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IN FACTFINDING PROCEEDINGS PURSUANT TO
GOVERNMENT CODE SECTION 3505.4

In the Matter of a Controversy Between:)
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)
SERVICE EMPLOYEES INTERNATIONAL UNION,) Factfinder's
LOCAL 1000) File No. 17-182-LA
)
)
and,)
)
)
STATE BAR OF CALIFORNIA) FACTFINDING REPORT
) AND RECOMMENDATION
) (November 10, 2018)
[Re: Factfinding, PERB No. SF-IM-188-M))
)

Appearances: Theresa Witherspoon, Senior Attorney, for Service Employees International Union, Local 1000; Jay J. Lee, Assistant General Counsel, for State Bar of California.

Factfinding Panel: Barry Winograd, Neutral Chairperson; Theresa Mesa, for SEIU Local 1000; Dag MacLeod, for the State Bar of California.

INTRODUCTION

This Factfinding Report and Recommendation concerns the wage rate for the State Bar's new Public Service Representative (PSR) classification. The undersigned was selected to serve as the neutral chairperson of a factfinding panel pursuant to Government Code Section 3505.4, as administered by the California Public Employment Relations Board (PERB No. SF-IM-188-M).

A hearing was conducted on September 28, 2017 in San Francisco, California. At the hearing, the parties were afforded the opportunity to introduce evidence. After receipt of final proposals and position statements, the dispute was deemed submitted on October 18, 2017. Panel deliberations followed.

In issuing this report, the panel has been guided by the factfinding criteria set forth in Section 3505.4(d), as follows:

- (d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:
 - (1) State and federal laws that are applicable to the employer.
 - (2) Local rules, regulations, or ordinances.
 - (3) Stipulations of the parties.
 - (4) The interests and welfare of the public and the financial ability of the public agency.
 - (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of

employment of other employees performing similar services in comparable public agencies.

- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

FINDINGS AND RECOMMENDATION

The PSR classification was the subject of negotiations by the parties in 2016 and 2017. These talks were conducted apart from parallel negotiations on a successor labor agreement for the bargaining unit as a whole. During negotiations for the new PSR classification, the parties agreed on the job description for the class, but reached an impasse on the appropriate rate of pay.

In this proceeding, apart from pay, the State Bar has advanced two additional issues for consideration, but neither is appropriate for resolution at this stage of the dispute. Both

depart from the labor agreement that has been in place, and that is the subject of negotiations over a successor agreement.

First, the State Bar has proposed that pay for the PSR be tied to a 40 hour work week. A 40-hour work week would be a departure from the 36.25 hour week that has been used by the agency for its employees, and that is incorporated in the labor agreement. (SB Exh. 2, Sec. 18.B.) The parties, however, are not at impasse on the issue of a 40-hour week work in the negotiations over a successor agreement. For this reason, it is not a timely subject for factfinding for the PSR classification.

Second, the State Bar's proposal is not tied to a multi-step, graded pay system long used by the employer for other classifications in the bargaining unit, even though a graded pay system is referenced in several other provisions in the most recent agreement. (See, e.g., SB Exh. 2, Secs. 13.0, 22.C.4, 22.H; App. C.6.) As above, this is not a timely subject for factfinding.

Rather than expand the bargaining dispute to encompass issues with an impact broader than the appropriate pay rate for the new PSR classification, the factfinder has focused on the narrow pay issue.

In the background to this dispute is direction from the California Legislature to the State Bar to conduct a comprehensive study of its operations and compensation system. (Bus. & Prof. Code, Sec. 6140.16(a); SB Exh. 4.) Analysis by the State Auditor also contributed to information about the employer's operations. (SB Exhs. 41, 42.)

While these governmental actions did not preempt bargaining by the State Bar with SEIU, a workforce classification review by an outside consultant - CPS HR - led to a number of recommendations. (SB Exh. 13.) One recommendation considered by the State Bar was to reclassify and retitle those handling the State Bar's customer service telephone functions spread over several departments. (Id., pp. 13, 17.) An internal review studied several call-in services and supported a proposed outcome establishing a single call center. (SB Exhs. 20, 21.)

Prior to the proposal for a new classification, significant customer-oriented communications were carried out by Complaint Analysts (CA) working in the State Bar's Office of the Chief Trial Counsel. (SEIU Exh. E; SB Exhs. 46.) Among other duties, CAs handled phone calls from the public expressing displeasure about attorneys, including allegations of professional wrongdoing. After investigations, these calls could lead to

attorney discipline. In reviewing the work of CAs, State Bar officials believed that most of the calls answered by CAs were routine in nature involving the use of standardized forms and letters, information searches, referral of callers to the State Bar website, and similar actions. (SB Exhs. 20, 21.) From this, the State Bar has reasoned that CAs were not utilized to the full extent of their skills.

In keeping with the recommendation for a single call center to consolidate public contacts, and the conclusion that CAs were engaged largely in routine work, the State Bar proposed the new PSR classification with duties more limited than those of CAs. (SB Exh. 23; SEIU Exh. T.) To utilize the skills of CAs, employees in that classification were elevated to a higher-level analyst position and, ultimately, will be trained to serve as investigators.

The PSR proposal has been put into effect, even as negotiations over the pay rate for the new classification moved ahead, with temporary staff now filling five of the six PSR staff positions; one other employee worked previously in the admissions office. The PSR staff, all based in San Francisco, responds to about 300-plus calls a day. The State Bar expects that a single call center with permanent employees should be in place by 2018

when calls for additional departments, including those dealing with admissions and member records, are consolidated.

The parties provided final proposals after the factfinding session.

The Union's proposal, geared to a 36.25 hour work week and the employer's graded pay system, is the following:

Grade /Step	1	1.5	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5	7
GR4	3684	3786	3889	3990	4092	4194	4296	4399	4501	4605	4707	4808	4910
GR5	4082	4197	4309	4423	4535	4648	4760	4875	4989	5102	5215	4328	5441
GR6	4510	4635	4760	4886	5011	5137	5261	5386	5511	5636	5761	5885	6009

The State Bar's proposal, adjusted to conform to a 36.25 hour work week, but without formal graded steps, is the following:

	Start of Salary Range	Top of Salary Range
PSR I	\$3,430 per month	\$4,573 per month
PSR II	\$3,773 per month	\$5,030 per month
PSR III	\$4,150 per month	\$5,533 per month

Aspects of the record support the State Bar's proposal. PSRs are projected under the employer's submission to be at or near the median for monthly wages paid to journey-level employees carrying out similar customer service functions in other

jurisdictions in the San Francisco Bay Area and in Los Angeles. (SB Exh. 43.) This also is so if employer-paid health and other workplace benefits are considered. A statewide approach is in keeping with the geographic breadth of the State Bar's operations, and with the parties' wage-setting experience in years past.

The employer's position also reflects more limited duties for the PSR classification, particularly by removing the analytical function previously assigned to CAs. After this change, PSRs are restricted from providing hands-on assistance to callers in researching and preparing complaints or from offering comments on the merits of a complaint. These matters are now reserved to consultation by members of the public with a State Bar attorney based on written complaints or inquiries.

In contrast, other factors support SEIU's proposal. By treating all agencies equally in the wage comparison, and with only a handful of comparator agencies, the result sought by the Union gives greater weight to higher costs of living in San Francisco and the Bay Area, generally. In this respect, customer service personnel performing some of the same duties as PSRs who are working for the cities of San Francisco and Oakland, and those at the Alameda County Superior Court, mostly have higher

rates of pay than jurisdictions in southern California. (SB Exhs. 15, 16, 43, 44.) The State Bar's wage analysis also does not utilize a total compensation approach to assess whether there are higher benefits provided by comparator agencies; for example, lacking at present is an employer contribution for retiree health benefits. (See, e.g., SB Exhs. 31, 43.)

Regarding the PSR assignment, although the Union acknowledges that a difference in some duties from those of CAs justifies a limited reduction in pay due to the more routine nature of the work for PSRs, the Union urges that the employer is seeking too much of a reduction. For the Union, it is especially important that PSRs have a continuing role in protecting the public. In that capacity, PSRs often are required to deal with clients or others displeased with attorney conduct, often vocally so. Apart from regulatory oversight, the State Bar has a six-figure membership that will be serviced, in part, through a revamped call-center operation.

For the reasons that follow, based on the evidence and argument presented, the panel majority recommends adoption of the State Bar's proposed salary for PSRs, subject to the condition set forth below.

First, in applying Government Code Section 3505.4(d), the most important factor to consider is a comparison of the conditions of employment for PSRs with those of customer service personnel in other jurisdictions. The Union acknowledges a change in duties, although it questions whether the change justifies the reduction sought by the State Bar. However, it is significant that the duties of CAs have not been carried over in full to PSRs, and those in the CA classification have been elevated to different positions. The trimmed down functions of the new PSR classification are more in line with other customer service personnel in other jurisdictions.


Second, again applying Government Code Section 3505.4(d), the overall compensation for PSRs as proposed by the State Bar is solidly consistent with the wage and benefit levels for customer service personnel elsewhere; indeed, the employer in this case is on the high side of that comparison. Granted, the parties have not yet negotiated retiree health benefits for employees, but this single difference does not justify rejecting a comparative analysis.

Third, while the Union made an appealing argument that compensation in the San Francisco Bay Area should be a key factor for analysis, the proper comparison is a statewide measure. A

statewide approach is in keeping with the historic practice of the parties in setting employee wages.

As a condition to this recommendation, the majority proposes that the State Bar's salary scale for a 36.25 hour work week be converted to a salary step model. Use of this approach is consistent with the established grade and step system provided under the labor agreement. No basis for a departure from that has been shown for the single PSR classification.

Date: November 10, 2017


BARRY WINOGRAD
Arbitrator/Factfinder

THERESA MESA
SEIU Panelist
(concur) (dissent)

DAG MACLEOD
State Bar Panelist
(concur) (dissent)

PUBLIC SERVICE REPRESENTATIVE JOB SERIES (I, II AND III)*

Monthly Salary Ranges for 36.25-hour workweeks and with Salary Steps, consistent with the Factfinding Report

Class/Step	1	1.5	2	2.5	3	3.5	4	4.5	5	5.5	6	6.5	7
PSR I	3,430	3,516	3,602	3,692	3,782	3,876	3,971	4,070	4,170	4,274	4,379	4,476	4,573
PSR II	3,773	3,867	3,962	4,061	4,160	4,264	4,368	4,477	4,586	4,700	4,815	4,922	5,030
PSR III	4,150	4,254	4,358	4,467	4,576	4,690	4,805	4,925	5,045	5,171	5,297	5,415	5,533

- * It is recommended that PSR Is, IIs and IIIs be treated as Grade 3s, 4s and 5s, respectively, for all non-wage purposes under the 2014-2016 General Unit Memorandum of Understanding, including for employees return and bumping rights under Sections 13 and 14.