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OFFICE OF THE
SECRETARY

VINCENT C. GRAY
MAYOR

OCT - 2 2014

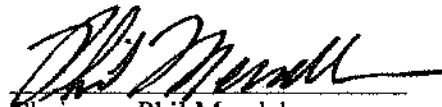
The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

On behalf of the University of the District of Columbia and in accordance with DC Code 1-617-17(I)(1), I have enclosed for consideration by the Council a proposed arbitration award titled DC PERB Case 01-I-08.

Sincerely,


Vincent C. Gray


Chairman Phil Mendelson
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following resolution which was referred to the Committee on _____.

To approve the negotiated Interest Arbitration Award submitted by the Mayor on behalf of the University of the District of Columbia

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Interest Arbitration Award between the University of the District of Columbia and the University of the District of Columbia Faculty Association Approval Resolution of 2014"

Sec. 2. Pursuant to §1-617.17(j) of the D.C. Official Code, the Council approves the Interest Arbitration Award between the University of the District of Columbia and the University of the District of Columbia Faculty Association which was transmitted to the Council by the Mayor on _____ and which resolves the compensation terms of a two year collective bargaining agreement. Those terms under the multi-year agreement between the University of the District of Columbia and the University of the District of Columbia Faculty Association include: \$1,881,870 in one-time lump sum payment for Fiscal Years 2008 through 2013; \$274,110 in a Merit Pool for Academic Year 2011-2012 and 2012-2013; \$491,417 for a 3% COLA Increase for Fiscal Year 2014; and a \$138,000 Merit Pool payable in Fiscal Year 2015 for Academic Year 2013-2014. The Interest Arbitration Award also includes revisions to the evaluation of faculty performance and related processes effective Academic Year 2014-2015.

Sec. 3. The Compensation changes approved by section 2 of this resolution shall be effective as of the date stated.

Sec. 4. Fiscal Impact Statement.

The Council adopts the fiscal impact statement in the Committee report as the Fiscal Impact Statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

1 Sec. 5. The Secretary of the Council shall transmit a copy of this resolution, upon its
2 adoption, to the University of the District of Columbia President and the Mayor.

3

4 Sec. 6. This resolution shall take effect immediately.



James E. Lyons, Sr.
Interim President

August 1, 2014

The Honorable Vincent C. Gray
Mayor, District of Columbia
1350 Pennsylvania Avenue, NW, Suite 316
Washington, DC 20004

Re: UDC Binding Interest Arbitration Opinion and Award

Dear Mayor Gray:

On July 7, 2014, Arbitrator Sean J. Rogers issued an Opinion and Award in the matter of the University of the District of Columbia Faculty Association and the University of the District of Columbia, DC PERB Case 08-I-08 ("the Award"). With respect to the issue of compensation, Arbitrator Rogers determined that the University's last best offer achieves a prompt and fair settlement of the dispute between the parties. Arbitrator Rogers also considered non-compensation issues related to evaluation of faculty, and decided in the University's favor regarding two of the three pending issues.

Pursuant to D.C. Code § 1-617.17(i)(1), the University hereby submits the Award to you for submission to the Council within 60 days after the Award, specifically by September 5, 2014. Included with the Award is a certification from the University's Chief Financial Officer that the Award is fully funded by previously enacted budget measures or approved reprogramming, a legal sufficiency certification, and a draft resolution for the Council's consideration.

The University respectfully requests that you submit the Award to the D.C. Council for approval pursuant to D.C. Code § 1-617.17(i)(1).

Sincerely,


James E. Lyons

Enclosures

Celebrated 100 Years of scholarship and achievement in DC

4200 Connecticut Avenue, NW — Washington, IN THE DISTRICT OF COLUMBIA 20008

p: 202.274.6016 f: 202.274.5304

**BEFORE
SEAN J. ROGERS
ARBITRATOR**

In the Matter of Arbitration between:

**UNIVERSITY OF THE DISTRICT OF COLUMBIA
FACULTY ASSOCIATION,**

Union

and

UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Employer.

(Interest Arbitration)

DC PERB Case 08-I-08

OPINION AND AWARD

APPEARANCES

On behalf of the University of the District of Columbia Faculty Association:

Jon G. Axelrod, Esq., Beins, Axelrod, P.C., – *representing the Union.*

On behalf of the University of the District of Columbia:

Gary L. Lieber, Esq. and Anessa Abrams, Esq., FordHarrison, LLP and Smurti Radkar, Esq., Assistant General Counsel, University of the District of Columbia – *representing the Employer.*

PROCEDURAL BACKGROUND OF THE ARBITRATION

This interest arbitration arises out of a compensation bargaining impasse between the University of the District of Columbia Faculty Association (UDCFA or Union) and the

University of the District of Columbia (UDC or Employer) (Collectively, the Parties).¹ This interest arbitration takes place pursuant to the District of Columbia (DC) Code § 1-617.17. (Statute).

The Parties current collective bargaining agreement is the *Sixth Master Agreement between the University of the District of Columbia and the University of the District of Columbia Faculty Association/NEA*, Effective September 30, 2006 through September 30, 2008 (CBA or *Sixth Master Agreement*). (Joint Exhibit (Jx) 1). This impasse arises from the Parties' efforts to renegotiate a successor agreement, the *Seventh Master Agreement*, after an extended period of no negotiations and no pay raises for the University of the District of Columbia (UDC) faculty since the expiration of the CBA. The Parties reached agreement on most of the *Seventh Master Agreement*. This impasse resolution procedure resolves the last two outstanding disputes between the Parties on Article XV, Evaluation and Article XVII, Compensation.

On January 13, 14, 15 and 31, 2014, pursuant to the Statute, a hearing was held at the FordHarrison, 1300 19th Street, NW, Suite 300, Washington, DC. At the hearing, the Parties were afforded a full opportunity: to present testimony, documents and other evidence; to examine and cross-examine witnesses; and to challenge documents and other evidence offered by the other Party.

UDCFA's witnesses were: Mary Collins, Field Services Representative, Washington Teachers Union; Mohamed El-Khawas, Professor, UDC; Paul Bachman, Professor, UDC; Daryao Khatri, Professor, UDC; Esther Ososanya, Professor, UDC; Brenda Brown, Associate Professor, UDC; Sasan Haghani, Associate Professor, UDC; and Wilmer Johnson, Professor, UDC.

UDC's witnesses were: Rachel Petty, Interim Provost, UDC; Herman Prescott, Executive Assistant to the Provost, UDC; Jackie Xu, Director, Institutional Research, UDC; and April Massey, Acting Dean College of Arts and Sciences, UDC.

The witnesses were sworn and sequestered, and a transcript (Tr) was taken. Joint Exhibits (Jx) 1-7, Employer Exhibits (Ex) 1-20 and Union Exhibits (Ux) 1-43 were offered

¹ The employees who make up the bargaining unit are: all full-time faculty employees holding a permanent appointment from appropriated funds, including librarians/media specialists, of the University of the District of Columbia, excluding any management official, confidential employee, supervisor or employee engaged in personnel work in other than a purely clerical capacity.

and received into the record. At the conclusion of the hearing, the evidentiary record was closed. The Parties elected to submit post-hearing briefs. Briefs were received on or about April 16, 2013. The Parties agreed that there are no issues of timeliness or arbitrability, and the bargaining impasse is ripe for resolution by the Panel pursuant to the Statute.

This Opinion and Award interprets and applies the Statute to the Parties' last best offers (LBO) and is based on the record developed by the Parties.

STATEMENT OF THE ISSUE

The Parties agreed that I am to resolve their dispute over the unagreed articles differently. Regarding the Compensation article, consistent with the Statute, the Parties agreed I am to choose the Union's or the Employer's last best offer (LBO) in the entirety consistent with the applicable statutory standards. Regarding the Evaluation article, the Parties agreed that I am to choose the Union's or the Employer's LBO issue-by-issue within the article consistent with the statutory standards. For this reason, both Parties stated the issue in two-parts with slightly different wording but with consistent intent.

Based on the Parties' two-part issue statements, I find that the issues for resolution are as follows:

1. Pursuant to the principles in DC Code § 1-611.03(a) and 1-617.17, which Article XV, Evaluation, last best offer issue-by-issue achieves a prompt and fair settlement of the dispute between the University of the District of Columbia Faculty Association and the University of the District of Columbia?
2. Pursuant to the principles in DC Code § 1-611.03(a) and 1-617.17, which Article XVIII, Compensation, last best offer achieves a prompt and fair settlement of the dispute between the University of the District of Columbia Faculty Association and the University of the District of Columbia?

RELEVANT STATUTORY PROVISIONS

From the DC Code:

§ 1-611.03(a)

(a) Compensation for all employees in the Career, Educational, Legal, Excepted, and the Management Supervisory Services shall be fixed in accordance with the following policy:

(1) Compensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups. For the purpose of this paragraph, compensation shall be deemed to be competitive if it falls reasonably within the range of compensation prevailing in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA); provided, that compensation levels may be examined for public and/or private employees outside the area and/or for federal government employees when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels.

(2) Pay for the various occupations and groups of employees shall be, to the maximum extent practicable, interrelated and equal for substantially equal work in accordance with this principle, dental officers shall be paid on the same schedule as medical officers having comparable qualifications and experiences.

(3) Differences in pay shall be maintained in keeping with differences in level of work and quality of performance.

§ 1-617.17. Collective bargaining concerning compensation.

(a) Collective bargaining concerning compensation is authorized as provided in §§ 1-602.06 and 1-617.16. Such compensation bargaining shall preempt other provisions of this subchapter except as provided in this section. The principles of § 1-611.03 shall apply to compensation set under the provisions of this section.

* * *

(3) . . . If the mediator does not resolve the impasse within 30 days, or any shorter period designated by the mediator, or before the automatic impasse

date, the Executive Director, upon the request of any party, shall appoint an impartial Board of Arbitration to investigate the labor-management issues involved in the dispute, conduct whatever hearing it deems necessary, and issue a written award to the parties with the object of achieving a prompt and fair settlement of the dispute. The last best offer of each party shall be the basis for this impasse arbitration. The award shall be issued within 45 days after the Board has been established. The award shall contain findings of fact and a statement of reasons. The award shall be final and binding upon the parties to the dispute.

(3A) If requested by both parties or ordered by the Executive Director of the Public Employee Relations Board, a mediator or Board of Arbitration appointed pursuant to paragraphs (2) or (3) of this subsection shall consider non-compensation matters at impasse at the same time it considers compensation matters at impasse.

STIPULATIONS

The Parties stipulated to the following procedural facts:

1. UDC and UDCFA have been parties to a series of collective bargaining agreements, the last one entitled Sixth Master Agreement. The Sixth Master Agreement was effective September 2006 through September 30, 2008, and its terms remain in effect as a matter of law until a successor agreement is negotiated.
2. In October 2007, UDC and UDCFA began negotiations for a successor agreement and were negotiating both compensation and non-compensation issues.
3. On or about May 6, 2008, the Union filed its "Declaration of Impasse Compensation and Non-Compensation Issues" with the D.C. Public Employee Relations Board ("PERB"), wherein it was assigned PERB Case No. 08-I-08.
4. By letter dated July 3, 2008, Julio A. Castillo, then Executive Director of PERB, informed UDC and the Union that, pursuant to D.C. Code § 1-617.17(f)(2), an automatic impasse was reached concerning compensation, and that, pursuant to PERB Rule 527.1(b), an impasse was reached concerning non-compensation issues. Accordingly, PERB appointed Commissioner Lynn Sylvester, Federal Mediation and Conciliation Service, to serve as the mediator in this matter.

5. UDC and UDCFA mediation with Commissioner Sylvester in October, November and December 2008.
6. By letter dated January 13, 2009, UDC informed the Union that it would no longer engage in negotiations relating to prohibited and permissive subjects of bargaining.
7. By letter dated February 20, 2009, UDC declared certain provisions of the expired Sixth Master Agreement non-negotiable.
8. On or about March 4, 2009, the Union filed its Negotiability Appeal with PERB, which was assigned PERB Case No. 09-N-02. On June 9, 2011, PERB issued its Decision and Order in the Negotiability Appeal, PERB Opinion No. 1104, holding that the University's non-negotiability declaration was untimely.
9. By letter dated November 5, 2012, PERB then Executive Director Ondray T. Harris appointed Sean J. Rogers as the Chairman of the Impartial Board of Arbitration in the above-captioned action. (Jx 2).

THE PARTIES

The University of the District of Columbia (UDC) is the urban land-grant, public university of the District of Columbia. UDC employs approximately 185 Professors, Associate Professor, Assistant Professor and Instructors who comprise a bargaining unit represented by University of the District of Columbia Faculty Association/National Education Association (UDCFA).

UDCFA is the professional organization representing "[a]ll full time faculty employees holding a permanent appointment from appropriated funds, including librarians/media specialists, of the University of the District of Columbia, excluding any management official, confidential employee, supervisor or employee engaged in personnel work in other than a purely clerical capacity" for collective bargaining purposes. (Jx 2). UDCFA is "the sole and exclusive bargaining agent" for these UDC employees. (Jx 2).

INTRODUCTION

This Award considers which of the Party's LBO submitted in this impasse arbitration achieves a prompt and fair settlement of the dispute pursuant to *DC Code* § 1-611.03(a) and § 1-617.17. My selection of the more reasonable LBO, pursuant to the applicable statutory standards, is discussed and resolved below in two-parts consistent with the issue statement.

LAST BEST OFFERS AND AWARD

ARTICLE XV, EVALUATION PROCEDURE

INTRODUCTION

The Parties reached substantial agreement on the language of Article XV, Evaluation Procedure, up to the final day of hearing on January 31, 2014 when revised LBOS were submitted into the record by both Parties. (Jx 6a and 7a). In these revised LBO, Parties did not agree on three issues which are discussed below and resolved by award below.

IMPASSE ISSUE ONE

A. GENERAL PROVISIONS, ¶ 4. (A.4.) concerning Performance Improvement Programs (PIP).

UDCFA's LBO states:

4. A faculty member who receives a composite or aggregate rating of "Improvement Needed" or "Does Not Meet Professional Standards" will be engaged in a Performance Improvement Program ("PIP") and be eligible for professional development training. By the conclusion of the Academic Year in which the evaluation was issued, the Department Chair, in consultation with the faculty member and the Faculty Association, will recommend a PIP to the Dean. The PIP shall highlight the faculty member's potential for improvement within his/her discipline, define required improvements, recommend professional development support, explain evaluation metrics and timelines, commit specific institutional resources, and formally partner the faculty member and the University toward the goal of improved faculty member performance in his/her discipline. The PIP shall include reduced teaching load to enable the faculty member to comply with the terms of the

PIP, such as taking courses leading to improvement. The faculty member must complete his work under PIP by May 1 and the University must complete its evaluation of the PIP by May 15. Based upon the evaluation of the PIP and the faculty member's annual evaluation, the University shall reassess the faculty member's performance notwithstanding Article XI(A)(7), the University may impose discipline, issue a second PIP, or conclude that the faculty member "Meets Professional Standards" or better. Discipline may be grieved and arbitrated. If the faculty member successfully completes the PIP and receives two consecutive evaluations of "Meets Professional Standards" or better, the PIP shall be expunged from all University records. (Jx 6a).

UDC's LBO states:

4. Faculty who receive a composite or aggregate rating of "Improvement Needed" will be engaged in a performance improvement process and be eligible for professional development training. Faculty who receive a rating of "Does Not Meet Professional Standards" may be subject to termination. For those faculty members placed on a performance improvement plan, University management shall develop a performance improvement plan which highlights the faculty member's potential for success, defines required improvements, recommends professional development supports, explains evaluation metrics and timeline, commits specific institution resources, and formally partners faculty member and the institution toward the goal of improved faculty member performance – minimally "Meets Professional Standards" at next evaluation. The length of any performance improvement plan will be determined by the University on a case-by-case basis but will not exceed one year. The faculty member has the right to request the Union be present when the performance improvement plan is presented to the faculty member by University management. Failure to satisfy the performance improvement plan may result in discipline, up to and including termination. (Jx 7a).

For Article XV, A.4., UDCFA's LBO requires UDC to engage a faculty member rated as "Improvement Needed" (the penultimate lowest rating) or "Does Not Meet Professional Standards" (the lowest rating) in a Performance Improvement Process (PIP) and requires the faculty member's eligibility for professional development training. UDCFA's LBO provides the PIP shall be recommended by the Department Chair, in consultation with the affected faculty member and UDCFA, to the Dean. UDCFA's LBO provides the PIP shall include reduced teaching load. Based on the PIP and the evaluation, UDC shall reassess the faculty member's performance and may impose discipline, a second PIP or a "Meets Professional Standards" rating (the acceptable rating) or better. The UDCFA's LBO

provides that any discipline resulting from the PIP may be grieved and arbitrated and with two consecutive acceptable rating or better, the PIP is expunged from UDC records.

UDC's Article XV, A.4. LBO provides faculty rated as "Improvement Needed" only will be engaged in a PIP and be eligible for professional development training. UDC's LBO permits the Employer to immediately terminate faculty rated as "Does Not Meet Professional Standards." UDC's LBO provides the length of a PIP will be determined by UDC on a case-by-case basis not to exceed one year. Faculty members can request the presence of UDCFA when the PIP is presented and failure to satisfy a PIP may result in discipline up to termination.

CONTENTIONS

UDCFA asserts that its approach to the evaluation of compliance with a PIP is the better process. UDCFA argues that the requirement that a faculty member complete a PIP on May 1 and UDC evaluate the faculty member's satisfaction of the PIP by May 15 provides adequate time to UDC management, conforms to other evaluation CBA provisions and is therefore reasonable.

UDC asserts this new Article XV will contain substantive evaluation standards vastly different from the previous CBA. For this reason, UDCFA argues faculty members rated as "Improvement Needed" or "Does Not Meet Professional Standards" should be engaged on PIP and be eligible for professional development training. In contrast, UDCFA argues it is unreasonable for UDC to have the right to terminate faculty members rated a "Does Not Meet Professional Standards." UDCFA argues that there is no evidence that faculty members were rated as "Unacceptable" or "Less than Satisfactory" over the extended period of the previous CBA. UDCFA says everyone should have the opportunity to improve. UDCFA maintains that UDC should not take disciplinary action for performance without notice and when no opportunity for remedial assistance or improvement is available to the faculty member.

UDCFA asserts it should devise the PIP through consultation with the Department Chair as has been the practice on numerous occasions. UDCFA argues the established practice is for its past presidents to participate in PIP development meetings at UDC's request.

UDCFA argues that discharge for unacceptable performance is not automatic or

even permissible under the previous CBA. For this reason, UDCFA argues a poor evaluation alone is not cause for discharge and performance discipline must be progressive and remedial. UDCFA says that evaluations and PIPs are intended to provide opportunity for improvement.

UDCFA asserts the Department Chair is the first line in the development of a PIP. UDCFA acknowledges that the Department Chair may not be the most qualified to develop a PIP so its proposal provides only for consultations by the Department Chair.

UDCFA asserts its LBO language regarding a reduced teaching load is not required, if not necessary for the success of a PIP. UDCFA argues that it accepts UDC's right to assign work and understands that reduced work loads would be impervious to this CBA restriction.

Regarding UDCFA's LBO PIP expungement after two years, UDCFA asserts that evaluation sheets and scores will remain part of the faculty member's file and only University records will be expunged after the faculty member achieves two years of "Meet Professional Standards" or better. UDCFA argues this approach is similar to the expungement schedule for written reprimands which are expunged after 90 days. UDCFA says, the PIP has no practical value in subsequent evaluations and the two-year expungement schedule will be independent of the promotion procedure which is based on three years of evaluations with at least one excellent rating.

For all these reasons, UDCFA asserts its Article XV, A.4. LBO is the more reasonable and provides a prompt and fair settlement of the dispute

UDC asserts that its LBO provides the flexibility and discretion to manage faculty who are rated "Does Not Meet Professional Standards" contrary to accreditation requirements. Moreover, UDC argues that UDCFA's LBO inappropriately merges this lowest rating with "Improvement Needed." Faculty rated as "Does Not Meet Professional Standards" have failed to satisfy UDC's most basic requirements. UDCFA's LBO would prevent UDC from terminating under performing faculty without a PIP first stripping management of this option. UDCFA's LBO would make these under performers eligible for additional resources of professional development training. Furthermore, UDC could not discipline poor performing faculty until they failed a PIP.

UDC asserts that its LBO allows it to develop PIPs on a case-by-case basis by those

management officials most familiar with the professional requirements of a UDC faculty position. UDC argues that the testimony of Dean April Massey established that PIPs are developed by the Dean's Office and not the Department Chairs. UDC argues that it is inappropriate for UDCFA to mandate a role for the Union in PIP development which is an essential function of management. It is also not reasonable for UDCFA to be involved in PIP development which is an assignment of work and an exercise of the right to manage personnel.

UDC asserts that PIPs are not one-size-fits-all and may vary in duration. Therefore, UDCFA's LBO requirement, that PIPs last one year, is unreasonable. UDC argues its proposal for a PIP's duration not to exceed one year is the more reasonable.

UDC asserts that while UDCFA's witnesses explained that the mandate of a reduced teaching load for a faculty member on a PIP in its LBO may not be necessary, the language is, nonetheless, mandatory. UDC maintains that PIPs are case-specific and UDC's LBO language does not prohibit a reduced teaching load. UDCFA's LBO compromises management's rights and is contrary to its accrediting plan. Since the UDCFA's LBO requires a reduced teaching load without reduce pay, the Union's LBO improperly dictates how UDC financial resources are expended.

UDCFA's LBO, regarding expungement of a PIP from University records after two consecutive annual evaluations of "Meets Professional Standards", is illogical and leaves an incomplete performance record. Specifically, the Union's LBO does not change the maintaining of the record of the low evaluation triggering the PIP and expungement as proposed by the Union has no ameliorative impact on promotional opportunities. Therefore, maintaining the PIP provides a complete picture of the faculty member's performance benefitting UDC and the faculty member.

Therefore, the record establishes that UDC's LBO should be selected by the Arbitrator as the more reasonable.

DISCUSSION

There are just a few, but significant, substantive differences between the Parties' LBOs.

First, UDCFA's combines the eligibility of faculty members rated "Improvement Needed" or "Does Not Meet Professional Standards" a PIP while UDC wants the freedom to terminate faculty rated "Does Not Meet Professional Standards." In this regard, the UDCFA LBO substantially limits UDC management's right to discipline. Arguably, an employer terminating an employee for poor performance, when a collective bargaining agreement requires, as in this instance, *cause* for such discipline, takes a significant risk of reversal at arbitration by terminating the employee without an opportunity to improve.² The record establishes that UDC is prepared to assume the risk.

Second, while less significant and more process based, the record shows that the requirement of UDCFA's LBO that PIPs will be initially developed through consultation with the Department Chair and the Union and then recommended to the Dean is a new procedure. UDCFA argues this is happening now but the record shows very few PIPs have been initiated by UDC over the long extended term of the Sixth Master Agreement. While this procedure does not infringe on a management right, it appears to create unnecessary, arguably wasteful, process in the creation of a PIP which is a fundamental management function.

Third, the UDCFA LBO's requirement of a reduced teaching load for a faculty member placed on a PIP is an infringement on UDC right to direct the faculty and to assign work which are retained management rights pursuant to Article X(a)(1) and (2).

Fourth, based on the record and testimony, I agree that UDCFA's LBO requiring the expungement of a PIP after two years of "Meets Professional Standards" or better is illogical leaving an incomplete performance record as well.

The remaining differences between the Parties' LBOs are much less significant and involve process, such as the completion date or duration of a PIP, which do not weigh material in my determination of which LBO is the more reasonable based on the

² Article X - Management Rights provides UDC may discharge or take other disciplinary action against faculty members for cause. (Jx 2).

appropriate statutory standards.

For all these reasons based on the record, I find that UDC's LBO for Article XV, A.4., is the most reasonable, achieving a prompt and fair settlement of the dispute and must appear in the Seventh Master Agreement.

IMPASSE ISSUE TWO

E. Evaluators and Their Roles, ¶ 2.a. (E.2.a.) concerning Composition and Appointment of the DEPC.

UDCFA's LBO states:

2. Composition and Appointment of the DEPC
 - a. A DEPC shall be established in each department/unit of the University. The DEPC shall consist of 3 department/unit members in departments/units with 7 or less full-time tenure or tenure track faculty members; 5 department/unit members in departments/units with 8 to 15 full-time tenure or tenure track faculty members; and 7 members in departments/units with 16 or more full-time tenure or tenure track faculty members. Full-time faculty members will be appointed to their DEPC for one year terms in rotating alphabetical order. For example, in a Department with a 7 person DEPC, the first 7 persons on an alphabetical list will serve in year 1; the second 7 will serve in year 2; and the next 7 (which may include faculty at the top of the alphabetical list) will serve in year 3. Each DEPC will select its own Chair. (Jx 6a).

UDC's LBO states:

2. Composition and Appointment of the DEPC
 - a. A DEPC shall be established in each department/unit of the University. The DEPC shall consist of 3 department/unit members in departments/units with 7 or less fulltime tenure or tenure track faculty members; 5 department/unit members in departments/units with 8 to 15 fulltime tenure or tenure track faculty members; and 7 members in departments/units with 16 or more fulltime tenure or tenure track faculty members. Half

of the members of the DEPC shall be selected by University management and half of the members of the DEPC shall be selected by the Union. The final DEPC member shall be selected by University management from a list of three faculty members submitted to the University by the Union. Members of the DEPC shall have at least one complete year of teaching experience at the University. Where there is no Department, a faculty evaluation committee shall be established within the respective Colleges by the Dean. The Committee(s) shall be established and operate in the same manner as the DEPC operates as described above. Each Dean shall have the discretion to establish one or more of such Committees consistent with academic units within each respective College. For evaluation purposes only, the faculty to be evaluated by a single evaluation committee should be grouped in reasonably related academic disciplines to the extent practical; provided, however, that the initial determination of management, after Faculty Association input, shall be presumed to be a reasonably related group of academic disciplines. (Jx 7a).

Pursuant to agreed language of the Seventh Master Agreement, the DEPC has many significant ministerial and substantive responsibilities with regard to faculty evaluations. DEPC responsibilities include: guidance on evaluation criteria; receipt and review of faculty members evaluative portfolio, narrative and supporting evidence; and analysis of the faculty member's portfolio. The DEPC Chair combines the DEPC analyses to produce an aggregate rating and transmits the rating to the faculty member and the Department Chair. The Department Chair rates the faculty member based on the DEPC aggregate rating and the faculty member's portfolio.

The Parties significant, material disputes over the E.2.a language concern the selection processes for and composition of the DEPC. UDCFA proposes that DEPC be appointed from full time faculty members for one-year terms in alphabetical order and each DEPC will select its own Chair. UDC proposes half the DEPC members will be select from full time tenure or tenure track faculty who shall have completed at least one year of teaching. UDC proposes as well that UDC select half and UDCFA select half of the DEPC members, with the odd member to be the Chair selected by UDC from a list of three faculty members selected by UDCFA. Other language differences are merely conforming and not material to the Parties' failure to reach agreement.

CONTENTIONS

UDCFA asserts that its LBO is closer to the Sixth Master Agreement language and reflects the Union's desire that the evaluation process is free from UDC control and a true peer review. UDCFA argues rotational selection reduces subjectivity, administrator involvement and UDC control at the DEPC level. UDCFA argues UDC's proposal allows UDC to select a majority of the DEPC members.

In response to UDC's criticism of UDCFA's proposal that DEPC members have a year of teaching experience, UDCFA argues its proposal requires DEPC members to be tenure or tenure track. UDCFA argues that by the time DEPC reviews evaluations, a new hire faculty member will have six months teaching experience and the Chair, Dean or Provost can correct any errors by new hire faculty DEPC members.

For these reasons, UDCFA concludes that its E.2.a. LBO is the more reasonable.

UDC asserts that its DEPC selection process allows for cooperation between the Parties while UDCFA's proposal is a completely random annual selection of DEPC members which allows for no UDC or UDCFA involvement. UDCFA's proposal does not accommodate UDC in any way and provides no UDC input. UDCFA does not satisfy the Union's objective because the random rotation does account for diversifying.

UDC asserts that under its proposal DEPC members will have at least one complete year of teaching experience ensuring that they are familiar with UDC's evaluation process having been through it once. Even UDCFA witnesses testify that new hire faculty members on the DEPC will be learning "on the fly." (Tr 1161). In the related area of experience, UDC argues that UDCFA produced no evidence supporting a one-year DEPC term while unchallenged testimony from Massey contradicted the wisdom of a one-year term. This is because, UDC argues, annual rotation of DEPC membership fails to recognize continuity, leadership and experience from one year to the next.

For these reasons, UDC maintains that the Arbitrator should adopt its E.2.a. LBO as the more reasonable.

DISCUSSION

As discussed above, the Parties have placed significant ministerial and substantive responsibilities for the implementation of the University's faculty evaluation process within the DEPC's jurisdiction. UDCFA LBO creates an annual, alpha-rotation selection process for DEPC members from among all tenured or tenure track faculty regardless of teaching experience or experience with UDC's evaluative process. UDCFA maintains this selection process is needed to prevent subjectivity in evaluations and administrators' involvement and UDC control over a pure peer review process. These assertions are not supported by testimony or competent and material evidence.

I am not persuaded of the reasonableness UDCFA's DEPC selection process. UDCFA's process is largely an annual rotating door through which DEPC members, unvetted by either Party, will pass in-and-out without regard to their teaching experience or knowledge of the evaluative process. This is not a selection process which prevents subjectivity in evaluations or ensures a true peer review process by the DEPC.

In contrast, UDC's DEPC selection process provides for UDC and UDCFA to carefully vet and select DEPC members with teaching experience and objectivity who have been through the evaluative process at least once. Furthermore, pursuant to UDC's LBO, UDCFA is provided an unfettered selection of the candidates for DEPC Chair. Therefore, in the final analysis, UDC's LBO provides UDCFA the opportunity to select half of the DEPC members and DEPC Chair candidates ensuring the Union majority control over the DEPC member selection. In addition, UDC's LBO allows UDCFA to exercise its independent judgment on the selection of the majority of DEPC members who will be objective and invested in a peer review approach to evaluations. In this way, UDC's LBO meets UDCFA's stated interests.

For all these reasons based on the record, I find that UDC LBO for Article XV, E.2.a., is the more reasonable achieving a prompt and fair settlement of the dispute and must appear in the Seventh Master Agreement.

IMPASSE ISSUE THREE

G. FREQUENCY OF EVALUATIONS, ¶ 1. (G.1.) concerning transition of faculty members on the Step Compensation System to the Merit Compensation System.

UDCFA's LBO states:

1. All faculty members shall be evaluated annually, except as excluded by events referenced in paragraphs 3 and 4 of this section. Provided further that faculty on the Step Compensation System shall be evaluated every three years until Academic Year 2014-15. Faculty members on the Step Compensation System will transition to the Merit Compensation System at the start of Academic Year 2014-15. (Jx 6a).

UDC's LBO states:

1. All faculty members shall be evaluated annually, except as excluded by events referenced in paragraphs 3 and 4 of this section. Provided further that faculty on the Step system shall be evaluated every three years until Academic Year 2015-16 when all faculty members shall be on the Merit system. Faculty on the Step system can make a one-time election from the Step system to the Merit system at the time the faculty member signs and submits his or her letter of reappointment (contract extension) for the 2014-2015 academic year in late May-early June 2014. (Jx 7a).

The differences between the Parties on this issue are not significant but have moment in terms of UDC's stated interest to end the Step Compensation System and move all faculty to the Merit Compensation System.

For Article XV, G.1., UDCFA's LBO requires Step Compensation System (Step) faculty to transition to the Merit Compensation System (Merit) UDC at the start of academic year 2014-2015. UDC's LBO provides for an election to transition to Merit in the same academic year, 2014-2015 and mandatory transition to Merit in academic year 2015-2016. The difference also impacts the frequency of evaluations for the Step faculty who are evaluated every three years and under Merit will be evaluated every year. Both Parties acknowledge this impact and change in evaluation frequency and, apparently, neither asserts this difference as grounds for concern.

CONTENTIONS

UDCFA asserts that its LBO is intended to accelerate the transition of Step faculty to Merit pay where they have an opportunity for merit bonuses based on their evaluation portfolio. UDCFA notes that UDC LBO permits but does not require transition to Merit in academic year 2014-2015 when UDCFA mandates the transition. UDCFA recognizes faculty transition to Merit pay will have to submit two annual evaluations. UDCFA does not understand UDC's reluctance to mandate faculty transition from Step to Merit for academic year 2014-2015.

For all these reasons, UDCFA asserts its Article XV, G.1. LBO is the more reasonable and provides a prompt and fair settlement of the dispute.

UDC asserts UDCFA's LBO will "cut off" the three evaluations of Step faculty resulting in two years for which faculty will receive no feedback or evaluations. UDC argues its LBO is more supportive of faculty, more faculty-centered and more supportive of accreditation standards. UDC argues that since UDCFA provided no testimony regarding its LBO, then UDC's LBO should be adopted and selected by the Arbitrator as the more reasonable.

DISCUSSION

The core difference as regards the Parties' dispute over G.1. is whether UDC will receive evaluations from Step faculty who transition to Merit in academic year 2014-2015. UDCFA has clarified its LBO through its Post-hearing Brief confirming that UDCFA understands that Step faculty must submit two evaluations covering their performance under the Step three-year and the Merit annual evaluative cycles.

UDC's strong preference and interest to move all Step faculty to Merit pay was expressed firmly and often at hearing by University witnesses. UDCFA's LBO, as explained by the Union's Post-hearing Brief, achieves this desired transition immediately and under circumstances and work rules that ensure Step faculty are evaluated for all teaching time. Under UDCFA's LBO, no teaching time will be cut off from evaluation as feared by UDC.

For all these reasons, I find UDCFA's LBO for Article XV, G.1., is the more reasonable achieving a prompt and fair settlement of the dispute and must appear in the Seventh Master Agreement.

ARTICLE XVII, COMPENSATION

INTRODUCTION

There are significant differences in the Parties' approaches to the resolution of Article XVIII, Compensation. (Jx 4 and 5).

UDCFA's LBO states:

- A. Salary for New Hires
 - 1. All faculty hired on or after September 1, 2006 are on the Merit Compensation System.
 - 2. The Minimum Hiring Salary for faculty on the Merit Compensation System is the Step 1 rate on Appendix A. The Minimum Starting Salary shall increase each Academic Year by the amount or percentage of the general salary increase.
 - 3. The University may hire new faculty with a starting salary at any step of the salary schedule in Appendix A appropriate to their prior experience and their rank on hiring.
- B. October 1, 2013 through September 30, 2014
 - 1. Faculty on the Step Compensation System:

Effective on October 1, 2013, faculty on the Step Compensation System will be paid pursuant to the Table in Appendix A. Faculty will be placed on the step that they held on May 1, 2013.
 - 2. Faculty on the Merit Compensation System

Effective on October 1, 2013, each faculty member on the Merit Compensation System shall receive a salary increase based on the following formula:

 - (a) faculty hired before October 1, 2008 \$15,000.00
 - (b) faculty hired in Academic Year 2008-2009 \$12,000.00
 - (c) faculty hired in Academic Year 2009-2010 \$9,000.00

- (d) faculty hired in Academic Year 2010-2011 \$6,000.00
- (e) faculty hired in Academic Year 2011-2012 \$3,000.00
- (f) faculty hired in Academic Year 2012-2013 \$1,000.00
- (g) faculty hired in Academic Year 2013-2014 \$0.00

Notwithstanding the foregoing, faculty hired after October 1, 2008 shall receive an increase which will place them at least at the Minimum Hiring Rate. For example, an Assistant Professor hired at the prior starting rate shall receive an increase to the new Assistant Professor Minimum Starting Rate.

C. October 1, 2014 through September 30, 2015

- 1. Effective October 1, 2014, all faculty will be on the Merit Compensation System.
- 2. All faculty will receive a 3.5% general salary increase

D. Merit Bonus Awards

Effective October 1, 2013, faculty members on the Merit Compensation System will be eligible for annual Merit Bonus Awards determined as follows:

- 1. The University will establish a Merit Compensation Pool consisting of 1% of the aggregate salary of all bargaining unit faculty paid during the just completed Contract Year. For example, the Merit Pool for awards in Contract Year 2013-2014 will be 1% of the aggregate salary paid in Contract Year 2012-2013.
 - 2. Faculty members with an aggregate Evaluation Rating of 3.5 or better will receive a Merit Bonus determined as follows:
 - (a) The base formula will be:
 - 3.5 = x
 - 3.6 = 2x
 - 3.7 = 3x
 - 3.8 = 4x
 - 3.9 = 5x
 - 4.0 = 6x
- "x" equals the amount of the pay increase for the

aggregate evaluation score of 3.5. Higher aggregate Evaluation Scores will receive multiples of the increase awarded to those receiving an aggregate Evaluation Score of 3.5.

- (b) The base formula will be multiplied by the number of faculty receiving each aggregate Evaluation Score:

$$3.5 = xa$$

$$3.6 = 2xb$$

$$3.7 = 3xc$$

$$3.8 = 4xd$$

$$3.9 = 5xe$$

$$4.0 = 6xf$$

"a" equals the number of faculty receiving an aggregate Evaluation of 3.5.

"b" equals the number of faculty receiving an aggregate Evaluation of 3.6.

"c" equals the number of faculty receiving an aggregate Evaluation of 3.7.

"d" equals the number of faculty receiving an aggregate Evaluation of 3.8.

"e" equals the number of faculty receiving an aggregate Evaluation of 3.9.

"f" equals the number of faculty receiving an aggregate Evaluation of 4.0.

- (c) The Merit Compensation Pool will be divided by the total number of xs to solve for "x"

For example, if the distribution of aggregate Evaluation Scores is

$$3.5 = 18$$

$$3.6 = 07$$

$$3.7 = 06$$

$$3.8 = 04$$

$$3.9 = 02$$

$$4.0 = 01$$

$$\text{then } 18x + 14x + 18x + 16x + 10x + 6x = 76x.$$

$$\text{If the Merit Pool was } \$150,000, \text{ then } x = \$1973.68.$$

- (d) No faculty member on the Merit Compensation System can receive a Merit Bonus Award greater than 10% of his/her base salary in a single year.

3. At the conclusion of each Academic Year, the University will

transmit to the Faculty Association a list identifying each bargaining unit faculty member and the aggregate Evaluation Score he/she received in the just completed Evaluation Period.

- E. **Salary Increase Upon Promotion**
A faculty member promoted in rank shall receive a salary increase of 10% effective upon the effective date of the promotion.
- F. **Renumber remaining provisions in Article XVIII.³ (Jx 4).**

UDC's LBO states:

- A. **Salary Increases**
 - 1. **General increases in the base pay of faculty will occur in the following ways:**
 - a) **Upon promotion in rank, a faculty member's base pay will be automatically increased in the amount specified by the University as being associated with promotion to that rank.**
 - b) **As a result of negotiated annual across-the-board general increases.**
 - 2. **Performance-based pay increases to base salary may occur as set forth below.**
- B. **Across-the-Board General Increases & Establishment of Performance-based bonus system.**

Across the Board General Increases:

- 1. **The University will pay a total of \$1,881,870 to all members of this bargaining unit as a one-time lump sum payment (not to be added to a faculty member's base compensation) and for which no TIAA-CREF contribution will be made, payable as follows:**
 - **Faculty who have been employed with the University since October 1, 2008 shall**

³ UDCFA's LBO also includes a comprehensive wage plan or pay chart for Contract Year 2013-2014 which is reproduced as Attachment A to this Award.

each receive \$11,588.00.

- Faculty who have been employed with the University since August 16, 2009 shall each receive \$9,270.00.
 - Faculty who have been employed with the University since August 16, 2010 shall each receive \$6,953.00.
 - Faculty who have been employed with the University since August 16, 2011 shall each receive \$4,635.00.
 - Faculty who have been employed with the University since August 16, 2012 shall each receive \$2,318.00.
 - Faculty who have been employed with the University since August 16, 2013 shall each receive \$0.
2. There will be a merit pool of \$274,110.00, which will be paid out as a onetime lump sum payment (not added to a faculty member's base salary), for which no TIAA-CREF contribution will be made. This merit money will be allocated based on the standard merit pool formula set forth in the Sixth Master Agreement covering the two-year evaluation period for Academic Year 2011-2012 and Academic Year 2012-2013, with none of the merit pool money being discretionary.
 3. The University will provide a three percent (3%) cost-of-living ("COLA") increase, including a TIAA-CREF contribution, to all faculty employed by the University as of the date of the Arbitration Decision, such payment to be added to the faculty member's base compensation.
 4. The University shall, in good faith, seek to budget One Hundred Thirty-Eight Thousand Dollars and No Cents (\$138,000.00) for a merit pool in fiscal year 2015, which, if funding is available, will be a one-time lump sum payment not added to a faculty member's base salary and for which no TIAA-CREF contribution will be made.

Effective the 2015-16 academic year, pay increases shall exclusively

be based on the following:

1. All performance-based bonuses shall be distributed based on the performance evaluation ratings (as set forth in Article XV) of eligible faculty for the most recent evaluation cycle.
2. A faculty member who receives a performance evaluation rating of "Outstanding" shall receive an increase to the base and a fixed bonus. A faculty member who receives a performance evaluation rating of "Distinguished" shall receive an increase to the base and a competitive bonus.
3. A faculty member who receives a performance evaluation rating of "Does Not Meet Professional Standards" or "Improvement Needed" may receive a General Development Fund Stipend but not an increase in salary.
4. A faculty member who receives a performance evaluation rating of "Meets Professional Standards" shall receive a standard increase in base pay.
5. If the parties do not reach an agreement on an 8th Master Agreement by September 30, 2015, the parties may separately meet solely for the purpose of attempting to negotiate a performance based bonus pool for Academic Year 2015-2016.

C. Salary Schedule

1. Effective the 2014-15 academic year, the pay bands will be as follows:
 - a. The Pay Band at the Assistant Professor level will be adjusted at the upper end by 15%, which is the equivalent of \$9,750.
 - b. The Pay Band at the Associate Professor level will be adjusted at the upper end by 15%, which is the equivalent of \$12,750.
 - c. The Pay Band at the Instructor level will be adjusted at the upper end by 15%, which is the equivalent of \$8,400.

No faculty member on the Step system will receive a salary increase or change in step based on these adjusted pay bands.

2. Steps

- a. Faculty on the Step system can make a one-time election from the Step system to the Merit system at the time the faculty member signs and submits his or her letter of reappointment (contract extension) for the 2014-2015 academic year in late May-early June 2014.
- b. Effective Academic Year 2015-2016, all faculty members shall be on the Merit system.
3. If the District of Columbia gives and funds a cost-of-living ("COLA") increase for this bargaining unit covering fiscal year 2015, the parties agree that the COLA increase shall be extended to the collectively-bargained employees in this unit. (Jx 5).

CONTENTIONS

UDCFA asserts that its LBO, at Article XVIII B.1., reasonably compensates UDC faculty after seven years in which their compensation was frozen and its LBO also sets the future course.

UDCFA's LBO proposes, for contract year 2013-2014, a Step pay plan, from Step 1 to 14, with across-the-board increases but UDCFA does not propose to change UDC's discretion to pay new hires at any Step on the pay plan. UDCFA argues these substantial increases in the Step pay plan reflect an approximate 3% annual salary increase since October 1, 2007. UDCFA's LBO provides that for contract year 2013-2014, Merit pay faculty will receive across-the-board compensation increases based on years of employment pursuant to UDCFA's LBO Article XVIII B.2.

UDCFA notes that both Parties seek the elimination of the Step pay plan which the Union proposes to end on October 1, 2014 when all faculty will receive a 3.5% general salary increase pursuant to its LBO Article XVIII C. UDCFA asserts this compensation approach will eliminate the need for salary caps except on hiring. UDCFA argues its LBO is effectively an overall 22.19% salary increase with increases of 3.5% for new hires to 34% for low-paid Assistant Professors.

UDCFA asserts its LBO Article XVIII D establishes a new formula for Merit Bonus Awards to be paid from a pool equal to 1% of the prior year aggregate faculty salary. Merit Bonus Awards are to be paid as bonuses, not added to base salary, under a graduated

formula to faculty with annual evaluation score of 3.5 or higher with higher ratings receiving high awards. UDCFA asserts that in the previous contract year all but 11 faculty received a 3.0 annual evaluation score the current evaluation score for bonus eligibility. UDCFA argues that its LBO requires a 3.5 or higher because it believes the Merit Bonus Award should not be awarded to such a high proportion of faculty.

UDCFA asserts its LBO Article XVIII E provides faculty members 10% salary increase on promotion replacing the Sixth Master Agreement's two step increase, while also requiring the University to set aside 1% of total salary to fund promotions.

UDCFA asserts its LBO will cost approximately \$6,879,412.87 which UDCFA argues the District of Columbia (DC) can pay because Mayor Gray has set aside \$44 million for raises. UDCFA argues DC's economic condition is improving with an FY2013 surplus of \$321 million. For these reasons, UDCFA argues the Arbitrator must not yield to UDC's poor-mouthing.

Regarding public sector employee-comparables to UDC faculty, UDCFA asserts the DC Public Schools (DCPS) is the only reasonable comparator under the appropriate statutory provisions. UDCFA argues that DCPS compensates its teachers at much higher rates than UDC while both employee groups teach the same core student group. UDCFA argues that while DCPS does not require a Master's Degree like UDC, a DCPS teacher with only a Bachelor's Degree and 16 years experience makes more money than an UDC Associate Professor at maximum salary. UDCFA argues the record establishes, across both of the pay ranges of DCPS teachers and UDC faculty, that UDC faculty are compensated less than DCPS teachers. Furthermore, DCPS and the Washington Teachers Union (WTU) are negotiating a new agreement which will presumably include increases for FY2013, F20Y14 and FY2015.

UDCFA asserts that the crucial, undisputed facts include: UDC faculty have received no raises since October 2007; the Washington Metropolitan area CPI-U is 11% from October 2007 to November 2013; DCPS teachers received raises in 2008-2009 of 3%, 2009-2010 of 5%, 2010-2011 of 4%, and 2011-2012 of 5%; and DCPS teachers receive higher salaries than UDC faculty sometimes by \$16,000 to \$20,000. UDCFA argues its LBO will not put UDC faculty salaries above DCPS teachers, but will close the gap.

UDCFA asserts under the Comprehensive Merit Personnel Act (CMPA), DC Code

§ 1-617.17(f), the Arbitrator may look to comparators outside DC when necessary to establish a reasonable statistical comparison, but it is unnecessary to look beyond DCPS teachers. However, UDCFA asserts that if the Arbitrator concludes it is necessary to look to comparators beyond DC employees, then the search must be restricted under the CMPA to the Washington Standard Metropolitan Statistical Area (SMSA).⁴

UDCFA refutes UDC's evidence from the AAUP/Chronicle because it is data which overstates and inflates UDC's average salaries and, UDC maintains, the figures are wrong.⁵ UDCFA argues it disputes the public and private colleges and universities which UDC asserts are appropriate comparators.⁶ UDCFA argues that the record does not support a distinction between public-institution and private-institution faculty on any grounds which UDC argues. UDCFA argues that the faculty at the two public universities, George Mason University and University of Maryland, will continue to earn more than UDC faculty even under its LBO, as would six of the seven private universities, excepting Howard University even without regard to future salary increases for these institutions' faculty.

UDCFA asserts that UDC has failed to prove the need to consider comparators outside the Washington SMSA. UDCFA argues, assuming *arguendo*, such comparators need consideration, the only appropriate comparator is the United States Naval Academy (USNA). Such a comparison establishes that UDC faculty are underpaid yet again compared to USNA faculty.

UDCFA asserts that UDC's comparators listed in UDC's *2012-2013 Faculty and Staff Compensation Market Study (UDC Market Study)*, prepared by Segal/Sibson (Segal/Sibson), support UDCFA's LBO. (Ux 23). UDCFA says this fact was conceded by Provost Petty, UDC witness, who recognized that UDC was well below salary ranges for all professorial ranks except at the minimum. In addition, UDC should not be permitted to cherry pick comparators as it has done in the presentation of its case. Moreover, UDC witness Prescott's assertion that the only proper comparators are public urban institutions

⁴ District of Columbia; Montgomery County, MD; Prince George's County, MD; Alexandria City, VA; Arlington County, VA; Fairfax County, VA; Fairfax City, VA; Falls Church City, VA; Loudoun County, VA; and Prince William County, VA.

⁵ The American Association of University Professors, *The Chronicle of Higher Education*.

⁶ Georgetown University, American University, George Washington University, George Mason University, University of Maryland, Catholic University, Gallaudet University, Howard University, and Trinity Washington University.

is erroneous and contradicts UDC's plan to become one of the nation's premier public universities.

Therefore, UDCFA argues even comparisons of faculty salaries outside the Washington SMSA show UDC faculty are underpaid.

UDCFA asserts its LBO is reasonable under all the circumstances. UDCFA says its LBO cost will be \$6,879,412 plus promotional costs and less some Social Security costs.⁷ UDCFA says that while UDC's cost calculation of its LBO is \$3,138,814, this difference represents an obvious, substantial difference arising only from UDCFA's proposed salary increase versus UDC's lump sum and FY2015 increase. UDCFA maintains its proposed salary increases are supported by the CMPA.

UDCFA argues its LBO is more fair and appropriate for several reasons: UDC's assertion that other DC employees received less pay since 2007 is true but ignores the proper comparator DCPS teachers; the Segal/Sibson conclusion that UDC faculty pay ranges are generally competitive at the minimum and less at the midpoint and maximum is irrelevant and uses the wrong comparators; and even if UDC faculty received 3% per year salary increases since October 2007, when salaries were frozen for UDC faculty, their compensation would still be lower than DCPS teachers.

UDCFA argues as well that UDC faculty salaries are below public and private institutions inside and outside the Washington SMSA; the Segal/Sibson report supports UDCFA research that the pay range maximums are inadequate; and faculty salaries should not be held hostage to administrative salaries which are 315% above the national average for administrative, executive and managerial staff. (Ux 20).

Under all these circumstances, UDCFA asserts its LBO is appropriate and reasonable.

UDCFA argues that UDC's LBO should not be selected because it does not improve faculty compensation in either the short or long-term. UDCFA argues UDC LBO is not consistent with UDC's "Right-Sizing Plan" regarding compensation or UDC's Strategic Plan, "Vision 2020." (Ux 20; Ex 1 and 4).

⁷ UDCFA asserts the difference between its costing and UDC costing of UDCFA's LBO (\$7,265,231) can be resolved between the Parties.

UDCFA asserts that UDC's LBO creates and solidifies a two-tier compensation system with new hire faculty on top. Since 2007, UDC has been hiring many faculty above the contractual maximum. UDC hiring allows faculty to negotiate their own salaries which results in compensation that is not the result of collective bargaining. UDC's proposal does not correct these many problems because UDC's LBO allows unfettered discretion to ignore Professors salary bands. This discretion should not be permitted in the Seventh Master Agreement. In contrast, UDCFA argues its LBO starts to close compensation gaps and prevents long-term faculty from being left behind in compensation.

UDCFA asserts UDC's LBO effective date could preclude compensation to certain faculty for work in academic year 2013-2014 because the LBO provides for a 3% salary increase for "all faculty employed by the University as of the date of the Arbitrator's Decision." UDCFA argues that UDC's LBO is unfair because it will exclude salary increases to faculty who did not complete the academic year or ceased employment before the Award. The Union argues UDCFA's LBO is more reasonable because it is fully retroactive to October 1, 2013 and does not disqualify faculty.

UDCFA argues that UDC seeks unilateral control over salary increases because there is no commitment for a merit pool for FY2015 indicating that UDC is unwilling to commit to asking the Mayor and City Council to fund an FY2015 merit pool. UDC's FY2015 COLA increase proposal does not guarantee that UDC will seek funding and there is no guarantee DC will fund a COLA increase not required by collective bargaining. Prescott testified that UDC could not put a COLA amount in its LBO because it has "no way of knowing what the city will do." (Tr 701). UDCFA argues, for this reason, UDC's LBO is not a fair proposal and should not be imposed by the Arbitrator.

UDCFA asserts that UDC's LBO permits individual faculty to negotiate salary increases which violates the CMPA precluding individual bargaining.

UDCFA asserts that UDC's LBO does not include a contract termination date although the Parties agreed the agreement terminates on September 30, 2015, but UDC's compensation proposal becomes effective in academic year 2015-2016, about six weeks after contract expiration. This LBO is unsupportable as a matter of law because the CMPA does not permit contract clauses to become effective after the contract's expiration.

For all these reasons, UDCFA asserts its LBO is the more reasonable and provides a prompt and fair settlement of the dispute, and so should be selected by the Arbitrator.

UDC asserts that the total cost of UDCFA's LBO will be \$7,265,231.00 while its LBO will cost \$3,232,177.00. UDC says its costing does not include the cost of its proposal for \$138,000.00 for FY2015 merit pay funding or the cost of a FY2015 COLA increase which is unknown at this time.⁸

UDC asserts that it is the responsibility of the Arbitrator to approximate the outcome the Parties would have reached if their bargaining resulted in an agreement while selecting either UDC's or UDCFA's LBO in its entirety.

UDC says UDCFA's comparative evidence does not comport with the applicable statutory standards which therefore, obligate the Arbitrator to select UDC's LBO as the most reasonable. UDC notes that from 2008 to 2014, the period of DC's financial crisis, UDCFA seeks on average a retroactive, across-the-board pay increase equaling 22% added to base pay. During the financial crisis, a variety of city employees received no wage increases except those whose collective bargaining agreements continued into the time of the financial crisis. UDC argues that UDCFA failed to present comparative data supporting its LBO and at no point clearly articulates a rationale for these retroactive increases. UDC says that UDCFA's LBO even includes retroactive merit and promotional pay of more than \$250,000.

UDC's argument continues, asserting that UDCFA has not presented any credible evidence supporting the use of DCPS as a comparator. In this regard, UDC maintains, UDCFA's rationale is unreasonable and unexplained. UDC says that there are many reasons why DCPS should not be given consideration as a comparator because the comparison ends with the fact that UDC and DCPS employ teachers and the DCPS-WTU collective bargaining agreement was final before the 2008-2010 financial crisis.

As to retroactive compensation, the Parties' LBOs and supporting arguments are substantially close, if not identical, to those described in the recent impasse award *In the Matter of the Arbitration Between Fraternal Order of Police Labor Committee Local 1 and*

⁸ UDC's Post-hearing Brief, p. 9, explains this proposal at C.3. as follows:

The University proposal also includes a promise to provide for a cost of living increase for fiscal year 2015 (**October 1, 2015-September 30, 2016**) for the entire faculty bargaining unit if such an increase is funded by the District of Columbia government. See Jt. Exh. 5 at p.3 section C(3). (Emphasis added).

Counsel has misstated the dates of FY2015 which will be October 1, 2014 to September 30, 2015.

Metropolitan Police Department of the District of Columbia, DC PERB Cases 13-I-03 and 13-I-04 (*FOP & MPD*), (Arbitrator M. David Vaughn (Vaughn)). Vaughn was not persuaded by the FOP LBO because it treated the financial crisis as if it did not happen. FOP's LBO including retroactive salary increases was not selected by Vaughn as a consequence.

UDC argues that its LBO retroactive proposal is far more generous than MPD's because it provides for \$1,881,870 divided among current faculty and \$274,110 for retroactive merit pay which will go to 139 of 183 faculty members who will receive \$11,588, the highest amount available under its proposal.

UDC argues that its LBO also includes a 3% across-the-board pay increase effective on the date of the issuance of the Arbitrator's decision.⁹ UDC argues that its LBO also provides increases in the pay bands resulting in higher pay for higher performing faculty.

UDC asserts its LBO is an effort to move to the middle to better assure its proposal is selected as the most reasonable at a time when UDC is fighting to maintain its existence as a higher education institution. Notwithstanding UDC's financial situation, UDC argues that it has put every penny on the table.

UDC asserts its financial constraints make UDCFA's LBO untenable because its LBO is out of line with DC's fiscal difficulties and UDC's independent financial plight. UDC argues that no DC bargaining unit has received anything even close to what UDCFA is unrealistically seeking. UDC says UDCFA's LBO would result in economic disaster, program elimination and reduction-in-force (RIF) while being inconsistent with UDC's strategic plan, as well.

UDC asserts its LBO is consistent with the applicable statutory standard and its inability to pay UDCFA's LBO constitutes more grounds to select UDC's LBO. UDC argues when compared appropriately to other institutions, such as the University of Maryland

⁹ This is a misstatement of UDC LBO B.3. by counsel. Specifically, UDC's LBO states:

The University will provide a three percent (3%) cost-of-living ("COLA") increase, including a TIAA-CREF contribution, **to all faculty employed by the University as of the date of the Arbitration Decision**, such payment to be added to the faculty member's base compensation. (Emphasis added).

Moreover, UDC witness Herman Prescott explained UDC LBO B.3. as providing for a 3% pay increase retroactive to October 1, 2013. (Tr 765-766).

Baltimore County, Bowie State University, Coppin State University and Morgan State University, UDC's pay scales are reasonable. UDC argues its pay scales compare favorably with other public land grant, urban and Historically Black Colleges and Universities (HBCU) except at the entry level which will be corrected by UDC's LBO.

UDC asserts that its LBO provides significant dollars to faculty and is the more reasonable while UDCFA's LBO is unrealistic, unaffordable, fails to account for DC financial circumstances and UDC issues. For these reasons, UDC requests that the Arbitrator select UDC's LBO on compensation.

DISCUSSION

There are structural similarities in and substantive differences between each Party's LBO. For example, both Parties have proposed structurally similar compensation for FY2008 through FY2013, the period of DC's financial crisis, when there was no compensation for this bargaining unit.¹⁰ In addition, both Parties have proposed across-the-board wage increases for FY2014 and FY2015. Further, both Parties have proposed funding the merit pay pool, albeit in different amounts. Finally, both Parties' LBOs, coupled with the October 1, 2014 transition of Step faculty to Merit pay, already selected by me above, proposes significant alterations to UDC's pay plans as a result.

In part, the substantive differences between the LBOs arise from the compensation comparators each Party asserts are appropriate for me to determine which LBO is the most reasonable. These differences regarding comparators, while not dispositive of my selection of an LBO as the most reasonable, are worthy of a brief discussion.

There are significant differences between the Parties' LBOs in how and how much each proposes bargaining unit compensation for FY2008 through FY2013. Their LBOs represent significant immediate and long term costs to UDC. These provisions of each LBO, in particular, are the center-of-gravity weighing my determination as well, and therefore, these provisions are the tipping point of my determination of which LBO is the most reasonable pursuant to the appropriate statutory standards.

It follows as well, that some of the differences in the Parties' LBOs are less

¹⁰ From FY08 through FY13, DC experienced an extraordinary economic downturn and financial crises, as did most of the nation. For the most part, DC employee bargaining unit employees received no new negotiated raises and, in some units, there was no bargaining.

significant than others. It is the significant differences, particularly regarding costs, which constitute the basis for my determination of the most reasonable LBO. This discussion is limited to those different provisions and the salient elements of each Party's LBO which form the basis for my determination as to which LBO, as a whole, is the most reasonable resulting in a prompt and fair settlement of the dispute.

While each Party's costing of their own and the others compensation LBO results in different total costs, the item-by-item differences are not significant enough to call into question their methodology. A Party's costing of contract compensation proposals is, by its nature, an estimate only. It can be difficult for an impasse neutral to determine which Party's costing method more accurately produces a reliable estimate.

In this dispute, I am convinced by the record testimony and evidence that UDC's cost estimate model is the more reliable.¹¹ (Ex 11, 11(a), (*compare*: 12, 12(a)), 14, 14(a), 15, and 15(a)). This is true, eventhough some costs arising from UDC's LBO were not fully developed at hearing.¹²

Compensation Comparators

DC Code § 1-617.17, Collective bargaining concerning compensation, provides that, "[t]he principles of § 1-611.03 shall apply to compensation set under the provisions of this section." Those principles require that,

[c]ompensation for all employees in the Career, Educational, Legal, Excepted, and the Management Supervisory Services shall be fixed in accordance with the following policy:

(1) Compensation shall be competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups. For the purpose of this paragraph, compensation shall be deemed to be competitive if it falls reasonably within the range of compensation prevailing in the

¹¹ See: testimony of Jackie Xu. (Tr 773-833).

¹² UDC estimates the total cost of UDCFA's LBO to be \$7,265,231 and the total cost of UDC's LBO to be \$3,138,814, not including Article XVIII B.4. cost UDC believes to be an additional \$138,000 and C.3. cost for a FY2015 pay increase based on an unknown pay increase proposed by the Mayor and approved by the City Council for non-bargaining unit UDC employees.

Washington, D.C., Standard Metropolitan Statistical Area (SMSA); provided, that compensation levels may be examined for public and/or private employees outside the area and/or for federal government employees when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels.

Thus, the *DC Code* constrains my LBO selection to a wage proposal LBO which is “competitive . . . with other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups . . . [which] . . . falls reasonably within the range of compensation prevailing in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA).”

The Washington DC SMSA includes the District of Columbia, the Maryland Counties of Calvert, Charles County, Frederick, Montgomery and Prince George's; the Virginia Counties and independent Cities of Arlington, Alexandria City, Clarke, Culpeper, Fairfax, Fairfax City, Falls Church City, Fauquier, Loudoun, Prince William, Manassas City, Manassas Park City, Rappahannock, Spotsylvania, Fredericksburg City, Stafford, Warren; and the West Virginia County of Jefferson.¹³

UDCFA argues that, within DC, the appropriate compensation comparator for its bargaining unit is the DCPS bargaining unit. Eventhough there are substantially higher minimum education hiring requirements to become a UDC faculty member, versus a DCPS teacher, the record establishes that UDC faculty members are significantly underpaid in comparison to comparable DCPS faculty members. Within the SMSA, the two public universities are George Mason University and University of Maryland, College Park. UDCFA argues that these are appropriate compensation comparators and establish the UDC bargaining faculty is significantly underpaid in comparison. UDC would have me consider many more comparators, more widely located, and across public and private university spectrum of samples. UDC's choice of comparators is unconvincing.

The CMPA provides, I may examine compensation “for public and/or private employees outside the area and/or for federal government employees when necessary to

¹³ Associated with the Washington D.C. SMSA, but categorized as part of the Ballimore--Towson, MD SMSA are the counties of Anne Arundel and Howard. In addition, associated with the Washington D.C. SMSA, but categorized as part of the California-Lexington Park, MD SMSA is the county of St. Mary's.

establish a reasonably representative statistical basis" for compensation comparison or conditions in the local labor market requiring a larger compensation sampling. There is no relevant or material evidence presented by either Party to support an examination of compensation outside the Washington DC SMSA, including other public university and colleges, for example the USNA which UDCFA argues is an appropriate comparator. For the same reason, UDC's arguments, based on the *Segal-Sibson* report, lack relevance and materiality because the compensation comparators in that report do not comport with the appropriate statutory standards.

For these reasons, and based on DC Code § 1-611.03, I find that there are sufficient comparators within DC and the Washington DC SMSA for valid compensation analysis. Moreover, I find the UDC faculty is significantly underpaid based on the appropriate comparators under the statute at a time when UDC management asserts that it wants to transform UDC into a premier higher education institution. The record also contains evidence of UDC efforts to reduce extraordinary compensation costs among non-bargaining unit clerical, administrative and management officials. (Ex 3). My task as the impasse neutral is to put the Parties on a path they might have otherwise chosen together had they reached agreement. The choice I make of LBOs must achieve a fair resolution of the dispute while providing reasonable and affordable compensation for this bargaining unit within the limits of the financial framework which the University must operate. This involves balancing the statutory standards for compensation against the reality of UDC financial resources.

Neither Party's LBO fully resolves the lack of competitive compensation for the UDC faculty bargaining unit which both Parties admit in their Post-hearing Briefs. Despite establishing that UDC's faculty is comparatively underpaid, I also find that the appropriate comparators do not support the selection of UDCFA's LBO, Article XVIII, for the following reasons. Primarily based on the extraordinary cost of UDC's LBO in which significant compensation is added to base salary, the structure of compensation for FY2014 and FY2015 and the Merit pay pool contributions, I find UDC's LBO, Article XVIII, Compensation, is the most reasonable resulting in a prompt and fair resolution of the dispute.

However, the Parties' LBOs on compensation after the financial crisis and during the CBA term warrants discussion as well.

FY2008 to FY2013 Compensation

The structure of each Party's LBO for FY2008 through FY2013 compensation, covering the period of the DC financial crisis, is nearly identical. Yet, each Party's LBO differs significantly with respect to the amount of compensation and the impact of the compensation on the current faculty pay plan. Simply stated and in the Parties' words, UDC's LBO compensation package will be a "one-time lump sum payment (not to be added to a faculty member's base compensation)" while UDCFA's compensation will be "a salary increase." In addition, UDCFA's LBO, Article XVIIIB, would constitute the entirety of bargaining unit faculty compensation for October 1, 2013 through September 30, 2014. UDC's LBO proposes an additional 3%, across-the-board, compensation for October 1, 2013 through September 30, 2014 which is discussed below.

Under ¶ B., UDCFA's LBO provides for extraordinary pay raises ranging from \$15,000 to \$1,000 for Merit pay faculty, based on their seniority since October 1, 2008, and increases to the Step faculty pay plan "to approximate a 3% annual salary increase since October 1, 2007" through a new Step faculty pay chart at attached to this Award. (UDCFA Post-hearing Brief, p. 5).

In contrast, UDC's LBO would pay lump sums to Merit and Step faculty ranging from \$11,588 to \$2,318, also based on their seniority since October 1, 2008.

UDCFA argues that its LBO is an effort to regain salary increases the Union believes were denied to bargaining unit faculty during the years of the DC financial crisis. Arbitrator Vaughn noted succinctly that,

[d]uring those years many District employees received no across-the-board wage increases, no or limited step increases, and a freeze on other increases in compensation. Some collective bargaining agreements extended into the period of the downturn, and, when they expired, their terms and conditions continued by operation of law, but no improvements were implemented. In the District, and most surrounding jurisdictions, collective bargaining either failed to produce new agreements or, when negotiated or imposed, included freezes and concessions. Only in the last couple of years have new agreements been reached.¹⁴

¹⁴ *FOP & MPD*, p. 22.

In hindsight, it is clear that no wage increases would have resulted through collective bargaining from FY2008 through FY2013 because no discretionary money was available to DC for collectively bargained wage increases.

Viewed in this light, I am convinced that UDCFA's LBO constitutes an extraordinary increase in faculty salary which is not supportable under any of the appropriate statutory standards. This is particularly true since UDCFA's LBO seeks to apply money that is available *now* to fund retroactively wage increases which would not have been achieved through collective bargaining during the financial crisis. There is *no* statutory standard to measure the reasonableness of UDCFA's LBO proposal at ¶ B. Similarly, there is *no* statutory support for me to select UDCFA's LBO based on its speculative, arguably unreasonable, assertion that this bargaining unit would have otherwise bargained 3% wage increases during this time if there had been no financial crisis. Absent statutory standards, I find that retroactive salary compensation added to base pay is inappropriate and unreasonable.

Conversely, I view UDC's LBO, Article XVIII B., as seniority based, lump sum, bonuses paid to bargaining unit faculty who have weathered the financial crisis with the university. UDC demonstrated through testimony and evidence that the University has the funds to cover these one time, lump sum, payments to UDCFA's bargaining unit faculty. When most other DC bargaining unit employees are receiving no compensation for the lost years of the financial crisis, UDC's LBO for these additional lump sum payments is the more reasonable.

As the impasse neutral, it is my role to select an LBO which I find will approximate the outcome the Parties would have obtained had they been successful at bargaining. Therefore, I find that the UDCFA's LBO at ¶ B. is unreasonable and would require extraordinary retroactive wage compensation added to base salary which is unsupportable under appropriate statutory standards. Conversely, UDC's LBO provides a seniority-based bonus structure compensating this bargaining unit in a more reasonable approach to the extended period without increased compensation that this bargaining unit endured during the financial crisis.

FY2014 and FY2015 Compensation

UDCFA's LBO does not provide for addition compensation for FY2014 beyond its LBO at ¶ B. UDCFA's LBO, ¶ C.1. and 2., does provide for all Step faculty to transition to

Merit pay on October 1, 2014 and "a 3.5% general salary increase" on October 1, 2014.¹⁵

The cost of this LBO is estimated at \$670,513 by UDC.

UDCFA's LBO, D., funds the Merit pay pool with "1% of the aggregate salary of all bargaining unit faculty paid during the just completed Contract Year." According to UDC, this funding formula will cost \$163,806 for FY2014 and \$193,271 for FY 2015.

UDCFA's LBO, E., requires a 10% salary increase on promotion to higher academic rank. UDC assumes a 5% per year promotion rate and estimates the cost of this LBO item at \$97,487 for FY2014 and \$198,386 for FY 2015.

In contrast, for FY2014, UDC's LBO, ¶ B.3. proposes a 3% cost of living (COLA) increase "to all faculty employed by the University as of the date of the Arbitration Decision" to be added to base pay. Based on my questions for clarification of this LBO item, UDC's witness Prescott testified, regarding the COLA's effective, that the COLA was to be added "[t]o the base, to everybody October 1[, 2013]." (Tr 766). UDC's cost estimate for this proposal is \$491,417.

In addition, UDC's LBO, ¶ C.3., proposes,

If the District of Columbia gives and funds a cost-of-living ("COLA") increase for this bargaining unit covering fiscal year 2015, the parties agree that the COLA increase shall be extended to the collectively bargained employees in this unit.

Arguably, UDC's LBO, ¶ C.3., is inartfully and awkwardly drafted. However, UDC's ¶ C.3. was clarified at hearing by Prescott as well. Prescott testified that the amount of the COLA for FY2015 would be equal to the wage increase proposed by the Mayor and approved by the City Council for non-bargaining unit employees. (Tr 763-764). He said that UDC has no cost estimate for this proposal but it commits to fund whatever COLA increase is proposed by the Mayor and approved by the City Council.

¹⁵ I found earlier in this Award that UDCFA's LBO at Article XV, G.1. was the most reasonable. This will result in Step faculty transitioning to Merit pay "at the start of Academic Year 2014-2015." My determination moots the provisions of UDCFA's LBO at ¶ C. 1. which was intended only as a conforming proposal to the Union's LBO, Article XV.

In conjunction with UDC's proposed lump sum payment pursuant to ¶ B.1., at ¶ B.2., UDC proposes to add \$274,110 to the Merit plan pool which will immediately provide for additional lump sum performance-based compensation to faculty this academic year and, under, ¶ B.4. another \$138,000 for FY2015 will be added by UDC to the Merit plan pool.

In addition, UDC's LBO, ¶ C., significantly raises the pay bands for Assistant Professor, Associate Professor and Instructor which, with the October 1, 2014 transition of Step faculty to Merit pay, benefits every member of the bargaining unit in these academic ranks.¹⁶

Turning first to UDCFA's challenges to UDC's LBO, the Union argues UDC's LBO is unfair because it excludes FY2014 salary increases to faculty who do not complete the academic year or ceased employment before the date of the Award. UDCFA says its LBO is more reasonable because it is fully retroactive to October 1, 2013 and does not disqualify faculty even those do not complete the academic year or ceased employment before the date of the Award.

However, the effective date of UDC's LBO, ¶ B.3., must be determined based on the CMPA which statutorily sets the date for this impasse award. In this dispute, the last hearing day was January 31, 2014, when the record closed except for the submission of Post-hearing Briefs. The Parties' counsels agreed to submit Post-hearing Briefs on April 16, 2014. On that day, the record closed. Pursuant to DC Code § 1-617.17(f)(3), "the award shall be issued within 20 days after the Board has been established." Since the record closed on April 16, 2014, the Award should have issued on May 6, 2014. However, the Parties' counsel have granted me extensions based on the size of the record including a 1338-page transcript, the extensive and numerous exhibits and case precedent submissions.

Therefore, I find that, by operation of statute, UDC's LBO, ¶ B.3. requires UDC to provide a 3% COLA "increase . . . to all faculty employed by the University" as of May 6, 2014. UDCFA's assertion that this is unfair is not only irrational, but also, to do otherwise, would inappropriately bind UDC to make retroactive salary payments to individuals who are outside the jurisdiction of UDCFA's certification amounting to an unenforceable collective bargaining agreement.

¹⁶ For the reasons discussed above, UDC's LBO, ¶ 2., has become moot.

For its part, UDC argues convincingly that it has put every penny on the table and cannot pay the cost of UDCFA's LBO. As I have already found, the Union's LBO regarding FY2008 to FY2013 compensation carries an extraordinary cost which is not supported by the appropriate statutory standards. In addition, contract costs increase significantly in UDCFA's LBO when its FY2014 and FY2015 compensation proposals are added.

UDC's LBO, as a whole, provides an organized, structured and balanced compensation approach with reasonable compensation and salary increases, including lump sums for FY2008 through FY2013, and across the board salary increases for FY2014 and FY2015. The UDC LBO compensation package is also reasonably aligned with recent impasse awards for other DC bargaining units as well.¹⁷

Other of UDCFA's LBO, including, ¶ A., Salary for New Hires, and ¶ D., Merit Bonus Awards, are over shadowed by the weight of evidence supporting a selection of UDC's LBO, as a whole, based on UDC's LBO at ¶¶ B.1., B.3. and C.3.

Finally, UDC's LBO lays a foundation for negotiations of the 8th Master Agreement which will begin soon. UDC's LBO does not resolve the compensation short coming UDCFA asserts, but does break the road block created by the financial crisis and returns the Parties on the collective bargaining roadway for the future.

Therefore, based on the facts, circumstances and evidence in the record, I find UDC's LBO, Article XVIII, Compensation, as a whole, satisfies the appropriate statutory standards as the most reasonable proposal resulting in a prompt and fair resolution of the impasse.

¹⁷ *FOP & MPD*, DC PERB 13-I-03 and 13-I-04; *District of Columbia Nurses Association & District of Columbia Department of Mental Health*, DC PERB 12-I-01; *District of Columbia Nurses Association & District of Columbia*, DC PERB 10-I-01.

AWARD

AWARD SUMMARY

ARTICLE XV, EVALUATION PROCEDURES

Impasse Issue One

UDC's LBO for Article XV, ¶ A.4., General Provisions, achieves a prompt and fair settlement of the dispute.

Impasse Issue Two

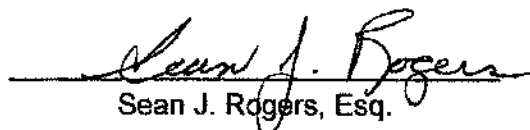
UDC's LBO for Article XV, ¶ E.2.a., Composition and Appointment of the DEPC, achieves a prompt and fair settlement of the dispute.

Impasse Issue Three

UDCFA's LBO for Article XV, ¶ G.1., Frequency of Evaluation, achieves a prompt and fair settlement of the dispute.

ARTICLE XVII, COMPENSATION

UDC's LBO for Article XVIII, Compensation, achieves a prompt and fair settlement of the dispute.



Sean J. Rogers, Esq.
Leonardtown, Maryland

July 7, 2014

APPENDIX A

Effective Contract Year 2013-2014

Rank	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
Distinguished																
Professor	81651	84414	87178	89939	92701	95463	98226	100988	103751	106513	109276	112038	114801	117563	120326	123088
Associate	68125	70407	72588	74770	76950	79133	81314	83496	85677	87859	90041	92222	94404	96585	98767	100948
Assistant	58424	60225	62027	63828	65630	67431	69232	71033	72835	74637	76438	78240	80041	81843	83644	85446
Instructor	50900	51612	52324	53036	53748	54460	55172	55884	56596	57308	58020	58732	59444	60156	60868	61580

Effective Contract Year 2014-2015

Rank	1	2	3	4	5	6	7	8	9	10	11	12	13	14
Distinguished														
Professor	84509	87368	90229	93080	95945	98804	101663	104522	107382	110240	113100	115959	118819	121677
Associate	70612	72871	75128	77386	79643	81902	84159	86417	88675	90933	93190	95449	97708	99965
Assistant	60468	62332	64197	66061	67927	69791	71655	73520	75384	77249	79113	80978	82842	84707
Instructor	51750	52418	53086	53755	54423	55092	55760	56428	57097	57765	58432	59102	59771	60439

In subsequent Academic Years, each Step will be recalculated to include the general salary increase. The parties will prepare a new schedule each Academic Year.



Office of the Chief Financial Officer

Donald L. Rickford
Chief Financial Officer

FROM: Donald L. Rickford *Donald L. Rickford*
Chief Financial Officer
University of the District of Columbia

TO: University of District of Columbia
Board of Trustees

DATE: July 31, 2014

RE: Funding Certification for UDC/UDCFA Binding Interest Arbitration

Upon review of the July 7, 2014 Opinion and Award in the matter of the University of the District of Columbia Faculty Association and the University of the District of Columbia, DC PERB case 08-I-08 ("AWARD"), and pursuant to D.C. Code § 1-617.17(i)(1), the Office of the Chief Financial Officer certifies that funds are available for the University of the District of Columbia (GF0) to cover all costs under the multi-year agreement between the University of the District of Columbia and the University of the District of Columbia Faculty Association as follows: \$1,881,870 one-time lump sum payment; \$274,110 Merit Pool for AY2011-2012 and AY2012-2013; \$491,417 as 3% COLA Increase for FY2014; and \$138,000 Merit Pool payable in FY2015 for AY2013-2014.

Should you require additional information, please contact Paris Saunders at 202-274-6168.

cc: D. Scott Barash, General Counsel
University of the District of Columbia



INTEROFFICE MEMORANDUM

TO: DR. JAMES E. LYONS, SR., INTERIM PRESIDENT
FROM: D. SCOTT BARASH, GENERAL COUNSEL *DSB/SR*
SUBJECT: LEGAL SUFFICIENCY REVIEW OF INTEREST ARBITRATION AWARD BETWEEN THE UNIVERSITY OF THE DISTRICT OF COLUMBIA AND THE UNIVERSITY OF THE DISTRICT OF COLUMBIA FACULTY ASSOCIATION/NEA
DATE: JULY 31, 2014

This memorandum provides a legal sufficiency review of the Interest Arbitration Award (“Award”) between the University of the District of Columbia (“University”) and the University of the District of Columbia Faculty Association/NEA (“UDCFA”) that was issued on July 7, 2014. The Award affects terms of the new collective bargaining agreement (“7th Master Agreement”) between the University and the UDCFA. The prior collective bargaining agreement (“6th Master Agreement”) expired on September 30, 2008, and efforts to negotiate the 7th Master Agreement resulted in an impasse regarding certain terms. The University and UDCFA thereafter entered into an interest arbitration proceeding where both Compensation and Non-Compensation issues were considered and decided.

The Compensation provisions of the Award provide for a 3% COLA for faculty for Fiscal Year 2014, effective October 1, 2013 for faculty employed by the University as of May 6, 2014. The Award also includes a one-time lump sum payment of \$1,881,870; a merit pool of \$274,000 for Academic Years 2011-12 and 2012-13; and a merit pool of \$138,000 for Academic Year 2013-14 which would be payable in Fiscal Year 2015.

With regard to the Non-Compensation issues considered and decided, the Award adopted the University’s offer as to Performance Improvement Plans (“PIP”) for faculty and evaluation of performance, as well as the University’s position as to the composition and appointment of members to the Department Evaluation and Promotion Committee (“DEPC”). The Award adopted the proposal to move all faculty to the merit system from the step system as of Academic Year 2014-15.

The Award has been reviewed and determined to be legally sufficient. It is recommended that the 7th Master Agreement, which includes the approved terms in the Award and previously agreed upon terms by the University and the UDCFA, be approved by the Board of Trustees.

If there are any questions regarding this matter, please contact the Office of the General Counsel at 202.274.5400.