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September 8, 2021

**VIA E-PERB ONLY**

Ronald Pearson, Esq.  
Supervising Attorney  
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Sacramento Regional Office  
1031 18th Street  
Sacramento, California 95811-4124

Re: **Petition for Board Investigation – Student Researchers United v. Regents  
of the University of California, PERB Case No. SF-RR-1022-H**

Dear Mr. Pearson:

In its September 2, 2021 response (“UC Response”), the Regents of the University of California unlawfully redefines HEERA to strip student employees of their right to be represented. The UC and its campuses are more than willing to tout themselves as premier research institutions. The UC encourages and helps facilitate Graduate Students to apply for prestigious fellowships and training grants, readily accept revenue generated by the external funding successfully attained by Graduate Student Trainees and Fellows, and benefit from the hard work of these student employees. And yet, with its myopic focus on funding sources, the University seeks to exclude Graduate Student Trainees and Fellows from the proposed unit. In doing so, the University’s response constitutes an ***ultimate refusal to recognize the entire proposed unit of approximately 17,000 Graduate Student Researchers, Trainees, and Fellows*** who have collectively raised their voices to fight for basic workplace rights and protections, and denies the democratic will of these student employees who have evidenced a ***supermajority*** of proof supporting their right to be represented by Student Researchers United/UAW.

The University’s analysis defies the totality of the circumstances that must be reviewed under HEERA and leads to absurd results. Graduate Student Trainees and Fellows are not merely students. Under their appointments, they provide a valuable service to the University, often performing the same work, on the same research project, in the same lab, and under the

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same faculty advisor as their Graduate Student Researcher and Graduate Student Assistant Researcher counterparts.<sup>1</sup> Indeed, the positions are fungible in that the same individual may toggle from being a GSR, Trainee, or Fellow from one quarter to the next, or even be classified simultaneously as part GSR and part Trainee or Fellow—all while doing the exact same work during the entire duration of their time at the University. No reasonable doubt exists as to the appropriateness of the petitioned-for unit, and the Union’s request for recognition must be granted. (Gov. Code, § 3574(a)).

### **The UC Response Is Invalid and the Union Thus Petitions for Board Investigation**

At the outset, we note that the employer cannot unilaterally modify Student Researchers United/UAW’s petitioned-for unit.<sup>2</sup> The UC claims to be “pleased to recognize” 11,097 of the petitioned-for graduate student employees, while concurrently *excluding* thousands of student employees petitioned-for in Appendix A, Categories 2-5. Yet, it has no authority to take these conflicting actions. Not only did the University fail to comply with PERB regulations, but it also showed its unprincipled willingness to subvert the democratic choice of student employees who overwhelmingly exercised their right to be represented by the Union.

Specifically, the UC’s Response fails to comply with PERB Regulation 51080. The regulation states that the employer “shall use ‘Format A’ if it has granted recognition....[or] The employer shall use ‘Format B’ if it has not granted recognition.” (8 CCR § 51080(c)-(d)). The UC used neither.

This defiance is indicative of the University’s practice of attempting to push through its own version of the law rather than complying with what is required. Indeed, there is no provision in the regulations allowing the *employer* to parse out who they want in and out of the *Union’s* petitioned-for bargaining unit. “The petition for recognition is the formal moment of genesis in our collective bargaining process; *we cannot give effect to the right to representation and employee choice unless we accept and process the petitions actually filed by employee*

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<sup>1</sup> Similar to the UC, which noted that the title codes in the first category of the Union’s petitioned-for unit includes both “GSRs” and “GSARs,” for purposes of this Petition, the Union collectively refers to those in the petitioned-for unit who the University acknowledges as student employees as “GSRs” for ease of reference. (See University Response at p. 2, fn. 2)

<sup>2</sup> This position was confirmed today by PERB in its letter dated September 8, 2021, which states in pertinent part: “It appears that the University sought to recognize only part of UAW’s petitioned-for unit. This was not one of the choices available to the University. The University was required to either recognize the petitioned-for unit, or deny recognition based on the reasons enumerated under PERB Regulation 51080(d)(3). Because the University failed to recognize the petitioned-for unit, PERB must treat the University’s September 2, 2021 response as a *denial of recognition* pursuant to PERB Regulation 51080(d).” (Emphasis added)

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*organizations.*” (*United Teachers Los Angeles v. Alliance Judy Ivie Burton Technology Academy High, et al.*, PERB Decision No. 2719 (2020) p. 28, emphasis added [rejecting employer’s challenge to the appropriateness of the petitioned-for units and giving credence to the petitioned-for units expressly described in UTLA’s recognition petitions under EERA]).

Therefore, pending notification by the University of their recognition of the Union’s entire petitioned-for unit, the Union construes the UC Response as an outright *denial of recognition*—despite the demonstrated *supermajority* of thousands of employees who submitted authorization cards in support of Student Researchers United.

Pursuant to PERB Regulation 51090, the Union requests a Board investigation to determine the appropriateness of the petitioned-for unit<sup>3</sup> and provides the following information:

**(1) The name, address and telephone number of the employee organization and the name, address and telephone number of the employee organization agent to be contacted**

<u>Employee Organization</u>	<u>Employee Agent to Be Contacted</u>
Student Researchers United/UAW 2730 Telegraph Avenue, Floor 1 Berkeley, California 94705 (510) 549-2514	Michael Miller, International Representative 6500 S. Rosemead Boulevard Pico Rivera, California 90660 (310) 435-8831

**(2) The name, address and telephone number of the employer**

Employer  
Regents of the University of California  
1111 Franklin Street, 8th Floor  
Oakland, California 94607  
(510) 987-9800

**(3) A copy of the request for recognition or intervention filed with the employer**

Please see the Union’s May 24, 2021 HEERA Representation Petition attached hereto as Attachment A.

**(4) A statement of the issues in dispute**

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<sup>3</sup> On May 24, 2021, the Union filed a request for recognition pursuant to Section 51030. On August 4, 2021, PERB determined that SRU had proof of majority support. The employer sought and PERB approved extension deadline for the employer response to September 2, 2021. As stated above, the UC’s Response constitutes a denial of recognition. Given that this Petition is filed within 90 days following the date the employer response was filed or due, it is timely filed.

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As noted, the Board has already determined that Student Researchers United has attained majority support of the employees in the proposed unit for selection as their exclusive representative. Indeed, the Union achieved a supermajority with approximately 70% of the student employees in the proposed unit submitting authorization cards.<sup>4</sup>

Thus, with that acknowledged, the only issue pending is whether the petitioned-for unit comprised of all graduate students employed as researchers, trainees, and fellows as described in Appendix A of the Representation Petition is appropriate. In particular, at issue now is whether graduate students performing work substantially similar to the GSRs and Graduate Student Assistant Researchers described in paragraph (1) of Appendix A, who receive financial remuneration from Institutional and Individual training grants or from fellowship awards, have representation rights under the Act as student employees and share a community of interest with GSRs and Graduate Student Assistant Researchers to be included in the unit.

**(5) A statement indicating what specific action(s) is requested of the Board.**

Pursuant to Government Code section 3574, “The higher education employer shall grant a request for recognition filed pursuant to Section 3573” unless, as relevant here, “[t]he employer reasonably doubts that the employee organization has majority support or reasonably doubts the appropriateness of the requested unit.” (Gov. Code, § 3574(a)).

No reasonable doubt exists with regard to majority support—The Union has evidenced a supermajority. Moreover, no reasonable doubt exists with regard to the appropriateness of the requested unit, as the UC’s position is belied by the language of the HEERA itself, the control the UC has over those in the petitioned-for unit, and the UC’s own prior arguments (as discussed more fully below).

Therefore, the Union requests: (1) the Board deem the Union’s petitioned-for unit as appropriate and (2) the Board use its authority vested in PERB Regulation 51096 to certify Student Researchers United/UAW as the exclusive representative of the petitioned-for unit.

**I. BACKGROUND**

**A. HEERA and the Decisions Leading Up to the Passage of SB 201**

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<sup>4</sup> The Union has submitted its proof of support and the UC has submitted its employee lists, and PERB has determined that the Union has achieved majority support. This percentage is based on the approximately 17,000 employees in the proposed unit per the Union’s HEERA Representation Petition and the Union’s records of the authorization cards obtained in support of the Union.

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In 1979, HEERA was enacted to extend collective bargaining and representational rights to employees throughout the California State University System, the University of California System, and Hastings College of Law. The Act grants employees the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring with their employer.

When HEERA was enacted and for approximately four decades, HEERA gave the Board authority to find employee status with regard to “student employees whose employment is contingent on their status as students” by analyzing services performed, educational objectives, and whether such a finding would further the purposes of the Act:

The board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or, that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of this chapter.

(See Gov. Code, §3562(f) [1979-1999]; Gov. Code, §3562(e) [2000-2017]) Thus, prior to SB 201, student employees had rights under HEERA only if the Board found that they satisfied this balancing test.

Under this balancing test, PERB found the educational objectives of housestaff (medical interns, residents, and clinical fellows in residency programs at University hospitals) subordinate to the valuable patient care services they provided. (*Regents of the University of California v. Public Employment Relations Bd.* (1986) 41 Cal.3d 601).

In addition, PERB found that “student employees in the GSI, reader, special reader, tutor, remedial tutor and part-time learning skills counselor positions at UCLA are employees under the HEERA.” (*The Regents of the University of California and Student Association of Graduate Employees, et al.*, PERB Decision No. 1301-H (1998), p. 2). The Board found that services performed by these student academic employees in dispute are vital to the University and must be performed without regard to whether they provide any educational benefit to student employees. The ALJ found that employment in these positions is contingent on student status, and the Board concluded that HEERA coverage for these student employees would further the purposes of HEERA.

In the same case, however, under HEERA’s old balancing test, the Board found that “student employees in graduate student researcher (GSR) and tutor supervisor positions are not employees under HEERA, and should be excluded from the bargaining unit.” (*Id.* at p. 2).

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**B. The UAW Requests Recognition for Postdoctoral Scholars and the UC Submits a Compelling Argument Why Postdoctoral Scholars Directly Funded by Outside Agencies *Should* Be Included in the Bargaining Unit**

In 2008, the UAW filed a petition to recognize a unit comprised of Postdoctoral Scholars and Fellows. In its response, the University objected to the proposed Postdoctoral unit as not appropriate on the ground that it excluded the Postdoctoral Scholar – Paid Directs. The Paid Directs received income directly from external funding agencies and were not “W-2 employees” of the University.

Nevertheless, the University argued that these Paid Directs have a community of interest with Postdoctoral Scholars – Employee and Postdoctoral Scholars – Fellow, and thus should be within the unit with those other two classifications. (University Response to PRO/UAW Request for Recognition – PERB No. SF-RR-914-H, dated September 5, 2008<sup>5</sup> (“Van Houten Response”), p. 2).

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...the exclusion of the Paid Directs from the unit is an artificial one and not based on sound policy or legal grounds... [O]ther than the source of funding and in some instances eligibility for certain benefits, all of their terms and conditions of employment are the same.

(*Id.* at pp. 3-4).

“[N]ot 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

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<sup>5</sup> We cite the UC’s Van Houten Response here at length because it shows that the UC had previously argued that employees with external funding sources must be *included* in the bargaining unit although it now has disingenuously taken a contrary position seeking to exclude them in the instant matter. Significantly, some of the Trainees and Fellows that the UC seeks to now exclude have funding from the same external grants and fellowships as their Postdoctoral counterparts and work with represented Postdoctoral Scholars in the same labs and on the same projects. The history of employee representation with the employer is a relevant factor in determining a community of interest. (Gov. Code, § 3579(a)(1)). We ask that PERB take judicial notice of this document which is part of the record in PERB Case No. SF-RR-914-H attached hereto as Attachment B.

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Directs.” (*Id.* at p. 7). “All Postdoctoral Scholars perform the *same type of work, research*, and they all work toward the same goal—engaging in leading edge research.” (*Id.* at p. 10, emphasis added).

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.***

(*Id.* at p. 8, emphasis added).

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.”)

(*Id.* at p. 12)

With the UC’s arguments in favor of including researchers paid for directly by external funding sources, the Postdoctoral Scholars – Employees, Fellows, and Paid Directs were recognized as an appropriate bargaining unit represented by UAW Local 5810.

**C. The NLRB Finds that Students Working as Research Assistants Who Are Funded by Training Grants Are Employees Entitled to the NLRA’s Protections**

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While these matters were being determined under HEERA in California, at other universities, student employee issues were also being decided. For example, in 2016, the National Labor Relations Board issued a decision supporting that student employees under training grants are entitled to protections as employees under the NLRA.<sup>6</sup> (*The Trustees of Columbia Univ. in the City of New York & Graduate Workers of Columbia-GWC, UAW*, 364 NLRB No. 90 (Aug. 23, 2016)).

The union petitioned for a unit including “All Graduate Research Assistants (including those compensated through Training Grants).” (*Id.* at pp. 14-15, fn. 97)

Columbia’s counsel argued that, “students on training grants are simply not employees because they’re not employed in a University position, that they’re simply supported by the Government to be students and they don’t provide a service to the University.” (*Id.* at p. 15 fn. 98)

“The Board has the statutory authority to treat student assistants as statutory employees, where they perform work, at the direction of the university, for which they are compensated.” (*Id.* at pp. 1-2)

Students, when working as research assistants, are not permitted to simply pursue their educational goals at their own discretion, subject only to the general requirement that they make academic progress, as they would be in semesters where they were under some form of financial aid other than a research grant.

The funding here is thus not akin to scholarship aid merely passed through the University by a grantor without specific expectations of the recipients. ***Because Columbia directs the student research assistants' work and the performance of defined tasks is a condition of the grant aid, we conclude that the research assistants in this case are employees under the Act.***

Columbia argues that, even if research assistants generally are common-law employees, the research assistants funded by a specific form of grants known as *training grants* present unique circumstances and lack the characteristics of common-law employment. However, the record shows that Columbia, which

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<sup>6</sup> While federal NLRB precedent is a “useful starting point” and has potential persuasive value, “California public sector labor relations precedent frequently protects employee and union rights to a ***greater degree*** than does federal precedent governing private sector labor relations.” (*Operating Engineers Local Union No. 3, AFL-CIO (Wagner et al.)*, PERB Case No. SA-CO-144-M (2021), p. 9, fn. 10, emphasis added)



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receives revenue from these training grants, is charged with ensuring that research assistants thereunder receive appropriate training within a formalized program (consistent with the funder's goal of having a well-trained workforce in biomedical and behavioral research), and *accordingly it oversees and directs the research assistants who receive the grants*. Additionally, research assistants often receive funds from research and training grants simultaneously. Further, participation in specific training activities is a requirement for receipt of training grants; thus, *notwithstanding the grantor's statement that the grant aid is not salary, it is a form of compensation*. (*Id.* at p. 18, emphasis added)

**D. The UC Opposes Efforts to Extend Collective Bargaining Rights to Student Employees**

Propelled by the unyielding efforts of student researchers, who, with the help of UAW, fought for years to have the recognition rights they deserved under HEERA, the California Legislature initiated various bills to extend collective bargaining rights to student employees, including SB 201. The UC continued to oppose those efforts.<sup>7</sup> The UC argued that SB 201 would fundamentally alter the relationship between faculty members and student researchers from one of *mentor-mentee* to *employer-employee* and argued that graduate research is not “work” in the traditional employment sense because that work is conducted as part of their educational pursuits.<sup>8</sup> (See August 31, 2017 Letter from Kieran Flaherty, Associate Vice President & Director, to the Honorable Lorena Gonzalez Fletcher, Chair, Assembly Appropriations Committee, re SB 201 (Skinner)).

**E. Over the UC's Opposition, the California Legislature Passes SB 201 to Expand the Definition of Employee in HEERA to Include Student Employees**

The California Legislature rejected the UC's contentions and passed SB 201 over the UC's opposition. On October 15, 2017, SB 201 amended Section 3562 of the Government Code, effective January 1, 2018, relating to higher education employees. In particular, the bill amended the definition of “Employee” or “higher education employee” to mean:

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<sup>7</sup> In addition to opposing SB 201, the UC opposed SB 259 in 2012, as well as AB 1834 in 2014.

<sup>8</sup> The UC raises these same arguments now—despite the fact that they were rejected prior to the enactment of SB 201. (See UC Response at p. 5 [“Students who are on fellowships and grants are advancing their own academic pursuits, and are not employees....A fellow/trainee has a mentee-mentor relationship with a faculty member, rather than an employee-employer relationship.”]).

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*any employee, including student employees whose employment is contingent on their status as students*, of the Regents of the University of California. . . .  
However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter.

(Gov. Code, § 3562(e) (emphasis added))

The Legislative findings expressly stated, “It is the intent of the Legislature to expand the definition of employee under HEERA to include certain student employees who previously had been denied collective bargaining rights.” (2017 Cal. Legis. Serv. Ch. 854 (S.B. 201), Legislative Findings, § 1(b)). The Legislature specifically wanted the bill to “make student employees, whose employment is contingent upon their status as students, ‘employees’ and ‘higher education employees’ for purposes of the act.” (2017 Cal. Legis. Serv. Ch. 854 (S.B. 201), § 1).

Thus, the 2018 amendment to HEERA was meant to expand coverage to the very student employees at issue in this matter.

## **II. THE GRADUATE STUDENT EMPLOYEES IN THE PETITIONED-FOR UNIT**

### **A. Description of the Categories of Workers in the Petitioned-for Unit**

A Graduate Student Researcher is a graduate student who performs research related to the student’s degree program in an academic department or research unit under the direction of a faculty member or authorized Principal Investigator. (APM-112-4-b-25)

Graduate Student Fellows and Trainees, along with other Student Researchers, helped the UC bring in over \$3.7 billion in contract and grant funding in 2020. Despite not being listed on the UC’s APM, Trainees and Fellows perform the same job functions as the above Graduate Student Researchers, who the UC acknowledges should be in the unit. They are graduate students who perform research related to the student’s degree program in an academic department or research unit under the direction of a faculty member or authorized Principal Investigator.

Trainees and Fellows often work side-by-side with GSRs and/or Postdoctoral Scholars, who the University acknowledges have representation rights.

Many Fellows and Trainees *are* paid directly by the University, which collects and remits their stipends to them. The UC generally disburses stipend payments to Trainees and Fellows through their billing and/or financial aid systems at each campus. Training grants have reporting

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requirements that the awardee institution (the UC in this case) must communicate to the funding institution. Similarly, fellowship funds are often provided to the UC, which is then responsible for disbursing them to the fellowship recipient. In cases where funds are provided directly from the funding institution to the student employee, they are required to have a UC faculty advisor who reports on the student employee's progress to the funding institution.

**B. The Classifications in the Petitioned-for Unit Are Often Fungible and Student Employees May Hold Various Classifications While Working on the Same Research Project**

The following is just a sampling of statements from student employees in the proposed unit who have been identified by the University as holding different positions throughout the course of their work on the same research project.

**Elizabeth McCarthy, PhD, Bioinformatics, UCSF (Trainee→GSR→Fellow)**

NIH F30 Fellowship Recipient

“I did the exact same work as a Graduate Student Researcher that I currently do now as an NIH F30 Fellow. I started my research on a training grant as a trainee here at UCSF, and then I was funded as a Graduate Student Researcher paid by the University of California to continue the same projects. Since January of this year, I've been funded by a fellowship from the NIH F30 Fellowship through the National Cancer Institute. Throughout this time, I've worked under the same faculty in the same lab here at UCSF.” (See Stuart Declaration at ¶ 5, Exs. A-D).

**Jenna Tan, PhD Student, Chemistry, UC Berkeley (GSR→Fellow)**

National Defense, Science and Engineering Graduate Fellowship Recipient

“I'm doing the same job now that I was when I was funded by the UC as a Graduate Student Researcher, or GSR. In my second year as a GSR, I applied for a fellowship in order to continue my work in the same lab with the same supervisor. At no point did my job description or responsibilities change.” (See Stuart Declaration at ¶ 6, Exs. E-F).

**Kate Bauman, PhD Student, UCSD (Concurrent GSR and Fellow)**

GSR & NIH F31 Fellowship Recipient

“I'm a recipient of an NIH F31 fellowship, but I also receive salary as a Graduate Student Researcher. The NIH chose to award me this prestigious fellowship for my work in engineering the microbiome to treat a rare genetic disease in newborns that's always fatal within early childhood. Not only could my research potentially allow these children to live full and healthy lives, but actually the approach that we're taking towards treatment could be replicated for other diseases as well. .... 75% of my salary comes from my fellowship and 25%

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comes as a Graduate Student Researcher. I actually receive two separate paychecks every month. However, the work that I do is not split 75%/25%. And my responsibilities in the lab are the same regardless of my funding source. If researchers on fellowships were excluded from the Student Researchers Union, it would force talented researchers to make an impossible choice. I can't imagine having to choose between a prestigious fellowship or having basic workplace protections. Excluding Student Researchers on fellowships from the union is not only impractical, I mean, what would someone in my situation do? But it also degrades the quality of research we're able to perform at UC." (See Stuart Declaration at ¶ 7, Exs. G-H).

**Lorenzo Washington, Graduate Student Researcher, Fellow, paid by UC with funding from the National Science Foundation, and Karen Serrano, Student Researcher, paid by UC as a Graduate Student Researcher (Fellow and GSR, respectively, working side-by-side on the same research project in the same lab)**

"[W]e have the same supervisor and work on the same research project with the same work expectations, you'd think I'd have the same rights in the workplace....[W]e do the same functions, and have the same qualifications, training, skills, and supervision...." (See Stuart Declaration at ¶ 8, Exs. I-J).

Under the UC's analysis, Lorenzo Washington, as a Fellow, would be excluded from the bargaining unit, while his colleague, Karen Serrano, would be included.

The interchangeable nature of the research work performed by the student employees in the proposed unit supports a strong community of interest and, accordingly, unit appropriateness.

### **III. PETITIONED-FOR FOR UNIT IS APPROPRIATE**

#### **A. Trainees and Fellows Are Student Employees Under HEERA**

HEERA now broadly defines "Employee" or "higher education employee" as "*any employee, including student employees whose employment is contingent on their status as students.*" (Gov. Code, § 3562(e))<sup>9</sup> In light of the legislative history and intent behind SB 201,

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<sup>9</sup> The Labor Code also contains an expansive definition: "Employee" means every person in the *service* of an employer under *any appointment* or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed...." (Labor Code, § 3351, emphasis added; see also Labor Code, § 3357, emphasis added ["Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is *presumed to be an employee.*"])

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the student employees in the petitioned-for unit are *exactly* the student employees that the legislature sought to include by amending HEERA in 2018.

If funding source were the entryway to having rights under HEERA, as the University suggests, then the legislators would have made that apparent in the statute. While UC painstakingly tries to elaborate on this purportedly decisive element, it is nowhere to be seen in the Act.

These are not just students that happen to be on campus seeking personal pursuits, as contended by the UC. (UC Response at p. 5). And, contrary to the UC's response, the Union is not trying to "convert all students into employees." (UC Response at p. 5). The UC has acknowledged before that "research" is "work." (Attachment B, Van Houten Response at p. 10). Not only are the student employees in the petitioned-for unit performing research, but they are also receiving remuneration for their services. These student employees are performing research under the direction of faculty at UC labs side-by-side on the same projects with GSRs and Postdocs, bringing research dollars and prestige to the UC, and publishing papers bannered the UC's name. Under these appointments, they are working and providing a service to the University. Indeed, they provide the same service as GSRs—working with GSRs and often toggling back and forth under that classification or holding a split GSR position while also being a Trainee/Fellow.

"HEERA encourages the 'pursuit of excellence' at the University....Under HEERA, these concepts—collective bargaining and academic freedom—co-exist and complement one another. They are not mutually exclusive, as much of the University's argument seems to suggest." (*Regents of the University of California and Student Association of Graduate Employees, UAW*, PERB Decision No. 1301-H (1998) p. 14) The student employees at issue perform research at laboratories throughout the UC system and receive remuneration, typically through the UC, for their work. The balancing test for student employment is obsolete. Despite the fact that this work also aligns with their educational pursuits, their work still makes them student employees who have a right to representation under HEERA. (See *The Trustees of Columbia Univ. in the City of New York & Graduate Workers of Columbia-GWC, UAW*, 364 NLRB No. 90, p. 18 (Aug. 23, 2016) (despite the university arguing that they were not common-law employees, the Board found the university had sufficient control over student research assistants who received their funding from external training grants, and thus they were deemed student employees for purposes of the Act)).

The UC narrowly focuses on funding sources to determine employment and fails to examine the extent of control it holds over Graduate Student Trainees and Fellows. Such control includes, but is not limited to:

- Working conditions at the lab;

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- Supervision and direction by a UC faculty member/PI;
- Pay, pay scales, minimum salary/stipends, supplemental pay, and pay increases;
- Access to benefits;<sup>10</sup>
- Access to healthcare;
- Occupational health and safety policies and practices, including those relating to COVID-19;
- Equipment used for research;
- UC email and technology;
- Ability to terminate student status, and accordingly, the employment that is contingent upon student status;
- Coverage under Sexual Violence and Sexual Harassment policies under Title IX (see University of California, Sexual Violence and Sexual Harassment, Interim Policy, III(B) Policy Coverage, p. 9);
- And, in most cases, disbursement of remuneration.<sup>11 12</sup>

The UC's spurious statements that it has "no control" and "the union has no standing to negotiate for wages, terms and conditions of employment" for individuals under grants and fellowships, (UC Response at p. 12), are wrong and belied by its own actions. The UC cannot plausibly state that it has no control over the student employees at issue due to the terms of their training grants and fellowships, when many of the training grants and fellowships are *identical* to those received by the Postdoctoral Scholars.<sup>13</sup> The UC did not feel that those postdoctoral

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<sup>10</sup> The UC already acknowledges that "[s]ome campuses have chosen to ensure that students who receive the enumerated external awards (and do not otherwise hold a GSR or other student academic appointment) receive paid parental leave, or childcare subsidies." (UC Response p. 10).

<sup>11</sup> "NSF training grants are paid through UC's payroll system, UCPath, while other fellowships and traineeships are paid through the [UC's] Financial Aid Management System." (UC Response at p. 9).

<sup>12</sup> The UC and UAW Local 2865 have been able to bargain over all of these topics for the Academic Student Employee unit and could similarly do so for those in the petitioned-for unit. (See <https://uaw2865.org/know-your-rights/contract/>).

<sup>13</sup> The Union has identified at least 13 NIH Institutional training grants at the UC that are funding both predoctoral/Graduate Student trainees and postdoctoral trainees (who are in the Postdoctoral Scholar bargaining unit):

- (1) Training in Molecular Toxicology, <https://reporter.nih.gov/project-details/10172167>, Project No. 2T32ES015457-11A1;
- (2) Multidisciplinary Training in Microbial Pathogenesis, <https://reporter.nih.gov/project-details/10192633>, Project No. 5T32AI007323-32;
- (3) Molecular Epidemiology Cancer Training Program, <https://reporter.nih.gov/project-details/10025195>, Project No. 2T32CA009142-41;

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training grants and fellowships stripped away its control over the Postdoctoral Scholars, and thus the same training grants and fellowships should not be used as an excuse to deny representation rights for the Graduate Student Trainees and Fellows in the petitioned-for unit.

Indeed, prior to bargaining, some Postdoctoral scholars did not receive wages from the University. The parties, however, were able to bargain over salary and stipend changes for the entire unit. (See UAW Local 5810/UC Collective Bargaining Agreement, Article 4(A), Compensation, <https://uaw5810.org/postdoc-contract/>) And, while some grants may have certain expectations or limitations, the parties were able to bargain to address those concerns—such restrictions did not bar those workers from being in the Postdoctoral unit, and they should not be used now to deny Graduate Student Trainees and Fellows their right to collectively bargain. (See UAW Local 5810/UC Collective Bargaining Agreement, Article 4(A)(2), Compensation, <https://uaw5810.org/postdoc-contract/>).

It is perplexing that the UC is trying to disclaim employment responsibilities over the graduate student Fellows given that it provides them with “*New Hire*” paperwork. The UC provides Fellows with a “*NEW HIRE* INFORMATION SUMMARY,” which has the option to select among three checkboxes as a “*TITLE*”: “GSR,” “TA,” or “*PREDOCTORAL FELLOW*.” (Emphasis added) While Predoctoral Fellow is noted as a “non-payroll title” as opposed to a

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- (4) Multidisciplinary training in basic and translational Alzheimer's disease research, <https://reporter.nih.gov/project-details/10143170>, Project No. 5T32AG066596-02;
  - (5) Improving the Health of Aging Women and Men, <https://reporter.nih.gov/project-details/10179265>, Project No. 5T32AG058529-03;
  - (6) Training Program in Cognitive Neuroscience, <https://reporter.nih.gov/project-details/9935119>, Project No. 5T32MH020002-20;
  - (7) Training Program in Substance Use, HIV and Related Infections, <https://reporter.nih.gov/project-details/10146318>, Project No. 5T32DA023356-15;
  - (8) Rheumatic Diseases Research Training Grant, <https://reporter.nih.gov/project-details/10149945>, Project No. 5T32AR064194-08;
  - (9) Cancer Researchers in Nanotechnology (CRIN), <https://reporter.nih.gov/project-details/10151565>, Project No. 5T32CA153915-10;
  - (10) Translational Epidemiology - Training for Research on Aging and Chronic Disease, <https://reporter.nih.gov/project-details/9936411>, Project No. 5T32AG049663-05;
  - (11) Training Researchers in Clinical Integrative Medicine (TRIM), <https://reporter.nih.gov/project-details/9991753>, Project No. 5T32AT003997-14;
  - (12) Biobehavioral Research Training in Symptom Science, <https://reporter.nih.gov/project-details/10205179>, Project No. 5T32NR016920-05;
  - (13) Training Program for Interdisciplinary Cancer Research, <https://reporter.nih.gov/project-details/10089944>, Project No. 2T32CA009054-41

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“payroll title,” it is nevertheless acknowledged to be a title on the New Hire paperwork. The University’s “NEW HIRE INFORMATION SUMMARY” form also includes, “APPOINTMENT INFORMATION” that includes the appointment duration.

The UC’s New Hire summary also notes that for “FELLOWSHIP RECIPIENTS,” “those who hold a Predoctoral fellow title,” that “[s]tipends are disbursed by Graduate Division at the end of the third week of the month.” The University has the Predoctoral Fellows sign and date the “NEW HIRE INFORMATION SUMMARY” form. (See, e.g., Stuart Declaration at ¶ 9, Exs. K-L)

Indeed, similar to the examples in Section II(B), above, Marcelo Francia, who received a New Hire Information Summary as a Predoctoral Fellow, was a GSR on payroll in the prior quarter—all while working on the same project, in the same lab, and for the same PI. And, now as a Fellow, he currently works side-by-side on the same project with other GSRs. (See Stuart Declaration at ¶ 9, Exs. K-L) Thus, the allegedly impenetrable differences among these student employee classifications are wholly constructed by the UC and simply arbitrary.

**1. The University’s Argument that Trainees and Fellows Are Merely Students Is Unavailing, and the University’s W-2 Employee Argument Must Be Rejected**

Although the Legislature enacted language broadly providing HEERA coverage to “*any* employee,” the UC impermissibly narrows the statute’s definition and boldly asserts that “the first prerequisite is that the student be a *W-2* employee.” (UC Response at p. 8, emphasis added). The UC created its own term that is nowhere in the statute, tries to define it in a footnote no less, and expects that fabricated prerequisite to trump the definition of “Employee” that already exists in the Act.

The UC’s reliance upon an unreported 1982 decision out of the Southern District of Texas shows the extent to which the UC is grasping at straws. The UC uses the case to show that Graduate Students “will not perform any services during the program, even if compensated monetarily, that are not ‘completely incidental to the scholastic program.’” (UC Response at p. 8, citing *Pollack v. Rick Univ.*, 28 Fair. Empl. Prac. Cas. (BNA) 1273 (S.D. Tex. 1982)).

Other than the decision having no precedential, let alone persuasive value, significantly the old balancing test under HEERA is obsolete and student employees are covered regardless of services “incidental” to the scholastic program. Indeed, the Texas district court decision is contrary to the UC’s own acknowledgment that Graduate Student Researchers are appropriately employees under HEERA.



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Further, the UC states that “[m]any of the external grants set forth in the UAW’s petition take pains to assert that the award does not create an employment relationship.” (UC Response at p. 3). Although the UC now uses this language in an attempt to abdicate its own employer responsibilities over Trainees and Fellows, the language in these external grant documents does the *exact opposite*—they actually highlight that the University—*not* the funding agency—has an employment relationship with the Trainees and Fellows. Indeed, they simply reiterate that Trainees and Fellows are *not employees of research agencies* such as the NIH but rather *employees of the UC* for purposes of HEERA. (See Attachment B, Van Houten Response at p. 12 [the UC previously acknowledging that when sponsoring agencies are either silent on the issue of employment status or specifically state that there is no employment status, the “University is the only employer.”])

## **2. The University’s Acknowledgment of GSRs as Student Employees Supports the Status of Trainees and Fellows as Student Employees Under HEERA**

The UC acknowledges that GSRs are student employees with a right to representation under HEERA. It states, “GSRs were always indisputably ‘student employees’ for purposes of the work performed as GSRs and GSARs. Therefore, the University does not dispute that they fall within the current HEERA employee definition.” (UC Response at p. 9).

Yet, despite the UC’s current acknowledgment that GSRs are student employees under HEERA, the UC pulls out the same old arguments it used to deny GSRs student employee status, (prior to the adoption of SB 201), to now deny graduate student Trainees and Fellows the right to representation under HEERA. Now with the passage of SB 201, the University again shows that its position with regard to Trainees and Fellows ignores and is inconsistent with HEERA’s express purpose. (*Regents of the University of California and Student Association of Graduate Employees, UAW*, PERB Decision No. 1301-H (1998), p. 14). The Legislature has spoken, and it is time for the UC to acknowledge that such student employees who receive remuneration for their research work have rights.

Here are a few examples to highlight how the UC continues to cling to the old balancing test and its prior arguments despite the fact that that standard no longer exists:

### **UC’s Comment Regarding Fellows/Trainees:**

“Any research is often directly related to satisfying degree requirements and/or their dissertation, and is designed to let a student focus on their own research and advancement.” (UC Response at p. 5).

### **UC’s Prior Argument and ALJ’s Finding Regarding GSRs:**

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[I]n most cases it is virtually impossible to distinguish between the time a student is performing paid work as a GSR from the time spent on non-paid status performing the student's own dissertation research. This is so simply because most GSRs are essentially paid by the University to perform their own research upon which they will base their dissertation.

*(Regents of the University of California and Student Association of Graduate Employees, UAW, PERB Decision No. 1301-H (1998), ALJ Decision, pp. 9-10).*

**UC's Comment Regarding Fellows/Trainees:**

"A fellow/trainee has a mentee-mentor relationship with a faculty member, rather than an employee-employer relationship." (UC Response at p. 5).

**UC's Prior Argument and ALJ's Finding Regarding GSRs:**

As part of their role as mentors, faculty will often co-author scholarly research papers, assist and/or encourage GSRs attendance and presentation at conferences and meet regularly with students to supervise their research and dissertation efforts. The relationship between GSRs and their faculty mentors typically constitute a stronger bond and are more time consuming than relationships between other student academic employees such as GSIs and their supervising faculty members.

*(Regents of the University of California and Student Association of Graduate Employees, UAW, PERB Decision No. 1301-H (1998), ALJ Decision, pp. 9-10; see also pp. 76-77 ["The role of the faculty member in relation to the GSR is more like a patron than a typical supervisor."])*

**UC's Comment Regarding Fellows/Trainees:**

"Students who are on fellowships and grants are advancing their own academic pursuits, and are not employees." (UC Response at p. 5).

**UC's Prior Argument and ALJ's Finding Regarding GSRs:**

The duties performed by GSRs in half-time positions vary greatly, depending up on the field of student and the experience of the GSR. A newly admitted graduate student might first be assigned to perform research of a very basic nature. This has two primary purposes. One purpose is to assist faculty members, post doctoral researchers (post docs) or other most advanced students with research grunt work. A second and more important reason, however, is to provide the student with an opportunity to learn basic laboratory research skills. Acquiring these skills is essential for later success as a graduate student, and is done for the education of the GSR more than for the smooth operation of the lab.

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*(Regents of the University of California and Student Association of Graduate Employees, UAW, PERB Decision No. 1301-H (1998), ALJ Decision, p. 8; see also p. 77 [“[T]he value of GSR positions accrue primarily to the GSRs and their educational objectives. The value of the services received by the University is not nearly as significant.”])*

The findings regarding GSRs bear a striking similarity to the UC’s current descriptions of Trainees and Fellows. The fact that Trainees and Fellows, just like GSRs, are mentored by their PIs, have research related to their studies, and gain an educational benefit, does not detract from their employee status. As it is undisputed that GSRs are student employees, it follows that Trainees and Fellows are thus student employees as well.

**B. The Student Employees in the Union’s Petitioned-For Bargaining Unit Share an Internal and Occupational Community of Interest**

The University contends that because Trainees and Fellows’ funding comes to the University through different grant sources the petitioned-for unit does not have a community of interest. Funding source, however, is not a valid determinant in a community of interest analysis. The University has shown that to be true in arguing for the inclusion of and recognizing Paid Directs in the Postdoctoral Scholar unit. Indeed, the Board must consider *all* the criteria in Section 3579(a)(1) when determining whether a community of interest exists under HEERA:

In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) 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.

(Gov. Code, § 3579(a)).

Significantly, no reference to source of funding appears in that lengthy list.

- 1. The petitioned-for Graduate Student employees perform functionally related services or work toward established common goals**

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The petitioned-for student employees all perform research under faculty supervision at labs throughout the UC system. The proposed graduate students employed as researchers, trainees, and fellows share the common goal of completing research projects, sometimes even in the same lab and with the same supervisor as other researchers, Trainees, and Fellows. Indeed, some of the members of the unit have even served as a GSR, Trainee, and Fellow in the same lab, under the same faculty, doing the exact same work. (See Stuart Declaration at ¶ 5).

## **2. The history of employee representation with the employer**

While this matter involves recognition as opposed to a unit modification, there is still relevant history of employee representation between the UAW and the University that cannot be ignored. Significantly, the University previously recognized fellows and vigorously argued to include researchers with external funding sources into the Postdoctoral Scholar unit. The University previously argued, “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.” (Attachment B, Van Houten Response at p. 14).

This history thus casts doubt to the reasonableness of the University’s position now that outside funding sources purportedly destroy the proposed unit’s community of interest, especially given that Postdoctoral Scholars are funded by some of the *same training grants and fellowships* that fund the student employees at issue. Just as one example, there are at least 13 NIH Institutional training grants at the UC used to employ both Graduate Student employees and Postdoctoral Scholars. Also, UAW 5810, the union of Postdoctoral Scholars, and Academic Researchers at the UC, includes those who are funded by NIH fellowships. Thus, there is a precedent within the history of employee representation at the UC to support their inclusion in the bargaining unit at issue.

The UC’s argument is illogical, creating situations where Postdoctoral Scholars and Academic Researchers are considered employees under HEERA while their graduate student counterparts being *funded under the exact same training grants and fellowships*, and often working in the same lab, are being denied employee rights.

The UAW also has a history of representing Academic Student Employees at the University and is well-versed in the issues facing these employees, be it GSHIP, fee remission, childcare, or a safe and discrimination-free workplace.

## **3. The extent to which the employees belong to the same employee organization**

Currently, all Graduate Student employees in the proposed bargaining unit are unrepresented. Student Researchers United/UAW, however, has obtained proof of support from

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the employees in the petitioned-for unit evidencing a supermajority. This includes proof of support of thousands of Trainees and Fellows evidencing a majority within the contested positions.

**4. The petitioned-for Graduate Student employees have common skills, working conditions, job duties, or similar educational or training requirements**

With regard to educational or training requirements, as opposed to Academic Researchers or Postdoctoral Scholars, the petitioned-for unit is comprised of graduate student employees who perform research functions. The job duties are similar, if not the same, among GSRs/RAs, Trainees, and Fellows. (See, *supra*, Section II). Indeed, many employees in the proposed unit have been classified within two or more of these classifications during their time at the lab, including having dual classifications at the same time, all while performing the same work on the same research project. The working conditions are common in that the research is typically performed at labs and under the direction and supervision of a UC faculty member/PI.

**5. The petitioned-for Graduate Student employees have common supervision**

As noted above, the Graduate Student employees in the petitioned-for unit all work under the direction and supervision of a UC faculty member/PI. Although some “non-GSRs often report to an outside entity,” (UC Response at p. 11), that does not negate the fact that “non-GSRs” also serve under UC faculty members/Pis and receive direct day-to-day supervision from them.

In light of all these similarities among the student employees in the petitioned-for unit, a community of interest binds them together, and the unit is an appropriate one.

**C. Effect the Projected Unit Will Have on Meet and Confer Relationships**

Postdoctoral Scholars and Academic Researchers, and the BX unit of Academic Student Employees (TAs, Readers, and Tutors) show the ability of employer representatives to deal effectively with employee organizations representing statewide academic units.

**D. Effect of the Proposed Unit on Efficient Operations**

This proposed unit will promote efficient operations. The UC already has infrastructure in place to bargain with statewide units that have employees funded by fellowships and training grants, such as the Postdoctoral Scholar unit and the Academic Researcher unit.

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Having a statewide unit will help resolve the many inefficiencies that currently exist for GSRs, Trainees, and Fellows. The proposed unit will help increase consistency and efficiency for the University, eliminating the need for the many individualized determinations currently being made by PIs, payroll, and human resources.

Connections among GSRs, Trainees, and Fellows are already integrated within the UC. For example, at UC Davis, the Training Grant Support Services (TGSS) serves as a virtual unit linking staff in Graduate Studies and the Office of Research. <https://gradstudies.ucdavis.edu/research-training-grant-programs>. It assists with training grants for Graduate Students and Postdoctoral researchers—indeed, they often work side-by-side with funding from the same grants.

**E. Number of Employees and Classifications in the Proposed Unit**

The proposed unit totaling over 13,000 (according to the UC's count) provides a significant number of student employees the right to effective representation throughout the state as intended by SB 201. The five categories of graduate students employed as researchers, trainees, and fellows are described in Attachment A of the Union's Representation Petition. (See Attachment A).

**F. Impact on the Meet and Confer Relationship Created by Fragmentation of Employee Groups or Any Proliferation of Units**

Given that the proposed unit is a statewide unit, the employer will be able to efficiently meet and confer and bargain over terms and conditions of employment that will be consistent across the state without a concern that there will be fragmented groups or a proliferation of units.

**G. Many Other Higher Education Institutions Have Included Graduate Student Fellows and Trainees in Their Bargaining Unit, and the Description of Performing "Substantially Similar" Work Has Been Found to Be Appropriate**

While the University claims to be "unaware of graduate student fellows and trainees being included in a bargaining unit at any other higher education institution," (UC Response at p. 4), as shown below, many such universities exist. Moreover, although the University argues that a unit description including those who "perform substantially similar work," is "vague and would

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Supervising Attorney  
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lead to endless litigation,” (UC Response at p. 11), a number of universities have included such language in units found to be appropriate.<sup>14</sup>

- **University of Massachusetts Amherst**

UAW and UAW Local 2322/GEO shall be the representative of and the bargaining unit shall consist of: Teaching Associates (TO), Teaching Assistants (TA), Research Assistants (RA), Project Assistants (PA), Assistant Residence Directors (ARD), and Graduate Interns employed by the University of Massachusetts Amherst, and *University of Massachusetts Amherst Fellows and Trainees whose duties and responsibilities are substantially similar* to those of TOs, TAs, RAs, PAs, ARDs, or Interns, for the purpose of good faith negotiations with the Administration on matters relating to employment policies and practices.

(<https://www.umass.edu/provost/sites/default/files/2019-12/GEO%202017-2020%2012-3-19.pdf>, emphasis added)

- **Harvard University**

The bargaining unit shall include all students enrolled in Harvard degree programs employed by Harvard University who provide instructional services at Harvard University, including graduate and undergraduate Teaching Fellows (teaching assistants, teaching fellows, course assistants) and all students enrolled in Harvard degree programs (other than undergraduate students at Harvard College) *employed by Harvard University who serve as Research Assistants (regardless of funding sources, including those compensated through Training Grants)*.

(NLRB Case No. 01-RC-186442, emphasis added)

- **University of Washington<sup>15</sup>**

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<sup>14</sup> Contrary to the UC’s argument, class codes are not required under HEERA to describe the petitioned-for unit. (UC Response at p. 11). While the request must be signed by an authorized agent of the employee organization and be on a form provided by the Board, PERB Reg. 51030(a)—*which it was*—what is *required* under HEERA is set forth in Government Code section 3573. Relevant here, there is no HEERA requirement to provide a “class code.” Rather, “[t]he request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate.” (Gov. Code, § 3573). Thus, the HEERA requirement has been met, and this sampling of other universities shows that similar language has been found to be appropriate.

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Supervising Attorney  
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The State of Washington, Public Employment Relations Commission, found as a conclusion of law that the following unit described “is an appropriate unit for the purposes of collective bargaining within the meaning of RCW 41.56.203”:

“ALL REGULAR PART-TIME STUDENT/EMPLOYEES ENROLLED IN AN ACADEMIC PROGRAM AT THE UNIVERSITY OF WASHINGTON AND WORKING IN ONE OR ANY COMBINATION OF THE FOLLOWING CLASSIFICATIONS...AND **ANY OTHER STUDENT EMPLOYEES WHOSE DUTIES AND RESPONSIBILITIES ARE SUBSTANTIALLY EQUIVALENT TO THOSE EMPLOYEES**, WHO REMAIN ELIGIBLE FOR WORK IN ANY OR ALL OF THOSE TYPES....”

*(In the matter of the petition of Graduate Student Employee Action Coalition, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (GSEAC/UAW), AFL-CIO, Involving certain employees of: University of Washington, State of Washington, Public Employment Relations Commission, Decision 8315-B – PECB, Case 16288-E-02-2699 (2004), Certification; see also Decision 8315 – PECB, Direction of Election, Case 16288-E-02-2699 (2003))*

Article 15 – Job Titles and Classifications, Section 1, states:

“Effective Autumn Quarter 2004, ASEs will be placed into titles and pay classifications based on the nature of job duties and qualifications as follows....” and includes:

Title/Pay Classification - ***Stipend Grad Trainee C***

Occupation Code - 10859

Salary – Stipend per Grant

Job Duties – Research

Standard Qualifications – Graduate

(<https://www.uaw4121.org/member-center-2/know-your-rights/contract/#article15>, emphasis added)

- **University of Connecticut**

As reflected in the Connecticut State Board of Labor Relations Case #30888, the University recognizes the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), and its Local Union,

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<sup>15</sup> Oddly, the only example the UC provides of a university that purportedly excludes Graduate Student Trainees and Fellows from the unit is wrong. (See UC response at p. 4, fn. 8) The unit at the University of Washington specifically **includes** Stipend Grad Trainees who receive stipends per their grants.



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Supervising Attorney  
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Graduate Employee Union-UAW Local 6950 (GEU-UAW Local 6950), as the exclusive bargaining representative for employees in the bargaining unit. The bargaining unit shall include all University of Connecticut Graduate Assistants (GAs), including Teaching Assistants (TAs), Research Assistants (RAs) and other Graduate Assistants who are not TAs or RAs. ***The bargaining unit shall also include graduate students whose functional relationship to the university is substantially identical to GAs even if another term is used by the University to describe their position.***

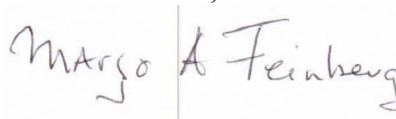
(Award, *In the Matter of Grievance Arbitration Between Graduate Employee Union, Local 6915 – International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (GEU-UAW) and University of Connecticut Board of Trustees* (2020), p. 14, emphasis added [finding that the University violated the collective bargaining agreement by failing to include Nexus Training Fellows when they had a function relationship with the University that was substantially identical to that of Graduate Assistants]).

Therefore, while the University regrettably continues to deny Trainees and Fellows their proper status as student employees for purposes of collective bargaining, other universities throughout the nation have embraced it. Under HEERA, the University must follow suit and recognize the right of these student employees to representation.

#### IV. CONCLUSION

No reasonable doubt exists as to the appropriateness of the petitioned-for bargaining unit. The balancing test apparently still used by the University is obsolete. Whatever educational objectives are met by the research performed by Trainees and Fellows does not nullify the fact that they perform work at UC labs that benefits the University, and they receive financial remuneration for those services. They are student employees under HEERA. Therefore, we request the Board to deem the Union's petitioned-for unit as appropriate and certify Student Researchers United/UAW as the unit's exclusive representative.

Sincerely,  
SCHWARTZ, STEINSAPIR, DOHRAMANN  
& SOMMERS, LLP



Margo A. Feinberg

PERB Received  
09/08/21 20:55 PM

ATTACHMENT A



# HEERA REPRESENTATION PETITION

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 05/24/2021

INSTRUCTIONS: A request for recognition or intervention 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 concurrent service and proof of service of the HEERA Representation Petition as required by PERB regulations 51030, 51040 and 51100. Attach additional sheets if more space is required.

1. EMPLOYER (Name, address, and telephone number)

Employer's agent to be contacted: Letitia Silas

Regents of the University of California

Title: Executive Director, Labor Relations

1111 Franklin Street, 8th Floor, Oakland, CA 94607

Address and telephone, if different:

1111 Franklin Street 5th Floor, Oakland, CA 94607  
(510) 987-0238

2. TYPE OF PETITION (Check all that apply) DATE FILED: 05/24/2021

- REQUEST FOR RECOGNITION (RR)
- PETITION FOR CERTIFICATION (PC)
- INTERVENTION
- SEVERANCE (Filed as PC)
- SEVERANCE (Filed as RR)

3. PROOF OF SUPPORT

Filed with:

PERB

Third Party\*

Majority support     30% support     10% support

\*Attach name, address & telephone number of third party, if applicable.

4. DESCRIPTION OF PROPOSED UNIT (Including class code and geographic location if other than a statewide unit is proposed)

Shall INCLUDE:

See Attachment A

Shall EXCLUDE:

See Attachment A16741

5. NUMBER OF EMPLOYEES IN PROPOSED UNIT:  
16741

6. IF A CURRENT MEMORANDUM OF UNDERSTANDING (MOU) EXISTS COVERING ANY EMPLOYEES PETITIONED FOR, INDICATE: MOU EFFECTIVE DATE:

MOU EXPIRATION DATE:

NO AGREEMENT IS IN EFFECT

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:

<u>Name of Organization</u>	<u>Address</u>	<u>Date of Recognition/ Certification (if any)</u>
na		

8. PETITIONER (Name, address and telephone number)

Employer's agent to be contacted:

Michael Miller

Name: Student Researchers United/UAW

Title: International Representative

2730 Telegraph Ave  
Floor 1, Berkeley, CA 94705  
(510) 549-2514

Address and telephone, if different:  
1111 Franklin Street 5th Floor, Oakland, CA 94607  
(510) 987-0238

## DECLARATION

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

NAME OF AUTHORIZED REPRESENTATIVE: Margo Feinberg

SIGNATURE OF AUTHORIZED REPRESENTATIVE: /s/ Margo Feinberg

Title: Attorney

Date: 05/24/2021

Los Angeles Regional Office  
425 W. Broadway, Suite 400  
Glendale, CA 91204  
(818) 551-2822

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1330 Broadway, Suite 1532  
Oakland, CA 94612  
(510) 622-1016

NOTICE OF REQUEST FOR RECOGNITION

PERB CASE NUMBER:

DATE NOTICE WAS POSTED:

ON \_\_\_\_\_, THE  
(Date)

(Employer)

RECEIVED FROM

(Employee Organization)

A REQUEST TO BE RECOGNIZED AS THE EXCLUSIVE REPRESENTATIVE OF EMPLOYEES  
IN THE UNIT DESCRIBED ON THE HEERA REPRESENTATION PETITION.

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 HEERA REPRESENTATION PETITION 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)



PERB Received  
05/24/21 13:43 PM

# HEERA REPRESENTATION PETITION

RECEIVED  
PUBLIC EMPLOYMENT  
2021 MAY 24 AM 11:58  
SAN FRANCISCO  
REGIONAL OFFICE

DO NOT WRITE IN THIS SPACE: Case No.: **SF-RR-1022-H** Dated Filed: **05/24/21**

INSTRUCTIONS: A request for recognition or intervention 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 concurrent service and proof of service of the HEERA Representation Petition as required by PERB regulations 51030, 51040 and 51100. Attach additional sheets if more space is required.

1. EMPLOYER (Name, address and telephone number) Regents of the University of California 1111 Franklin Street, 8th Floor Oakland, California 94607 (510) 987-9800 Ext.	Employer's agent to be contacted: <b>Letitia Silas</b> Title: <b>Executive Director, Labor Relations</b> Address and telephone, if different: 1111 Franklin St., 5th Floor Oakland, California 94607-5200 (510) 987-0238 Ext.
--	--

PERB Received  
09/08/21 20:55 PM

2. TYPE OF PETITION (Check all that apply) <input checked="" type="checkbox"/> REQUEST FOR RECOGNITION (RR) <input type="checkbox"/> PETITION FOR CERTIFICATION (PC) <input type="checkbox"/> INTERVENTION <input type="checkbox"/> SEVERANCE (Filed as PC) <input type="checkbox"/> SEVERANCE (Filed as RR)	DATE FILED: 05/24/2021	3. PROOF OF SUPPORT Filed with: <input checked="" type="checkbox"/> PERB <input type="checkbox"/> Third Party* <input checked="" type="checkbox"/> Majority support <input type="checkbox"/> 30% support <input type="checkbox"/> 10% support *Attach name, address & telephone number of third party, if applicable.
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4. DESCRIPTION OF PROPOSED UNIT (Including class code and geographic location if other than a statewide unit is proposed)  Shall INCLUDE: Please see Attachment A  Shall EXCLUDE: Please see Attachment A	5. NUMBER OF EMPLOYEES IN PROPOSED UNIT: 16,741	6. IF A CURRENT MEMORANDUM OF UNDERSTANDING (MOU) EXISTS COVERING ANY EMPLOYEES PETITIONED FOR, INDICATE: MOU EFFECTIVE DATE: MOU EXPIRATION DATE: NO AGREEMENT IS IN EFFECT <input checked="" type="checkbox"/>
---	--	---

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:		
<u>Name of Organization</u>	<u>Address</u>	<u>Date of Recognition/Certification (if any)</u>
N/A		

8. PETITIONER (Name, address and telephone number) Student Researchers United/UAW 2730 Telegraph Ave., Floor 1 Berkeley, California 94705 (510) 549-2514 Ext.	Petitioner's agent to be contacted: <b>Michael Miller</b> Title: <b>International Representative</b> Address and telephone, if different: 6500 S Rosemead Blvd. Pico Rivera, CA 90660 (310) 435-8831 Ext.
---	--

**DECLARATION**

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

PETITIONER'S AUTHORIZED REPRESENTATIVE:

*Michael J. Miller*  
(Signature)

Title: **International Representative** Date: **05/24/2021**

Los Angeles Regional Office  
425 W. Broadway, Suite 400  
Glendale, CA 91204  
(818) 551-2822

San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612  
(510) 622-1016

NOTICE OF REQUEST FOR RECOGNITION

PERB CASE NUMBER:

DATE NOTICE WAS POSTED:

ON \_\_\_\_\_, THE Regents of the University of California  
(Date) (Employer)

RECEIVED FROM \_\_\_\_\_  
(Employee Organization)

PERB Received  
09/08/21 20:55 PM

A REQUEST TO BE RECOGNIZED AS THE EXCLUSIVE REPRESENTATIVE OF EMPLOYEES  
IN THE UNIT DESCRIBED ON THE HEERA REPRESENTATION PETITION.

THE REQUEST IS BASED ON THE CLAIM THAT A MAJORITY OF THE EMPLOYEES IN THE  
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NOTICE IS HEREBY GIVEN THAT ANY OTHER EMPLOYEE ORGANIZATION DESIRING TO  
REPRESENT ANY OF THE EMPLOYEES IN THE UNIT DESCRIBED IN THIS REQUEST FOR  
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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.

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SEE THE HEERA REPRESENTATION PETITION FOR THE NAMES, ADDRESSES AND  
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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.

## ATTACHMENT A

Full name of Petitioner: Student Researchers United / International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)

### DESCRIPTION OF PROPOSED UNION

#### SHALL INCLUDE:

All graduate students employed as researchers, trainees, and fellows as described below:

1. Graduate Student Researchers and Graduate Student Assistant Researchers, currently appointed to and receiving financial remuneration in titles and title codes
  - 1. GSAR-GSHIP, 3274
  - 2. GSAR-NON GSHIP, 3273
  - 3. GSR-FULL FEE REM, 3282
  - 4. GSR-FULL TUIT & PARTIAL FEE REM, 3283
  - 5. GSR-NO REM, 3266
  - 6. GSR-PARTIAL FEE REM, 3276
  - 7. GSR-TUIT & FEE REM, 3284
  - 8. GSR-TUIT & FEE REM-UCSD-GRP B, 3285
  - 9. GSR-TUIT & FEE REM-UCSD-GRP C, 3286
  - 10. GSR-TUIT & FEE REM-UCSD-GRP D, 3287
  - 11. GSR-TUIT & FEE REM-UCSD-GRP E, 3262
  - 12. GSR-TUIT & FEE REM-UCSD-GRP F, 3263
  - 13. GSR-TUIT & FEE REM-UCSD-GRP G, 3264

as well as any other Graduate Student appointed to a different academic student title and performing substantially similar work;

2. Research Assistants as defined by Academic Personnel Manual 112-4-b-47, who are graduate students in the University with high scholarship standing who serve with financial remuneration but whose appointments must be part time. This appointee does research under the direction of a faculty member and may or may not collaborate in the publication of research as determined by the faculty member directing the work;
3. Graduate Students performing work substantially similar to those in paragraph (1) above and receiving financial remuneration from Institutional and Individual training grants including but not limited to National Institutes of Health Institutional Training Grants T32, T35, T90/R90, D43, D71, National Institutes of Health Individual Training Grants (F30, F31, and F31-Diversity), Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship, and National Sciences Foundation Research Traineeship Program;
4. Graduate Students performing work substantially similar to those in paragraph (1) above and receiving financial remuneration from fellowship awards through National Science Foundation Program, National Defense Science and Engineering Graduate Fellowship Program, Department of Energy Computational Science Graduate Fellowship, National Aeronautics and Space Administration Space Technology Graduate research Opportunities Fellowship; and

5. Graduate Students performing work substantially similar to those in paragraph (1) above currently appointed to and receiving financial remuneration as UC Graduate Student Research Assistants at Lawrence Berkeley National Laboratory

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

**SHALL EXCLUDE:**

1. All employees defined by HEERA as managerial, supervisory and/or confidential;
2. All employees of Lawrence Livermore National Laboratory and Los Alamos National Laboratory;
3. All employees in title code CWR003 – Visiting Student Res-Graduate;
4. All positions that are exclusively represented at the time of this petition; and
5. All staff positions covered by the *University of California Office of the President Personnel Policies for Staff Members*.



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. The name and address of my  
Residence or business is UAW 2865, 2730 Telegraph Ave.,  
Floor 1, Berkeley, CA 94705

On 05/24/2021, I served the HEERA Representation Petition for  
PERB Received (Date) (Description of document(s))  
09/08/21 20:55 PM

Student Researchers United/UAW in Case No. \_\_\_\_\_  
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

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;

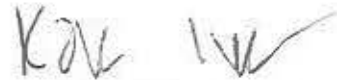
electronic service - I served a copy of the above-listed document(s) by  
transmitting via electronic mail (e-mail) or via e-PERB to the electronic service  
address(es) listed below on the date indicated. (May be used only if the party  
being served has filed and served a notice consenting to electronic service or has  
electronically filed a document with the Board. See PERB Regulation 32140(b).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Regents of the University of California  
1111 Franklin Street, 8th Floor  
Oakland, California 94607

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct and that this declaration was executed on 05/24/2021,  
at Berkeley, California  
(City) (State) (Date)

Kavitha Iyengar



(Type or print name)

(Signature)

(02/2021)

Proof of Service

PERB Received  
09/08/21 20:55 PM

PERB Received  
09/08/21 20:55 PM

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

SEP 09 2008



1111 Franklin Street, 8th Floor • Oakland, California 94607-5200 • (510) 987-9800 • FAX (510) 987-9757

Charles F. Robinson  
VICE PRESIDENT AND GENERAL COUNSEL

Writer's direct line: (510) 987-9755  
E-mail: leslie.vanhouten@ucop.edu

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);

Regional Director Anita Martinez  
September 5, 2008  
Page 2

- (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

Regional Director Anita Martinez  
September 5, 2008  
Page 3

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.)

Regional Director Anita Martinez  
September 5, 2008  
Page 4

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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September 5, 2008  
Page 5

- 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

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Page 6

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.]



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Page 7

### **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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Page 8

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 compromise 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

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

Regional Director Anita Martinez  
September 5, 2008  
Page 9

disclaims any employer relationship. Its documentation notes: The fellowship should not be considered as a "work contract between HFSPO 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

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<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.

Regional Director Anita Martinez  
September 5, 2008  
Page 9

disclaims any employer relationship. Its documentation notes: The fellowship should not be considered as a "work contract between HFSPO 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."

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### 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

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<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;

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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.

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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 Kossuth 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

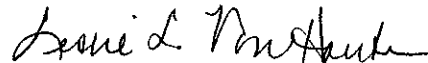
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unrepresented with respect to certain terms and conditions of employment. This does not mean that they cannot be represented. In such a situation, each employer is charged with bargaining over only those employment terms it controls. Even when one 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

DO NOT WRITE IN THIS SPACE: Case No: \_\_\_\_\_ Dated Filed: \_\_\_\_\_

**INSTRUCTIONS:** A request for recognition or intervention 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 concurrent service and proof of service of the HEERA Representation Petition as required by PERB regulations 51030, 51040 and 51100. Attach additional sheets if more space is required.

1. EMPLOYER (Name, address and telephone number) \_\_\_\_\_  
 Regents of the University of California  
 1111 Franklin Street, 12th Floor  
 Oakland, CA 94607  
 ( 510 ) 987 - 9220 Ext. \_\_\_\_\_

Employee's agent to be contacted: Leslie L. Van Houten  
 Title: University Counsel  
 Address and telephone, if different:  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607  
 ( 510 ) 987 - 9800 Ext. \_\_\_\_\_

2. TYPE OF PETITION (Check all that apply) DATE FILED: June 30, 2008

REQUEST FOR RECOGNITION (RR)  
 PETITION FOR CERTIFICATION (PC)  
 INTERVENTION  
 SEVERANCE (Filed as PC)  
 SEVERANCE (Filed as RR)

3. PROOF OF SUPPORT  
 Filed with:  PERB  Third Party\*  
 Majority support  30% support  10% support  
 \*Attach name, address & telephone number of third party, if applicable:

4. DESCRIPTION OF PROPOSED UNIT (Including class code and geographic location if other than a statewide unit is proposed)

Shall INCLUDE:  
 Please see Attachment A.

Shall EXCLUDE:  
 Please see Attachment A.

5. NUMBER OF EMPLOYEES IN PROPOSED UNIT:  
5,000

6. IF A CURRENT MEMORANDUM OF UNDERSTANDING (MOU) EXISTS COVERING ANY EMPLOYEES PETITIONED FOR, INDICATE:  
 MOU EFFECTIVE DATE: \_\_\_\_\_  
 MOU EXPIRATION DATE: \_\_\_\_\_  
 NO AGREEMENT IS IN EFFECT

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	Address	Date of Recognition/Certification (if any)
N/A		

8. PETITIONER (Name, address and telephone number) \_\_\_\_\_  
 Postdoctoral Researchers Organize (PRO/LAW); International Union, United Automobile, Aerospace and Agricultural Implement Workers of America -   
 6500 South Rosemead Blvd.  
 Pico Rivera, CA 90660  
 ( 415 ) 538 - 0844 Ext. \_\_\_\_\_

Petitioner's agent to be contacted: Maureen Boyd  
 Title: UAW International Representative  
 Address and telephone, if different:  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**DECLARATION**

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

PETITIONER'S AUTHORIZED REPRESENTATIVE: Maureen Boyd  
 (Signature)

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

Los Angeles Regional Office  
3530 Wilshire Blvd., Suite 1435  
Los Angeles, CA 90010-2334  
(213) 736-3127

San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514  
(510) 622-1016

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 Eborra

(Type or print name)



(Signature)

1 PRO/UAW Request for Recognition

Filed 7/1/08

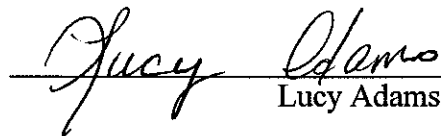
2 DECLARATION OF SERVICE BY MAIL

3  
4 I, the undersigned, say: I am over the age of 18, employed in Alameda County,  
5 California, in which county the within-mentioned mailing occurred, and not a party to the subject  
6 cause. My business address is 1111 Franklin Street, 8<sup>th</sup> Floor, Oakland, California 94607-5200. I  
7 served the attached: UNIVERSITY RESPONSE TO PRO/UAW REQUEST FOR  
8 RECOGNITION by placing a copy thereof in a separate envelope for each addressee named  
9 hereafter, addressed to each such addressee respectively as follows:

10 Margo A. Feinberg, Attorney  
11 Schwartz, Steinsapir, Dohrmann & Sommers  
12 6300 Wilshire Boulevard, Suite 2000  
Los Angeles, CA 90048

13  
14 Each envelope was then sealed and, with the postage thereon fully prepaid,  
15 deposited in the United States mail at Oakland, California on the date set forth below.

16 I declare under penalty of perjury under the laws of the State of California that the  
17 foregoing is true and correct: Executed September 5, 2008 at Oakland, California.

18  
19   
20 \_\_\_\_\_  
Lucy Adams

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24 93702.1  
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