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December 17, 2022

Rafael Jaime, President
UAW Local 2865
2730 Telegraph Avenue, Floor 1
Berkeley, California 94705

Re: Supplemental Compensation and Appointments

Dear Rafael:

We write this letter to follow up on our discussions regarding the anticipated impact of wages increases, pursuant to the Tentative Agreement reached between the Parties on December 16, 2022, on the top-ups and supplemental compensation that the University has historically provided to certain employees and on appointment levels.

Can UC unilaterally eliminate or reduce additional compensation that an academic worker has been receiving in response to collectively bargained wage increases?

No. The Parties have agreed that the University can pay ASEs/SRs over the minimum/maximum salary wage schedule. (See, e.g., SRU TA, Wages, (A)(3), (B)(5); 2865 TA, Art. 30A(A)(3), Art. 30B(A)(3)) Historically, some academic workers have received top-ups or other forms of supplemental compensation over the base wages.

If the University has been providing an academic worker with top-ups or other forms of supplemental compensation used to augment base wages, then that supplement should remain. The University should not take away or reduce an academic worker's supplemental

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compensation in response to an increase in collectively bargained wages. The law prohibits the University from discriminating against or interfering with the rights of unions and their members by reducing compensation and benefits because of protected activity. (See *Regents of the University of California (Berkeley)* (2018) PERB Decision No. 2610-H at pp. 80-82 [unlawful discriminatory conduct may be established when an employer makes changes to pay, benefits, hours, or working conditions in response to union or other protected activity]; see also *Regents of the University of California (Irvine)* (2018) PERB Decision No. 2593-H at p. 7 [“A prima facie case of interference will be found when the employer has engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by the statute.”]) Such protected activity includes collectively bargaining terms and conditions of employment. (See Gov. Code, §§ 3565, 3571(a), 3571(c))

Thus, the University should not unilaterally eliminate or reduce supplemental compensation that an academic worker has been receiving to undermine or circumvent wage increases achieved through collective bargaining or provided for pursuant to the collective bargaining agreement. If an academic worker has been receiving supplemental compensation, the University should continue to provide that supplemental compensation on top of the collectively agreed-upon salary.

Can UC arbitrarily under-appoint an ASE/SR in order to undermine collectively bargained wages or benefits?

No. As stated above, the law prohibits the University from discriminating against or interfering with the rights of unions and their members by reducing compensation and benefits because of protected activity. (See *Regents of the University of California (Berkeley)* (2018) PERB Decision No. 2610-H at pp. 80-82 [unlawful discriminatory conduct may be established when an employer makes changes to pay, benefits, hours, or working conditions in response to union or other protected activity]; see also *Regents of the University of California (Irvine)* (2018) PERB Decision No. 2593-H at p. 7 [“A prima facie case of interference will be found when the employer has engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by the statute.”])

Thus, the University should not alter standard appointment percentages to undermine or circumvent wage increases or percentage-based benefits achieved through collective bargaining. While there may be circumstances where a lower appointment percentage is warranted, the University should not deviate from standard appointments to avoid its contractual obligations.

Indeed, the collective bargaining agreement provides additional protections. UAW recently prevailed in an arbitration where the arbitrator found that, despite UC’s claim of broad

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management rights, UC violated the collective bargaining agreement by appointing employees at below 25% to circumvent its contractual responsibility to provide fee remission. (Opinion and Award, *UAW Local 2865 and UC Berkeley [Re: Fee Remission Grievance, No. BX-01-053-17]* (Winograd, 2020)) The University should provide appointments, consistent with negotiating history and longstanding practice, to effectuate in good faith the contractual promises made during collective bargaining. (See *id.* at pp. 27-28)

Sincerely,

SCHWARTZ, STEINSAPIR, DOHRMANN
& SOMMERS LLP

A handwritten signature in black ink, appearing to read "Margo A. Feinberg". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Margo A. Feinberg

MAF:lz