

**DECISION AND AWARD**

**In the Matter of a Controversy between**

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**Coalition of Kaiser Permanente Unions,**

**And**

**Kaiser Permanente**

**Re: 1.L.2 Panel – Redeployment Process**

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**For the Employer:**

**Cheryl L. Kopitzke, Esq.  
Kaiser Permanente**

**For the Union:**

**Bruce Harland, Esq.  
Weinberg, Roger & Rosenfeld**

**1K.5 Arbitration Panel:**

**David A. Weinberg- Neutral Arbitrator**

**Caroline Lucas- Coalition of KP Unions**

**Heather Thompson- Coalition of KP Unions**

**Shankar Viswanathan-  
Director, Employee Relations  
Kaiser Permanente**

**Charlene Yates- Director, Employee Relations  
Kaiser Permanente**

## PROCEDURAL BACKGROUND

Pursuant to the National Collective Bargaining Agreement between The Coalition of Kaiser Permanente Unions (CKPU) and Kaiser Permanente, the parties selected David A. Weinberg as the Neutral Panel Arbitrator in the above referenced case. The parties each selected two respective panel members in accordance with 1L.2 of the National Agreement. As a result of this dispute a Zoom hearing was held on December 7, 2021. During the course of the Hearing, the Arbitrator afforded both parties full opportunity for the presentation of evidence and oral argument, along with a Panel discussion of mutual interests and concerns. The parties stipulated the matter is properly before the Panel for resolution, and that jurisdiction may be retained to resolve any disputes over the meaning or application of the Decision and Award.

The parties submitted to the Panel the following issue:

**Is KP obligated to follow the NCAL KP Redeployment Map as approved on February 28, 2017, in bargaining local redeployments? If so, does the NCAL KP Redeployment Map mandate that the parties bargain all the options and alternatives prior to formal notification to employees under the Redeployment phase, and what is the appropriate remedy?**

## BACKGROUND

As outlined in the joint summary of findings of November 5, 2021, by John Kolodny and Emily Millar:

### Background

In 2015, the parties agreed to the following provision during 2015 Coalition National Bargaining, and it became Section 1.D.3.d Redeployment of the 2015 National Agreement (p. 30), which reads:

By April 1, 2016, each region shall develop and implement a consistent redeployment process, which will include local union leaders, national and regional Workforce Planning and Development, career counselors, recruitment, labor relations and operational leaders. The parties will build or refine redeployment process maps. This task will be supported by long-term and short-term forecasting of strategic and operational changes that may lead to redeployment. These efforts will be both collaborative and transparent.

In Northern California, Kaiser Permanente and the Coalition unions created the KP NCAL Redeployment Map approved February 28, 2017. The NCAL Redeployment Map consists of eight pages outlining key assumptions and considerations, a four-phase process, case management support, redeployment structure, roles and responsibilities and planning resources.

Specifically, the Redeployment Map references 4 phases - Pre-Redeployment; Planning; Formal Employee Notification and EISA Period. Under the Pre-Redeployment phase (p. 3.), it states:

- Formal notification to institutional union.
- Interest based problem solving regarding potential changes and impacts to department or function
- Joint meeting on communication to affected employees. Communication may be joint or not based on the agreement between the institutional union and employer.

Additionally, the section under Key Assumptions and Considerations (p.2) reads:

- Each potential redeployment situation is different; therefore, this process is designed to be flexible and allow for customization depending on circumstances.
- Local collective bargaining agreements and bargaining outcomes will inform the specifics of any redeployment.
- Early joint engagement is critical to success.
- This process is based on successful practices from past redeployments and are intended to appropriately leverage key labor and management assets and capabilities.

### 2021 Redeployment in Dispute

On April 29, KP notified UHW SEIU and OPEIU leaders of their plan to redeploy employees and send notice to employees on April 30, 2021. The redeployment involved 231 UHW members and 84 OPEIU members. (See attached formal notice with a list of impact employees).

In response, the Coalition unions asked that KP hold off from any notification to employees until the following Monday May 3, 2021. They wanted time to talk to their members.

On May 3, 2021, Kaiser Permanente sent notification to employees. (See attached example of the notice). NCAL Labor Relations offered to meet on any date the unions were available to discuss and work through the redeployment process.

The parties met and reached agreement in some service areas and regional functions and in others, the parties reached impasse and Kaiser Permanente moved forward with redeployment. All employees have either been placed in new positions, entered the redeployment process under EISA or have had their notice rescinded.

Kaiser Permanente contends that they have followed the same process in this redeployment as they have in prior local redeployments involving OPEIU and UHW SEIU and has met its contractual obligations in this case.

#### Undisputed Facts:

- KP and the Coalition of KP Unions in NCAL met and jointly created the KP NCAL LMP Redeployment Process Map approved on February 28, 2017.  
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There was testimony during the Panel Hearing stating it took the parties over a year to agree upon the approved February 28, 2017, Process Map, and during these negotiations Kaiser proposed a timeline for the Pre-Redeployment Phase, which was not agreed upon by the Coalition and ultimately not included in the Process Map. There was also testimony that in prior redeployments with Local 29 the parties did not engage in formal interest-based bargaining during the Pre-Redeployment Phase. These prior redeployments involved significantly fewer employees.

## DISCUSSION AND ANALYSIS

The Union in this case argues that the parties agreed upon a process to be used for redeployments as specified in the February 2017 approved NCAL LMP Redeployment Process. There is no dispute that the affected Unions asked the Employer to engage in interest-based bargaining as indicated in the Pre-Redeployment Phase and to rescind the RIF notices they sent to employees on May 3, 2021. The Employer contends that this Pre-Redeployment Phase is not a mandatory part of the process that the Employer is required to engage in prior to the Planning Phase.

I am persuaded that the Union's interpretation of the Redeployment Process is more contractually sound and in accordance with the parties' intent for the following reasons. It is well accepted that Arbitrators are required to give meaning to all language that is placed in a bargained agreement. This Pre-Deployment Phase is placed in the Agreement without any language indicating that the problem-solving bullet points are optional. While the Employer contends that the broken lines indicate that this Pre-Deployment Phase is not really part of the process, I cannot infer this conclusion especially given that the first bullet point requiring formal notification to institutional union clearly must take place. Furthermore, the fact that in the bargaining that led up to this Agreement the Employer wanted to place timelines in this section indicates that they believed it was a required process. If not, and it was entirely voluntary then there would be no need for timelines as the Employer could simply say they were not interested in going through this Pre-Redeployment Phase process. Additionally, the fact that

there are arrows placed in each of the boxes indicates that this is a process from one phase to the next. Finally, the chart is color coded with the Pre-Redeployment Phase outlined in yellow, which corresponds with the Bargaining color box in the document, which lends weight to the Union's contention that bargaining is to take place in this phase.

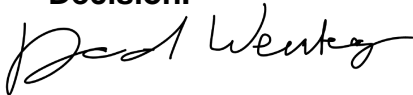
It is true that the Interest based bargaining or problem-solving process was not used formally in prior redeployments. But having made a formal request in this case was within the Union's right to live up to the terms of the Agreement. The prior cases cited were much smaller and do not create a binding past practice that could overturn the contractual language placed in the Process Agreement. Additionally, the timelines in this case were much more compressed than in any of the other redeployment examples cited by the Employer.

I should note that the interest-based problem solving mentioned in the Pre-Redeployment Phase is meant to be a flexible process and is not intended to unreasonably delay the redeployment. Given the failure to engage in this Pre-Redeployment Phase I am remanding this Redeployment back to the parties for 30 days (unless a mutually agreed upon longer period), in which to discuss and problem solve the Redeployment and issues related to currently affected employees. While I am not ordering the rescinding of the Redeployment and RIF, it may be appropriate for the Panel to consider an extension of the EISA for affected employees after the parties engage in this 30-day process, if the parties do not reach a fully negotiated agreement. The Panel will retain jurisdiction of any remedial issues regarding this case.

## DECISION

1. The Employer violated the National Agreement when it did not follow the NCAL KP Redeployment Map as approved on February 28, 2017.
2. The Neutral Panel Arbitrator is remanding this Redeployment back to the parties for 30-days (unless a mutually agreed upon longer period) in which to discuss and problem solve the Redeployment and the issues related to currently affected employees.
3. The Panel retains jurisdiction of any remedial issues consistent with this

**Decision.**



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David A. Weinberg

Neutral Panel Arbitrator

December 14, 2021