

COMPENSATION COMPARABILITY: STRUCTURING AUXILIARY ORGANIZATION COMPLIANCE

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Professional Monograph Series

For over two decades the Auxiliary Organizations Association (AOA)¹ has commissioned and published professional papers for its members on timely governance and management subjects.

AOA continues the series with this monograph. The author's purpose is to inform governing boards and management regarding the parameters of arguably required statutory and regulatory "comparability" standards in employee salaries, working conditions and benefits, as well as to suggest methods to secure compliance with those standards, while maintaining flexibility with compensation practices that meet individual auxiliary and university needs

The analysis, conclusions and approaches in this monograph are those of the author, not the AOA nor its member organizations. This paper is not meant to, and should not be construed as, legal or compliance advice. While general Auxiliary organization governance issues follow patterns, most issues are fact and circumstance sensitive, and should, therefore, be addressed and resolved by each individual Auxiliary in consultation with appropriate advisors. AOA will endeavor to keep this monograph up-to-date.

Background

One of the more intractable auxiliary organization standards deals with employee compensation² "comparability." To truly grasp these standards and to find ways to satisfy them requires an understanding of the legislative history and statutory intent behind them, as well as how that intent was implemented in Trustees' regulations, through direction from the Chancellor's Office, in General Counsel advice, and by the auxiliary organizations.

¹ The AOA, a California public benefit nonprofit corporation, is organized to develop and foster sound relationships between members and with their customers and clients; and to provide governance and management development programs, services and publications. AOA members are auxiliary organizations serving campuses within the California State University. The AOA is *not* an auxiliary organization.

² For the purpose of this paper, the term compensation is intended as shorthand for salaries, benefits and working conditions.

Legislative Intent & History

The genesis of the “comparability” provisions now found in the Education Code³ is SB 1422, authored and introduced on April 20, 1961 by State Senator Albert Rodda. The “Rodda Act” was sought by the California State Employees Association (CSEA) to beat back inroads of the AFL-CIO in soliciting membership from auxiliary organization employees. Auxiliary organization employees and employees of the State often work in close proximity. There was apprehension at the time that auxiliary organization employees might earn salaries and benefits that were higher than those of State employees. The statute would serve to generally equalize salaries and benefits for comparable positions in order to make employment attractive with either the State or an auxiliary organization.⁴

SB 1422 initially would have required the Trustees’ to adopt regulations directing auxiliary organization governing bodies to provide salaries, working conditions and benefits for their employees at least equal to those of State employees. As it made its way through the legislative process retirement benefits were excluded.⁵ Then Cal Poly President Julian McPhee (a Sacramento power-broker in his own right) insisted that permanent status also be excluded.

As amended, SB 1422 passed the State Legislature and was signed by the Governor. It was effective January 1, 1962 and was to be implemented by July 1, 1962.

In 1969, the Rodda Act was amended slightly by the insertion of the word “College” between “State” and “employees” to narrow the comparison of services performed by auxiliary organization employees to just those employees within the CSU system. This change had a measurable impact in the food service function across the system, since large State food service segments (i.e. prisons) would be excluded from comparison.

SB 693 was enacted into law effective January 1, 1977 to further amend the comparability standards. Now removed were permanent status and retirement exclusions. For so-called “non-comparable” employee classes (which were subject to a “salaries prevailing in other educational institutions in the area” equality standard), and alternative standard was added: “commercial operations of like nature.” Some problematic language was also added, but these were remedied the following in year. The Rodda Act has, in substance, remained unchanged since 1978.

The full text of the Rodda Act (Ed Code Section 89900(c) and (d)) appears in Appendix A, pages 1 and 2.

³ *California Education Code* Section 89900(c) and (d).

⁴ CSU General Counsel Legal Opinions L71-1389 and L75-3552

⁵ The CSEA price paid for silencing the Chancellor’s Office opposition to the Bill.

Part of problem in understanding the intent of 89900(c) is that the term “comparable” is used in two different ways: first, for comparing compensation factors (... to provide salaries, working conditions, and benefits...*comparable* to those provided...); and second, for comparing position duties (...[f]or those full-time employees whose duties are not *comparable* to classes...).

Implementation: An Overview

Initially, the Trustees’ adopted regulations that mirrored the statutory provisions. On June 4, 1962, the Chancellor’s Office issued a memorandum offering some guidance that included definitions for key terms found in the new law. The term “comparable to” first came out meaning “at least as much – as to benefits and working conditions.”⁶

Early implementation by auxiliary organizations diverged significantly. Some took no action, while others did as little as they thought would pass for compliance. Most changes were limited to vacation accumulations, sick leave, holidays, overtime and CTO. Salary changes were de minimums over the new comparability standards.

Then on October 21, 1975, the Office of General Counsel⁷ redefined “comparable to:”

*** It is our opinion that the term comparable would be defined to mean that individual benefits provided by an auxiliary organization need not be identical to those provided by the State (sic) so long as the total package of employee benefits, exclusive of retirement and permanent status benefits, is competitive with State (sic) employment in the same class.

For full-time employees, the present *statutory* comparability standard appears to include retirement and permanent status. But, the Trustees’ were given statutory latitude to adopt regulations that:

- Would permit an auxiliary organization to withhold retirement benefits and/or permanent status from temporary and executive employees, and
- To withhold retirement benefits from employees where the auxiliary organization is funded primarily by mandatory student fees, and
- To exempt new auxiliary organizations from the requirement of providing retirement benefits for the first three years.

⁶ From Chancellor’s Office Budget Letter No. 21-6. General Counsel’s view at the time was that since the law was meant to be curative in nature, a logical interpretation was that a minimum standard was to be insured.

⁷ CSU General Counsel Legal Opinion L75-3552 (analyzed more fully in the Analysis section).

Trustees' regulations⁸ picked up these statutory latitudes, except that the rules do not permit auxiliary organizations (except those funded primarily by mandatory student fees) to withhold retirement benefits from their executive employees. Translation: executive employees get retirement benefits, but not permanent status.

Some anomalies appear in Title 5. While the statutory requirement is that comparability be to CSU employees performing "similar services," the Trustees' regulations require that they be "substantially similar services." The term "executive employee" in the statute includes as one of the example positions, "business manager." The parallel Title 5 definition dispenses with the word "business."

Appendix A (at page 3) includes the full text of Trustees' regulations dealing auxiliary organization employee comparability standards.

Additional references to implementation guidance are included in the following Analysis section.

Analysis

What are the key comparability standards and terms?

There are essentially two primary statutory compliance standards (with included associated key terms), together with a qualifying provision for CalPERS retirement programs, (all in italics). The Trustees' have adopted regulations intended to be congruent with the statute.

a). *Auxiliary organization governing boards shall provide salaries, working conditions, and benefits for full-time employees that are comparable to those provided CSU employees performing similar services.* [Ed Code § 89900(c)]

- A "full-time employee" *means a person who is employed in a permanent position for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser. Persons employed on a temporary, intermittent, irregular time base, or on a limited term basis are not "full-time employees," unless those employees are engaged in a continuing 10-month or academic year basis and are employed for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser.* [Ed Code § 89900(c)]

Statutorily authorized regulations:

1. pass-through this standard using the term "substantially similar services" in lieu of "similar services." [Title 5, § 42405(a)]

⁸ Found in *California Code of Regulations*, Title 5, Section 42405.

2. authorize governing boards to exclude retirement benefits and/or permanent status from “temporary employees”⁹ defined as –

an employee for a research project, workshop, institute, or other special project funded by any grant, contract or gift; or

an employee whose contract of employment is for a fixed term not exceeding three years. [Title 5, § 42405(b)]

3. authorize governing boards to excluded permanent status from “executive employees”¹⁰ defined as –

any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, managers, directors, and the like, as determined by the governing board...[Title 5, § 42405(c)]

4. authorize governing boards of auxiliary organizations determined by the Chancellor as being funded primarily by mandatory student fees collected by the Trustees to exclude retirement benefits from its employees. [Title 5, § 42405(d)]

5. authorize Chancellor to exempt a newly created auxiliary organization from the retirement benefits requirement for a period not to exceed three years from date of establishment. [Title 5, § 42405(e)]

Note: This regulatory provision is authorized by Ed Code § 89900(d).

b). For those full-time employees whose duties are not comparable to classes in CSU employment, the salaries established shall at least be equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature (applicable even if there are no CSU employees performing similar services to those employed by the auxiliary). [Ed Code § 89900(c)]

Statutorily authorized regulations:

1. pass-through this standard, also using the term “substantially similar services” instead of “similar services.” [Title 5, § 42405(a)]

c). Retirement benefits may be provided by other than the Public Employees’ Retirement System. A contract for participation in the [that system] in accordance with the terms and conditions of the Public Employees’

⁹ The Title 5 definition tracks verbatim the definition in Ed Code § 89900(c).

¹⁰ The Title 5 definition for executive employees drops from the list of examples the word “business” from “business manager.”

Retirement Law shall be deemed to satisfy fully the requirement of subdivision (c) with respect to retirement. [Ed Code § 89900(d)]

The term “retirement benefits” is commonly accepted to mean only the pension or annuity payments received following separation from service. It does not include other benefits, such as health insurance coverage, extended to retirees, or such benefits through a common provider (CalPERS as the primary example).

Finally, the regulations include the following: the Chancellor shall provide, and may from time to time revise, rules and procedures for the administration of [these Title 5 provisions]. [Title 5, § 42405(f)]

The above comparability standards have been summarized in a one-page matrix as Appendix B.

What Interpretations have been brought to these standards and terms?

The term ‘comparable.’ In an attempt to bring a degree of clarification to issues affecting the compensation comparability requirements, the CSU General Counsel issued a legal opinion in 1975 (L75-3552). In particular, the “proper construction of the term ‘comparable’ (as that term is used in Education Code Section 89900 and Title 5, Section 42405) was analyzed. This opinion adopted the “everyday understanding” of the term “comparable” based upon the legislative context and apparent intent in using the term, coupled with how the term had been interpreted administratively. Thus: “...the common understanding of the term “comparable” suggests overall equality but admits [the possibility] of some variance. Variance may have qualitative and/or quantitative measures that consider nature and extent of coverage(s), relative value/cost, etc.

“Comparable” means that individual benefits provided by an auxiliary need not be identical to those provided by the CSU so long as the total package of employee benefits, exclusive of retirement and permanent status benefits, is competitive with CSU employment in the same class. This interpretation has survived the years.

Unfortunately, the term “comparable” is also used to distinguish between those positions with “similar” [or “substantially similar” as expressed in Title 5] duties, and those that do not. In this case, use of the phrase “duties not comparable” really means that the auxiliary position duties are *not substantially similar* to those positions in CSU positions.

For full-time employees in positions with duties are *not substantially similar* to CSU positions, the minimum requirement is only that salaries be at least equal to those at area educational institutions or commercial operations of like nature. There is no Rodda Act or Title 5 requirement to provide “comparable” benefits or

working conditions. Other requirements, such as campus or auxiliary organization policy, or bargaining agreements may affect the compensation factors for such positions.

The term 'other educational institutions.' This term has consistently been interpreted to mean all levels and types of educational institutions including those elementary and secondary school districts, community colleges, and 4-year colleges and universities, whether private or public.¹¹

The phrase 'in the area.' "Generally means a minimum geographical area which is adequate to provide the auxiliary organization with a sufficient number of salary comparisons on which to determine a prevailing rate. It is expected that the area will vary in size depending upon the class being surveyed. If possible, surveys should be relatively localized and consistent with that area used by the [campus] for recruiting purposes for similar jobs."¹²

The term *permanent status* is an expression deserving of attention since it has no *statutory or regulatory* definition. *Permanent status* is not "tenure" as used in the academic realm, and it is not necessarily a vested right to employment. The term seems to derive from the statutory distinction between the defined temporary employees and "full-time employees" (see above) in *permanent positions*. It remains for the auxiliary organization governing board to frame employment status. Such a structure should include appropriate employment categories: temporary, probationary, permanent, for example; together with equally important "at will" statements, any employee-vested employment rights, and reservations of employer prerogatives concerning demotion, transfer, duties changes, and compensation adjustments based upon business necessity.

Responsibility for compliance. The governing board of each auxiliary organization has the primary responsibility for developing and maintaining personnel policies, including compliance with the comparability standards. The campus oversight through established system policies apply.¹³ The Board of Trustees and the Chancellor retain the authority to review auxiliary organization policies to ensure compliance with these standards.

Minimum compliance measures required. Each auxiliary organization must first classify and sub-classify its employees into defined categories. The employee category triggers the applicable salary, benefits and working condition standards.

Employees are either full-time or not full-time. A full-time employee is defined in the statutory standard. See above. The Chancellor's Office has administratively defined the term as "a person who is employed for 40 hours or more per week; or

¹¹ Budget Letter No. 21-6, June 4, 1962.

¹² *Ibid* at page 2.

¹³ CSU General Counsel Legal Opinion L77-4268 and Executive Orders 648 and 731.

in some instances, the governing board of an auxiliary may determine that a work shift of less than 40 hours per week constitutes full-time employment.”¹⁴

Full-time employees must then be sub-classified as either temporary or permanent (a possible third category is probationary). There is a statutory and regulatory definition for “temporary employees.” See above. Auxiliary organization board policy should define all key terms, such as permanent and probationary, substantially similar, and not substantially similar categories. An employee may not be classified as probationary for more than three years.¹⁵

From among those employees categorized as full-time, a determination must follow as to those with duties (services) that are *substantially similar* to positions (services) within the CSU system and those that are in positions that are not substantially similar. The criteria are not precise for making a determination that a position is substantially similar or not. Clearly, however, a determination needs to look beyond merely a job title or a cursory comparison of duties. For example, a Cashier (by job title) in a small organization may have some or all of the duties of the same job title in the CSU system, but may also perform additional or broader duties that, upon analysis, bear upon a documented determination that the position is *not substantially similar*.

With the full-time, *substantially similar* positions identified, the remaining full-time positions that are *not substantially similar* to CSU positions can be identified and – depending upon the organization’s compensation policy -- the minimum standard may be applied with respect whether their salaries (only) are at least equal to those prevailing in other educational institutions in the area or in commercial operations of a like nature. Of course, there are other reasons (including non-discrimination standards) for an organization to provide all full-time employees in *not substantially similar* positions the benefits and/or working conditions afforded those in *substantially similar* positions. It’s just that neither the Rodda Act nor Title 5 require it.

Scope of the ‘Mandatory Fees’ exemption from Retirement Benefits Standard. Student body organizations have only a limited exemption from the comparability standards. Auxiliary organizations that are funded primarily by mandatory student fees collected by the Trustees are exempt from the requirement of providing retirement benefits. Title 5, Section 42405(d) requires an annual Chancellor’s Office determination of which organizations fall into this category.¹⁶

The fee for student unions was not a consideration in making the exemption for retirement benefits. Thus, the reference to “mandatory student fees” in the

¹⁴ Cited in brief in support of amendment to Title 5, § 42405, presented before Trustees’ Committee on Finance at November 29-30, 1977 meeting.

¹⁵ CSU General Counsel Legal Opinion L77-4268. There is an analysis in this opinion on probationary/temporary employees.

¹⁶ Included in the “List of Auxiliary Organizations in Good Standing” required by Title 5, § 42406.

comparability standards applies only to student body organization membership fees as authorized by Education Code, Section 89300.¹⁷

Student body auxiliary organizations that also operate other functions not funded primarily by mandatory student fees (commercial services, student unions, etc.) may not be exempt from providing comparable retirement benefits.

Compliance Methodology

Formal Policy Statement. The starting point for effective compliance with the compensation comparability standards is a clear, complete and written statement of policy adopted by the governing board of each auxiliary organization. The essential provisions of such a policy statement should include:

- A scope and purpose provision clearly tying the statement to an intent to comply with Title 5, Section 42405 as a framework for the proper administration of employee salaries, benefits and working conditions;
- A set of key definitions consistent with the statutory, regulatory and administrative standards relating to comparability.
- A general statement of policy implementing Title 5, Section 42405, together with any sought exclusions or exceptions.
- A provision dealing with the practices needed to implement the policy statement.

A sample general policy statement appears as Appendix C.

Developing and Documenting an Employee Classification System. With a general policy in place, an auxiliary organization should then get to the heart of the compliance process: develop and document an employee classification system that best serves its authorized functions, the legitimate needs of the organization, and one that is evaluated periodically to insure that it accurately reflects the current classes within the employee service.

Furthermore, the analysis put into the classification statements should also be exerted in writing the active employee position descriptions that fall within each classification statement.

There are a host of practicalities in the administration of employee compensation programs for auxiliary organization that may require divergence from a “locked-step” approach that attempts to track CSU program actions. These include insurance policy requirements, ERISA standards, bargaining agreements,

¹⁷ June 19, 1978 ABS Coded Letter to campus business managers.

coverage limitations, and the like. These practicalities should be documented so that it can be demonstrated the compensation program is coherent with the comparability standards.

Only when the board policy statement, classification system, and position descriptions are in place should the comparability analysis/determination be concluded.

Summary and Conclusions

The Rodda Act and implementing Title 5 regulations require auxiliary organizations to provide -- with some limitations and exclusions -- salaries, working conditions and benefits for their full-time employees that are comparable to those provided CSU employees performing similar services. For their other employees the only legal requirement is that salaries (NOT working conditions or benefits) shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature.

Over the years there has been an evolving pattern by auxiliary organizations of identifying too many employees as performing services substantially similar to those performed by university employees. Absent rigor in the analysis of position tasks, duties and scope of responsibility, it is quite convenient to merely adopt CSU position titles for auxiliary organization positions, and declare them substantial similar. Once in that category, it becomes difficult to change – particularly when the auxiliary organization fails to examine the employee classification system on a regular basis.

The Rodda Act standards provide a certain degree of flexibility for the auxiliary organization in attaining the policy objectives intended by the State Legislature. Auxiliary organizations should utilize that flexibility and be well within the compliance standards.

While there are indeed nuances to these comparability standards, a serious and consistent board and management implementation effort should keep the organization well within compliance.

CALIFORNIA EDUCATION CODE

(Extract Only)

89900. (a) A certified public accountant shall be selected by each auxiliary organization described in Section 89901. The office of the chancellor, in cooperation with the Department of Finance, shall develop and forward the applicable auditing and reporting procedures to each auxiliary organization for distribution to the selected certified public accountant. In accordance with procedures prescribed by the chancellor, the certified public accountant shall annually audit any and all state university auxiliary funds. The auxiliary organizations shall contract for and receive the audit annually, and shall submit the audit to the trustees. Auxiliary organizations shall annually publish an audited statement of their financial condition, which statement shall be disseminated as widely as feasible and be available to any person on request. In the case of an auxiliary organization primarily serving a single campus of the California State University, publication in the campus student newspaper shall be deemed compliance with this requirement. In the case of an auxiliary organization serving the Trustees of the California State University, distribution of the published audited statement of its financial condition at a regularly scheduled meeting of the trustees shall be deemed compliance with this requirement.

(b) In the case of an auxiliary organization primarily serving a single campus of the California State University, the president of that state university shall be responsible for ascertaining that all expenditures are in accordance with policies of the trustees, the propriety of all expenditures, and the integrity of the financial reporting, made by auxiliary organizations.

(c) The operation of auxiliary organizations shall be conducted in conformity with regulations established by the trustees. The regulations shall include provisions requiring the governing board of each auxiliary organization to provide salaries, working conditions, and benefits for the full-time employees of each auxiliary organization that are comparable to those provided California State University employees performing similar services. However, the regulations may permit retirement benefits or permanent status benefits, or both, to be withheld from temporary and executive employees of each auxiliary organization. In addition, the regulations may exempt from the requirement of providing retirement benefits any auxiliary organization that is funded primarily by mandatory student fees collected by the trustees. For the purposes of this subdivision, a temporary employee is (a) an employee employed for a research project, workshop, institute, or other special project funded by any grant, contract or gift; or (b) an employee whose contract of employment is for a fixed term not exceeding three years. For the purposes of this subdivision, an executive employee is any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, business managers, directors, and the like. For purposes of this subdivision, "full-time employee" means a person who is employed in a permanent position for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser. Persons employed on a temporary, intermittent, irregular time base, or on a limited term basis are not "full-time employees," unless those employees are engaged on a

continuing 10-month or academic year basis and are employed for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser. For those full-time employees whose duties are not comparable to classes in California State University employment, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature. This requirement shall apply to full-time employees of auxiliary organizations even if there are no California State University employees performing similar services.

(d) Retirement benefits may be provided by other than the Public Employees' Retirement System. A contract for participation in the Public Employees' Retirement System in accordance with the terms and conditions of the Public Employees' Retirement Law shall be deemed to satisfy fully the requirements of subdivision (c) with respect to retirement.

Notwithstanding anything in subdivision (c) to the contrary, the regulations established by the trustees may exempt the governing board of any newly created auxiliary organization from the requirement of providing retirement benefits for a period not to exceed three years from the date that the auxiliary organization is established.

CALIFORNIA CODE OF REGULATIONS

(Extract Only)

s 42405. Employees.

(a) Except as otherwise provided in this Section, the governing board of each auxiliary organization shall provide salaries, working conditions and benefits for its full-time employees which are comparable to those provided campus employees performing substantially similar services. For those full-time employees who perform services that are not substantially similar to the services performed by campus employees, the salaries established shall be at least equal to the salaries prevailing in other educational institutions in the area or commercial operations of like nature.

(b) Notwithstanding anything in this Section to the contrary, the governing board of each auxiliary organization may withhold retirement benefits or permanent status benefits or both from temporary employees. For the purposes of this Section, a temporary employee is:

(1) An employee employed for a research project, workshop, institute or other special project funded by any grant, contract or gift; or

(2) An employee whose contract of employment is for a fixed term not exceeding three years.

(c) Notwithstanding anything in this Section to the contrary, the governing board of each auxiliary organization may withhold permanent status benefits from executive employees. For the purposes of this Section, an executive employee is any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, managers, directors, and the like, as determined by the governing board of each auxiliary organization.

(d) At least annually, the Chancellor shall determine which of the auxiliary organizations included on the list prepared pursuant to Section 42406 is an auxiliary organization funded primarily by mandatory student fees collected by the Trustees. Notwithstanding anything in this Section to the contrary, the governing board of any auxiliary organization designated by the Chancellor as an auxiliary organization that is primarily funded by mandatory student fees collected by the Trustees may withhold retirement benefits from its employees.

(e) Notwithstanding anything in this Section to the contrary, the Chancellor may exempt the governing board of any newly created auxiliary organization from the requirement of providing retirement benefits for a period not to exceed three years from the date on which the Chancellor approves the establishment of the auxiliary organization pursuant to Section 42407.

(f) The Chancellor shall provide, and may from time to time revise, rules and procedures for the administration of this Section.

Note: Authority cited: Section 89900, Education Code.

APPENDIX B

AUXILIARY ORGANIZATION

SECTION NO. xxx

POLICY MANUAL

DOCUMENT NO. xxx

SECTION: **POLICY STATEMENT - PERSONNEL**

SUBJECT: **EMPLOYEE SALARIES, BENEFITS AND WORKING CONDITIONS**

PURPOSE: To implement policy in compliance with California Code of Regulations Section 42405.

EFFECTIVE DATE: _____

EMPLOYEE SALARIES, BENEFITS AND WORKING CONDITIONS

I. BACKGROUND AND PURPOSE

- A. The purpose of this policy statement is to comply with and implement the requirements of the Board of Trustees of the California State University regulations (Title 5, Section 42405 of the California Code of Regulations), and to provide a general policy framework and delegation of authority for the administration of organization employee salaries, benefits and working conditions.

This statement shall not operate to create employee rights not previously vested or specifically provided herein, or to determine Auxiliary Organization policy beyond the requirements established by the Board of Trustees.

II. DEFINITIONS

- A. As used in this statement, the following definitions of terms and phrases shall apply:
1. "Classification" or "class" means a group of positions sufficiently similar with respect to duties and responsibilities that the same title may reasonably and fairly be used to designate such positions allocated to the class and that substantially the same tests of fitness may be used and that substantially the same minimum qualifications may be made to apply with equity.
 2. "Substantially similar services" are those positions with duties, responsibilities, and fitness tests within organization classification and qualification standards equivalent to those positions in class standards established by the California State University.
 3. "Comparable salaries, working conditions, and benefits" are those salaries, working conditions, and benefits paid to or provided on behalf of an

otherwise qualified organization employee which, in total, are competitive with California State University employment in substantially similar services.

4. "Full-time Employee" means a person who is employed for 40 hours or more per week or to an equivalent work schedule which constitutes full-time employment, including those employees engaged on a 10-month or academic year basis.
5. "Administrative position" means any employee with either significant supervisory responsibility or who is engaged primarily in one or a combination of professional or quasi-professional activities. Positions in this category are determined and appointed by the Executive Director within budgetary authority.
6. "Staff position" means any employee who provides supporting services such as secretarial, clerical and maintenance. Such an employee may have supervisory responsibility.
7. "Temporary Employee" means an employee whose funding for employment is for a fixed term not exceeding three years.
8. "Executive position" means any management employee with responsibility for the development and execution of organization policy. At the time of the adoption of this statement, executive positions are:
 - a. Executive Director
 - b. Associate Executive Director
 - c. Human Resources Director
 - d. Financial Services Director
 - e. Bookstore Director
 - f. Campus Dining Director
 - g. Sponsored Programs Director

III. GENERAL POLICY

- A. Salaries, working conditions and benefits shall be provided to all full-time organization employees on a basis comparable to those provided campus employees performing substantially similar services. For those full-time employees performing services that are not substantially similar to the services performed by campus employees, salaries paid shall be at least equal to those prevailing in other educational institutions in the area or commercial operations of like nature.
- B. Except for the position of Executive Director, the Executive Director appoints other Executive positions within budgetary authority and under established compensation plans. This authority may not be delegated.

IV. POLICY APPLICATION

- A. The Executive Director shall evaluate and determine those organization positions to be classified as performing substantially similar services to campus positions based upon this policy statement.
- B. The Executive Director is authorized to develop and implement employee compensation plans consistent with this policy statement and budgetary authority.

V. EMPLOYMENT STATUS

- A. Employment with the Auxiliary Organization does not constitute a vested right of permanent status. Such employment is at the discretion of both the organization and the employee. Either may conclude employment at any time with or without cause or advance notice. The organization retains the right to demote, transfer, change job duties, and adjust compensation as a result of business necessity at any time.

VI. IMPLEMENTATION

- A. The Executive Director shall develop and implement plans, practices and procedures in accordance with this policy. Such implementation shall be through appropriate employee handbooks and internal manuals, and shall include means to involve the Board and apprise the University President of planned Executive appointments and significant compensation plan changes.

SALARIES, WORKING CONDITIONS & BENEFITS
(Minimum Compensation Comparability Requirements)

EMPLOYEE CATEGORY	RETIREMENT BENEFITS ARE MANDATORY	PERMANENT STATUS BENEFITS ARE MANDATORY	TO WHAT SHOULD SALARIES BE COMPARABLE?	TO WHAT SHOULD OTHER WORKING CONDITIONS AND BENEFITS BE COMPARABLE?
1. Executive employees ¹	Yes	No	CSU employees ² performing similar services	CSU employees performing similar services
2. Full-time employees ³ performing substantially similar services to CSU employees (comparable) ⁴	Yes	Yes	CSU employees performing similar services	CSU employees performing similar services
3. Full-time employees not performing substantially similar services to CSU employees	No	No	Other educational institutions in the area or commercial operations of like nature	No requirement
4. Full-time temporary employees (Type A): Employed for research projects, workshops, institutes, or other special projects funded by any grant, contract or gift; or (Type B): An employee whose contract of employment is for a fixed term not to exceed three years (comparable)	No	No	CSU employees performing similar services	CSU employees performing similar services
5. Full-time temporary employees (Type A or Type B) NOT performing substantially similar services	No	No	Other educational institutions in the area or commercial operations of like nature	No requirement
6. Full-time employees of an auxiliary organization funded primarily by mandatory student fees collected by Trustees (comparable) ⁵	No	Yes	CSU employees performing similar services	CSU employees performing similar services
7. Full-time employees of an auxiliary organization funded primarily by mandatory student fees collected by Trustees (non-comparable)	No	No	Other educational institutions in the area or commercial operations of like nature	No requirement
8. Part-time employees (all types)	No	No	No requirement	No requirement

¹ The statutory definition: *any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, directors, and the like.* The Title 5 regulations definition: *any management employee with responsibility for the development and execution of auxiliary organization policy and includes, but is not limited to, general managers, managers, directors, and the like, as determined by the governing board of each auxiliary organization.* The Education Code permits the Trustees to authorize auxiliary organizations to withhold retirement from executive employees, but the regulations adopted by the Trustees did not do so.

² Note: “Similar services” in the Education Code became “substantially similar services” in the Title 5 regulations.

³ For purposes of implementing the intent of the Education Code, the Office of the Chancellor has defined a full-time employee as a person who is employed for 40 hours or more per week, or in some instances, the governing board of an auxiliary organization may determine that a work shift of less than 40 hours per week constitutes full-time employment.

⁴ Some auxiliary organizations have contracts with CalPERS that differentiate between categories of full-time employees and permit exclusion of a category from retirement benefit coverage. On October 21, 1975, the Office of General Counsel stated: “...it is our opinion that the term comparable would be defined to mean that individual benefits provided by an auxiliary organization need not be identical to those provided by the State so long as the total package of employee benefits, exclusive or retirement and permanent status, is competitive in the same class.”

⁵ As determined annually by the Chancellor.

Special Note: The Chancellor may exempt the governing board of any newly created auxiliary organization from the requirement of providing benefits for a period not to exceed three years from the date on which the Chancellor approves the establishment of the auxiliary organization pursuant to Title 5, Section 42407.

References:

California Education Code Section 89900
California Code of Regulations, Title 5, Section 42405