

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

FILE

SEP 09 2008



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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, 8th 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);

- (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

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

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

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

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

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.

² 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.)

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

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

390-18 Salary and Stipend

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

390-60 Sick Leave

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

390-61 Time Off

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

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

390-62 Childbearing, Parental and Family and Medical Leave

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

390-75 University of California Retirement Plan Membership

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

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

390-17 Terms of Service

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

390-18. Salary and Stipend

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

390-19 Appointment Percentage

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

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

390-21 Notice of Appointment

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

390-40 Grievances

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

390-50 Corrective Action and Dismissal

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

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

B. What Is a Postdoctoral Scholar?

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

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

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 (HFSPO), University Corporation for Atmospheric Research (UCAR), the National Science Foundation, the Natural Sciences and Engineering Research Council for Canada (NSERC) and the China Scholarship Council.

Some sponsoring agencies are very specific about the relationship between them and the Postdoctoral Scholar.³ 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 HFSPO also

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

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

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

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

III. LEGAL ANALYSIS

A. Community of Interest

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

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

⁴ 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.

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;

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

4. The Extent to Which Employees Have Common Supervision

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

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

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

B. Other Legal Issues

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

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

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

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

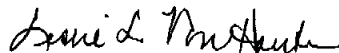
Regional Director Anita Martinez
September 5, 2008
Page 13

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

IV. CONCLUSION

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

Very truly yours,



Leslie L. Van Houten
University Counsel

la

cc: Dennis Dudley
Myron Okada
Howard Pripas
Mark Westleye



HEERA REPRESENTATION PETITION

DO NOT WRITE IN THIS SPACE Case # _____

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 extra space is required.

1. EMPLOYER (Name, address and telephone number) <u>Regents of the University of California</u> <u>1111 Franklin Street, 12th Floor</u> <u>Oakland, CA 94607</u> (510) 987 - 9220 Ext. _____	Employer's agent to be contacted: <u>Leslie L. Van Houten</u> Title: <u>University Counsel</u> Address and telephone, if different: <u>1111 Franklin Street, 8th Floor</u> <u>Oakland, CA 94607</u> (510) 987 - 9800 Ext. _____
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2. TYPE OF PETITION (Check all that apply) DATE FILED: <input checked="" type="checkbox"/> REQUEST FOR RECOGNITION (RR) <u>June 30, 2008</u> <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)	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 <small>*Attach name, address & telephone number of third party, if applicable.</small>
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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: <u>Please see Attachment A.</u> Shall EXCLUDE: <u>Please see Attachment A.</u>	5. NUMBER OF EMPLOYEES IN PROPOSED UNIT: <u>5,000</u> 6. IF A CURRENT MEMORANDUM OF UNDERSTANDING (MOU) EXISTS COVERING ANY EMPLOYEES PETITIONED FOR, INDICATE: MOU EFFECTIVE DATE: _____ MOU EXPIRATION DATE: _____ <input checked="" type="checkbox"/> NO AGREEMENT IS IN EFFECT
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7. ORGANIZATION(S) RECOGNIZED OR CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OR KNOWN TO HAVE AN INTEREST IN REPRESENTING ANY OF THE EMPLOYEES COVERED BY THIS PETITION:		
Name of Organization <u>N/A</u>	Address _____	Date of Recognition/ Certification (if any) _____

8. PETITIONER (Name, address and telephone number) <u>Productive Research Organism (PRO) UAW International Union, United Automobile, Aerospace and Agricultural Implement Workers of America</u> <u>6500 South Redwood Blvd.</u> <u>Richmond, CA 94680</u> (415) 528 - 0844 Ext. _____	Petitioner's agent to be contacted: <u>Maurice Boyd</u> Title: <u>UAW International Representative</u> Address and telephone, if different: _____ _____ _____
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I declare that the statements herein are true to the best of my knowledge and belief.

PETITIONER'S AUTHORIZED REPRESENTATIVE: Maurice 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
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NOTICE OF REQUEST FOR RECOGNITION

PERB CASE NUMBER: SF-RR-914-H

DATE NOTICE WAS POSTED: _____

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

RECEIVED FROM UAW International
(Employee Organization)

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

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

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

THE LAST DATE FOR FILING AN INTERVENTION IS: _____

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

THIS NOTICE MUST REMAIN POSTED UNTIL: _____

BY: _____
(SIGNATURE OF EMPLOYER'S AUTHORIZED AGENT)

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

ATTACHMENT A
DESCRIPTION OF PROPOSED UNIT

SHALL INCLUDE:

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

Postdoctoral Scholars – Employee (Title Code 3252);
Postdoctoral Scholars – Fellow (Title Code 3253);
Postgraduate Researcher – FY (Title Code 3240);
Postgraduate Researcher – AY State Funds (Title Code 3243);
Postgraduate Researcher – AY Extramural Funds (Title Code 3245); and
Visiting _____ - Postdoc (Title Code 3370)

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

SHALL EXCLUDE:

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

PROOF OF SERVICE

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

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

Attachment A and Cover Letter

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

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

personal delivery;

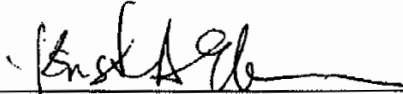
facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d).

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

510 - 987 - 9800
510 - 987 - 9220

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

Kristin Ebor
(Type or print name)


(Signature)

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DECLARATION OF SERVICE BY MAIL

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

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

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

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


Lucy Adams