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September 2, 2021

Via E-Mail (ronald.pearson@perb.ca.gov)

Ronald Pearson
Supervising Regional Attorney
California Public Employment Relations Board
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124

Re: *SF-RR-1022-H: Regents of the University of California and Student Researchers United, UAW*

Dear Mr. Pearson:

The Regents of the University of California submits this response to PERB's August 4, 2021 letter regarding sufficient interest for purposes of unit recognition. The recognition petition ("Petition") sought one unit consisting of approximately 16,741 graduate students in five different categories. (See [Appendix A, Categories 1-5](#).) The University is pleased to recognize a new unit of approximately 10,789¹ Graduate Student Researchers and Graduate Student Assistant Researchers, as listed by specific title codes in Appendix A, Category 1 of the Petition, and 308 UC Graduate Student Research Assistants at Lawrence Berkeley National Laboratory, totaling 11,097 graduate student employees. However, the other described students (Appendix A, Categories 2-5) or vague non-defined titles, are inappropriate for inclusion in the unit for the reasons discussed below.

I. INTRODUCTION AND OVERVIEW OF THE UNIVERSITY'S RESPONSE TO THE PETITION

The first category in the Petition included Graduate Student Researchers and Graduate Student Assistant Researchers, currently appointed to and receiving financial remuneration in the following academic student employee titles and title codes:

¹ As indicated in the University's letter to PERB dated June 16, 2021, these numbers are based upon payroll data effective April 30, 2021, for those paid on a monthly basis and May 15, 2021, for those paid on a weekly basis.

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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 indicated in the University's response dated June 16, 2021, there are 10,789 student employees in these title codes as of April 30, 2021 (for those paid on a monthly basis) and May 15, 2021 (for those paid on a bi-weekly basis). The University does not dispute that these title codes are assigned to student employees with a community of interest and thus the University is pleased to recognize that the above-title codes should be included in the proposed unit (collectively herein "GSRs").² Under Appendix A, Category 1, the UAW also seeks to include "any other Graduate Student appointed to a different academic student title and performing substantially similar work." While this description is vague and does not define "substantially similar work," the University is unaware of any other academic student titles that have substantially the same duties as GSRs.

Under Category 2 of Appendix A of the Petition, the UAW also seeks to represent "Research Assistants" as defined by Academic Personnel Manual 112-4-b-47, but there are no individuals who serve as Research Assistants as defined by this provision. This title has not been in use since approximately 2012. As a result, this title should not be included in the bargaining unit.

In Categories 3 and 4, the UAW seeks to include Graduate Students performing work "substantially similar" to the GSRs 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)³, Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship, National Sciences Foundation Research Traineeship Program,

² The University is aware that the above title codes include "GSARs" as well, but collectively refers to these student employees who it recognizes as belonging in the proposed unit as GSRs herein for ease of reference.

³ The NIH describes these as fellowships, not individual training grants.

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National Science Foundation Program⁴, 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.⁵ It is unclear what “substantially similar” means as there are over 400,000 individual funding opportunities from numerous sponsors across all disciplines for graduate students. Students apply directly to the agencies and retain ownership of the awards, which are meant to support their scholarly activities and progress toward their degrees. They are subject to policies and requirements consistent with those of other gift aid fellowship programs, including remaining in full time enrollment status while making suitable progress toward their degree. Examples are found here: <https://grad.berkeley.edu/financial/fellowships/> and <https://www.graddiv.ucsb.edu/our-services/extramural-funding#Funding>.

Assuming arguendo that one could distill down the catch-all, vague term, “substantially similar,” graduate students who receive stipends via the enumerated external grants and fellowships are not categorized as employees like GSRs and thus, they do not fall under HEERA. For example, the University does not:

- Exercise control over the minimum stipend amount
- Set the standards for awarding or continuing financial support
- Treat stipends as wages
- Exercise control over termination of financial support for individual awards
- Exercise control over the amount the outside organization provides for tuition and fee remission
- Cap the amount of money that a student receives from outside agencies

Many of the external grants set forth in the UAW’s petition take pains to assert that the award does not create an employment relationship. These include [NIH T32 grants](#), [NIH individual fellowships](#), and the [NSF Graduate Research Fellowship Program](#). Some awards also specifically recognize that a student may additionally, separate and apart from the fellowship or grant, perform services for their home educational institution as a teaching assistant or student researcher, but that those duties and “services” are not included within the funding conditions of the external fellowship or grant. Further, several of the individual fellowships distribute the stipend funding directly to the student fellow, without using the University as an intermediary. In the case of training grants awarded by the NIH and NSF, if a student is to take on limited supplemental employment as a GSR, the University must verify that the work performed as a GSR differs from that performed on the training grant, and that the GSR work does not impede

⁴ The University interprets this to mean the NSF Graduate Research Fellowship Program.

⁵ [Appendix B](#) contains a detailed listing of the requirements and characteristics of each of these fellowships and grants.

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the training activities and objectives that the grant requires. This requirement further distinguishes between a GSR and a trainee/fellow. Critically, the continued receipt of an external fellowship stipend is dependent on academic progress, not completion of specific research projects or deliverables that is typical of GSR employment.

The University of California provided the names of 2,255 students who are receiving external funding from one of these types of awards. Of this total, 554 are already on the GSR list that the University provided to PERB for inclusion in the bargaining unit because they hold separate and distinctive appointments as GSR employees. Assuming arguendo all of these students were included in the bargaining unit, there are an additional 3,943 individuals listed in the Petition⁶ who are not GSRs and who do not have any of the listed grants or fellowships. It is unclear on what basis the 3,943 individuals are included in the UAW's Petition. The mere fact that a graduate student is a student and performs research (as they all do as part of their academic requirements) does not make them an employee for purposes of HEERA. If it did, the University would be in the untenable position of paying each graduate student an hourly wage to complete their own school work, transforming ordinary educational learning work into work for wages. HEERA was never intended to convert all students into employees.⁷ The University is further unaware of graduate student fellows and trainees being included in a bargaining unit at any other higher education institution.⁸

The final category in the Petition is "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." The University accepts the 308 students employed as UC Graduate Student Research Assistants into the unit with the GSRs.

⁶ UAW estimated the approximate number of employees in the proposed bargaining unit as 16,741. The University provided the names of 10,789 GSRs in the employee title codes enumerated in Appendix A, Category 1, and 308 GSRA's from Lawrence Berkeley National Laboratory, resulting in a difference of 5,644 names. The University estimates that another 2,255 students are receiving awards from the external grants and fellowships enumerated in Appendix A, Categories 3 and 4, with 554 of them already on the GSRs list and therefore in the bargaining unit. Assuming arguendo, these 1,701 students (not accounting for the 554 who are already included because they are GSRs) were included in the unit, there still remains another 3,943 individuals who are unaccounted for.

⁷ Under their theory, all students who received external income in any sort, such as Pell Grants or TEACH Grants, would be entitled to organize just by virtue of the fact that they received a "grant" as a student.

⁸ For example, at University of Washington, where UAW represents GSRs, "graduate research assistants who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university" are NOT included in the unit.

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In sum, the University does not object to the inclusion of approximately 11,097 GSRs and UC Graduate Student Research Assistants the union petitioned-for; the University objects to the inclusion of the other individuals listed in UAW's Petition because students on external grants/fellowships are not employed by the University solely based upon receiving said grant/fellowship. Even if PERB determines the non-GSRs are "employees" under HEERA, there is no community of interest between GSRs and non-GSRs.⁹ Further, it is unclear which students comprise the other 3,943 members of the petitioned-for bargaining unit. Therefore, the University cannot adequately respond to this category of students.

II. FACTUAL SUMMARY

A. Background

The University's graduate education enterprise enrolls over 56,000 students, with doctoral students representing the largest number (27,000) and professional (22,000) and master's (7,000) comprising the remainder. Graduate education is funded through a variety and combination of methods (often, the combination is referred to as the financial support package), which can include:

- Fellowships/Grants;
- Student Loans;
- GSR employment; and/or
- Teaching Assistant, Reader, Tutor employment ("Academic Student Employee or ASE") employment (*currently represented by the UAW in the BX Bargaining Unit*)

The University provides graduate students unparalleled opportunities to work closely with world-class faculty, and to combine their participation in collaborative research projects with development of their own research. A fellowship/traineeship is a form of financial aid to the graduate student. Students who are on fellowships and grants are advancing their own academic pursuits, and are not employees. 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. A fellow/trainee has a mentee-mentor relationship with a faculty member, rather than an employee-employer relationship.

⁹ The University identified 2,255 students who are receiving financial remuneration from one of the identified grants or fellowships, and of these 2,255, 554 were also current GSRs at the time UAW filed the petition for recognition. The University does not dispute that those 554 students are a member of the proposed unit as it relates to their GSR appointment only and not to their non-GSR funding and conditions.

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Any student employment at the University of California is limited to 50% time to ensure that the student always remain a student first and an employee second and that there is timely progression to degree. Requiring all fellows and trainees to be characterized as employees will increase the time it takes students to complete their degrees since student employment is capped at 50% time and a fellowship/traineeship is a form of financial aid to the graduate student to advance their own academic pursuits. This limitation on access to fellowships and traineeships will ultimately be at a cost to the students and to the University.

The financial support packages of academic doctoral students differ considerably from those of graduate professional students, with the former receiving more fellowships and employment and the latter relying more heavily on student loans. In looking at a financial support package for graduate education, UC aims to provide a competitive net stipend (financial support in excess of tuition and fees, to be used for living expenses) utilizing a combination of the methods listed above, thereby reducing the need for a graduate student to take out loans to fund their education.

B. Terms and Conditions of Graduate Student Researcher Appointments

Academic Personnel Manual APM-112-25 defines a GSR as “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.”¹⁰ There is a [systemwide salary scale](#) that the campuses adhere to in setting salaries for students appointed as GSRs.¹¹ GSRs have the ability to grieve matters related to their academic appointments through APM 140. Matters related to academic standing or non-employment-related matters are addressed through other applicable academic or student procedures. Depending on their appointment type, GSRs may be eligible for partial or full tuition and fee remission, including payment of health insurance fees (GSHIP) and non-resident student tuition.¹² In addition, GSRs who are appointed for at least 12 months with at least 50% FTE are eligible to earn vacation leave.

The campuses are relatively consistent in their treatment of GSRs because efforts were made to provide GSRs with terms and conditions of employment similar to that of the UAW’s BX bargaining unit. In addition to tuition and fee remission, benefits include, at a minimum:

¹⁰ The Petition also includes Graduate Student Assistant Researchers (“GSARs”). APM-112-24 defines a GSAR as “a graduate student who is trained in research techniques under the supervision of a Principal Investigator on a research project that is not necessarily related to the student’s degree program.” There are only 11 GSARs on the list provided to PERB.

¹¹ The GSR and GSAR salary scale will increase by 3% on October 1, 2021, as this increase was planned long before the Petition was filed.

¹² If appointed to a fee remission-eligible title, most campuses provide full remission with an appointment of at least 25% FTE for the quarter/semester.

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- Up to six weeks of paid leave for pregnancy, childbirth, or related conditions
- Up to four weeks of paid leave for GSRs with their own serious health condition, who need to care for a family member with a serious health condition, or for baby bonding with a newborn child or a newly placed child
- Two additional weeks of unpaid leave for GSR's own health condition or baby bonding
- Childcare reimbursement of \$1100 per quarter, \$1650 per semester, and \$1100 for summer

The University considers GSRs to be employees, and in doing so, it exercises the level of control that one would expect to see in an employer-employee relationship. First and foremost, the University sets the criteria for employment, including the pay rates, grade point average prerequisites, and the percentage of time that a GSR may be employed. By policy, a GSR's appointment is limited to 50% time during the academic year, with higher percentages possible between terms and during the summer. Like other employees, they are paid through UCPath, the University's payroll system, and their paychecks have the typical deductions that are taken out for other student employees. The University issues a W-2 to the GSR at the end of the tax year. These facts, combined with the benefits enumerated above, are consistent with how an employer would treat an employee. The picture is different for graduate trainees and fellows who receive external forms of financial support, as the University does not set the criteria for receiving a stipend.

III. LEGAL ANALYSIS

A. **The Non-GSRs are not Employees under HEERA and Thus Should be Excluded from the Unit**

1. **Definition of Employee**

HEERA has recognized that student employees may be "employees" entitled to collective bargaining rights. Prior to 2017, the student employee must have met two conditions in order to be considered an "employee" under HEERA: (1) their employment must be contingent on their status as students and (2) the services they provide are unrelated to their educational objectives, or their educational objectives are subordinate to the services they perform and coverage under this act would further the purposes of the act. In 2017, the legislature broadened the definition of "employee" under HEERA by eliminating the second condition. The amended definition now includes "student employees whose employment is contingent on their status as students."¹³

¹³ As set forth below, this amendment was not intended to convert non-employees into employees, but was meant to recognize that there are students who also happen to be employees, but their employment status is not contingent on them remaining an employee. This could apply to various jobs across a campus, such as food service, an administrative position or custodial service.

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Based upon this change in the law, the University acknowledges that graduate students who are employed as GSRs may form a union, and the University looks forward to bargaining in good faith for an inaugural contract with its GSRs. However, neither the prior definition nor the post-2017 definition was intended to convert students who were not W-2 employees into W-2 employees (i.e. paid for time by the University through a paycheck by the hour, with taxes and withholdings taken out).¹⁴ Rather, it was to ensure that those students who were also W-2 employees and whose employment was contingent on their status as students could organize.

As stated, the current definition of “employee” under HEERA states:

(e) “Employee” or “higher education employee” means any employee, including **student employees** whose employment is contingent on their status as students, of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. 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.

Therefore, the first prerequisite is that the student be a W-2 employee.¹⁵ In other words, before looking at whether that employment is contingent on student status, the individual must meet the first threshold of being recognized as a W-2 employee by the University. The non-GSRs listed in the Petition are not W-2 employees of the University and they do not meet the threshold definition of “employee” by the IRS, or as defined by the law. For example, under the IRS standard, a person is considered a W-2 common law “employee” if the employer can control what the employee will do and how it will be done. (<https://www.irs.gov/businesses/small-businesses-self-employed/employee-common-law-employee>; See also *Pollack v. Rice Univ.*, 28 Fair. Empl. Prac. Cas. (BNA) 1273 (S.D.Tex.1982) [holding that Title VII does not apply to discrimination in admissions to a graduate program because the individual will not perform any services during the program, even if compensated monetarily, that are not “completely incidental to the scholastic program”].)

¹⁴ The University uses the term W-2 employee to refer to individuals who are employed under the traditional sense, with characteristics such as being paid through payroll, having full benefits, and being subject to employment policies. The term W-2 employee is to distinguish from the definition of “employee” in HEERA, which is for the sole purpose of identifying who is an “employee” for purposes of collective bargaining rights under HEERA.

¹⁵ It would be circular reasoning to adopt the Union’s position that every student who receives funding contingent on their status as a student is a “student employee” as set forth in the “employee” definition under HEERA, and it would ignore the plain language of the statute, which requires employment status before even looking at what that employment is contingent upon.

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At the University, some Postdoctoral Scholars are on training grants and fellowships, and they are all in one bargaining unit consisting of postdoctoral scholars. However, postdoctoral scholars are distinguishable from students because they have no other status at the University, except as an employee. When the UAW petitioned to unionize the postdoctoral scholars in 2008, all of the postdoctoral scholars, including those on training grants and fellowships, were included in the University's Academic Personnel Manual (the policies applicable to academic employees), [APM-390](#), as employees of the University. Postdoctoral scholars are not students and do not obtain fellowships or traineeships to further their own education or to obtain their degree; they all already have their PhD. Students, on the other hand, obtain fellowships and traineeships to fund their education and to perform research toward their field of study.

When the UAW petitioned to unionize the postdoctoral scholars that were enumerated in APM-390 as employees of the University and had employee title codes but excluded postdocs paid directly through fellowships, the University argued for inclusion of these paid directs because they were listed as employees under APM-390 and had an employee title code. Similarly, the University does not object to the inclusion of the GSRs and GSARs who have employee title codes and are covered by the APM.

All of these contexts recognize that just because an individual is a student and they have their expenses covered and/or receive a stipend from an external source, does not mean they are an employee of their home educational institution.

2. Non-GSRs are not “student employees” under HEERA

With the above background in mind, there is a significant difference between GSRs and non-GSRs in terms of whether they are “student employees.” 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. However, the non-GSRs in the Petition are not “student employees” nor has the University ever treated students who receive stipends via the enumerated external grants and fellowships as employees. For example, the University does not:

- Exercise control over the minimum stipend amount
- Set the standards for awarding or continuing financial support
- Treat stipends as wages¹⁶
- Exercise control over termination of financial support for individual awards

¹⁶ With the exception of NSF training grants, the stipends paid for fellowships and traineeships are paid through the Financial Aid Management System rather than UC's payroll system, UCPath. They are also administered by offices related to student financial support rather than employment.

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- Exercise control over the amount the outside organization provides for tuition and fee remission
- Cap the amount of money that a student receives from outside agencies

Many of the external awards at issue here assert that the award does not create an employment relationship, and further distinguish between the award from any service to the home educational institution in the form of employment as a teaching assistant or student researcher. Indeed, several of the individual fellowships distribute the stipend funding directly to the fellow, without using the University as an intermediary. In the case of training grants awarded by NIH and NSF, if a student is to take on limited supplemental employment as a GSR, the University must verify that the work performed as a GSR differs from that performed on the training grant, and that the GSR work does not impede the training activities and objectives that the grant requires. This requirement further distinguishes between a GSR and a trainee/fellow. However, graduate student employment at the University of California results in tuition and fee remissions, which are not chargeable to many of these fellowships and training grants. Critically, the continued receipt of a fellowship stipend is dependent on academic progress, not completion of specific research projects or deliverables that is typical of GSR employment.

As an example, the National Science Foundation Graduate Research Fellowship Program (<https://www.nsfgrfp.org/>) recognizes and supports outstanding graduate students in NSF-supported STEM disciplines who are pursuing research-based master's and doctoral degrees at accredited US institutions. The five-year fellowship includes three years of financial support including an annual stipend of \$34,000 and a cost of education allowance of \$12,000 to the institution. The fellowship is designed to support the awarded student's scholarly activities in pursuit of a graduate degree. Students apply for the fellowship directly with the NSF, outlining their scholastic qualities and research interests. Student who are awarded by the NSF are then able to designate their desired institution, which can be changed at the student's discretion.

Some 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. The fact that the University offers these benefits to students who are not employees does not create or imply an employment relationship. The University often also covers the balance when there is a difference between the amount of tuition and fees (including non-resident tuition), or the amount of health insurance funding, that an outside agency will pay. Again, this does not create or imply an employment relationship. The University does so because this type of support encourages students to seek external funding, and because its competitor institutions offer similar support as part of a graduate program. Rather, this is part of the University's bid to attract the best and brightest graduate students.

In sum, the University does not exercise control over the amount of money the non-GSRs receive, the conditions under which they are received or the conditions under which those funds may be terminated. Without that level of control, and because the non-GSRs do not meet the

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definition of common law employees as governed by applicable governmental agencies like the IRS, the non-GSRs are not “student employees” under HEERA and are thus not entitled to HEERA’s collective bargaining rights.

B. The Petition is Invalid as to Non-GSRs as it is Vague and Does Not Include Class Codes

As stated, the Petition includes various categories that do not refer to specific class codes or job descriptions, but rather just state that the category includes individuals who “perform substantially similar work” as GSRs. The HEERA Representation Petition requires a union to include class codes or job descriptions to define the unit. HEERA does not permit PERB to certify a class of those who “perform substantially similar work,” because it is vague and would lead to endless litigation over who is “substantially similar,” especially as hiring continues over subsequent years. Only those title codes that are specifically identified, therefore, are properly included in the unit. Categories 3 and 4, as phrased, encompass only those who “perform substantially similar work” *and* receive funding in the various categories. Therefore, given that the initial prerequisite – that they “perform substantially similar work” – does not define a specific unit or classification, the request as to Categories 3-4 must be denied.

C. Even if the Non-GSRs are Employees, There is No Community of Interest

If PERB determines that those traditionally not treated as W-2 employees are in fact “employees” for purposes of HEERA protection, the University respectfully submits that there is no community of interest to allow the current proposed unit to move forward. HEERA requires PERB to take into account the following criteria in determining the appropriateness of a unit:

- (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)(1).)

The University has never had a unit representing non-employee students, and the GSRs and non-GSRs do not work toward established common goals as the goals for GSRs are set by the University whereas the non-GSR’s goals are set by third party entities. Additionally, they do not have common supervision – the GSRs all report to faculty within the University and non-GSRs often report to an outside entity. Finally, the working conditions and job duties are dissimilar in

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that the GSRs' working conditions are set by the University and the non-GSRs' working conditions are set by the funding agency.

D. The Petitioned-for Unit, Unmodified, Will Have an Adverse Impact on Meet and Confer Relationships, Efficient Operations, and Effective Representation

HEERA also requires PERB to assess the following criteria when the appropriateness of a unit is at issue:

- (2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.
- (3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.
- (4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.
- (5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(Gov. Code § 3579(a)(2-5).)

These factors, combined with the lack of community interest, weigh against recognition given the lack of effective representation of the combined unit. (*The Regents of the UC Professional Librarians* (1982) PERB Dec. No. 247-H [“Given the pronounced community of interest differences between the diverse groups of...employees, we cannot find that an overall unit would provide employees with the statutory right to effective representation...”.].)

Here, effective representation of the GSRs would be severely hampered by including the non-GSRs in the unit. Specifically, the union has no standing to negotiate for wages, terms and conditions of employment and the like for the non-GSRs as they are often governed by specific compensation terms from the respective grants and fellowships over which the union and the University have no control. This inability to negotiate for the terms and conditions of non-GSRs' employment and compensation will not lead to effective representation between and

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among GSRs and non-GSRs. Further, if the students are all put into one unit, it is possible that a bargained-for provision could conflict with rules for obtaining outside funding. For example, many fellowships and grants do not permit a student to work in a GSR-type position without approval. A unified contract, however, could in and of itself make the terms and conditions such that the non-GSR is acting in a GSR role, thereby eliminating their eligibility for the external funding.

Based on the foregoing, the University recognizes the GSRs as a new unit within its system and looks forward to negotiating a contract, but it does not believe it is appropriate to include all non-GSRs into a bargaining unit.

Sincerely,

**PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP**

By: *Sandra McDonough*
Sandra L. McDonough

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APPENDIX A

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APPENDIX A - REQUEST FOR RECOGNITION CATEGORIES

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
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8. GSR-TUIT & FEE REM-UCSD-GRP B, 3285
9. GSR-TUIT & FEE REM-UCSD-GRP C, 3286
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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 11 2-4-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

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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.

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APPENDIX B

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APPENDIX B - DETAILED DESCRIPTION OF FELLOWSHIPS AND GRANTS IDENTIFIED IN PETITION

The various grants and fellowships listed in the Petition have different terms and conditions, none of which have commonality with GSRs. Program-specific summaries follow:

1. NIH Training Grants (T32, T35, T90/R90, D43, D71)¹⁷

- a. Institutional grant for which a faculty member applies
- b. Trainees are generally required to pursue training full-time, defined as 40 hours per week, and may engage in part-time employment incidental to their training, generally no more than 10 hours per week as long as the employment activities do not interfere with their training
- c. As an example of the type of grants, for T32, “Trainees are expected to be participants in a formal predoctoral curriculum offering broad and fundamental training in the neurosciences. We encourage a curriculum that includes education in multiple levels of analysis, and an understanding of the tools, technologies, and methods used in contemporary neuroscience research. We also expect that training will be grounded in principles of rigorous experimental design, an understanding of the critical need for, and proper use of, statistics, and quantitative literacy. Students should gain an understanding of the neurobiological basis of diseases and disorders of the nervous system as part of their core knowledge. The portion of the institutional training program supported by a Jointly Sponsored Predoctoral training grant typically includes core courses, laboratory rotations, and programmatic activities including development of professional skills. It is expected that these institutional training programs will contribute to basic and disease-related neuroscience research that is relevant to the participating NIH Institutes.”
- d. “Trainees are generally supported for 12-month full-time training appointments for which they receive a stipend as a subsistence allowance to help defray living expenses during the research training experience. The stipend is not a ‘salary’ and is not provided as a condition of employment with either the Federal government or the recipient organization.”
- e. NIH requires that stipends be paid in accordance with established stipend levels. NIH further states, “No departure from the standard stipend provided by NIH under the grant may be negotiated by the recipient organization with the trainee.”
- f. Stipend level for FY 2020 was set at \$25,320 annually
- g. Grant covers up to 60% of actual tuition and fees at the institution, up to a maximum \$16,000 per year in tuition, or up to \$21,000 per year for a dual degree program

¹⁷ The University was only able to identify students receiving stipends through T32 grants. Sources: [NOT-OD-20-070](#), [NOT-OD-17-095](#), Grants Policy Statement [11.3.8.2](#), [11.3.10.7](#), [Grants Policy Statement 11.3.16.1](#)

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- h. Grant covers actual cost of health insurance, up to \$4,200 per year
 - i. No explicit grant of vacation leave; rather, trainees may receive their stipend during the normal periods of vacation and holidays observed by individuals in comparable training positions at the sponsoring institution
 - j. Trainees may receive their stipend for up to 15 calendar days of sick leave per year
 - k. Trainees may receive up to 60 calendar days (equivalent to eight workweeks) of parental leave each year for the birth or adoption of a child
 - l. NIH must approve unpaid leave
- 2. NIH Individual Fellowships (F30, F31, F31-Diversity)¹⁸**
- a. Fellowships are awarded to individuals, not institutions
 - b. Fellows are generally required to pursue training full-time, defined as 40 hours per week, and may engage in part-time employment incidental to their training, generally no more than 10 hours per week as long as the employment activities do not interfere with their training.
 - i. NIH must approve if fellow wishes to be part-time.
 - c. “A stipend is provided as a subsistence allowance for Kirschstein-NRSA fellows to help defray living expenses during the research training experience. It is not provided as a condition of employment with either the Federal government or the sponsoring institution.”
 - d. As an example, “applicants must also have identified a research sponsor and a dissertation project that **must be in basic biomedical sciences relevant to the NIGMS mission**, and includes a promising approach to the problem as well as strong training potential. The proposed mentored research training is expected to clearly enhance the individual’s potential to develop into a productive, independent physician-scientist or other clinician-scientist.”
 - e. Stipend is not considered salary.
 - f. NIH, not institution, determines stipend level.
 - g. Stipend level for FY 2020 was set at \$25,320 annually
 - i. Institution distributes the stipend to the fellow.
 - h. Fellowship covers up to 60% of actual tuition and fees at the institution, up to a maximum \$16,000 per year in tuition, or up to \$21,000 per year for a dual degree program
 - i. Fellowship award includes an institutional allowance that can include health insurance for the fellow
 - j. No explicit grant of vacation leave; rather, fellows may receive their stipend during the normal periods of vacation and holidays observed by individuals in comparable training positions at the sponsoring institution

¹⁸ Sources: [NOT-OD-17-095](#), [NOT-OD-20-070](#), [NOT-OD-21-074](#), [Grants Policy Statement 11.2.7](#), [Grants Policy Statement 11.2.9.2](#), [Grants Policy Statement 11.2.10.7](#), [Grants Policy Statement 11.2.9.4](#), [Grants Policy Statement 11.2.13.1](#), [11.2.13.2](#)

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- k. Fellows may receive their stipend for up to 15 calendar days of sick leave per year
 - l. Fellows may receive up to 60 calendar days (equivalent to eight workweeks) of parental leave each year for the birth or adoption of a child
 - m. NIH must approve unpaid leave
 - n. Fellows may request childcare costs at \$2,500 per year
 - o. NIH has right to terminate the individual fellowship prior to scheduled completion date if it determines that the recipient has materially failed to comply with the terms and conditions of the award or to carry out the purpose for which it was made
 - i. Includes completion of annual progress reports
- 3. Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship¹⁹**
- a. Institutional award to which faculty applies; students at the institution then selected as fellows
 - i. Davis is the only campus with fellows under this program.
 - b. Doctoral level training stipend is \$79,500, broken down into \$24,500 per year for 3 years, plus \$2,000 cost of education allowance
 - i. Continued funding is contingent upon making satisfactory academic progress
 - c. Fellow is deemed responsible for tuition and fees, though the institution can apply its cost of education/training allowance to the fellow's tuition and fees
 - d. Fellows may accept supplemental employment that would positively contribute to their teaching or research and provide eligibility for tuition waivers
 - e. Not entitled to accrue vacation leave
 - f. Fellow can take up to six months off because of health, personal reasons, or outside employment, but longer than six months will forfeit eligibility
 - i. For doctoral level, must use the 36 months of funding within 42 months
- 4. NSF Research Traineeship Program²⁰**
- a. Institutional award for which a faculty member applies
 - b. 12 month program, with stipend of \$34,000
 - i. Appointment and stipend may be distributed over multiple years
 - c. Trainee cannot be charged tuition or any other required costs of education while receiving an NRT stipend
 - i. Additional costs related to trainees can be included in the budget
 - d. Trainees must receive explicit, formal training in communication, teamwork, ethics, and other transferable professional skills
 - e. Fringe benefits including payment for leaves may be allowable

¹⁹ Sources: [CFR](#) and [Request for Applications](#)

²⁰ Sources: [Program Solicitation](#), [FAQs](#), [NSF Proposal & Award Policies & Procedures Guide](#)

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- f. Policies & Procedures guide distinguishes between trainee and employee costs for budget purposes (see II-15-16 and II-18)

5. NSF Graduate Research Fellowship Program²¹

- a. Fellowship awarded to an individual, not an institution
 - i. May only accept one federal graduate fellowship
- b. Provides three years of funding over five years
 - i. When fellow is receiving funding, they are on Tenure
 - ii. If fellow needs to take leave for more than a month, NSF must approve
 - iii. Fellow must meet all requirements and make satisfactory academic progress to continue to the next year, even if not on Tenure status
- c. Stipend is \$34,000/year
 - i. Cost of education allowance of \$12,000 is provided directly to the institution
 - ii. While on Tenure status, fellows are exempt from payment of tuition and fees
 - iii. “Fellows are not, in any sense, considered salaried employees of the NSF. NSF will not deduct funds from the stipend or pay any additional amounts, such as Social Security Taxes.”
- d. Tenure status includes normal, short vacation periods, but summer is not considered vacation and the fellow must be engaged in their graduate program (coursework or research)
- e. Non-Tenure is called Reserve status
 - i. Fellow is expected to continue making academic progress during this time; NSF must approve non-enrollment
- f. Leaves
 - i. Fellow may be in medical deferral status for at least one month, up to one year for medical or dependent care needs, during either Reserve or Tenure year
 - ii. Must be approved by institution and NSF
 - iii. Paid leave available for fellows on Tenure status: either the institution’s paid leave policy for graduate students, or if no policy, can receive up to three months of stipend pay, which is deducted from the 36 months of Tenure status.
- g. Fellow is expected to devote full time to advanced scientific study or work during fellowship period, but may undertake teaching or similar activity for “reasonable amount” without NSF approval, compensation for this work is determined by institution

²¹ Sources: [Program Solicitation](#), [Administrative Guide for Fellows and Coordinating Officials](#)

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- h. Fellowship can be terminated when fellow is not making satisfactory academic progress, if they fail to submit the annual activities report, or if they fail to meet the deadline for declaring fellowship status
- i. For Workers Compensation purposes, “NSF graduate fellows are covered by applicable institutional policies for graduate students.”

6. National Defense Science and Engineering Graduate Fellowship Program²²

- a. Fellowship awarded to an individual, not an institution
- b. Three years
 - i. Satisfactory academic progress is a condition of the appointment
 - ii. Cannot receive simultaneous remuneration from another fellowship
- c. Stipend is \$38,400 annually, paid out monthly directly to the student
 - i. Must be enrolled in academic study or engaged in research to receive support during summer months
 - ii. Taxes are not deducted from the stipend
- d. Covers full tuition and fees during the fellowship, paid directly to the institution
 - i. Covers health insurance up to \$1,200; remainder is fellow’s responsibility
- e. Department of Defense must approve changes to the fellow’s advisor, program, and institution
- f. Leaves
 - i. Government may grant deferral up to 12 months for military service, diagnosis of a health condition that prevents the fellow from progressing in their studies, or if the fellow’s immediate family member requires medical care or assistance

7. DOE Computational Science Graduate Fellowship²³

- a. Fellowship awarded to an individual, not an institution
- b. Yearly stipend of \$38,000, renewable up to four years
 - i. Campus data shows this is paid directly to the fellow
- c. Renewal is dependent on acceptable academic performance and progressing toward degree, completion of practicum, research is of interest to DOE
- d. Covers full tuition and fees during the appointment period
 - i. Institution must certify that the fellow is not required to teach or provide other departmental support activities for more than one term
 - ii. Additional graduate responsibilities must be approved in advance by funder
- e. Summer must be spent conducting full-time research related to the completion of the degree program, enrolled in classes, or participating in practicum assignment
- f. Fellow must complete a 12 week practicum at a DOE laboratory

²² Sources: [Stipends & Travel](#), [Tuition, Fees, Benefits](#), [FAQ - Fellowship](#)

²³ Sources: [Eligibility](#), [Benefits & Opportunities](#), [DOE Lab Practicum](#), [Program of Study](#), [Program Review](#)

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- g. Fellow must complete a Program of Study to ensure that they can succeed in computational science
 - i. Changes to Program of Study must be approved by funder in advance
 - h. Fellow must participate in annual program review
- 8. NASA Space Technology Graduate Research Opportunities²⁴**
- a. Fellowship awarded to individual, not an institution
 - i. Fellow's faculty advisor is designated as PI on the award
 - b. Provides two to four years of support at doctoral level
 - i. Renewal is contingent on satisfactory progress (academic performance, research progress, recommendation by faculty advisor, recommendation by NASA Center research collaborator); both quarterly and annual reports required
 - ii. Receipt of other federal graduate fellowship at different point in graduate degree may impact the amount awarded by this fellowship
 - c. Annual stipend is \$36,000/year, for personal expenses
 - i. Per campuses, stipend is paid directly to fellow
 - ii. Award includes \$11,000 for the fellow's faculty advisor, which can be used to cover student travel to professional meetings, lab supplies, supplement to health insurance or tuition/fees
 - iii. \$10,000 award for student's annual 10 week visiting technologist experience at NASA
 - d. Tuition and fees covered up to \$20,500
 - i. Institution must exempt fellow from paying the difference between the allowance and what is actually charged
 - e. Health insurance cost paid up to \$2,500 or actual cost if lower
 - f. Unpaid leave of absence is allowed for incorporating professional development, as approved by NASA; up to two periods of up to three months each per federal regulation, may charge paid leave to the award

²⁴ Sources: [Fall 2021 Solicitation](#), [Federal regulation re: allowance of paid leave on a grant/fellowship](#), [NASA Grant Manual](#)

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PROOF OF SERVICE

**The Regents of the University of California and Student Researchers United, UAW
Case No. SF-RR-1022-H**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On September 2, 2021, I served true copies of the following document(s) described as **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S RESPONSE TO PERB'S AUGUST 4, 2021 LETTER** on the interested parties in this action as follows:

Margo A. Feinberg, Attorney
Schwartz, Steinsapir, Dohrmann & Sommers, LLP
6300 Wilshire Boulevard, Suite 2000
Los Angeles, CA 90048-5268
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Pico Rivera, CA 90660
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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address wfarrell@paulplevin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 2, 2021, at San Diego, California.



Whitney W. Farrell