IM-4143-H

Introduction

As the panelist representing the California State University (CSU), I want to share my thoughts on the report Mr. Najeeb Khoury, an independent third party, issued following factfinding proceedings between the CSU and the California Faculty Association (CFA). Overall, if both parties take the report to heart, we should be very close to an agreement. From the CSU's point of view, we have identified 15 items that were before the panel. We believe we can resolve 13 of them by utilizing the independent factfinder's recommendations. Even on the two issues where the CSU is not prepared to adopt the independent factfinder's recommendations, we find ourselves much closer to resolution than the parties were previously.

Areas Where the CSU Believes Additional Negotiations or Mediation Would be Needed for Resolution

There are two issues where the CSU believes additional negotiations or mediation would be needed for resolution. They are as follows:

1. Salary Related Issues

CFA presented CPI-U data to support their salary proposals. The independent factfinder used the CPI-U as the basis for coming up with his recommendation of a 7% GSI in the current year. Even at 7%, the independent factfinder postulates that the CSU will still lag the CPI-U at the conclusion of this year. While the independent factfinder's recommendations are limited to the one-year term of the reopener, if attaining the CPI-U becomes a goal of the parties in these negotiations, then the CSU believes that the general salary increase (GSI) offered over three years by the CSU will not only attain but exceed CPI-U increases by July 1, 2025. This statement relies on the current forecasts for the CPI-U over the next two years, which are less than 2.5% each year.

As a reminder, the three-year deal offered to CFA by the CSU contained 5% GSI for each year (15% over 3 years) and while the CSU is not able to offer a Post-Promotion Increase (PPI) and Service Salary Increase (SSI) at the end of year one, in the spirit of the independent factfinder's recommendation, the CSU is willing to offer a PPI of 2.65% in

year two, and an SSI of 2.65% in year three. With GSIs over a 5-year period exceeding the projected CPI-U for the same time period, the CSU does not see the need for the other changes contemplated by the independent factfinder, which were predicated on his GSI recommendation not fully meeting CPI-U.

By the CSU adding the additional PPI and SSI recommended by the independent factfinder to the CSU's latest offer, if accepted, it would mean all faculty members would (subject to the compact funding in FY 24/25 & 25/26) receive a minimum of 22% in base salary increases between July 1, 2021 and July 1, 2025, with some faculty receiving as much as 29.95% in increases depending on SSI's and/or PPI's. The GSIs alone exceed the projected CPI-U.

Additionally, the CSU notes that Mercer, a leading global human resources firm, recently completed a review and study of CSU faculty compensation.¹ The project task force included faculty members, members of the Board of Trustees, university administration, and CFA leadership. That report showed that overall CSU faculty compensation aligns with comparable peer institutions and that CSU offers valuable benefits – the second highest in the market data set.

2. Faculty Workload (Course Caps)

Early on in the negotiations, the CSU offered to add a step before the grievance process regarding workload concerns. This is consistent with the independent factfinder's recommendation that the parties could benefit from adding another step in the pre-grievance/arbitration process. The CSU stands ready to further that dialogue. It is in both parties' interest to ensure that our faculty are not overworked, and to avoid grievances whenever possible.

Areas Where the CSU is Willing to Move Forward with the Independent Factfinder's Recommendations

The following is a list of the remaining items where the CSU is willing to move forward with the independent factfinder's recommendations. Importantly, this includes the recommendation of increasing paid parental leave from 6 weeks to 8 weeks and increasing the workload reduction option from 40% to 60%.

I've included text directly from the independent factfinder's report below on these issues.

3. Paid Parental Leave

Independent factfinder's recommendation: I, therefore, propose that the parties increase the benefit from 30 working days (six weeks) to 40 working days (eight weeks) and that those bargaining unit members who work on a semester system and utilize the workload reduction option be given a workload reduction of 60% for 1 semester (up from 40%).

¹ The full Mercer Faculty Compensation Study can be viewed at: <https://www.calstate.edu/csu-system/faculty-staff/faculty-compensation-study>

4. Assigned Time for Non-Tenure Track Faculty to Perform Service Work

Independent factfinder's recommendation: I recommend adopting CSU's approach, whereby service work can be used to meet preexisting entitlements but cannot serve to add to an entitlement base.

5. Department Chair Additional Pay

Independent factfinder's recommendation: The parties appear to agree that the minimum department chair monthly salary should be increased to \$160 from \$80 with chairs of large departments receiving an additional \$80 instead of \$40. [...] I note that the parties are in conceptual agreement, and I recommend that the parties memorialize this conceptual agreement.

6. Personal Crisis Leave

Independent factfinder's recommendation: I recommend that the parties allow bargaining unit members to use their sick time to address health or natural disaster issues that are impacting their immediate families. [...] There is no reason why a faculty unit employee should not be allowed to ask for discretionary leave when there is a health or safety issue impacting the bargaining unit member's immediate family. I recommend the parties agree to amend the language of Article 23.19 to allow for that possibility.

7. Life Insurance

Independent factfinder's recommendation: Group policies normally allow employees to purchase additional life insurance above the employer provided insurance at reasonable rates without needing a medical exam. I recommend that the parties work together to get quotes from the group life insurance carrier so that they can offer this added option to the bargaining unit employees.

8. Gender-Inclusive Restrooms

Independent factfinder's recommendation: I recommend adopting CSU's proposal but with two additions. First, I recommend that CSU place information at its non gender-inclusive bathrooms explaining where the nearest gender-inclusive bathroom is located. Second, I recommend the parties agree to a process whereby CFA can report to CSU locations where bargaining unit members do not have access to convenient gender-inclusive restrooms. Once CFA reports such an issue, CSU should inform CFA within sixty days of either its plans to add a gender-inclusive restroom in the reported area or explain to CFA why such an addition is not feasible.

9. Lactation Rooms

Independent factfinder's recommendation: Given that CSU is required to provide lactation spaces per the labor code, I do not recommend adding CFA's language. However, as with the gender-inclusive restroom recommendation, I recommend the parties agree to a process whereby CFA can report to CSU locations where bargaining unit members are having issues with adequate lactations spaces. Once CFA reports such an issue, CSU

should inform CFA within 60 days of its plans for addressing the issue or an explanation for why it believes adequate lactation spaces are already being provided.

10. Counselors

Independent factfinder's recommendation: I recommend that the parties create a working group to study both the feasibility of a cap on direct service time and the best practices for hiring counselors and reducing ratios. [...] On the issue of counselors being able to switch calendars, I recommend adopting CSU's approach of making it at the discretion of the appropriate administrator. However, I would amend CSU's proposed language to make clear that a counselor may request either an academic year appointment or a ten-month appointment. I also recommend adding language that would require an administrator denying a request to provide a written rationale within a specified period.

11. Parking

Independent factfinder's recommendation: I recommend that the parties adopt the same agreement for 2023-2024, namely that parking increases can increase by no more than the percentage of the General Salary Increase.

12. Flex Cash Program and Recreational Facilities

Independent factfinder's recommendation: I recommend the status quo on the waiver amounts and on the recreational facility fees language, but I also recommend that the parties create a working group to study the potential economic savings of raising the waiver amounts and the feasibility of reducing or eliminating recreational facility fees for bargaining unit members.

13. Alternative Transportation Programs

Independent factfinder's recommendation: Given the diversity of the campuses, I agree that the campus presidents should retain discretion over the programs. But I recommend including "bike or micro-mobility rental passes" as types of alternative transportation benefits that should be supported by such programs.

14. Increase Minimum of Range for Lecturer A and Lecturer B

Independent factfinder's recommendation: I do not recommend CFA's proposal regarding increasing the entry level Lecturer A and B salaries by \$10,000 and \$5,000 respectively. This proposal may create compaction issues, and it potentially could lead to a scenario where the entry level salaries exceed the salary levels of higher steps on the salary table.

15. Campus Policing

Independent factfinder's recommendation: I agree with CSU that general questions about policing and how policing should occur on campuses fall outside the scope of bargaining. [...] As CSU points out, CSU police would normally not interview CFA represented employees for employment related issues. However, this might not be clear to CFA represented employees, as the CSU police are an arm of CSU. CFA represented

employees, like all citizens, have certain rights when police want to interview them. If a CFA represented employee is being placed in custody, then Miranda rights would apply. If the police are asking to interview a CFA represented employee, the employee has no obligation to agree and can demand that a union representative or attorney be present as a condition to agreeing to do the interview. I, therefore, recommend that the parties make clear in the CBA that CFA represented employees have certain rights when CSU police seek to interview them in non-employment related matters.

Conclusion

I wish to thank Mr. Najeeb Khoury, the independent factfinder and chair of the panel, for his efforts to learn about and understand these issues, and for taking the time to come up with these thoughtful recommendations.

It is CSU's sincere hope that the independent factfinder's recommendations will serve as a road map to agreement. The CSU remains committed to engaging in dialogue through mediation or negotiations to alleviate our differences and achieve a multi-year deal that provides salary increases for our faculty.

Dated: November 20, 2023



JOSEPH J. JELINCIC III
Assistant Vice Chancellor, Collective Bargaining
Factfinding Panel Member



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November 20, 2023

Najeeb Nabil Khoury, Esq.
2505 Rockdell St.
La Crescentia, CA 91214

Reference: Response to draft factfinding report

Dear Arb. Khoury,

Thank you for your draft report. The union has taken the time to review each of your recommendations. Set out below are my panel responses to each issue you made recommendations for. Please include them in the final report. Feel free to call or email with any questions or concerns.

Workload

Course caps

The union disagrees that creating firm course caps necessarily leads to unintended consequences. The intention is to have predictable and pedagogically defensible class sizes, while still allowing flexibility for individual faculty members. The union appreciates the Panel Chair's recommendations on new language for 20.2.b and will give this recommendation careful consideration when we get back to the table.

Counselors workload, appointment, and staffing

The union disagrees in part with the Panel Chair's findings. The language of the proposal comes directly from internationally recognized standards. Union leaders look forward to the opportunity to convince CSU management that current workload, appointment, and staffing in Counseling and Psychological Services is inadequate. The reason for difficulty in hiring and retention is predominantly due to low pay, adverse working conditions, and excessive workload. Furthermore, working groups in recent years have not resulted in a mutually agreed upon settlement.

Service time for temporary faculty

The union remains concerned that service work that does not build entitlement would provide a disincentive for faculty on a temporary appointment to engage in such work.

Leaves with Pay

The union appreciates the Panel Chair's recognition that 30 days of parental leave is insufficient, and the union remains committed to obtaining additional parental leave for new parents bonding with their new child. We additionally look forward to negotiating crisis leave with the employer.

Salary*Department Chair pay*

The union agrees with the Panel Chair's recommendation.

Raise the minimum salary of Ranges A and B

Minimum salary for Range A at full time is \$54,360. Minimum salary for Range B at full time is \$64,860. Most faculty are hired at less than full-time positions in these salary ranges. These minimum salaries, where most faculty on temporary appointments start and stay, is unconscionably low and faculty are already compacted at the bottom of Ranges A and B. The Panel Chair has expressed concern with triggering me-too clauses in other contracts; the union notes that this salary program would not do so.

GSI plus enhancements

The combined CPI-U for the three-year period of this contract is 16.9%. A one-year 7% GSI, even with other enhancements, does not keep the majority of faculty ahead of inflation. The union appreciates the Panel Chair's creative approach to enhancing this GSI and avoiding having to pay other employees in the CSU similarly. Paying out two SSIs is worthy of consideration if it was part of a comprehensive salary program. But because of the intricacies of how the SSI program is normally implemented (on anniversary of hiring), the union would suggest making a one-time change to the SSI amount and to allow the SSI to exceed the normal SSI Max. Because so many faculty on temporary appointments would lack the accumulation of units to achieve eligibility, instead of two SSIs spread over the calendar year as the panel chair recommends, the union suggests changing the amount to 5.3% and allowing faculty to exceed the SSI Max on a one-time basis. A pro-rated lump sum of \$3,000 for those faculty who receive neither an SSI nor a PPI could be part of a comprehensive salary program.

Benefits

The union believes that some of the recommendations are worthy of careful consideration.

Health and Safety*Gender-inclusive restrooms and lactation spaces*

The union believes that some of the recommendations are worthy of careful consideration.

Alternatives to police

The union appreciates the Chair's suggestions regarding faculty being interviewed by police. The union will continue to negotiate with management over the health and safety of members, including interactions with law enforcement.

Sincerely,



Kevin Wehr
CFA Bargaining Chair