

In the Matter of an Arbitration Between

**INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA, LOCAL 5810**

- and -

**REGENTS OF THE UNIVERSITY OF  
CALIFORNIA**

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**AWARD & OPINION**

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NB 3834  
BK-PX1271-17  
DV-PX1301-17  
DV-PX-1311-17  
(Grievance: Postdoc Pay)

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**Arbitrator: Norman Brand, Esq.**

**Appearances:**

For International Union, United Automobile, Aerospace and  
Agricultural Implement Workers of America, Local 5810  
Schwartz, Steinsapir, Dohrmann & Sommers LLP  
**By Margo A. Feinberg, Esq.**

For Regents of The University of California  
Office of the President, Labor Relations Unit  
**By E. Kevin Young, Esq.**

**Date: May 3, 2019**

**Background**

On January 30, 2017 the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”), Local 5810 (“Union”) filed a second step grievance with the University of California (“UC”). They were unable to resolve the grievance at the lower steps of the grievance procedure. By agreement of the parties, the Arbitrator held a hearing in Oakland, CA on January 25, 2019. Both parties were present at the hearing and represented by counsel. Each had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearing. A court reporter recorded the proceedings. At the close of the hearing the parties asked to file post-hearing briefs. The Arbitrator declared the hearing closed when he received the last brief on April 15, 2019.

**Issue**

The parties stipulated the following issue:

Did the University violate the contract between UAW 5810 and the Regents of the University of California when it provided an annual salary that was not equal to the minimum required for Postdoctoral Scholar grievants: [REDACTED]

[REDACTED] based upon their original date of hire and employment experience at the University for the purposes of Article 4 when they moved from one campus to another, under the supervision of a new PI?

If so, what is the remedy?

## Procedural Stipulations

The parties entered the following procedural stipulations:

1. The lower steps of the grievance procedure have been met or waived and the matter is properly before the Arbitrator.
2. If, and only if, there is a remedy, the Arbitrator will retain jurisdiction over the remedy.

## Factual Stipulations

1. Grievant [REDACTED] was a postdoctoral scholar ("postdoc") at University of California, Berkeley ("UCB") beginning from February 21, 2014 with Principal Investigator ("PI") [REDACTED].
2. From February 21, 2014 through February 20, 2015, [REDACTED] salary was \$43,000.
3. On February 21, 2015, [REDACTED] salary was raised to \$44,556.
4. On February 21, 2016, [REDACTED] salary was raised to \$47,268.
5. Beginning on September 1, 2016, [REDACTED] worked as a postdoc at University of California, Davis ("UCD") in the [REDACTED] under the supervision of PIs [REDACTED], at the same salary of \$47,268.
6. On September 25, 2017, [REDACTED] was offered an extension of her [REDACTED] Postdoctoral Research fellowship from September 1, 2017 through August 31, 2018, and her annual salary was raised to \$54,228.
7. On July 31, 2018, [REDACTED] separated from employment with the University of California.

8. **Grievant** [REDACTED] worked as a postdoc at UCSD beginning from October 1, 2014 until March 31, 2016 under the supervision of PI [REDACTED]

9. On April 1, 2016, [REDACTED] worked at UCB as a postdoc under the supervision of [REDACTED] with a salary of \$48,000.

10. On December 1, 2016, [REDACTED] began receiving a salary of \$48,216.

11. In or about January of 2017, [REDACTED] salary was raised to \$50,316, retroactive to December 1, 2016.

12. **Grievant** [REDACTED] worked as a postdoc at UCB in the [REDACTED] [REDACTED] from September 1, 2014 until August 21, 2016, under the supervision of PI [REDACTED] with a starting salary of \$58,000.

13. On December 1, 2015, [REDACTED] salary was raised to \$59,160.

14. On September 1, 2016, [REDACTED] worked as a postdoc at UCD in the [REDACTED] [REDACTED] with a salary of \$55,000.

15. On September 1, 2017, [REDACTED] received a raise to \$56,375.

16. On September 1, 2018, [REDACTED] received a raise to 58,066.

## Contract Language

### ARTICLE 4

#### A. GENERAL PROVISIONS

The provisions of this section apply only when the referenced terms are implemented.

1. Nothing shall preclude the University from providing compensation to Postdoctoral Scholars at rates above those required in this Article. Such rates may be provided on appointment, reappointment, anniversary date, and/or as a merit increase.
2. The provisions of this Article shall not apply to any Postdoctoral Scholar appointed on a grant (e.g., Einstein Fellows, Hubble Fellows) that restricts that Postdoctoral Scholar's remuneration to only the pay received by the grant.
3. For implementing salary/stipend changes in accordance with NIH updates to the NRSA Scale, the UC Postdoctoral Scholar salary/stipend minimum rate for Experience Level 0 shall equal Experience Level 2 of the new NRSA scale, and progress sequentially as described in Appendix Table 23.
4. When extramural agencies establish stipends at a rate less than the University-established salary/stipend minimum, and the campus elects to proceed with the appointment of a Postdoctoral Scholar, the campus shall provide additional funding to increase the salary/stipend level of the Postdoctoral Scholar to the established minimum. The supervisor shall arrange the additional funding prior to the start date of an appointment.
5. If the University provides a supplement to a Postdoctoral Scholar such that the Postdoctoral Scholar's total salary exceeds the Postdoctoral Scholar's base salary/stipend rate, continuance or discontinuance of the supplement is at the sole discretion of the University, unless the supplement is necessary to meet the salary/stipend requirements of this article.
6. When the requirements of the sponsoring agency exceed the requirements of this Agreement, with the exception of the provisions of §A.2. above, the requirements of the sponsoring agency shall control all salary increases and adjustments to the individual Postdoctoral Scholar's salary.

#### B. UC POSTDOCTORAL SCHOLAR EXPERIENCE BASED SALARY/STIPEND SCALE

Changes to the scale, as referenced in below, shall be reflected in Table 23 of the Academic Salary Scale - Appendix to the Agreement.

1. December 1, 2016 Scale Increases
  - a. On December 1, 2016, the University shall implement the projected FY 2017 NIH Ruth L. Kirschstein National Research Service Award (NRSA) Stipend levels in accordance with A. 3. above.

- b. On December 1, 2016, all full-time Postdoctoral Scholars shall have their salaries/stipends increased to the NIH experience-based scale at the same experience step they are currently on. If the Postdoctoral Scholars anniversary/reappointment date is December 1, 2016, the provisions of B. i.e. shall also apply.
- c. Postdoctoral Scholars with salary/stipend amount above the appropriate experience level will not receive an increase pursuant to this Section.
- d. Postdoctoral Scholars awarded a Kirschstein Fellowship, shall receive an increase on the effective date established in their revised NIH Award Notice.

2. Subsequent Salary /Stipend Scale Increases Through the Duration of the Agreement.

Increases to the University Postdoctoral Scholar salary/stipend minima rates shall be made in accordance with the NIH Notice pertaining to the Ruth L. Kirschstein National Research Service Award (NRSA) Stipend Levels. The effective date of the change is the first day of the payroll period following the announcement, except for Postdoctoral Scholars awarded a Kirschstein Fellowships, for whom the effective date is the date established in their revised NIH Award Notice.

- a. The implementation of and/or changes to the UC Postdoctoral Scholar Salary Scale does not automatically affect the salaries of Postdoctoral Scholars, except for Kirschstein Fellows as provided above.
- b. The new minima will apply to individual salaries/stipends only when a Postdoctoral Scholar is newly appointed, reappointed, or on the anniversary date for those Postdoctoral Scholars with multiple year appointments.
- c. Individual Postdoctoral Scholar salary/stipend increases shall occur in accordance with the provisions of §C. below.

**C. INDIVIDUAL POSTDOCTORAL SCHOLAR INCREASES**

Once a Postdoctoral Scholar is appointed at or above the appropriate experience rate, all future appointments must be to at least the appropriate experience-based salary/stipend rate.

1. In the event a Postdoctoral Scholar receives a multiple-year appointment, the Postdoctoral Scholar must thereafter receive salary/stipend increases to the appropriate experience-based salary/stipend rate on their anniversary date, as applicable in the scale referenced in Appendix Table 23.

2. If a Postdoctoral Scholar's salary/stipend amount is above the appropriate experience level on reappointment, or on their anniversary date for Postdoctoral Scholars with multi-year appointments, the Postdoctoral Scholar shall receive an increase to at least the minimum of the next appropriate salary/stipend experience level, or at least a two percent (2%) salary increase, whichever is greater, as applicable in the scale referenced in Appendix Table 23.

## Postdoctoral Scholar Experience Based Salary/Stipend Minima

UC Scale	Effective December 1, 2016
UC Appointment Step for Postdoctoral Scholar Experience Level	Projected NIH/NRSA Stipend for FY 2017
0(0-11 months)	\$48,216
1 (12-23 months)	\$50,316
2 (24-35 months)	\$52,140
3 (36-47 months)	\$54,228
4 (48-59 months)	\$56,400
5 (60-71 months) by exception	\$58,560

## Facts

The parties have an arrangement through which UC provides the Union monthly data on the entire bargaining unit. It includes the individual's title code, appointment start date, appointment end date, salary, and the percentage of the appointment. UC supplements the data weekly, with any changes to the payroll status of individual Postdoctoral Scholars. (Tr. 32:1-24)<sup>1</sup> The Union reviews the data. If it finds discrepancies between what it believes the correct salary/stipend should be and the data UC provides it files a Step 2 grievance with the campus and attempts to resolve the discrepancies. (Tr. 40:6-20) The discrepancies could be the result of data entry errors, "Gremlins" in the system, or differences in the way the parties interpret the CBA. (Tr. 41:4-42:17)

The Union discovered four categories of what it believed to be salary/stipend discrepancies, based on its understanding of the CBA. All four categories involved Postdoctoral Scholars who had a title change, appointment, or reappointment because of a funding source change. These changes occur when a Postdoctoral Scholar: 1) changes departments within a campus; 2) changes PIs on the same campus; 3) moves from one campus to another with the same PI; or, 4) moves from one campus to a different campus with a different supervising PI. (Tr. 43:1-44:2) When the changes occurred, the Postdoctoral Scholars were placed at the appropriate experience step, but they did not receive an increase until their next appointment or reappointment.<sup>2</sup> The

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<sup>1</sup> UC also provides monthly retrospective data showing what deductions were made from a Postdoctoral Scholar's salary.

<sup>2</sup> Increases are based both on moving to a higher step on the salary/stipend schedule due to the number of months of UC experience, and changes in the salary/stipend amount at each step because of



Union interprets the CBA to require compensating Postdoctoral Scholars based on their total months of experience at UC. That means a change of title, appointment, or reappointment that occurs fewer than 12 months after the last change of title, appointment, or reappointment, does not affect when the next experience based salary/stipend step increase is due. The next experience based increase is due when the Postdoctoral Scholar's experience at UC equals the minimum number of months for the next salary step. UC interprets any title code change, appointment, or reappointment resulting from a funding source change as establishing a new date for calculating minimum salary and a new date for when contractually required increases are due.

The parties resolved the first three categories of discrepancy the Union grieved through mediation. The parties agreed to disagree on " the impact of moving from a laboratory under the supervision of a principal investigator on one campus to a laboratory on another campus under the supervision of a different principal investigator for purposes of calculation of compensation under Article 4." The mediated agreement left the Union free to grieve UC's interpretation in the last situation. (J-7, ¶6) It did, resulting in this arbitration.

Each Grievant changed campuses and supervising PIs before they would have been eligible for their next increase under Article 4.C. Upon appointment at the new campus with the new PI:

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increases in the NIH Ruth L. Kirschstein National Research Service Award ("NRSA") step levels. This Award only addresses experience based salary/stipend level changes.

- a) [REDACTED] who was first hired April 1, 2014, was placed at the correct salary step for her experience as of September 1, 2016, the date of her appointment at UCD;
- b) [REDACTED] who was first hired October 1, 2014 and had been paid over the minimum, received a 4.6% increase when he moved to UCD on April 1, 2016;
- c) [REDACTED] who was first hired September 1, 2014 and had been paid over the minimum had his salary reduced from \$59,160 to \$55,000 when he moved to UCD on September 1, 2016.<sup>3</sup>

In each instance, UC treated the Grievant as a new hire and used the date of the Postdoctoral Scholar's appointment at the new campus as the date on which it based their initial salary schedule placement and subsequent increases.<sup>4</sup>

## Discussion

The Union makes three overall arguments and specific arguments for each Grievant. First, it argues it is illogical to treat Postdoctoral Scholars who change campus and supervising PI as new hires. They are UC employees, whether they are employed on the UCD or UCB campus. If they move between campuses it is an internal move. This is underscored by UC's agreement that Postdoctoral Scholars following a PI to another campus retain their original appointment date. Second, UC failed to show there was a past practice. It provided only conclusory statements, with no documentary

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<sup>3</sup> This is above the minimum salary/stipend for his experience level step. (J-6,d)

<sup>4</sup> According to UC chief negotiator Fishel: "with respect to a postdoc who starts at one campus and voluntarily takes a new position at another, whether it's at the end of an appointment or in the middle of a current appointment, that that, in the University's mind, was a brand-new appointment, a new hire..." (Tr. 80:11-16)

evidence to show it had previously administered the CBA in this way. Furthermore, UC provides no evidence the Union acquiesced in its interpretation of the CBA. Third, UC provided no bargaining history evidence to illuminate the meaning of the contract language. It only provided testimony by its negotiators about what they thought it meant and by administrators as to how they applied the CBA. The only bargaining testimony was about the settlement agreement, which reiterates there is a continuing dispute over the issue in this arbitration.

As to each of the Grievants, the Union makes the following specific arguments.

██████████ – "... once a postdoc has received a multi-year appointment ... [she] must ... receive ... increases to the appropriate experience-based salary/stipend rate *on their anniversary date.*" ██████████ was hired on February 21, 2014 with a multiple year appointment.<sup>5</sup> Consequently, Article 4, §B.2.B required UC to provide her increases on her anniversary date.

██████████ – Because he "had accrued 26 months experience working as a postdoc" as of December 1, 2016, he should have been regarded as being on Step 2 and increased to the minimum of Step 2 on Scale F. Instead, UC did not increase him to that rate until April 1, 2017.

██████████ – He should have been given a 2% increase on his over scale salary when he transferred to UCD on his anniversary date. Instead, his salary was reduced.<sup>6</sup>

UC makes four arguments to demonstrate it has not violated Article 4. First, it asserts the Union failed to meet its burden of proof. It provided no evidence other than the opinion of Mr. Hoffrey, its data base administrator. He testified his opinion was "based upon our interpretation of Article 4 ..." which was different from UC's. (Tr. 42:15-

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<sup>5</sup> The Union cites the stipulated facts and its exhibit showing she was employed over several years. While ██████████ was employed over more than a single year, there is no record evidence ██████████ ever "receive[d] a multiple year appointment." At the time she was first appointed the CBA provided: "Appointments are normally one year's duration." (J-1, p.1) In the absence of contrary evidence, it must be assumed she received serial, one year appointments. That is neither a "multi-year" appointment, nor a "multiple year appointment."

<sup>6</sup> It was still over scale.

17) Nor did the Union refute the UC evidence that it consistently interpreted Article 4 to mean that an appointment to a different campus was a new appointment that establishes the date for subsequent experience and schedule change increases.

Second, it argues the term “anniversary date” is used to apply only to “multiple year appointments.” Some Postdoctoral Scholars are appointed for two years, rather than a single year. In those cases, Fishel testified, the parties intended the anniversary date of the original appointment to be the date on which the salary increases described Article 4 were to be applied.

Third, UC argues the plain language of Article 4 demonstrates that “anniversary date” applies only to “Postdoctoral Scholars with multiple year appointments.” Article 4(A)(1) lists three times UC can grant above scale compensation to Postdoctoral Scholars: on “appointment,” “reappointment,” and “anniversary date.” Article 4(B)(1)(b) refers to Postdoctoral Scholars who have a certain “anniversary/appointment date,” for determining when and whether they can get an increase based on the NIH experience based scale. This demonstrates the connection between a multi-year appointment and the use of “anniversary date.” Article 4(C)(1) says that “In the event a Postdoctoral Scholars receives a multiple-year appointment ...” the Postdoctoral Scholar gets “... increases ... on their anniversary date...” Article 4(C)(2) delineates what occurs when the “salary/stipend amount is above the appropriate experience level on reappointment, or on their anniversary date for Postdoctoral Scholars with multi-year appointments...” Article 4 makes a clear distinction between Postdoctoral Scholars appointed with a one year term and those with multi-year appointments.

Finally, multiple UC witnesses testified that they had always used the hire date at a new campus to “provide a new marker for providing postdocs an annual increase.” This was a consistent past practice that was known to the Union. UC provided Hoffrey weekly data reports showing how it interpreted Article 4. He testified to knowing UC created a new date for annual increases after a funding source change, when a Postdoctoral Scholars changed PIs at the same campus, when a Postdoctoral Scholars changed campuses with the same PI and funding, and when Postdoctoral Scholars changed campuses to go to a new PI. The Union did not challenge the practice until 2016. This well-established past practice should be given significant weight in the arbitration.

The Arbitrator finds the CBA does not permit UC to treat Postdoctoral Scholars with continuous service who move to a new campus and PI as “new employees.” The CBA requires the conclusion they are continuing UC employees. There is an implicit assumption in Article 4. Because the minimum initial appointment is for one year, ordinarily reappointments will be a year later.<sup>7</sup> The table of “experience based salary/stipend minima” provides an increase for each year of experience. Ordinarily, Postdoctoral Scholars will be reappointed each year, on cycle, and get increases based on their additional experience. Similarly, Postdoctoral Scholars who have a “multiple year appointment” get step increases “to the appropriate experience-based salary/stipend rate on their anniversary date.” (Article 4(C)(1)). UC is correct in asserting Article 4 uses “anniversary date” to refer only to those Postdoctoral Scholars on multiple year appointments. No other Postdoctoral Scholars have their movement “to the

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<sup>7</sup> There is an exception for Interim appointments. Article 2(B)(4)

appropriate experience-based salary/stipend rate” explicitly based on their “anniversary date.”

The parties have resolved the issue of what happens when a title change or reappointment occurs “off cycle” – other than at the end of the Postdoctoral Scholar’s appointment year – without a change of campus. Essentially, Postdoctoral Scholars are held harmless. If their new salary exceeds what they would have been entitled to at the next experience level, they wait 12 months for their next increase. If it does not, they receive an experience increase at an increment of 12 months from their original hire date. (J-7, ¶ 3) Similarly, they have resolved the issue of what happens when the appointment or reappointment occurs because the Postdoctoral Scholars’ PI changes campus. They “will be considered to have continuous employment for... calculation of compensation under Article 4.” (J-7, ¶ 6) Again, the Postdoctoral Scholars are held harmless. They are not deemed a new employee for compensation purposes.

Grievants, however, fit neither of these categories. Because they changed PI, as well as campus, their appointments (“off cycle” or “on cycle”) were treated as the appointments of new employees. Each appointment was “in the University’s mind, ... a brand-new appointment, a new hire...” (Tr. 80:15-16).

Grievants ██████████ both had off cycle appointments at their new campuses. Both were deemed new employees. They did not have a step movement, or percentage raise in lieu of a step movement, based on their months of UC experience. Instead, like any other new employee, they did not receive a step movement (or increase in lieu of a step movement) until twelve months after their appointments to the new campus. The record shows that when ██████████ had sufficient UC experience to qualify for the next

step, UC did not increase her to that step. Instead, it waited until she was reappointed one year after her UCD appointment. [REDACTED] situation is more complicated. When he was appointed at UCB he had 18 months experience but was apparently mis-placed on Step 0, which was later corrected to Step 1. He did not move to Step 2 when he had 24 months of experience. Instead, he moved to Step 2 when he was reappointed one year after his original appointment at UCB.

[REDACTED] case is the most straightforward. As a Postdoctoral Scholar with a salary/stipend over the appropriate experience level, he would have been entitled to a 2.5% increase under Article 4(C)(2) when he moved to Step 1. With a year of experience at UCB, UC would have placed him at Step 1 when he went to UCD. Presumably, UC justifies reducing his salary when he moved to UCD because it deems him a new employee. If he were a new employee, UC could pay him any salary/stipend that met or exceeded the minimum for a Step 1 employee.

In all instances, after Grievants moved to a different campus, under a different PI, UC began to calculate their experience based compensation as if they were new hires. It is undisputed that UC continuously employed each Grievant. UC has pointed to nothing in the CBA between the Regents of the University of California and the Union that makes each campus a separate employer. There is simply no contractual basis for treating each campus as a separate employer. Regardless of their campus or PI, Grievants were at all times UC employees, in titles covered by the CBA.

UC's justification for treating Grievants as it did is twofold: that treatment complies with the CBA and it is a past practice. The first argument relies on UC's assertion that its current employees who change campus and PI without a break in

service are “new hires.” If they are new hires, Article 4(C) requires UC to initially appoint them “at or above the appropriate experience rate.” Thereafter, “all future appointments must be to at least the appropriate experience based salary/stipend rate.” UC claims it complies by initially placing the “new hire” Postdoctoral Scholar at the correct step based on their prior experience at UC. Thereafter, it gives them experienced based increases based only on the number of months of experience they have accumulated since becoming a “new hire” at UC. The premise of UC’s argument is that a Postdoctoral Scholar who works for UC without a break in service becomes a “new hire” by virtue of changing campuses and PIs. UC has shown no contractual basis for treating bargaining unit employees who change campuses and PIs without a break in service as “new hires.”

Second, UC claims there is a well established past practice of treating Postdoctoral Scholars who change campus and PI as new employees. UC offered the testimony of its chief negotiator as to what she believed the contract meant. The Arbitrator does not doubt the sincerity of her belief. But she provided no bargaining history, no evidence to show the parties had discussed the issue across the bargaining table and agreed on this meaning. She provided no document she disseminated to campuses showing UC interprets Article 4, or any other article, to mean that Postdoctoral Scholars who change campus and PI are new employees. Various campus administrators said they always do it this way. UC, which has all of the payroll records for bargaining unit Postdoctoral Scholars, did not offer a single document to show that it has “always” treated Postdoctoral Scholars who change campus and PI as new employees. The Union evidence shows it filed grievances when it found



discrepancies, attempted to work them out, and ultimately grieved the 4 categories of discrepancy it found. The parties mediated resolutions to three and, by agreement, arbitrated this category. That behavior does not support the assertion the Union knowingly acquiesced in UC's interpretation. Absent knowing acquiescence by the other party to the CBA, there is no binding past practice.

The CBA does not permit UC to treat Postdoctoral Scholars who move to different campuses and PIs without a break in service as new hires. It must provide them experience based salary/stipend step increases based on their entire unbroken service with UC.

## Award

1. The University violated Article 4 of the contract between UAW 5810 and the Regents of the University of California when it provided an annual salary that was not equal to the minimum required for Postdoctoral Scholar Grievants: [REDACTED] based upon their original date of hire and their employment experience at the University after they moved from one campus to another, under the supervision of a new PI.
2. The University will make [REDACTED] whole by paying her \$2,055.50 in unpaid salary, minus appropriate deductions for taxes.
3. The University will make [REDACTED] whole by paying him \$608.00 in unpaid salary, minus appropriate deductions for taxes.
4. The University will make [REDACTED] whole through March 31, 2019 by paying him \$13,268.64 in unpaid salary, minus appropriate deductions for taxes. It will retroactively increase his salary to \$62,781.06 as of April 1, 2019.
5. In accordance with the stipulation of the parties, the Arbitrator retains jurisdiction over the implementation of the Remedy.

San Francisco, California  
May 3, 2019

  
Norman Brand