



**STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD  
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No.: ..... Tracking No.: 4373J866V992 ..... Date Filed: 6/9/2010 10:00:45A

**INSTRUCTIONS:** File the original and one copy of this charge form with proof of service attached to each copy in the appropriate PERB regional office (see PERB regulation 32075). Proper filing includes concurrent service and proof of service of the charge as required by PERB regulation 32615(c). All forms are available from the regional offices or PERB's website at [www.perb.ca.gov](http://www.perb.ca.gov). If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES  NO  If yes, Case Number: \_\_\_\_\_

1. CHARGING PARTY: EMPLOYEE  EMPLOYEE ORGANIZATION  EMPLOYER

a. Full name:  
POSTDOCTORAL RESEARCHERS ORGANIZE / INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND  
b. Mailing Address:  
POSTDOCTORAL IMPLEMENT WORKERS OF AMERICA  
6500 SOUTH ROSEMEAD BOULEVARD  
PICO RIVERA, CA 90660  
c. Telephone number:  
(501)-801-1500  
d. Name, title, and telephone number of person filing charge:  
HENRY M. WILLIS, ATTORNEY, (323)-655-4700  
e. Bargaining unit(s) involved:  
POSTDOCTORAL SCHOLARS EMPLOYED BY THE UNIVERSITY OF CALIFORNIA

2. CHARGE FILED AGAINST: (mark only one) EMPLOYEE ORGANIZATION  EMPLOYER

a. Full name:  
REGENTS OF THE UNIVERSITY OF CALIFORNIA  
b. Mailing Address:  
1111 FRANKLIN STREET  
OAKLAND, CA 94607  
c. Telephone number:  
(510)-987-9220  
d. Name, title, and telephone number of agent to contact:  
GAYLE SAXTON, INTERIM DIRECTOR - LABOR RELATIONS, (510)-987-9907

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:  
b. Mailing Address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:  
b. Mailing Address:  
c. Agent:

**5. GRIEVANCE PROCEDURE**

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?  
Yes  No

**6. STATEMENT OF CHARGE**

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:  
**Government Code section 3571(a), (c), (d)**

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and not conclusions of law. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*

**SEE ATTACHED**

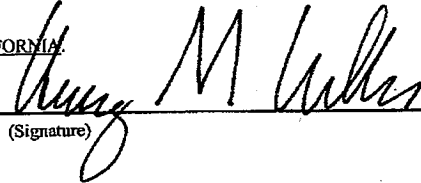
**DECLARATION**

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge

and belief and that this declaration was executed on JUNE 9, 2010 at LOS ANGELES, CALIFORNIA.

HENRY M. WILLIS

(Type or Print Name)



(Signature)

Title, if any: **ATTORNEY**

Mailing address:

**6300 WILSHIRE BOULEVARD, SUITE 2000  
LOS ANGELES, CA 90048-5268**

Telephone Number: **(323)-655-4700**

## ATTACHMENT "A" TO UNFAIR PRACTICE CHARGE

The University of California ("UC" or "the University") recognized the Postdoctoral Researchers Organize / International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("PRO/UAW" or "the Union") as representative of its Postdoctoral Scholars on November 3, 2008, based on PERB's certification that the Union had support from a majority of those employees.<sup>1</sup> Collective bargaining negotiations began on January 20, 2009.

In the eighteen months since negotiations began the University has (1) engaged in surface bargaining, (2) misrepresented the facts to justify its refusal to bargain over Postdoctoral Scholars' salaries and benefits, (3) delayed negotiations by refusing to offer meaningful proposals and breaking its promise to respond in a timely fashion to the Union's proposals, (4) refused to provide the Union with the information it needs in order to engage in meaningful bargaining and used its failure to provide this information as a device to postpone negotiations, and (5) attempted to undermine the Union by subverting the bargaining process through unilateral changes in employees' terms and conditions of employment and direct dealing with employees, while (6) at the same time offering assistance to those individuals who are attempting to decertify the Union.

### A. REFUSAL TO BARGAIN IN GOOD FAITH—SURFACE BARGAINING

#### 1. Claiming inability to bargain because of the California State Budget crisis

Within the last six months, UC has violated HEERA § 3571(a) and (c) by using false claims of inability to pay to reject proposals that would result in an agreement between the parties. More particularly, UC has made claims about the supposed impact of the California State Budget crisis that are completely false and that serve no purpose other than as a pretext for its refusal to engage in meaningful bargaining over Postdoctoral Scholars' salaries and benefits.

The Union has been attempting to negotiate its first collective bargaining agreement with UC since January 20, 2009, with particular interest in negotiating wages and other economic terms with UC. However, UC Chief Negotiator Gayle Saxton has repeatedly impeded negotiations by stating that UC cannot make

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<sup>1</sup> The Unit includes all employees in the following classifications: Postdoctoral Scholar – Employee (Title Code 3252), Postdoctoral Scholar – Fellow (Title Code 3253), Postdoctoral Scholar – Paid Direct (Title Code 3254), Postgraduate Researcher – FY (Title Code 3240), Postgraduate Researcher – AY State Funds (Title Code 3243), Postgraduate Researcher – AY Extramural Funds (Title Code 3245), and Visiting \_\_\_\_\_ – Postdoc (Title Code 3370). We refer to these unit employees collectively as "Postdocs" or "Postdoctoral Scholars"; references to employees in particular classifications will name the specific job title for that classification.

reasonable economic proposals because of the State Budget crisis. Most recently, Saxton has made these statements during negotiations on April 23, 2010, but such statements were also made at prior bargaining sessions, including April 15 and 16, 2010 and February 17, 2010.

Reliance on the State Budget crisis as grounds for refusing to discuss salary increases for Postdoctoral Scholars is purely pretextual. Postdoctoral Scholars' appointments at UC are funded almost entirely from research contracts and grant revenues from federal, State, local, or private sources, rather than from State general funds. UC itself has acknowledged that it "cannot legally transfer funds from restricted sources, such as state and federal research grants, and use the money to make up for cuts in state funding."  
[http://www.universityofcalifornia.edu/budget/?page\\_id=1120](http://www.universityofcalifornia.edu/budget/?page_id=1120).

Moreover, these research funds are not in jeopardy and have indeed increased of late. According to UC's audited financial statements, the University's overall research contract and grant revenue—including federal, State, local and private sources—has more than doubled in recent years, growing from \$2.2 billion in 1997 to \$4.7 billion in 2009. Indeed, even in the midst of California's current budget crisis, UC's overall research contract and grant revenues increased 4.3 percent from 2008 to 2009—including a 3.4 percent expansion of state research funds—and show no sign of waning.

In November 2009, for example, UCLA's website touted how researchers there had brought in a record pace \$4 million per day so far in the 2009-2010 fiscal year. (<http://www.today.ucla.edu/portal/ut/researchers-bring-in-4m-a-day-111993.aspx>) UC Davis announced similarly, in December 2009, that the campus was on pace to hit a new record for annual research revenue. "Despite the difficult budget situation, UC Davis is on a steep upward curve—doubling our research income in less than a decade," said UC Davis Chancellor Linda Katehi. See <http://www.universityofcalifornia.edu/news/article/22536>.

The federal government (through agencies such as NIH, NSF, DOE, DOD, and NASA) provides by far the largest single portion of UC's research funding, contributing roughly two-thirds of the University's overall annual research contract and grant dollars. Federal research contract and grant revenues funding UC's research budget are also the most likely to grow dramatically in the near future as a result of Congressional and federal agencies' stimulus measures as well as the Obama Administration's reprioritization of science research.

The pretextual nature of UC's claim that it cannot offer Postdoctoral Scholars any economic increases due to the State Budget Crisis is underscored by the fact that UC has recently offered and granted increases to similarly situated employees. For example:

- UC reached agreement in February 2010 with UPTE-CWA, the union representing more than 10,000 Researchers and Technicians employed by UC. These employees work alongside Postdoctoral Scholars and are funded from the same grants as Postdoctoral

Scholars. UC's agreement with UPTE-CWA provides for raises totaling 14.5% over the next three years (4.5%, 5% and 5%), as well as a \$1,000 lump sum payment this July to make up for the lack of a raise in 2009-10. See <http://www.upte.org/publication-ebulletin/2010-02-19.html>).

- Resident Physicians, who have similar levels of post-graduate education and training as Postdoctoral Scholars and often work alongside Postdoctoral Scholars, received combined general and step increases totaling 6.5% to 7.9% for each of the 2009-10, 2010-11, and 2011-12 years. See Resident Physician salary scales at [http://www.ucop.edu/acadadv/acadpers/rev\\_table22\\_housestaff.pdf](http://www.ucop.edu/acadadv/acadpers/rev_table22_housestaff.pdf) and the 2009-2012 Resident Physicians contract at [http://atyourservice.ucop.edu/employees/policies\\_employee\\_labor\\_relations/local\\_agreements/ucsd/SDHSA\\_MOU-Final-09-12.pdf](http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/local_agreements/ucsd/SDHSA_MOU-Final-09-12.pdf).

UC has given the same sort of salary increases to these unions that it insists it cannot give the Postdocs represented by PRO/UAW. Its reliance on a wholly false claim of inability to pay is proof of its refusal to bargain in good faith.

## **2. Misrepresenting UC policy on experience-based step increases**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by insisting that it is contrary to UC policy to provide experience-based, annual step increases for highly educated, skilled, academic employees such as Postdoctoral Scholars. This claim by UC is wholly false, as UC's consistent practice of providing such increases to unit employees and other similar employees shows.

UC's Chief Negotiator, Gayle Saxton, has stated on several occasions in rejecting proposals for experience-based annual step increases that the University is "philosophically opposed" to providing annual, experience-based increases to academic employees.<sup>2</sup> She made this statement most prominently at an informal bargaining session on February 17, 2010. Saxton states that the opposition to such increases for Postdoctoral Scholars comes from academics at the University and that it is "resounding." She says that these "academics" believe fervently that "merit" increases are the only appropriate way to set salaries for academic employees, since they are so highly educated and are engaged in important academic work.

UC's stated position in these negotiations is, however, completely inconsistent with the manner in which UC historically has paid many of its academic employees, including hundreds of Postdoctoral Scholars. For example, Resident Physicians, who are represented and considered "academic" employees by UC, just like Postdoctoral Scholars, receive annual experience-based step increases very similar to those the Union is proposing.

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<sup>2</sup> UC divides all its employees into categories: academic, staff, management, etc. Postdoctoral Scholars are academic employees.

Moreover, the National Institutes of Health—the agency that provides more funding for postdoctoral research at UC than any other outside agency—sets salaries based upon years of Postdoctoral experience. The NIH's Kirschstein Fellowship, one of the most prestigious academic post-doctoral fellowships in the world, provides annual experience-based step increases in its stipends to Postdocs, including the hundreds of Kirschstein Fellows working at UC. UC currently pays two-thirds of its Postdocs salaries that are comparable to the relevant corresponding NIH Kirschstein steps based on years of experience.<sup>3</sup> Its claim that it has a deep-seated philosophical objection to providing experience-based, annual step increases is patently false and is intended, instead, to avoid reaching agreement on these issues.

UC's inability to pay argument is also pretextual from the standpoint of economics. Because of the high rate of turnover among Postdoctoral Scholars, who cannot work in this job more than five years by UC policy, a system of experience-based step increases would represent a one-time, relatively low cost to UC.<sup>4</sup> As UC's own records indicate, 72 percent of Postdoctoral Scholars already receive a salary or stipend, which, based on their years of experience, is at or above the rates that the Union is proposing in its experience-based step system proposal. These facts further belie UC's ability to pay arguments.

3. **Manufacturing an "unfunded mandate" issue concerning "Paid Direct" Postdocs in order to stall negotiations**

When the Union petitioned to represent Postdoctoral Scholars at UC in 2008, it did not seek to represent Postdoctoral Scholars-Paid Direct, because it had reason to believe that UC might object to their inclusion, given the statements to this effect that UC had made when the Union had filed for a unit that included the Postdoctoral Scholars—Paid Direct in 2006. UC, however, took the opposite stance in 2008, refusing to recognize the Union because the unit it sought did not include Postdoctoral Scholars-Paid Direct. UC offered the following rationale for its position in a letter to PERB dated September 5, 2008:

This random sampling of the Paid Directs' sponsoring institutions' operative documents reveals that the vast majority are silent on the

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<sup>3</sup> When NIH awards an individual Postdoctoral Fellowship, the stipend it provides for the individual is based on a scale that has steps based on years of Postdoctoral experience. In subsequent years of the award, the NIH provides a higher stipend based on that scale. Several hundred NIH Fellows, who work in labs at UC under the supervision of faculty members, are classified as Postdoctoral Scholars-Fellow. Due to NIH funding rules, UC is obligated to pay NIH fellows according to these experience-based step increases.

<sup>4</sup> The salary schedule for Kirschstein Fellows shows just how low the costs are: these Postdocs make only \$37,740 in their first year and top out at \$47,940 in their fifth. <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-10-047.html>. UC estimates that the PRO/UAW experience-based step proposal would represent a one-time cost of \$4 to \$5 million.

issue of any employment relationship between them and the Postdoctoral Scholars they sponsor. Others disavow any employment relationship and still other make it clear that the Postdoctoral Scholar retains an employment relationship with the sponsoring institution. *However, none of these relationships impair the ability of the Union to bargain with the University about the terms and conditions of employment within the control of the University even if the Postdoctoral Scholar has an employment relationship with a sponsoring institution.*

(emphasis added) The University went on to insist that including these Postdoctoral Scholars-Paid Direct in the same unit as other Postdoctoral Scholars was essential and that treating them separately would be "unworkable":

*It will be more efficient for the University to have one set of terms and conditions of employment for all the Postdoctoral Scholars. Furthermore, having all the Postdoctoral Scholar titles in one unit will avoid fragmentation of a homogeneous employment group. . . . This is especially important for two reasons: (1) many of the Postdoctoral Scholars move from title to title as their source of funding changes, and (2) many Postdoctoral Scholars hold dual appointments as Employee and Paid Direct, Postdoctoral Scholars. It would be unworkable to have an individual doing one body of work covered by different terms and conditions of employment.*

(emphasis added). A copy of the University's position statement is attached as Exhibit A to this charge.

The Union and the University therefore agreed to include these employees in the unit. UC did not raise any objections, practical or principled, to bargaining over the salaries and health benefits for Postdoctoral Scholars-Paid Direct at any time during the first year of bargaining.

On April 15, 2010, however, the University announced that (1) that it did not have any way to know what these Paid Directs are being paid or whether the terms of their agreements with their funding sources barred them from receiving financial support from UC, (2) that it had not made any effort to that point to collect that information and (3) that it would need until October 2010 to collect it. The University insisted that, until it obtained this information, it could not give any across-the board increases in salaries and benefits because that might expose it to the risk of a potential "unfunded mandate" and could, in some unknown number of cases, violate the terms of these Paid Directs' contracts.<sup>5</sup>

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<sup>5</sup> Even in the worst-case scenario, however, in which all of the Fellows and Paid Directs in question had funding restrictions, it would only cost the University \$1.6 million per year. This is an insignificant amount in the context of the nearly \$5 billion UC receives each year in research grants and contracts.

(cont.)

The University's sudden discovery that Paid Directs are different from other Postdocs is clear evidence of surface bargaining. The University did not claim in September 2008 that it would not be able to bargain over the salaries and benefits to be provided to Paid Directs—on the contrary, it stated that the University wanted to negotiate a single system of terms and conditions to cover employees who frequently moved between job titles and/or held two titles at a time.

Furthermore, UC's claim that it has no way of knowing what its Paid Directs are paid is simply false. The University's Academic Personnel Manual in fact requires the University to acquire this information and act on it:

- d. When extramural agencies establish stipends at a rate less than the University-established salary and stipend scale minimum, and the University elects to proceed with such an appointment, the campus is required to provide additional funding to bring the pay level of the Postdoctoral Scholar up to the established minimum. The mentor is required to arrange the additional funding prior to the begin date of an appointment.

\* \* \*

- g. A Postdoctoral Scholar in the "Postdoctoral Scholar – Fellow" or "Postdoctoral Scholar – Paid Direct" title may have his or her stipend supplemented with additional funding beyond the scale minimum. Supplementation must be in conformance with the terms of the fellowship or traineeship and, if paid with University funds, be paid in the "Postdoctoral Scholar – Employee" title. Except as provided in APM – 390-18-e for salaries paid above scale, the sum of stipend and salary may not exceed the maximum of the scale and must be consistent with campus criteria for determining the appropriate pay level of an individual Postdoctoral Scholar.

Its claim that it, one of the most sophisticated research universities in the world, lacks the information technology to keep track of what these employees are paid is dubious, to say the least.

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*(footnote 5 cont.)*

The University modified its stance slightly the next day by proposing an across-the-board 1.5% increase, including Fellows and Paid Directs, effective July 2010. The University continued to insist, however, that its alleged lack of detailed information on the content of Paid Directs' contracts made it unable to bargain over any greater increases prior to that date or any future increases.

But even if we gave the University the benefit of the doubt, and allowed for the possibility that it only discovered after bargaining commenced in January 2009 that it did not know the amount of salary and health benefits that its Paid Direct employees are receiving, the fact remains that it waited more than a year to claim that their lack of detailed information prevented them from bargaining and limited what they could offer in negotiations with the Union. Even more tellingly, the University waited another month *after* it first raised this issue with the Union in April 2010 to even initiate an effort to collect this information.

The University only discovered this supposed gap in its information, moreover, on the eve of a Congressional hearing on the University's delays in bargaining over these fundamental issues. This tells us two things:

- The University did not take negotiations over Paid Directs' salaries and benefits seriously enough to engage in the minimal investigation necessary to engage in meaningful negotiations on this issue.
- It then used its supposed uncertainty over their salaries and benefits as a pretext to excuse its past refusal to bargain over the subject, while delaying substantive discussions on this issue for another six months.

Either of these alone would be evidence of surface bargaining; together they are conclusive.<sup>6</sup>

The APM also belies UC's claim that it cannot bargain over wages. UC leaves it up to the department or supervisor under whom the Fellow or Paid Direct works to negotiate over any supplemental salary or benefits; in practice, the department or supervisor ends up paying something to hundreds of Fellows and Paid Directs. Yet while the University engages in one-on-one negotiations with nearly all Paid Directs, it claims it is unable to bargain with their collective bargaining representative on the same subject. That is the classic example of an employer that is unwilling to bargain.

#### **4. Surface bargaining over health care benefits**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by engaging in a pattern and practice of delay and surface bargaining over health care benefits. The University has engaged in the same pattern of surface bargaining on this issue, in which it ignored the Union's proposals while offering proposals of its own that even it did not take seriously, as it has on other issues. PRO/UAW made its initial proposal to make a number of improvements to

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<sup>6</sup> This is not, moreover, the only instance in which the University has failed to provide the Union with the information it has requested in a timely manner, then used its own failure to produce that information as an excuse for stalling negotiations. We deal with the additional evidence on that point in Section D(2) below.

Postdoctoral Scholar health benefits on May 13, 2009. During negotiations on June 10, 2009, a month later, one of UC's benefits representatives, Gary Stradiatto, informed PRO/UAW's bargaining team that they had not even passed the PRO/UAW proposal to their health insurance experts for costing, and that once the proposals were provided to those experts, the costing of the proposals would take several weeks to be completed. The University did not make a counterproposal regarding health care until July 27, 2009.

Furthermore, on August 19, 2009, the parties scheduled a special bargaining session to focus primarily on health insurance. At this meeting, UC gave the Union a proposal that would institute a new premium sharing arrangement that would significantly increase out-of-pocket costs for Postdoctoral Scholars. But even while it was making this offer, the University's lead negotiator, Gayle Saxton, was telling the Union's chief negotiator that the University was not really serious about its new premium sharing proposal.

It took the University more than six months, however, to present an offer that it did take seriously. That April 16, 2010 offer, however, was nearly meaningless, since it offered increases in the amount of premiums paid by the University, but only for the 2010 calendar year, while leaving benefits in later years to be determined later. UC has made it clear that it will demand sacrifices from Postdocs if it reopens the contract.

This April 16, 2010 offer would also leave Fellows and Paid Directs without any contractual right to health care coverage, based on UC's stated concerns about the creation of an "unfunded mandate" and the possibility that it might conflict with some Paid Directs' grant contracts. UC conceded, as noted above, that it had not made any effort to identify those individual Paid Directs for whom this might be a problem.

This lackadaisical approach to bargaining is the opposite of good faith bargaining. Nearly a year has passed since the Union presented its health care proposals, yet the University still claims it is unable to bargain over Paid Directs' benefits—an issue that it waited eighteen months to raise, after having taken the opposite position with PERB in 2008—because it had not bothered to look for the information it now claims it needs.

5. **Refusing to meet at reasonable times through representatives with authority to negotiate a collective bargaining agreement**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by failing to select representatives with the ability to reach agreement and by delaying high level meetings intended to discuss settlement offers

On October 27, 2009, PRO/UAW chief negotiator Mike Miller, UAW Assistant Regional Director Gary Jones, and Elected Postdoc Bargaining Committee Representative Matthew O'Connor met with UC VP of Human Resources and Benefits, Dwaine Duckett, UC chief negotiator Gayle Saxton, and UC Executive Director of Labor Relations Shelly Nielsen in an effort to settle the

contract. At Duckett's request, PRO/UAW made what Duckett acknowledged was a reasonable settlement offer. Duckett pledged to do everything in his power to convince his side to accept the offer or make a reasonable counterproposal and get back to Miller.

Duckett failed to respond to Miller for over a month. Then, on November 30, 2009, he inexplicably stated that UC would make no further movement from its previous offer. Duckett himself acknowledged the University's "nonproposal" was unreasonable. Duckett blamed "the Academics" for the unreasonable offer, referring to a presentation he had made to the UC system-wide Academic Senate and feedback he had gotten there.

After the November 30, 2009 non-proposal, Duckett did not return phone calls from Miller until January 22, 2010. At that time he said he would like to schedule another meeting to discuss settlement.

After scheduling a meeting for February 8, 2010, Duckett canceled. The parties then rescheduled this meeting for February 17, 2010 to ensure his attendance. After that he did not even attend the meeting of February 17th, sending his staff instead, which defeated the purpose offered by UC for delaying the earlier meeting and the reason the Union agreed to the delay.

At the meeting on February 17th, the only change UC made to its previous proposal was to offer an across-the-board increase of 1.5% for fiscal year 2011, effective October 1, 2010. This offer was not only wholly out of step with what UC was simultaneously offering similarly situated employees represented by CWA, but means that the University spent over a year in negotiations before coming up with a proposal that would not provide any pay increase for the first two years that the Union had represented Postdoctoral Scholars.

The University has not changed its position since then. Indeed, at the bargaining session on April 23, 2010, Saxton said she would have to check with her superiors to see whether UC would even be willing to move from its previous proposal.

On May 14, 2010, the Union proposed bargaining for three days during the week of May 24 to settle the contract. In response, on May 17, UC chief negotiator Gayle Saxton said that UC would not have salary data collected until the end of May, and that it would make sense instead to meet to bargain over Layoff, No Strikes, and Appointments, which, she said, should take less than three days. Saxton proposed meeting on May 25 or June 2 and 3.

The Union then proposed to meet on May 25 and June 2 and 3 to settle the contract, since UC said it would have gathered the salary information it said it needed to bargain over the remaining economic topics, as well as Layoff, No Strikes, and Appointments. On May 18, 2010, UC chief negotiator Gayle Saxton responded again, agreeing to the May 25 date, but this time claiming that, while UC was willing to meet on June 2 and 3, it would not be able to complete its

salary analysis until the end of June – rather than the end of May as previously stated.

When the parties met on May 25, 2010, the University produced *no* proposals on Layoff, No Strikes, or Appointments even though the University (1) owed the Union counterproposals on all three topics and (2) had proposed meeting on that day to discuss them. Saxton also reiterated in this meeting that UC would not be in a position to make any economic proposals until the end of June, at the earliest.

The pattern is clear. UC promised to engage in meaningful bargaining with the Union, then reneged on those promises. When the Union pressed the University to agree to dates to discuss the remaining issues, the University agreed, then either backed out of its agreement or showed up on the agreed-upon date unprepared to bargain.

**6. Manufacturing impasse by refusing to bargain in good faith**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by bargaining in bad faith so that it can declare impasse between the parties.

The University revealed its strategy some time ago. In September 2009, then Executive Director of Labor Relations, Lynn Boland, told the Union, as she was trying to help resolve the contract dispute before she left UC, that UC would not alter its proposals in any meaningful way because UC thought it could win a favorable fact finding report at impasse and/or be able to impose conditions after fact finding and that they were waiting for impasse to occur.

Most recently, UC confirmed its desire to reach impasse in a settlement conversation on February 17, 2010, with UC chief negotiator Gayle Saxton and Executive Director of Labor Relations Shelly Nielsen and UAW chief negotiator Mike Miller, UAW Assistant Regional Director Gary Jones, UAW International Representative Ken Lang and Elected Postdoc Bargaining Committee Representative Matthew O'Connor. At that meeting, Saxton and Nielsen made clear that, if the Union were not to agree to the University's proposals, then the parties "would likely be heading for impasse."<sup>7</sup>

This eagerness to reach impasse is the opposite of good faith bargaining. It is one thing for an employer to take a position in which it sincerely believes and to bargain hard for its goals. It is another matter altogether, however, for an employer (1) to refuse to engage in serious negotiations over economic terms, based on patently false justifications, such as the Budget crisis, or a newfound philosophical aversion to experience-based step increases, (2) to claim it is unable to negotiate over economic terms because it has not investigated the cost of the Union's proposals, while delaying any efforts to acquire that information, (3) to make offers that the University did not intend to be taken seriously, but which it

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<sup>7</sup> The University has, moreover, taken this message that negotiations are "stalemated" to employees, as detailed at greater length in Section E below.

left unchanged for months while bargaining on that subject remained in limbo, (4) to renege on promises to provide counteroffers and to break scheduling agreements, and (5) to send negotiators to the table without the authority to engage in meaningful bargaining. The University has devoted more energy to finding ways to avoid engaging in bargaining than it has to solving disputes.

UC's refusal to negotiate in good faith warrants an issuance of an unfair practice complaint. The Union seeks an order (1) finding that UC violated HEERA § 3571(a) and (c) and (2) requiring UC to negotiate in good faith.

## **B. REFUSAL TO BARGAIN—REGRESSIVE BARGAINING**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by engaging in regressive bargaining over Postdoctoral Scholar layoffs.

On April 15, 2010, the University proposed, for the first time in 15 months of negotiations, language that UC have sole discretion in the determination of layoffs. The April 15th proposal stated:

The University shall have sole discretion to determine when layoffs shall occur. Layoff is defined as an involuntary separation, or a reduction in percent effort or duration of appointment for a Postdoctoral Scholar prior to the established appointment end date as a result of appropriate funding becoming unavailable.

UC's previous proposals regarding layoffs included no such language. Indeed, UC's last proposal merely stated the following regarding layoffs:

Layoff is defined as an involuntary separation, or a reduction in percent effort or duration of appointment for a Postdoctoral Scholar prior to the established appointment end date as a result of a lack of funds or the premature unanticipated termination of the research project due to circumstances beyond the control of the University.

Similarly, on February 6, 2009, and June 2, 2009, UC proposed the following language:

Layoff is defined as an involuntary separation, or reduction in time in a Postdoctoral Scholars title, prior to the established end date as a result of a lack of work, or a lack of funds.

When questioned about the new language on April 15, 2010, UC's chief negotiator, Gayle Saxton, claimed the language did not change the meaning of its proposal. Yet she refused to remove the language, which, on its face, gives the University much broader discretion than its previous proposals.

UC's regressive bargaining tactics are a refusal to negotiate in good faith and warrant issuance of an unfair practice complaint. The Union seeks an order

finding that (1) UC violated HEERA § 3571 (a) and (c) and (2) requiring UC to rescind its regressive bargaining position and negotiate in good faith.

### **C. REFUSAL TO BARGAIN—UNILATERAL CHANGES**

Within the last six months, UC has violated HEERA § 3571 (a) and (c) by making unilateral changes to Postdoctoral Scholar childcare benefits at UC Santa Cruz.

On December 3, 2009, Jean Marie Scott, Associate Vice Chancellor for the Division of Student Affairs, wrote to Postdoctoral Scholars to inform them that they would no longer have access to the campus child care center, a benefit previously provided to Postdoctoral Scholars. The change went into effect on January 4, 2010.

The University did not bargain over this change to Postdoctoral Scholar access to the campus child care center, much less secure the Union's agreement to it. In fact, the Union and UC had reached a tentative agreement on access to childcare services on July 30, 2009:

Postdoctoral Scholars shall have access to current general campus facilities and services as outlined in Appendix \_\_\_\_\_. Nothing shall limit the University's ability to improve Postdoctoral Scholar access to the facilities listed in Appendix \_\_\_\_\_.

For the Santa Cruz campus, the appendix states that Postdoctoral Scholars have the same access as academic and staff employees. At the time of the tentative agreement, these employees had access to campus child care services.

UC's refusal to negotiate in good faith warrants an issuance of an unfair practice complaint. The Union seeks an order (1) finding that UC violated HEERA § 3571(a) and (c) by making a unilateral change to childcare benefits at UC Santa Cruz, (2) restoring the child care benefits to Postdoctoral Scholars which were taken away, and (3) making any affected unit members whole for the loss of childcare benefits from the date of the unilateral change.

### **D. REFUSAL TO BARGAIN—FAILURE TO PROVIDE INFORMATION**

#### **1. Failing to provide requested information**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by refusing to provide relevant and necessary information to the Union.

The University has failed to give the Union critical information necessary and relevant for bargaining over important unresolved issues. The following list summarizes the most relevant categories of information requested and still outstanding, followed by an explanation of the relevance of the information in bargaining. The Union requested this information repeatedly in writing on

December 19, 2008, February 6, 2009, April 17, 2009, July 17, 2009, August 26, 2009, March 17, 2010, and April 20, 2010, as well as in numerous verbal requests. See Exhibit B for a complete listing of outstanding requested information.

a. **Stipend Information.** The Union has made written demands for information regarding stipends and sources of stipends for Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs on December 19, 2008, July 17, 2009, August 26, 2009, March 17, 2010, and April 20, 2010. In light of the University's recent assertion that it would be prohibited from providing increases to some number of Postdoctoral Scholar—Fellows or Postdoctoral Scholar—Paid Directs due to funding agency restrictions, it is critical that the Union have the information, which it requested many months ago, that would allow it to assess that claim.

- **Source of stipend (Item #1N of March 17 Memo).** This information would enable the Union to understand the range of practices among funding agencies that award fellowships to Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs in relation to proposals regarding salary/stipend increases and assess the University's claim that there might be prohibitions or restrictions on providing an increase to any of these employees.
- **Information regarding Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs (Item #92 of March 17 Memo):** In Item #92, requested on July 17, 2009, March 17, 2010, and April 20, 2010, the Union requested a number of items of information regarding Fellows and Paid Directs, including, but not limited to, any agreements between funding agencies and the University regarding Fellows or Paid Directs (including those referenced in the University's September 5, 2008, letter to PERB), description of how the University determines the overall stipend/salary rate for Fellows and Paid Directs, and a description of the process for setting up the appointment at the University. Like the information in item #1N, this information would enable the Union to evaluate the University's assertion that there may be prohibitions or restrictions on providing increases to some Postdoctoral Scholar—Fellows or Postdoctoral Scholar—Paid Directs. Additionally, in response to the University's assertion in bargaining on April 15, the Union requested any policies, guidelines, or other information from external funding agencies that would show how the University would be prohibited from providing either a supplemental appointment or additional compensation to increase a Fellow or Paid Direct overall pay rate.

b. **Health Insurance.** On April 17, 2009, July 17, 2009, and again on March 17, 2010, the Union requested a breakdown of Postdoctoral Scholar – Fellows and Postdoctoral Scholar – Paid Directs who are on the Postdoctoral Scholar Benefits plan by (1) the number who have their premiums paid by the University and (2) the number who pay their own premiums. Since the

University is still proposing that it not be required to pay the health insurance premium for Fellows and Paid Directs, the Union cannot assess UC's claims that agreement cannot be reached on health benefits, because doing so may possibly create an "unfunded mandate."

c. **Information regarding Layoffs.** The University has provided incomplete information on the number of layoffs during the 2008-2009 year and no information from other years. The University's failure to provide this information obstructs the Union's ability to bargain over one of the outstanding topics in the negotiations by making it harder to determine just what working conditions Postdocs have been working under and to evaluate what precautions would be necessary in cases of layoff, what criteria should be applied if the University were to have the right to lay off Postdoctoral Scholars, and whether UC needs the right to lay off Postdoctoral Scholars at all, given the short-term nature of Postdocs' appointments, especially under UC's current Appointments proposal.

d. **Information regarding Grants and Contracts.** The Union requested a number of pieces of information regarding Grants and Contracts in Items #78, #79, and #80 on February 6, 2009, July 17, 2009, August 26, 2009, March 17, 2010, and April 20, 2010. The Union requested, among other things, copies of a representative sample of grants and their accompanying documents (application, budget, breakdown of actual expenditures, etc.), copies of all guidelines for writing grant proposals from each campus, and copies of all expenditure reports from grants and contracts. While the University and the Union have had some discussion of the guidelines used for grant applications, the Union has not received any of the other requested information. Since virtually all Postdoctoral Scholars are funded from grants and contracts from extramural sources, this information is critical to the Union's ability to assess all outstanding economic proposals and the University's "unfunded mandate" argument.

UC's refusal to provide the Union with necessary and relevant information, especially in light of their newfound claims that the information is necessary to bargain, is tantamount to a failure to negotiate in good faith and warrants an issuance of an unfair practice complaint. The Union seeks an order: (1) finding that UC violated HEERA § 3571 (a) and (c), (2) requiring UC to negotiate in good faith; and (3) ordering UC to immediately provide all requested information to the Union.

2. **Using its own failure to provide information as a tactic to delay negotiations**

Within the last six months, UC has violated HEERA § 3571(a) and (c) by using its own failure to provide information as a reason to not reach agreement.

During negotiations on Friday, April 16, 2010, the University indicated it could not increase stipends, beyond the one-time 1.5% increase, for some unspecified number of Postdoctoral Scholars—Paid Direct and Postdoctoral

Scholars—Fellow. UC chief negotiator Gayle Saxton presented proposals on Compensation and Duration that postponed bargaining over economic issues for the unit as a whole for calendar year 2011 and beyond until October of 2010.

In explaining the proposals, Saxton stated, for the first time after more than 15 months of negotiations, that potential funding restrictions by extramural agencies could prohibit the University from increasing stipends for some number of Postdoctoral Scholars—Paid Direct and Postdoctoral Scholars—Fellow, who make up a small minority of the bargaining unit. Saxton used this unsubstantiated claim to make a proposal that would postpone reaching agreement on wages and benefits for months or years.

Saxton could not provide any contractual support for this newfound claim, nor could she provide the number of employees impacted or the cost to provide them wage increases. The University proposes surveying all Paid Directs one at a time to acquire this information and has indicated it will take considerable time to compile that information.

The University had never raised this issue prior to April 15, 2010, even though the Union had made repeated written requests for information related to these issues on December 19, 2008, February 6, 2009, March 10, 2009, July 17, 2009, August 26, 2009, March 17, 2010, and April 20, 2010. Nor had the University ever suggested that the University did not have sufficient information to cost out proposals; on the contrary, the University had provided the Union with a costing document in July 2009, on which both sides had relied to cost their proposals throughout bargaining, without ever stating that these cost estimates were deficient or an obstacle to settlement.

Despite making this claim on April 15, moreover, UC did not even begin attempting to gather the information until May 5, when UC Vice President for Research and Graduate Studies Steve Beckwith directed the campuses to do so, delaying the process for an additional three weeks. It was only after a public Congressional hearing on April 30 looking into why the contract negotiations had taken so long that UC actually took action to gather the information, underscoring the surface nature of its stated "need" for the information.

This is a pretext for refusing to bargain. The University's own Academic Personnel Manual requires it to acquire this information at the outset of a Postdoc's employment. Even if it did not have this information in January 2009, there is no justification for waiting until May 2010 to make the first tentative efforts to acquire it.<sup>8</sup>

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<sup>8</sup> The Union has grave reservations, moreover, about the method that the University says it will use to acquire this information. The University has already engaged in direct dealing with employees, as described in Section E below, and has exhibited favoritism toward those employees who are trying to decertify the Union, as discussed in Section F below. This one-on-one method for collecting information gives the University an avenue to continue its unlawful conduct, but on a much more widespread basis.

If the University had fulfilled the Union's information requests, this information would already be available. The University's failure to provide this information on a timely basis violates both HEERA and the California Public Records Act. Moreover, the fact that the University delayed even attempting to fulfill the Union's information request for 15 months, and then used its own unsubstantiated claim about possible funding restrictions as the basis to further delay bargaining, makes clear that the University is engaged in surface bargaining.

UC's refusal to negotiate in good faith warrants an issuance of an unfair practice complaint. The Union seeks an order (1) finding that UC violated HEERA § 3571(a) and (c), (2) requiring it to provide the information sought by the Union and (3) requiring UC to negotiate in good faith.

#### **E. REFUSAL TO BARGAIN—DIRECT DEALING WITH EMPLOYEES**

Within the last six months, UC has violated HEERA § 3571(a) and (d) by engaging in direct dealing with Postdoctoral Scholars.

In what would become a pattern of behavior over the course of negotiations, Professor Jerry Hedrick, a member of the management bargaining committee, engaged in direct dealing, thus circumventing the bargaining process, at a February 11, 2009, meeting of the UC Davis Postdoctoral Scholars Association (PSA), a University-sponsored and funded organization of Postdoctoral Scholars. Professor Hedrick engaged in discussions about and volunteered to advise a subcommittee on "mentoring" that would develop guidelines for a Postdoc handbook. Not only is this a subject within the scope of bargaining, but the Union had given its initial proposal on the subject of mentoring just five days earlier in the first formal meetings between the parties, making crystal clear to UC that PRO/UAW intended to bargain over it.

University representatives more recently engaged in direct dealing with bargaining unit members on December 10, 2009 by discussing in detail the status of negotiations at a UC San Francisco Academic Senate Graduate Council meeting at which Postdoctoral Scholars were present. At this meeting, a University administrator, Farid Chehab, gave a report regarding negotiations attributed to Professor Hedrick, who had given the report at a previous University meeting.

This report was aimed at driving home the message that bargaining was futile. Chehab stated that UC and UAW were "stalemated" on six articles and that the parties had "stopped negotiating," which was inaccurate and misleading. Chehab also emphasized that the University had no incentive to compromise on certain critical items, such as layoffs, appointments, benefits, wages, contract duration, and strikes because the status quo was satisfactory. This report was also given at other meetings, as attested to by Saxton's March 2, 2010 letter, a copy of which is attached as Exhibit C.

These mischaracterizations of negotiations are not only indicia of surface bargaining, but evidence of the University's attempt to go over the Union's head to negotiate with employees, while stressing the futility of collective bargaining.

UC's refusal to negotiate in good faith warrants an issuance of an unfair practice complaint. The Union seeks an order (1) finding that UC violated HEERA § 3571(a) and (c), (2) barring it from engaging in direct dealing with employees over bargainable matters and (3) requiring UC to negotiate in good faith.

## **F. INTERFERENCE WITH EMPLOYEES' PROTECTED RIGHTS**

### **1. Favoritism toward advocates of decertification**

Within the last six months, UC has violated HEERA § 3571(a) and (d) by interfering with the Union's representation of unit members and aiding individuals in their efforts to decertify the Union.

On December 2, 2009, UC Chief Negotiator, Gayle Saxton received an email requesting the names of postdoctoral research employees, email addresses, and department/campus information from an individual who was attempting to decertify the Union.

In response to this email, Saxton directed Myron Okada, the Academic Employee Relations Manager and a member of UC's bargaining committee for Postdoctoral negotiations, to provide the names of all employees and their department/campus affiliation to the individual interested in decertifying the Union. Although the University did not release email addresses, Okada helpfully responded to the individual via email and referred the individual to online campus directories in order to obtain employees' email addresses.

Although the University claims that its response to this information request was consistent with the Public Records Act, the author of that email request did not invoke the Public Records Act. Nor did the University treat it as such: rather than refer the request to the appointed public information officer pursuant to University protocol for public records act requests, the University responded directly. It also responded to this request far more expeditiously, providing the requested information within 15 days, than it has when the Union has requested information

Saxton was aware that this individual was attempting to decertify the Union. The University's favored treatment of his information request constitutes unlawful assistance for this individual's efforts to decertify the Union, interferes with the Union's efforts to represent its members and violates HEERA.

### **2. Publicizing a website hosted by advocates of decertification**

Within the last six months, UC has violated HEERA § 3571(a) and (d) by encouraging unit members to view a website advocating decertification of the

Union. On different campuses, Administration officials have disseminated a website that promotes decertification of PRO/UAW as the collective bargaining representative of Postdoctoral Scholars and encouraged Postdocs to review the website.

In December 2009, Human Resources Personnel Luci Pacocha sent the website address to bargaining unit members in the Physics Department at UC Riverside.

On or around December 1, 2009, the address of the website opposing PRO/UAW was forwarded to the UC Davis Postdoctoral Scholars Association (PSA) list serve. As the PSA is the UC-sponsored organization of Postdocs, the message thus went to nearly all Postdocs at UC Davis. This message was sent at the behest of the same individual to whom UC gave the list of Postdoctoral Scholars.

As noted in Saxton's January 19, 2010 correspondence to Christine Des Jarlais, the Assistant Dean of Postdoctoral Affairs and Graduate Outreach at UCSF and a member of UC's bargaining committee for Postdoc negotiations, and Guy Zuzovsky, the Labor Relations Manager at UCSF, PSA is an extension of the University Administration, and any representations by PSA are directly attributable to the University. The dissemination of the website is in direct violation of the University's obligation to act in a neutral manner.

On or about December 1, 2009, UC posted an email advocating decertification of UAW by the same individual to whom Saxton gave the list of all Postdocs at UC on a Scripps Institute of Oceanography website.

On December 10, 2009, in a UC San Francisco Academic Senate Graduate Council meeting at which Postdoctoral Scholars were present, a University administrator, Dr. Farid Chehab, discussed positively as an "item of interest" and provided the address for the website advocating decertification of the UAW while giving a report on the ongoing negotiations. Dr. Chris Des Jarlais, another University bargaining team representative, was in attendance and made no efforts to stop the administrator from providing this report and the website or to disclaim support for it.

UC's unlawful conduct warrants an issuance of an unfair practice complaint. The Union seeks an order (1) finding that UC violated HEERA § 3571(a) and (d) and (2) ordering that UC immediately cease and desist from engaging in any activities to decertify the Union or support employees' attempts to do so.

# **EXHIBIT A**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
OFFICE OF THE GENERAL COUNSEL

COPY  
FILE

SEP 09 2008



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September 5, 2008

Regional Director Anita Martinez  
Public Employment Relations Board  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514

Re: University Response to PRO/UAW Request for Recognition - PERB No. SF-RR-914-H

Dear Ms. Martinez:

This letter is the University of California's (the "University") response to the petition for representation, Case No. SF-RR-914-H, filed on July 1, 2008, by the Postdoctoral Researchers Organization/United Auto Workers ("PRO/UAW" or the "Union"). The University files this response pursuant to PERB Regulation 51080.

Pursuant to that Regulation, the University responds as follows:

Format B: Denial of Recognition

- (1) Name, address and telephone number of the employer, and name, address and telephone number of the employer agent to be contacted:

University Counsel Leslie L. Van Houten  
Office of the General Counsel  
Regents of the University of California  
1111 Franklin Street, 8<sup>th</sup> Floor  
Oakland, CA 94607  
(510) 987-9800

Executive Director Howard Pripas  
Labor Relations  
University of California  
Office of the President  
300 Lakeside Drive  
Oakland, CA 94612  
(510) 987-0196

- (2) Attach a copy of the request for recognition: (See attached);

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- (3) **Reasons for Denial of Recognition:** The University denies the request for recognition on the grounds that the unit petitioned for is not appropriate.

I. **INTRODUCTION**

The PRO/UAW has petitioned for the following unit:

All Postdoctoral Scholars and Postdoctoral Fellows in title codes including but not limited to:

Postdoctoral Scholars - Employee (Title Code 3252);

Postdoctoral Scholars – Fellow (Title Code 3253);

Postgraduate Researcher – FY (Title Code 3240);

Postgraduate Researcher – AY State Funds (Title Code 3243);

Postgraduate Researcher – AY Extramural Funds (Title Code 3245); and

Visiting \_\_\_\_\_ - Postdoc (Title Code 3370)

in a statewide unit at all University of California campuses, research programs and units.

**SHALL EXCLUDE:**

Postdoctoral Scholars – Paid Direct; employees defined by HEERA as managerial, supervisory and/or confidential; student employees whose employment is contingent on their status as students; and all employees of Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory and Los Alamos National Laboratory.

The University objects to the unit on the grounds that one of the titles sought to be excluded, the Postdoctoral Scholar - Paid Direct, Title Code 3254 ("Paid Directs), is properly within the unit. As will be shown below, the Paid Directs have a community of interest with the two petitioned

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for titles, the Postdoctoral Scholars - Employee, Title Code 3252 ("Employees") and Postdoctoral Scholars - Fellow, Title Code 3253 ("Fellows").<sup>1</sup>

It is not clear why the Union excluded the Paid Directs from the unit. This choice is particularly interesting because the Paid Directs are very similar to the Fellows as both groups of Postdoctoral Scholars receive their funding from outside agencies. In the case of the Fellows, the funds are funneled through the University, and the Fellows receive either a paycheck or a payment from accounts receivable depending on campus practice. Paid Directs receive their pay, as the name aptly suggests, directly from the funding agency. Additionally, the University urges PERB to take judicial notice of the representation petition filed by the Union in 2006, SF-RR-888-H. In that petition, the Union considered the Paid Directs to be appropriately within the unit.

The discussion below will establish that the exclusion of the Paid Directs from the unit is an artificial one and not based on sound policy or legal grounds.

II. THE EMPLOYEE POSTDOCTORAL SCHOLARS, THE FELLOW POSTDOCTORAL SCHOLARS, THE PAID DIRECT POSTDOCTORAL SCHOLARS

A. Policies

In July 2003, the University promulgated a new policy covering the Postdoctoral Scholars throughout the University. APM 390 states:

**390-0 Policy**

This policy defines and sets forth terms and conditions relating to the appointment of Postdoctoral Scholars. It applies to both (1) Postdoctoral Scholars who are employees of the University and (2) Postdoctoral Scholars who are appointed as fellows and are paid stipends by extramural agencies either directly or through the University.

The policy acknowledges that there are three different types of Postdoctoral Scholars and the difference is their source of funding. However, other than the source of funding and in some

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<sup>1</sup> Please note that four of the petitioned for titles, 3370 (Visiting Postdoctoral Scholar) and 3240, 3243 and 3245 (Post Graduate Researchers) are being phased out and the titles will be eliminated in 2010. There are no incumbents in 3243 and 3245. No one new has been appointed to 3240 or 3370 since 2004. For purposes of this response, the University will refer to the petitioned for titles as only the Employee and Fellow Postdoctoral Scholar titles. However the University does not dispute that title code 3370 and 3240 belong in this unit with the understanding that those titles will be eliminated in 2010. (See APM 390, Transition Guidelines, No. 5.)

instances eligibility for certain benefits, all of their terms and conditions of employment are the same.<sup>2</sup>

### **390-8 Titles**

The title of a Postdoctoral Scholar appointment is determined by the requirements of the funding agencies.

**a. Postdoctoral Scholar – Employee**

An appointment is made in the title "Postdoctoral Scholar – Employee" when (1) the agency funding the salary requires or permits the appointee to be an employee of the University, or (2) whenever General Funds, Opportunity Funds or other University discretionary funds are used to support the position.

**b. Postdoctoral Scholar – Fellow**

An appointment is made in the title "Postdoctoral Scholar – Fellow" when the Postdoctoral Scholar has been awarded a fellowship or traineeship for postdoctoral study by an extramural agency and the fellowship or traineeship is paid through a University account.

**c. Postdoctoral Scholar – Paid Direct**

An appointment is made in the title "Postdoctoral Scholar – Paid Direct" when the Postdoctoral Scholar has been awarded a fellowship or traineeship for postdoctoral study by an extramural agency and the agency pays the fellowship or traineeship directly to the Postdoctoral Scholar, rather than through the University. Such appointments shall have a "without-salary" status.

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<sup>2</sup> All total there are approximately 5,500 Postdoctoral Scholars in these three titles. There are approximately 4,600 Employee Postdoctoral Scholars; approximately 600 Fellows and approximately 300 Paid Directs. Some of the Paid Directs have a dual appointment and hold an Employee Postdoctoral Scholar title as well. These employees are in both titles because it is the University's policy to ensure that all Postdoctoral Scholars receive the same pay. Thus, if a Paid Direct's stipend is not sufficient to meet the University's salary scale, the Paid Direct will receive the difference and be appointed to the Employee title at an appointment rate based on the salary differential. (See APM 390-18d.)

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- d. Postdoctoral Scholars may be assigned to more than one Postdoctoral Scholar title concurrently depending on University and extramural funding agency requirements.

Other than APM section 390-8, there are no sections of APM 390 that treat Paid Directs differently from Postdoctoral Fellows. There are policy distinctions between Postdoctoral Employees on the one hand and Postdoctoral Fellows and Paid Directs on the other, as follows:

#### **390-18 Salary and Stipend**

- g. The effective date of merit increases shall be established by the campus. Increases to "Postdoctoral Scholars – Fellow" and "Postdoctoral Scholars – Paid Direct" should be provided in accordance with the provisions of the extramural funding agency.

#### **390-60 Sick Leave**

- a. "Postdoctoral Scholars – Employee" are eligible for paid sick leave of up to twelve days per twelve-month appointment period. Unless the extramural funding agency has different sick-leave requirements, "Postdoctoral Scholars – Fellow" and "Postdoctoral Scholars – Paid Direct" are also eligible for paid sick leave of up to twelve days per twelve-month appointment period.
- b. For "Postdoctoral Scholars – Employee," unused sick leave shall be carried forward to subsequent Postdoctoral Scholar appointments. Unless the extramural funding agency has different requirements, the unused sick leave of "Postdoctoral Scholars – Fellow" and "Postdoctoral Scholars – Paid Direct" shall be carried forward to subsequent Postdoctoral Scholar appointments.

#### **390-61 Time Off**

Postdoctoral Scholars do not accrue vacation. "Postdoctoral Scholars – Employee" are expected to take time off each academic year in the intersession and recess periods (which constitutes about four weeks, excluding University holidays) between the beginning of Fall Term and the end of Spring Term.... Unless the extramural funding agency contains provisions to the contrary, "Postdoctoral Scholars – Fellow" and "Postdoctoral Scholars – Paid Direct" are eligible to take time off under these same conditions. Postdoctoral

Scholars will remain on pay status during intersession and recess periods or their alternatives.

**390-62 Childbearing, Parental and Family and Medical Leave**

- a. Postdoctoral Scholars are eligible for childbearing leave, parental leave, and active service-modified duties as provided in APM - 760 and for family and medical leave as provided in APM - 715. ...
- c. Childbearing, parental, and family and medical leave policies for "Postdoctoral Scholars – Fellow" and "Postdoctoral Scholars – Paid Direct" are subject to the requirements of the Postdoctoral Scholar's extramural funding agency.

**390-75 University of California Retirement Plan Membership**

"Postdoctoral Scholars – Employee" contribute to the University of California Defined Contribution Plan as Safe Harbor participants and are not eligible for the University of California Retirement Plan. "Postdoctoral Scholars – Fellow" and "Postdoctoral Scholars – Paid Direct" are not eligible for either plan.

Furthermore, there are numerous sections that deliberately treat Paid Directs as equivalent to and no different from the other two types. Examples include:

**390-17 Terms of Service**

- b. The total duration of an individual's postdoctoral service may not exceed five years, including postdoctoral service at other institutions.

**390-18. Salary and Stipend**

- f. Except as provided in APM - 390-18-e for salaries paid above scale, the sum of stipend and salary may not exceed the maximum of the scale and must be consistent with campus criteria for determining the appropriate pay level of an individual Postdoctoral Scholar. [The exception in "18-e" is that Chancellors may approve above-maximum salaries for any Postdoctoral Scholar.]

### **390-19 Appointment Percentage**

- a. Appointments to the Postdoctoral Scholar title are full time, based on the expectation that the Postdoctoral Scholar will be fully involved in scholarly pursuits. In special cases, upon written request of the appointee and concurrence of the mentor, an exception may be granted.

When a reduced-time appointment has been approved, the mentor and Postdoctoral Scholar shall sign a written agreement specifying the reduction in hours of work and concomitant responsibilities.

### **390-21 Notice of Appointment**

A Postdoctoral Scholar shall be provided a written notice of appointment.

### **390-40 Grievances**

- a. A Postdoctoral Scholar may present a grievance according to the following procedures.

### **390-50 Corrective Action and Dismissal**

- a. The University may impose corrective action or dismissal when, in its reasoned judgment, the Postdoctoral Scholar's performance or conduct merits the action.

Interestingly enough, as this policy review establishes, there is much in common between the Fellows, who the Union has determined should be in the unit, and the Paid Directs, who the Union has excluded from the unit. As will be established below, not only is there a community of interest between the Fellows and the Paid Directs, there is a community of interest among the Employee Postdoctoral Scholars, the Fellows and the Paid Directs.

### **B. What Is a Postdoctoral Scholar?**

A Postdoctoral Scholar, be she an Employee Postdoctoral Scholar, a Fellow or a Paid Direct, is a recently-minted Ph.D. who is electing to receive further training prior to going into an academic and/or research career. All Postdoctoral Scholars must have a Ph.D.

All Postdoctoral Scholars conduct research under the direction of faculty advisors. The faculty advisor is doing research which is compatible with the Postdoctoral Scholar's areas of research

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interest. The faculty advisor is generally the Principal Investigator (PI) on a grant and runs the laboratory or research project where the Postdoctoral Scholar pursues her research and where she works.

Postdoctoral Scholars work in the PI's laboratory or on the research project with other University employees including faculty and other research staff. Many actually supervise other staff working in the laboratory or on the project. Postdoctoral Scholars are expected to publish and otherwise participate in the research life of the University.

Many have different sources of funding throughout their postdoctoral experience. For example, one quarter a Postdoctoral Scholar may be appointed as an Employee Postdoctoral Scholar and the next year, she may be a Fellow and the following year, a Paid Direct. To further complicate matters, an individual may have a dual appointment as a Paid Direct and an Employee Postdoctoral Scholar at any given time. Thus, a Postdoctoral Scholar may stay in the same laboratory, working for the same PI, doing the same research and nothing will change except her source of funding.

### C. The Paid Directs

The Paid Directs all have sponsoring agencies which fund their postdoctoral experience. The following are some the representative agencies currently supporting Postdoctoral Scholars at the University: UC Mexus-Conacyt, the Fulbright Foreign Scholarship Board, the Hewitt Foundation, the Japan Society for Promotion of Science, Duetche Forschungsgemeinschaft, the National Science Foundation, Ben Gurion University, National Academies, European Molecular Biology Organization (EMBO), the Swiss National Science Foundation, Wellcome Trust, International Human Frontier Science Program (HFSP), University Corporation for Atmospheric Research (UCAR), the National Science Foundation, the Natural Sciences and Engineering Research Council for Canada (NSERCC) and the China Scholarship Council.

Some sponsoring agencies are very specific about the relationship between them and the Postdoctoral Scholar.<sup>3</sup> Some state that the Postdoctoral Scholar is not an employee of the sponsoring agency. For example the EMBO form notes: "The fellow is not, therefore, an employee of EMBO which cannot accept liability for his/her actions, liability, health, safety or research expenditures." The Wellcome Trust's documents also contemplate that there will be an employer-employee relationship between the University and the Wellcome fellow. The operative document notes: "Dr. x's full employment costs: these comprise the Fellow's basic salary as determined by the Host Institution, . . . It is a condition of the award that the Fellow should be granted the status and prerogatives of other academic staff. . . ." The HFSP also

<sup>3</sup> And for some, we cannot tell because we do not have translations of the operative documents.



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disclaims any employer relationship. Its documentation notes: The fellowship should not be considered as a "work contract between HFSP0 and the holder of the fellowship."

A few others actually note that there is some kind of continuing employment relationship between the sponsoring institution and the Postdoctoral Scholar. The Kosin University College of Medicine in its affidavit of financial support notes: "[The postdoctoral scholar] is presently associate professor at Department of Neurology. Dr.[x] will receive his regular salary. . . ." It also appears that the UCAR contemplates an employer-employee relationship as its letter to the postdoctoral scholar says: "UCAR offers a comprehensive benefits package including group health, dental, life insurance, sick leave, paid time off (PTO) and mandatory participation in the UCAR TIAA/CREF retirement plan."

This random sampling of the Paid Directs' sponsoring institutions' operative documents reveals that the vast majority are silent on the issue of any employment relationship between them and the Postdoctoral Scholars they sponsor. Others disavow any employment relationship and still others make it clear that the Postdoctoral Scholar retains an employment relationship with the sponsoring institution. However, none of these relationships impair the ability of the Union to bargain with the University about the terms and conditions of employment within the control of the University even if the Postdoctoral Scholar has an employment relationship with a sponsoring institution.

### III. LEGAL ANALYSIS

#### A. Community of Interest

Government Code section 3579 sets forth the criteria to be examined when making unit decisions. The criteria for examining the community of interest are set forth in section 3579(a)(1).<sup>4</sup>

#### 1. The Extent to Which Employees In Question Perform Functionally Related Services or Work Towards Established Goals

All Postdoctoral Scholars, Employees, Fellows and Paid Directs, are involved in doing the research of the University. While the subject matters and the research itself vary, the service all

<sup>4</sup> Government Code Section 3599(a)(1) says:

The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

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Postdoctoral Scholars perform is research related. As the University of California, Office of the President's website states:

*The University of California's reputation as a research powerhouse is built not only upon the strengths of its faculty researchers and scholars, but is due in large measure to the achievements of its students, both graduate and undergraduate. In addition, post-doctoral researchers play key roles in many laboratories, departments and research units, generating much of the leading-edge research that helps to keep California in the forefront of science and technology.*

<http://www.ucop.edu/research/ucres.html> (Emphasis added.)

All Postdoctoral Scholars perform the same type of work, research, and they all work towards the same goal – engaging in leading edge research.

2. The History of Employee Representation With the Employer/The Extent to Which the Employees Belong to the Same Employee Organization

Other than the representation petition filed by the Union in 2006, there is no history of representation for any of the three titles at issue.

3. The Extent to Which the Employees Have Common Skills, Working Conditions, Job Duties, or Similar Educational or Training Requirements

The Postdoctoral Scholars, Employees, Fellows and Paid Directs, all have the same background requirements. The following is from the University of California, Berkeley website, <http://vspa.berkeley.edu/#postdoc>, and is typical of the requirements at other University campuses. Please note that the same requirements apply regardless of the Postdoctoral Scholar's title.

#### **Postdoc Definition**

**Applicants must satisfy all of the following specifications:**

- possess a Ph.D. or foreign equivalent conferred *less than five years ago* (however, extenuating circumstances, including health and family care, will allow for exceptions to this requirement);
- proposed appointment may not total more than five years of service including previous postdoctoral experience at other institutions;

Regional Director Anita Martinez

September 5, 2008

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- have an institutional source of funding, e.g., fellowship, traineeship, or equivalent external support;
  - pursue a program of research and training under the direction of a faculty member with approval of an academic department or organized research unit (ORU) and registration with the VSPA Program;
  - may not have been employed as an assistant professor, associate professor, or professor; and
  - the appointment term must be at least one month in duration.
4. The Extent to Which Employees Have Common Supervision

Since each Postdoctoral Scholar is assigned to a faculty mentor, each will have a different faculty advisor who also serves as the supervisor. The common thread is that each Postdoctoral Scholar has a faculty supervisor and this is the same for all Postdoctoral Scholars regardless of their title.

To determine whether a community of interest exists among employees, the Public Employment Relations Board ("PERB" or the "Board") considers, among other things, the qualifications, training and skills, contact and interchange with other employees, and job functions. (San Diego Community College District (2001) PERB Decision No. 1445; Rio Hondo Community College District (1979) PERB Decision No. 87; Office of the Santa Clara County Superintendent of Schools (1978) PERB Decision No. 59.) In considering whether a community of interest exists, "PERB eschews the use of a checklist approach and instead considers the totality of circumstances." (San Diego Community College District, supra, PERB Decision No. 1445, citing Monterey Peninsula Community College District (1978) PERB Decision No. 76.) The focus of the inquiry concerns whether employees share "substantial mutual interests." (Id.) Because the only essential difference between a Paid Direct and the other two titles is the fund source, when all of these factors are examined, there can be no doubt that the Paid Directs share a "substantial mutual interest" with the two other Postdoctoral Scholar titles.

Additionally, the other tests for unit appropriateness are met. For example, it will be more efficient for the University to have one set of terms and conditions of employment for all the Postdoctoral Scholars. Furthermore, having all the Postdoctoral Scholar titles in one unit will avoid fragmentation of a homogeneous employment group. See Government Code Section 3579 (a) (2)-(5). This is especially important for two reasons: (1) many of the Postdoctoral Scholars move from title to title as their source of funding changes, and (2) many Postdoctoral Scholars hold dual appointments as Employee and Paid Direct, Postdoctoral Scholars. It would be unworkable to have an individual doing one body of work covered by different terms and conditions of employment. Inclusion of the Paid Directs in the unit is consistent with the HEERA unit determination criteria.

B. Other Legal Issues

To reiterate, the University does not know why the PRO/UAW now seeks to exclude the Paid Directs from the unit when in 2006, the Union considered them to be part of the unit. The only apparent difference between the Paid Directs and the Employee Postdoctoral Scholars is that an outside agency supports the Postdoctoral Scholar. However, that fact is the same for the Fellows who also have their support originating outside of the University. Moreover, that distinction not only fails as a matter of fact, it fails as a matter of law.

As we know, the majority of sponsoring agencies are either silent on the issue of employment status or specifically state that there is no employment status. For the vast majority of the Paid Directs, the University is the only employer. The sponsoring agencies merely provide the money to support or help support the Paid Directs. Since the University controls all other terms and conditions of the appointments of Paid Directs, it is the employer. See *Alameda County Board of Education*, PERB Dec. No. 323 (1983) (finding the key inquiry in determining whether an entity is an employer under EERA is whether the alleged employer had "sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization as their representative.")

It appears that there are a few agencies which maintain an employment relationship with Postdoctoral Scholars. PERB has adopted the following test to determine joint employer status: "where two or more employers exert significant control over the same employees -- where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment -- they constitute joint employers." *United Public Employees v. Public Employment Relations Board*, 213 Cal. App. 3d 1119, 1128 (1989); *NLRB v. Browning-Ferris Industries, Inc.*, 691 F.2d 1117, 1124 (3d Cir. 1982). "A finding that companies are 'joint employers assumes in the first instance that companies are 'what they appear to be' -- independent entities that have merely 'historically chosen to handle jointly . . . important aspects of their employer-employee relationship.'" *Browning-Ferris*, 691 F.2d at 1122. Thus for the Postdoctoral Scholar who maintains his academic position with the Kosin University and for the UCAR Paid Directs, some of their terms and conditions of employment are controlled by their host institutions and others, such as control of their day to day work, are controlled by the University. These Paid Directs are joint employees of their sponsoring institution and the University, and the University and the sponsoring agency are joint employers.

However that joint employment relationship does not defeat the argument that these Paid Directs should be in the unit. California public sector labor law is clear on this point. In joint employment relationships, employees have more than one employer setting his or her terms and conditions of employment. *Unified Public Employees v. Public Employment Relations Board*, 213 Cal. App. 3d at 1128. Consequently, more than one bargaining relationship may exist covering the employees of joint employers or the employees of the joint employers may be

Regional Director Anita Martinez

September 5, 2008

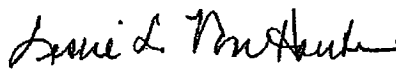
Page 13

unrepresented with respect to certain terms and conditions of employment. This does not mean that they cannot be represented. In such a situation, each employer is charged with bargaining over only those employment terms it controls. Even when one employer falls under PERB jurisdiction and the other does not, the public employer still has a duty to bargain. See *Fresno Unified School Dist.*, PERB Decision No. 82 (1979); *The Regents of the University of California*, PERB Order No. Ad-293-H; *Engineers & Architects Assn.*, Unfair Practice Case No. LA-CE-12-M (2002) (overturned on other grounds in PERB Decision No. 1637-M). Thus, even if the sponsoring agency controlled some of the terms and conditions of the Paid Directs' appointments, it would not prevent the Union from bargaining with the University over the other terms and conditions of employment.

#### IV. CONCLUSION

The University respectfully requests that the Paid Directs be included in the proposed unit. Their inclusion is in concert with the HEERA unit determination, criteria and the Paid Directs share a "substantial mutual interest" with the Fellows and Employee Postdoctoral Scholars. There is no good factual, policy or legal reasons to exclude them from the proposed unit.

Very truly yours,



Leslie L. Van Houten  
University Counsel

la

cc: Dennis Dudley  
Myron Okada  
Howard Pripas  
Mark Westleye

179753.1



# HEERA REPRESENTATION PETITION

**INSTRUCTIONS:** A request for recognition or certification is to be filed with the appropriate Higher Education employer. A petition for certification must be filed with the appropriate PERB regional office. Proper filing includes consent of service and proof of service of the HEERA Representation Petition as required by PERB regulations 5100, 51040 and 51100. Attach additional sheets if more space is required.

1. EMPLOYER (Name, address and telephone number) Employer's agent to be contacted: Leslie L. Van Houston

Regents of the University of California Title: University Counsel

1111 Franklin Street, 12th Floor Address and telephone, if different:

Oakland, CA 94607 1111 Franklin Street, 8th Floor

Oakland, CA 94607

( 510 ) 987-9220 Ext. \_\_\_\_\_ ( 510 ) 987-9800 Ext. \_\_\_\_\_

<p>2. TYPE OF PETITION (Check all that apply) <span style="float: right;">DATE FILED: <u>June 30, 2008</u></span></p> <p><input checked="" type="checkbox"/> REQUEST FOR RECOGNITION (RR)</p> <p><input type="checkbox"/> PETITION FOR CERTIFICATION (PC)</p> <p><input type="checkbox"/> INTERVENTION</p> <p><input type="checkbox"/> SEVERANCE (Filed as PC)</p> <p><input type="checkbox"/> SEVERANCE (Filed as RR)</p>	<p>3. PROOF OF SUPPORT</p> <p>Filed with: <input checked="" type="checkbox"/> PERB <input type="checkbox"/> Third Party</p> <p><input checked="" type="checkbox"/> Majority support <input type="checkbox"/> 30% support <input type="checkbox"/> 10% support</p> <p>*Attach name, address &amp; telephone number of third party, if applicable: _____</p>
<p>4. DESCRIPTION OF PROPOSED UNIT (Including class code and geographic location if other than a statewide unit proposal)</p> <p>Staff INCLUDE:</p> <p>Please see Attachment A.</p> <p>Staff EXCLUDE:</p> <p>Please see Attachment A.</p>	<p>5. NUMBER OF EMPLOYEES IN PROPOSED UNIT: <u>5,800</u></p> <p>6. (If a CURRENT MEMORANDUM OF UNDERSTANDING (MOU) EXISTS COVERING ANY EMPLOYEES PETITIONED FOR, INDICATE MOU EFFECTIVE DATE: _____</p> <p>MOU EXPIRATION DATE: _____</p> <p><input checked="" type="checkbox"/> NO AGREEMENT IS IN EFFECT</p>

7. ORGANIZATION(S) RECOGNIZED OR CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF OR KNOWN TO HAVE AN INTEREST IN REPRESENTING ANY OF THE EMPLOYEES COVERED BY THIS PETITION.

Name of Organization: <u>N/A</u>	Address: _____	Date of Recognition/Certification (If any): _____
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8. PETITIONER (Name, address and telephone number) Petitioner's agent to be contacted: Maireen Boyd

International Brotherhood of Teamsters (IBT) Local 1000, 6570 South Rosemead Blvd., Title: UAW International Representative

Bliss River, CA 90668 Address and telephone, if different: \_\_\_\_\_

( 415 ) 598-6844 Ext. \_\_\_\_\_ ( 415 ) \_\_\_\_\_ Ext. \_\_\_\_\_

I declare that the statements herein are true to the best of my knowledge and belief.

PETITIONER'S AUTHORIZED REPRESENTATIVE: Maireen Boyd (Signature)

Title: UAW International Representative Date: 6/30/08

**NOTICE OF REQUEST FOR RECOGNITION**

PERB CASE NUMBER: SF-RR-914-H

DATE NOTICE WAS POSTED: \_\_\_\_\_

ON July 1, 2008 THE Regents of the University of California  
(Date) (Employer)

RECEIVED FROM UAW International  
(Employee Organization)

A REQUEST TO BE RECOGNIZED AS THE EXCLUSIVE REPRESENTATIVE OF EMPLOYEES  
IN THE UNIT DESCRIBED ON THE REVERSE OF THIS NOTICE.

THE REQUEST IS BASED ON THE CLAIM THAT A MAJORITY OF THE EMPLOYEES IN THE  
PROPOSED UNIT WISH TO BE REPRESENTED BY THE ABOVE NAMED EMPLOYEE  
ORGANIZATION.

NOTICE IS HEREBY GIVEN THAT ANY OTHER EMPLOYEE ORGANIZATION DESIRING TO  
REPRESENT ANY OF THE EMPLOYEES IN THE UNIT DESCRIBED IN THIS REQUEST FOR  
RECOGNITION HAS THE RIGHT, WITHIN 15 WORKDAYS FOLLOWING THE DATE OF  
POSTING OF THIS NOTICE, TO FILE WITH THE EMPLOYER AN INTERVENTION SUPPORTED  
BY AT LEAST 30% OR AT LEAST 10% OF THE EMPLOYEES IN THE UNIT REQUESTED OR  
OF THE EMPLOYEES IN A UNIT CLAIMED TO BE APPROPRIATE.

THE LAST DATE FOR FILING AN INTERVENTION IS: \_\_\_\_\_

SEE THE REVERSE OF THIS NOTICE FOR THE NAMES, ADDRESSES AND TELEPHONE  
NUMBERS OF THE EMPLOYER, THE INCUMBENT EXCLUSIVE REPRESENTATIVE (IF ANY),  
AND THE PETITIONER.

THIS NOTICE MUST REMAIN POSTED UNTIL: \_\_\_\_\_

BY: \_\_\_\_\_  
(SIGNATURE OF EMPLOYER'S AUTHORIZED AGENT)

PERB Regulation 51035 requires that this Notice be conspicuously posted on all employee bulletin boards in each facility of the employer in which members of the proposed unit are employed. The Notice should be posted as soon as possible but in no event later than 10 days following receipt of the petition. The Notice must remain posted for at least 15 workdays.  
PERB-4105 (02/01)

**ATTACHMENT A**  
**DESCRIPTION OF PROPOSED UNIT**

**SHALL INCLUDE:**

All Postdoctoral Scholars and all Postdoctoral Fellows in titles and title codes including but not limited to:

Postdoctoral Scholars – Employee (Title Code 3252);  
Postdoctoral Scholars – Fellow (Title Code 3253);  
Postgraduate Researcher – FY (Title Code 3240);  
Postgraduate Researcher – AY State Funds (Title Code 3243);  
Postgraduate Researcher – AY Extramural Funds (Title Code 3245); and  
Visiting \_\_\_\_\_ - Postdoc (Title Code 3370)  
in a statewide unit at all University of California campuses, research programs and units.

**SHALL EXCLUDE:**

Postdoctoral Scholars – Paid Direct; employees defined by HEERA as managerial, supervisory and/or confidential; student employees whose employment is contingent on their status as students; and all employees of Lawrence Berkeley National Laboratory, Lawrence Livermore National Laboratory and Los Alamos National Laboratory.

**PROOF OF SERVICE**

I declare that I am a resident of or employed in the County of Alameda,  
State of California. I am over the age of 18 years and not a party to the within entitled  
cause. The name and address of my residence or business is 2855 Telegraph Avenue, Suite 305  
Berkeley, CA 94705

On June 30th, 2008, I served the HEERA Representation Petition, including  
(Date) (describe document(s))

Attachment A and Cover Letter

on the parties listed below (include name, address and, where applicable, fax number) by (check  
the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery  
by the United States Postal Service or private delivery service following ordinary business  
practices with postage or other costs prepaid;

personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations

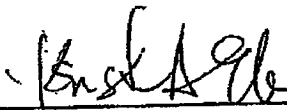
32090 and 32135(d).

Regents of the University of California  
Office of the General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607

510 - 987 - 9800  
510 - 987 - 9220

I declare under penalty of perjury that the foregoing is true and correct and that this  
declaration was executed on June 30th, 2008, at Berkeley, California.

Kristin Ebor  
(Type or print name)

  
(Signature)

---

# **EXHIBIT B**

April 20, 2010

Myron Okada  
Academic Employee Relations Manager  
University of California Office of the President  
300 Lakeside Dr., 12<sup>th</sup> floor  
Oakland, CA 94612  
VIA ELECTRONIC AND US MAIL

Re: UAW Request for Information Follow-Up

I am writing to follow up on our previous requests for information. Starting on December 19, 2008, we have repeatedly sought information which is necessary in order to enable the Union to bargain over various proposals. We have requested the information not only under the Higher Education Employer Employee Relations Act (HEERA), but also under the California Public Records Act (on July 17, 2009, and on March 17, 2010).

In response to our most recent request on March 17, 2010, we have only received items related to health and safety, which the Union continues to desire as the exclusive bargaining representative but we do not need to complete negotiations since we have reached tentative agreement on a health and safety article many months ago.

On Friday, April 16, 2010, the University indicated it could not increase stipends for some number of Postdoctoral Scholars—Paid Direct and Postdoctoral Scholars—Fellow. Despite this new found claim, the University could not provide any contractual support for that proposition, nor could it provide the number of employees impacted or the cost to provide them wage increases. The University indicated it would take considerable time to get that information. Yet, if the University had fulfilled our information requests this information would already be available. The University's failure to provide this information in a timely basis violates both HEERA and the California Public Records Act. The University's most recent proposals, without the information to support them, can only leave us with the conclusion that the University is engaged in surface bargaining.

In an effort to expedite production of information relevant to the outstanding issues, at this critical point in negotiations, without waiving any of our previous requests, we request that the University focus on the following information and that it be provided by the close of business Friday, April 23, 2010, or as early as practical thereafter. We reiterate our request for this information as the exclusive bargaining representative under HEERA, as well as under the California Public Records Act. Please provide any information as it becomes available.

1. Salary Information. In Item #1, as requested on December 19, 2008, July 17, 2009, August 26, 2009, and March 17, 2010, we have sought historical bargaining unit information to

include salary/stipend rates, salary/stipend increases, the reasons for any increases, start and end dates of appointments, and other information. While we initially agreed to look at the 2007-2008 year as a model, we have continued to seek all four years of information since it will allow us to assess how things have worked under the status quo over a period of time. We have received partial information from all campuses except Santa Cruz for the 2007-2008 year, who provided information from 2008-2009. Since the Berkeley campus has provided information from all four years requested, albeit incomplete, the other campuses should have the capability to access this information as well. Please refer to our March 17, 2010, memo for an overall accounting of our request. Of the information still lacking, we most need the following in order to evaluate proposals regarding salaries/stipends.

- a. Historical salary/stipend rates paid to all Postdoctoral Scholars (Item #1L and #1M, as well as Item #11): This information will enable us to evaluate average salaries over time, the changing size of the bargaining unit, and changing overall cost of Postdoctoral Scholar salaries over time. While we have information that allows us to calculate costs of various salary proposals, we lack the historical information to evaluate the impact of these proposals in comparison to how salaries have already been changing over time under the status quo.
  - b. Percent salary increase over previous salary and reason for increase (merit, general range adjustment, step increase, etc.) (Item #1O): This information will allow us to evaluate the impact of proposals regarding salary increases in relation to what kinds of increases have already been occurring under the status quo in recent years.
  - c. Total number of years worked as a Postdoc, at UC and at other institutions (Item #1S): In order to fully assess the cost and impact of proposals regarding experience-based step increases, it is necessary to understand how long the typical Postdoc works at UC.
2. Stipend Information. We have requested information regarding source of stipend for Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs on December 19, 2008, July 17, 2009, August 26, 2009, and March 17, 2010 as part of Item #1. We also requested certain information in Item #92. In light of the University's recent assertion that it would be prohibited from providing increases to some number of Postdoctoral Scholar—Fellows or Postdoctoral Scholar—Paid Directs due to funding agency restrictions, it is critical that we have the information requested many months ago that would allow us to assess that assertion.
- a. Source of stipend (Item #1N): This information would enable us to look at and understand the range of practices among funding agencies that award fellowships to Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs in relation to proposals regarding salary/stipend increases and assess whether there would be any prohibition on providing an increase to any of these employees.
  - b. Information regarding Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs (Item #92): In Item #92, requested on July 17, 2009, and again on March 17, 2010, we requested a number of pieces of information regarding Fellows and Paid Directs, including, but not limited to, any agreements between funding agencies and the University regarding Fellows or Paid Directs (including those referenced in the University's September 5, 2008, letter to PERB), description of how the University determines the overall stipend/salary rate for Fellows and Paid Directs, and a description of the process for setting up the appointment at the University. Like the information in item #1N, this information would enable us to evaluate the University's assertion that it may be prohibited from providing increases to some Postdoctoral Scholar—Fellows or Postdoctoral Scholar—Paid Directs. Additionally, in response to your assertion in bargaining

on April 15, we request any policies, guidelines, or other information from external funding agencies that would show how the University would be prohibited from providing either a supplemental appointment or additional compensation to increase a Fellow or Paid Direct overall pay rate.

3. Appointment Length. We have requested information regarding start and end dates of Postdoctoral Scholar appointments on December 19, 2008, July 17, 2009, August 26, 2009, and March 17, 2010 (Item #1P): This information is critical for the Union to be able to evaluate proposals regarding minimum length of appointment.
4. Health Insurance. Information about premiums for Postdoctoral Scholar—Fellows and Postdoctoral Scholar—Paid Directs (Item #90L). On April 17, 2009, July 17, 2009, and again on March 17, 2010, we requested a breakdown of Postdoctoral Scholar – Fellows and Postdoctoral Scholar – Paid Directs who are on the Postdoctoral Scholar Benefits plan by (1) the number who have their premiums paid by the University and (2) the number who pay their own premiums. Since the University is still proposing that it not be required to pay the health insurance premium for Fellows and Paid Directs, as is the case under the status quo, we cannot cost our proposal to institute paid premiums unless we have this information.
5. Information regarding Layoffs. Item #9, as requested on December 19, 2008, and modified on July 17, 2009, and March 17, 2010: The University provided information on the number of layoffs during the 2008-2009 year, with the exception of the Davis campus. Without complete information for the 2008-2009 year, and without information from other years, we have no way to assess what is a typical number of Postdocs laid off each year under the status quo. Without this information regarding the number of layoffs in recent years, it is impossible for the Union to properly evaluate what precautions would be necessary in cases of layoff and what criteria would be necessary for the University to have the right to lay off Postdoctoral Scholars.
6. Information regarding Grants and Contracts. We requested a number of pieces of information regarding Grants and Contracts in Items #78, #79, and #80 on February 6, 2009, July 17, 2009, August 26, 2009, and March 17, 2010. We requested, among other things, copies of a representative sample of grants and their accompanying documents (application, budget, breakdown of actual expenditures, etc.), copies of all guidelines for writing grant proposals from each campus, and copies of all expenditure reports from grants and contracts. While we have had some discussion of the guidelines used for grant applications, we have otherwise not received any of the requested information. Since virtually all Postdoctoral Scholars are funded from grants and contracts from extramural sources, this information is critical to the Union's ability to assess all outstanding economic proposals.

If you have questions or would like to discuss any of the above, please let us know. As always, we would be interested in discussing ways to modify this request for information in ways that would more easily comport with existing forms of information at UC.

Please send responses directly to me at [klang@uaw.net](mailto:klang@uaw.net). If there are items that must be sent through US Mail, please send them to the following address:

Ken Lang, International Representative  
c/o UAW Region 5  
6500 S. Rosemead Blvd.  
Pico Rivera, CA 90660

Sincerely,

---

Ken Lang  
International Representative

# **EXHIBIT C**

# UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE VICE PRESIDENT  
HUMAN RESOURCES

OFFICE OF THE PRESIDENT  
300 Lakeside Drive  
Oakland, CA 94612-3550

March 2, 2010

Mr. Mike Miller  
International Representative  
UAW Regional Headquarters  
6500 So. Rosemead Blvd.  
Pico Rivera, CA 90660

Dear Mike:

I am writing in confirmation of and response to our conversations regarding University communications by some individuals at the Coordinating Committee on Graduate Affairs (CCGA) and UCSF Graduate Council meetings about the status of Postdoctoral Scholars negotiations. At our February 17, 2010 informal meeting in Oakland, you informed me of statements made by two members of the University bargaining team that cause you to question the University's desire to achieve a settlement in the current negotiations. As I stated, the University takes seriously your concerns and, as promised, I have investigated the matter.

I have now had the opportunity to consult with various constituencies here at Office of the President and at the campuses and can report the following:

- (1) Some of the statements about which you were concerned were raised at a December 2009 CCGA<sup>1</sup> meeting held at the Office of the President. On another instance, statements were made at a meeting of the UCSF Graduate Council during which individuals other than faculty and administrative representatives, including possible postdoctoral scholars, were present. Because the CCGA meeting, and portions of the Graduate Council meeting, involve both management and non-management individuals, neither is a forum in which discussions about active collective bargaining would normally occur. If such discussions were to occur, only factual information should be transmitted (e.g., the identification of articles remaining on the table, articles in which Tentative Agreements have been reached). Over the course of the almost thirty years during which the University has negotiated with unions, the University has taken a firm position that statements which draw conclusions about negotiations, or which provide detailed descriptions of the agreements reached are not appropriate topics for general discussion. The University understands that such communications could violate understandings of confidentiality necessary to the bargaining process. Statements of personal opinion should never occur in such forums.
- (2) In these instances, certain members of the UC bargaining team were asked to provide an update to the CCGA and/or the local Graduate Council meeting about the Postdoctoral Scholar negotiations. These individuals are not labor relations professionals but rather are members of the academic community for whom "labor relations" rules regarding speech are incongruous to the dearly-held academic freedom to engage in dialogue and debate. In reading the notes, I believe that the vast majority of the statements

<sup>1</sup> CCGA is comprised of Academic Senate Faculty, representatives of Academic Administration including staff consultants, and graduate student representatives. The primary role of CCGA is to advise the Senate and the administration on all matters regarding the promotion of research and learning related to graduate education.

made were intended to be representations of fact, pursuant to the historic University position regarding discussions about negotiations. I recognize that some of the statements did provide slight descriptions of the agreements reached, and for this I apologize.

- (3) I'd like to turn my attention to your assertion that Dr. Hedrick has demonstrated that UC is "stalling" in its negotiations with the UAW through his statements made at a CCGA meeting on December 1, 2009. Specifically, Dr. Hedrick's said: "UC has no real incentive to bargain away these items since the current contract(s) [sic]<sup>1</sup> are acceptable." Dr. Hedrick had been addressing the outlying issues on the bargaining table: layoff, appointment, benefits, wages, and no strikes. While his comments clearly exceed the boundaries of acceptable commentary to an audience comprised of non-management personnel, he was simply stating that UC policy was an acceptable alternative to some of the bargaining positions taken by the UAW. Further, and most importantly, I must remind you that our initial discussion about these meetings and the comments made at them occurred at a University-initiated informal settlement discussion on Wednesday, February 17<sup>th</sup>. At this meeting, the University in fact informally offered the UAW an across-the-board increase not offered in any earlier negotiations. Only moments before these informal discussions began did you make me aware of the comments addressed in this letter. Additionally, I must remind you that after the last negotiations in October, both parties agreed to postpone further bargaining until after the winter holidays, although we did try to schedule the resumption of negotiations in January. Unfortunately, your team was not able to meet on the suggested January dates, UC was not able to meet the first week in February as suggested by the UAW, and the UAW was not able to meet the week of January 25<sup>th</sup> or February 8<sup>th</sup>, as suggested by the University. We were able to schedule bargaining on February 17 and 18, 2010, however, that session was converted to the informal meeting I referenced earlier in the paragraph. I wholeheartedly disagree that the University has been either "stalling" or failing to consider alternatives that could bring us closer to settlement.
- (4) I have reminded all members of the University bargaining team of the strict limits required when communicating about collective bargaining matters. I believe the confidentiality of the bargaining process will be maintained into the future

You also raised the question as to whether the University has actively assisted individuals who want to decertify the UAW Postdoctoral Scholar unit. I unequivocally state that the University of California has not engaged in such activity. As I mentioned to you, an interested Postdoctoral Scholar approached me seeking the names and e-mail addresses of other postdoctoral scholars. The University did not provide the requested list of e-mail addresses, although we did provide a list of current unit members. As you know, this information is a matter of the public record.

I am enclosing for your information the various disclosures that I am aware of concerning postdoctoral scholars bargaining about which you have expressed a concern. Please know that all other campuses have affirmatively stated that they have not engaged in similar conversations with similar campus groups, and that they are unaware of any other information disclosures regarding the current status of postdoctoral scholars bargaining.

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<sup>1</sup> The reference to "current contract(s)" means current Academic Personnel Manual 390 policies.

Mr. Mike Miller  
March 1, 2010  
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Again, I want to assure you that the University is committed to good faith bargaining, and is hopeful that the University and the UAW can reach a mutually acceptable agreement in a timely fashion. Please let me know if you have additional questions and concerns.

Sincerely,



Gayle Saxton  
Interim Director - Labor Relations

**Attachments**

cc: Provost Pitts  
Vice President Duckett  
Vice President Beckwith  
Interim Executive Director Price  
University Postdoctoral Scholars Bargaining Team  
Labor Relations Managers

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of LOS ANGELES, State of CALIFORNIA. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is:

SCHWARTZ, STEINSAPIR, DOHRMANN & SOMMERS  
6300 WILSHIRE BOULEVARD, SUITE 2000  
LOS ANGELES, CALIFORNIA 90048-5268

On JUNE 9, 2010, I served the UNFAIR LABOR PRACTICE CHARGE on the parties at the addresses or fax number listed below:

REGENTS OF THE UNIVERSITY OF CALIFORNIA  
1111 FRANKLIN STREET  
OAKLAND, CALIFORNIA 94607

by (check the applicable method or methods):

- Placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.
- Personal delivery.
- Facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration  
was executed on JUNE 9, 2010, at (City and State where executed) LOS ANGELES,

CALIFORNIA.

JOANNA RIVERA

(Type or print name)

Joanna Rivera

(Signature)