

**U.S. House of Representatives
Committee on Education and Labor**

**Written Testimony of
Michael Miller
International Representative
International Union, UAW**

**Submitted for the field hearing on
“Understanding Problems in First Contract Negotiations:
Post-Doctoral Scholar Bargaining at the University of
California”**

**Berkeley, California
April 30, 2010**

Good morning Chairman Miller, Congresswoman Lee and Congresswoman Woolsey. Thank you for holding this hearing. Thank you for supporting scientific research, the University of California and Postdoctoral Scholars.¹ My name is Mike Miller. I have been an International Representative with the UAW for ten years. I am currently chief union negotiator in bargaining a first contract covering 6,000 Postdoctoral Scholars throughout the UC system. I am also a proud alumnus of UCLA where I earned a Masters degree in Political Science, worked as a Teaching Assistant and helped organize the union for 12,000 Teaching Assistants, Readers and Tutors at UC statewide.

The Postdoctoral Scholar bargaining unit was certified in November 2008. Since then, bargaining has dragged on 56 days without settling a contract that, as we have heard in previous testimony, would greatly improve the work lives of such critical and deserving employees.

Several bargaining issues are still pending. Please see Exhibit D. Unfortunately, no issues have been resolved since October 2009.

Based on my experience negotiating contracts with UC, University of Washington, and the California State University System, 56 days over 18 months greatly exceeds the amount of time needed to settle a first contract if the parties *want* to do so.

Negotiations for a first contract for Teaching Assistants at UC took only nine months in 1999-2000 during which the Union filed dozens of unfair labor practice charges and struck and the Governor as well as Legislative leaders intervened in bargaining leading to the direct involvement of the UC President in settlement; the first contract for Teaching Assistants at the CSU system took 6 months during 2004-2005; and the first contract for Teaching and Research Assistants at the University of Washington took only seven weeks in 2004.

The evidence in the case of Postdoctoral Scholars' bargaining, however, suggests that UC does *not* want to settle the contract. This is particularly unsettling since, after a great deal of struggle and rancor to negotiate the first Teaching Assistant contract ten years ago, we established a cooperative and productive bargaining relationship with UC for a number of years. Rather than building on that

¹ UC received \$2.98 billion in grants and contracts from federal sources in fiscal year 2009. See UC Consolidated Audited Annual Financial Reports, available at <http://www.universityofcalifornia.edu/reportingtransparency/>. Also see Chart 1.

relationship and bargaining constructively toward an agreement for Postdoctoral Scholars, UC appears to be trying to delay and derail bargaining.

UC Using State Budget Crisis as Pretext to Deny Increases

UC's chief negotiator, Gayle Saxton, and several administrators in the UC Office of the President, have repeatedly maintained that the California state budget crisis prevents UC from agreeing to increased salaries or improved health benefits for Postdoctoral Scholars. At least three sets of facts undermine UC's position.

Postdoctoral Scholars are Paid from Expanding Research Revenue, not Shrinking State General Funds

Over 90 percent of Postdoctoral Scholars are compensated from research contracts and grants that come from federal sources allocated by Congress, *not* state general funds.² Moreover, according to UC's budget office: "UC cannot legally transfer funds from restricted sources, such as state and federal research grants, and use the money to make up for cuts in state funding."³

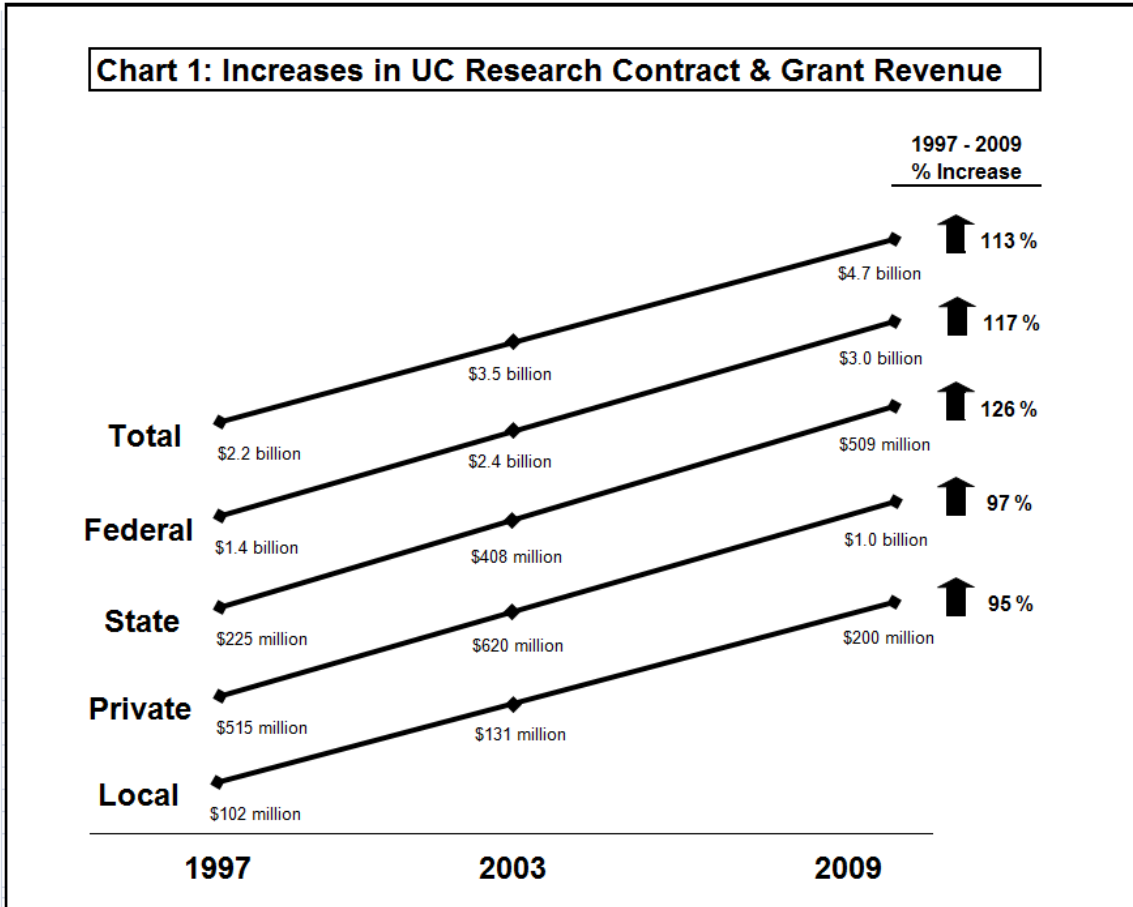
These grant and contract revenues that fund Postdoctoral Scholar salaries and benefits have also been expanding dramatically in recent years. According to UC's audited financial statements, the University's overall research contract and grant revenue – including federal, state, local and private sources – has more than doubled in recent years, growing from \$2.2 billion in fiscal year 1997 to \$4.7 billion in 2009.⁴ Even in the midst of California's current budget crisis, UC's overall research contract and grant revenue increased 4.3 percent from 2008 to 2009—including a 3.4 percent expansion of state research funds.⁵ (See Chart 1)

² While UC receives research funding from a variety of sources, and although UC says exact numbers are unavailable, UAW and UC have discussed in bargaining that federal grants and contracts fund roughly 90 percent of UC's Postdoctoral Scholar appointments (See Chart 2).

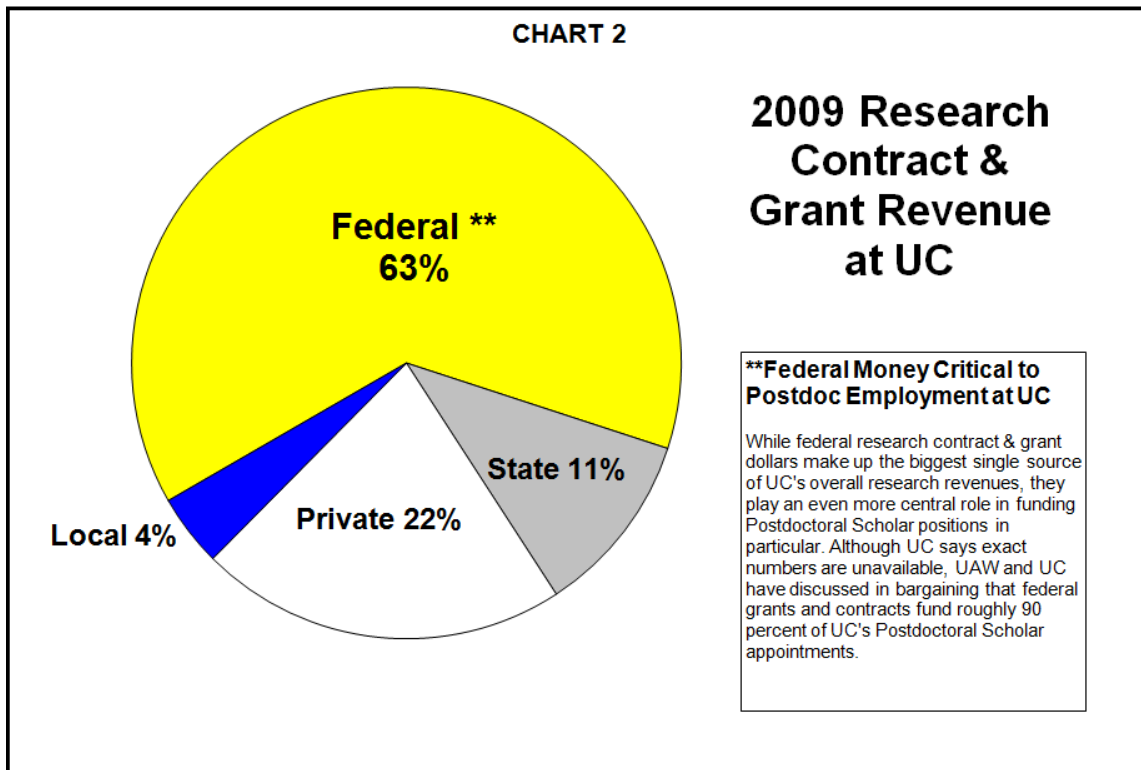
³ See "How the Budget Works," on the University of California Budget News webpage, which can be viewed at http://www.universityofcalifornia.edu/budget/?page_id=1120

⁴ See UC Consolidated Audited Annual Financial Reports, available at, <http://www.universityofcalifornia.edu/reportingtransparency/>.

⁵ Ibid.



Moreover, this increase in research contract and grant revenue only shows signs of accelerating in the future. Much of this increase will come from federal sources, especially given the recent re-prioritization of science under the Obama administration. The federal government (through agencies such as NIH, NSF, DOE, DOD, and NASA) provides by far the largest single portion of UC's research funding, contributing roughly two-thirds of the University's overall annual research contract and grant dollars, and is especially important to Postdoctoral Scholar positions. (See Chart 2) While federal sources are the largest source of UC's contract and grant revenues, the fact remains that all categories of research contract and grant revenues at UC – including from the state of California – have grown significantly in recent years and show no sign of waning.



In fact, a number of the UC campuses have been touting their unprecedented recent growth in contract and grant revenue. UC Davis recently announced, for example, its expectation that it would set a record this year for research revenues and underscored the significance of that fact in the context of the current state budget crisis. "Despite the difficult budget situation, UC Davis is on a steep upward curve — doubling our research income in less than a decade," says UC Davis Chancellor Linda Katehi. Similarly, UCLA recently announced that its research operations were bringing in a record-setting \$4 million per day so far in fiscal year 2010.⁶

This growth in contract and grant revenue at UC should only make easier UC's existing capacity to provide economic improvements for Postdoctoral Scholars. "The University has the capacity within its research budgets to agree to fair salary increases," notes Norman Ellstrand, Professor of Genetics at the University of California, Riverside and recent recipient of a Guggenheim Fellowship. "Funding agencies, as well as the University administrators who oversee grant proposals, expect that grant budgets include salary increases each

⁶ For UC Davis, see "Research funds hit new high, top half-billion dollars," at <http://www.universityofcalifornia.edu/news/article/22536>. For UCLA, see "UCLA researchers bring in \$4M a day in research contracts, grants," at <http://www.today.ucla.edu/portal/ut/researchers-bring-in-4m-a-day-111993.aspx>.

year and budget accordingly. Given these facts, and the tremendous value Postdoctoral Scholars bring to the institution, the University's bargaining team should be able to reach an agreement with fair wage increases and benefits quickly."⁷

UC Has Agreed to Substantial Compensation Increases with Similar Employees

Second, in February of this year, UC agreed to a contract with another union representing nearly 10,000 Researchers and Technicians on a contract that includes significant compensation increases in each of the next three years.⁸

In the agreement with UPTE-CWA, UC will provide Staff Research Associates and Technicians a \$1,000 lump sum for the 2009-10 year, and combined general and step increases of 4.5 percent, 5 percent, and 5 percent in fiscal years 2010-11, 2011-12, and 2012-13, respectively, a 15.2 percent compound increase.⁹ Not only do these researchers and technicians work side-by-side with Postdoctoral Scholars, but they are also funded by the same contracts and grants.

UC has also agreed to provide substantial increases to Resident Physicians over the next few years. Resident Physicians will receive combined general and step increases of 6.0 percent to 7.9 percent in each fiscal year, 2009-10, 2010-11, and 2011-12.¹⁰

UC "Philosophically Opposed" to Experience-Based Pay Increases for Postdoctoral Scholars

In addition to using the California budget crisis as pretext for not settling the Postdoctoral Scholar contract, Ms. Saxton contends that the University is

⁷ See Exhibit A, Statement from Professor Norman Ellstrand.

⁸ See <http://www.upte.org/rx-tx/ulp/index.html> for UPTE-CWA's description of charges filed prior to their one-day ULP strike on September 24, 2009. For a description of the labor board's response to the charges, see UPT-CWA's January 2010 newsletter at <http://www.upte.org/rx-tx/01-10CAW.pdf>. For examples of UPTE-CWA's public relations campaign against UC, see <http://www.upte.org/rx-tx/execpay.pdf> or <http://www.peopleorprofit.org/>.

⁹ See <http://www.upte.org/publication-ebulletin/2010-02-19.html> for a summary; and see the contract at http://www.ucop.edu/atyourservice/employees/policies_employee_labor_relations/collective_bargaining_units/technical_tx/contract_articles/tx_contract_0410draft.pdf.

¹⁰ The Resident Physician contract can be viewed at http://www.ucop.edu/atyourservice/employees/policies_employee_labor_relations/local_agreements/ucsd/S_DHSA_MOU-Final-09-12.pdf. See http://meded.ucsd.edu/assets/6/File/housestaff/Salary_percent20Scale_percent2009-10_percent20&_percent2010-11.pdf for their salary scales that will take effect July 1, 2010. Salary scale changes that took effect on July 1, 2009, can be viewed at <http://www.ucop.edu/acadadv/acadpers/0910/table22.pdf>.

“philosophically opposed” to providing experience-based pay increases to Postdoctoral Scholars because they are “academic” employees who, according to UC, should only be eligible for merit-based raises. Yet, UC pays thousands of Resident Physicians, whom it also classifies as academic employees and who have similar levels of education and training, experience-based salary increases every year.

Additionally, the NIH, the agency providing the single largest source of federal funding for research grants to UC sees fit to reward its own NIH Postdoctoral Fellows with experience-based step increases. The NIH Kirchstein program, one of the most academically prestigious in the world, ensures that Postdoctoral Scholars on this fellowship receive annual experience-based step increases to recognize and reward their experience level. Pursuant to NIH regulations, UC already applies these increases to the 400-500 Kirchstein Postdoctoral Fellows who are part of the UAW bargaining unit.¹¹ A number of departments and labs at UC also follow this standard already for non-NIH Kirchstein Postdoctoral Scholars to track the national standard.¹²

Moreover, because of the high rate of turnover among Postdoctoral Scholars (who cannot work in this job more than five years), establishing a system of experience-based step increases would represent a one-time, relatively-low cost to UC. As UC’s own records indicate, 72 percent of Postdoctoral Scholars already receive a salary or stipend at or above the rate we are proposing, based on years of experience.¹³

Delaying Bargaining by Hiding Behind UC’s Own Alleged Inability to Provide Information

UC has repeatedly delayed providing information we have requested and then used its own failure to provide the information as an excuse to delay bargaining.

Relevant to the outstanding bargaining topics, we have requested information regarding historical salary/stipend rates, source of stipend, salary/stipend

¹¹ While UC has not provided specific information on stipend source for Postdoctoral Scholars, they have communicated in bargaining that roughly 400-500 NIH Kirchstein Fellows are currently working at UC.

¹² See <http://grants.nih.gov/grants/guide/notice-files/NOT-OD-10-047.html> for the NIH Kirchstein stipend scale based on years of experience as a Postdoctoral Scholar.

¹³ According to a costing document from April 2009 payroll records that UC provided to the Union, 4,029 of the 5,578 individuals were paid at least the equivalent of what they would make on an NIH fellowship

increases and the reasons for those increases, years worked as a Postdoctoral Scholar, the number of Postdoctoral Scholars laid off in recent years, examples of and information regarding grants and contracts, health insurance premium information for Fellows and Paid Directs. As of yet, we have only received a tiny fraction of the information requested.¹⁴

The claim that one of the most sophisticated research universities in the world lacks the information technology to track its employees is as revealing of UC's motivation not to reach agreement as it is ridiculous.

As an example, on April 15, 2010, UC for the first time asserted that there were alleged restrictions from funding sources of a small fraction of Postdoctoral Scholars – those in the Postdoctoral Scholars—Fellow and Postdoctoral Scholars—Paid Direct titles – that prevent UC from agreeing to salary increases and health benefit improvements in 2010 as well as any salary increases and health benefit improvements in any subsequent year of a contract.

When pressed for the number of Postdoctoral Scholars whose funding source may pose such a problem or the cost of the alleged liability for UC, Ms. Saxton stated that she does not and cannot know because UC does not keep track of this information in any centralized way. Ms. Saxton also has not produced a single agreement with a funding agency that contains the restrictions she alleges prevent increases in salary and benefits. But, most ridiculous of all and clearly reflecting their strategy of delay, when UC proposed the next day that we postpone bargaining salaries and benefits for future years to October 2010, they also proposed a one-time across-the-board 1.5 percent increase for all Postdoctoral Scholars in July 2010– completely contrary to Ms. Saxton's claim about restrictions on salary increases. This contradictory position suggests very

¹⁴ The Union requested these items starting on December 19, 2008, and continuing on February 6, 2009, March 10, 2009, April 17, 2009, July 17, 2009, August 26, 2009, March 17, 2010, and April 20, 2010. More specifically, starting on December 19, 2008, and numerous times since then, the UAW has requested source of stipend for each Postdoctoral Scholar, which UC has yet to provide. The Postdoctoral Scholars Saxton now says may pose a problem are all in the Fellow or Paid Direct titles, which receive a fellowship stipend rather than a salary. As of July 17, 2009, we also requested a number of pieces of information regarding Fellows and Paid Directs, including, but not limited to: any agreements between funding agencies and the University regarding Fellows or Paid Directs (including those referenced in the University's September 5, 2008, letter to PERB (See Exhibit E) as the basis for arguing to include Paid Directs in the bargaining unit), description of how the University determines the overall stipend/salary rate for Fellows and Paid Directs, and a description of the process for setting up the appointment at the University.

strongly that UC's alleged inability to provide information is simply pretext for not reaching agreement for as long as possible.

UC Wasting Valuable Public Resources Avoiding a Contract

The use of University resources – whether from the \$825 million UC received last year in Facilities and Administration costs from grants and contracts, general funds, or tuition revenues – to engage in these delays has not gone unnoticed. “We have been watching these negotiations for roughly 15 months now and are disappointed to see UC once again continuing its pattern of dragging out negotiations for as long as possible,” says Victor Sanchez, President of the University of California Student Association, representing over 200,000 students across the UC system, “especially since some part of our rapidly increasing tuition and fees goes to pay the administrators in charge of these negotiations.”¹⁵

Rather than settle a multi-year contract with reasonable salary increases and benefits each year, UC is proposing to bargain over salary and benefits in October 2010 and each subsequent October if no multi-year agreement can be reached. Unnecessarily prolonged bargaining wastes resources.

Attempting to Support Decertification Effort

On at least three campuses, the UC administration has disseminated a website promoting decertification of the UAW and encouraged Postdoctoral Scholars to review it. Moreover, in December 2009, Ms. Saxton provided a list of Postdoctoral Scholars to an individual seeking to decertify the Union.

On December 10, 2009, in a UC San Francisco Academic Senate Graduate Council meeting at which Postdoctoral Scholars were present, a

¹⁵ While the claim that UC lacks the information technology to track its employees seems implausible, credulity is strained even further by the fact that last year alone UC received \$825 million in Facilities & Administration (F & A) costs from grants and contracts. F & A costs are recovered by UC as a percentage of every dollar awarded by a granting agency for the direct costs—salaries, benefits, etc.—of performing the research project. For federal grants and contracts at UC, for example, UC receives roughly 53 percent, or an additional 53 cents spent on every dollar of research. One of the main purposes of this money is, according to the NIH, to pay for “indirect costs associated with the overall management of an organization, e.g., President’s Office, Human Resources Office, Accounting Office, office supplies, etc.” See <http://oamp.od.nih.gov/dfas/faqIndirectCosts.asp#difference>.

University administrator discussed positively as an “item of interest” and provided the address for the website advocating decertification of the UAW while giving a report on the ongoing negotiations. A University bargaining team representative was in attendance and made no efforts to stop the administrator from providing this report and the website.

While UC is clearly more interested in decertification than are Postdoctoral Scholars, these actions further demonstrate UC’s desire to delay reaching agreement on a contract.

Conclusion

From the evidence presented emerges a pattern of delay and obstruction by UC with the apparent goal of stalling and/or avoiding all together a collective bargaining agreement that would significantly improve the lives of the 6,000 Postdoctoral Scholars who make UC such a great research University. The first Teaching Assistant contract and the most recent Researcher and Technician contract only settled after unfair labor practices and strikes and we’d like to avoid that. UC will hopefully change this pattern, avoid such unnecessary and unproductive acrimony and settle this contract swiftly and equitably.

Exhibit A
Testimony of Norman Ellstrand

I am Norman Ellstrand, Professor of Genetics at the University of California, Riverside, and recent recipient of a Guggenheim Fellowship. I have been a UC faculty member for three decades and have employed a several Postdoctorals over those years, in addition to other researchers and graduate students.

Postdocs have been critical to my research projects. The Postdoctoral scientists that I have hired have conducted research that has lead to many of the key publications of my career. And many of those scientists have gone on to become research leaders elsewhere. For example, my first three postdocs are now faculty at University of New Mexico, University of Pittsburgh, and University of Washington at Seattle.

Thus, I am well-aware that postdocs play a crucial role both in maintaining UC's reputation as a world leader in innovative research and in generating the science that propels UC's continually expanding research budget. Postdocs not only perform the research for existing grant projects, but they also do much of the work in developing new projects and grant proposals.

The University has the capacity within its research budgets to agree to fair salary increases. Funding agencies, as well as the University administrators who oversee grant proposals, expect that grant budgets include salary increases each year and budget accordingly. Given these facts, and the tremendous value Postdoctoral Scholars bring to the institution, the University's bargaining team should be able to reach an agreement with fair wage increases and benefits quickly.

Exhibit B
Testimony of Robert Dudley

My name is Robert Dudley. I am a Professor of Integrative Biology at the University of California, Berkeley. I have been at UC Berkeley since 2003. My research focuses on the mechanics and evolution of animal flight, particularly in insects and hummingbirds.

The Berkeley campus and UC generally are the envy of the world when it comes to higher education and scientific research. Postdocs are a critical component of our world-renowned research programs.

As faculty, it is in our own best interests to advocate on behalf of Postdocs. Improving working conditions for Postdocs enhances our overall research capacity and helps us to attract and retain the scientific prowess necessary to maintain our academic reputation.

What is also at stake is the preeminent position of the United States in scientific progress and technological innovation. Post-WWII US economic and scientific progress has derived substantially from our ability to attract the best workers and researchers from around the nation and the globe. To this end, improved postdoctoral support must be an integral component of ongoing efforts to maintain the nation's scientific and engineering infrastructure.

Exhibit C
Testimony of Victor Sanchez

My name is Victor Sanchez. I am the President of the University of California Student Association, representing over 200,000 students across the UC system. We have been watching these negotiations for roughly 15 months now and are disappointed to see UC once again continuing its pattern of dragging out negotiations for as long as possible, especially since some part of our rapidly increasing tuition and fees goes to pay the administrators in charge of these negotiations. Postdocs do much of the work that makes UC such a premiere research institution and, as such, they deserve a fair contract. The thousands of undergraduates who work in the labs on campus benefit tremendously from the supervision and mentoring of Postdocs. These undergraduates are the potential Postdocs of tomorrow, but watching how UC is approaching these negotiations will make many of them question whether or not to go into science as a career after graduating.

Exhibit D
Outstanding Bargaining Topics

UAW PROPOSALS	UC PROPOSALS
<p>HEALTH INSURANCE</p> <p>Lower costs and improved coverage for healthcare</p> <ul style="list-style-type: none"> • Maintain percent of premiums paid by Postdocs (like UC is doing for other staff plans at UC) and ensure paid coverage for all Postdocs; improve preventive coverage (which may well reduce UC's long term costs) and reduce annual out-of-pocket costs 	<p>No Improvements to health insurance</p> <ul style="list-style-type: none"> • Maintain benefits and premium structure for 2010 (meaning Fellows and Paid Directs have no guarantee of paid health insurance) • Wait until October 2010 to negotiate health insurance benefits for future years
<p>SALARIES</p> <p>Salary increases consistent with funding agency standards</p> <ul style="list-style-type: none"> • \$1,000 lump sum for 2009 • General Range adjustment of 4 percent upon ratification and each October 1 after 2010 • Experience-based increases based on NIH Kirchstein program 	<p>Meaningful increases postponed</p> <ul style="list-style-type: none"> • One-time 1.5 percent across-the-board increase in 2010 • No experience-based increases • Wait until October 2010 to negotiate any future increases
<p>APPOINTMENT LENGTH/SECURITY</p> <ul style="list-style-type: none"> • Postdocs shall have 5-year appointments • UC pays health insurance for six months before COBRA begins 	<ul style="list-style-type: none"> • Postdoc appointments will normally be one year • COBRA begins at layoff
<p>NO STRIKES</p> <p>Postdocs have same rights as Teaching Assistants</p> <ul style="list-style-type: none"> • Protect right of individual Postdocs to exercise their conscience in support of other employees' strikes 	<p>Postdocs have fewer rights than Teaching Assistants</p> <ul style="list-style-type: none"> • Deny the right of individual Postdocs to exercise their conscience in support of other employees' strikes

Exhibit E

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

ADO
FILE

SEP 09 2008



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VICE PRESIDENT AND GENERAL COUNSEL

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September 5, 2008

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

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

Dear Ms. Martinez:

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

Pursuant to that Regulation, the University responds as follows:

Format B: Denial of Recognition

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

University Counsel Leslie L. Van Houten
Office of the General Counsel
Regents of the University of California
1111 Franklin Street, 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);

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

I. **INTRODUCTION**

The PRO/UAW has petitioned for the following unit:

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

Postdoctoral Scholars - Employee (Title Code 3252);

Postdoctoral Scholars - Fellow (Title Code 3253);

Postgraduate Researcher - FY (Title Code 3240);

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

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

Visiting _____ - Postdoc (Title Code 3370)

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

SHALL EXCLUDE:

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

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

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

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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.)

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

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

390-18 Salary and Stipend

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

390-60 Sick Leave

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

390-61 Time Off

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

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

390-62 Childbearing, Parental and Family and Medical Leave

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

390-75 University of California Retirement Plan Membership

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

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

390-17 Terms of Service

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

390-18 Salary and Stipend

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

390-19 Appointment Percentage

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

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

390-21 Notice of Appointment

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

390-40 Grievances

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

390-50 Corrective Action and Dismissal

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

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

B. What Is a Postdoctoral Scholar?

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

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

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

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

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

C. The Paid Directs

The Paid Directs all have sponsoring agencies which fund their postdoctoral experience. The following are some of 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, Deutsche 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 (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 HFSP also

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

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

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

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

III. LEGAL ANALYSIS

A. Community of Interest

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

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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://vsppa.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 Kossin 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

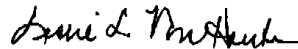
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unrepresented with respect to certain terms and conditions of employment. This does not mean that they cannot be represented. In such a situation, each employer is charged with bargaining over only those employment terms it controls. Even when one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

INSTRUCTIONS: A petition for recognition or representation is to be filed with the appropriate regional HEERA office. A petition for certification must be filed with the appropriate PERB regional office. Every filing includes consent of the unit and proof of membership in the HEERA Representation Petition as required by PERB regulations 21000, 21040 and 21100. Attach additional copies of this petition to the appropriate PERB regional office.

1. EMPLOYER (Name, address and telephone number):
 Regents of the University of California
 1111 Franklin Street, 12th Floor
 Oakland, CA 94607
 (916) 997-7220 Fax

Employer's agent to be contacted: Leslie L. Van Houten
Title: University Counsel
Address and telephone, if different:
 1111 Franklin Street, 12th Floor
 Oakland, CA 94607
 (916) 997-7208 Fax

2. TYPE OF PETITION (Check all that apply) **DATE FILED:** Nov 20, 2008

RECOGNITION FOR REPRESENTATION (RR)
 RECOGNITION FOR CERTIFICATION (RC)
 REPRESENTATION
 SURVEILLANCE (based on PERB)
 SURVEILLANCE (based on NLRB)

3. UNIONS OF SUPPORT
 Filed with: PERB Third Party
 Multiple unions Sole member No support
 *Attachments, address & telephone number of first party if applicable

4. DESCRIPTION OF PROPOSED UNIT (Including state name and geographic location if other than a statewide unit if proposed):
 Staff FACULTY
 Please see Attachment A.

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

6. IF A CURRENTLY FORMER EMPLOYEE OF UNDERSTANDING AND A EXISTING EMPLOYEE HAS BEEN IDENTIFIED FOR RECOGNITION, INDICATE:
 MOST EFFECTIVE DATE: _____
 MOST EXPIRATION DATE: _____
 NO AGREEMENT IS IN EFFECT

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

Name of Organization: N/A **Address:** _____ **Date of Recognition/Expiration (if any):** _____

8. PETITIONER (Name, address and telephone number):
 National Labor Relations Board (NLRB) - International Union, United Automobile, Aerospace and Agricultural Implement Workers of America
 6550 South Riverwood Blvd.
 Reno, NV 89506
 (775) 326-8825 Fax

Petitioner's agent to be contacted: Maurice Royce
Title: UAW International Representative
Address and telephone, if different: _____

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

PETITIONER'S AUTHORIZED REPRESENTATIVE: *Maurice Royce*
Title: UAW International Representative **Date:** 6/30/08

Los Angeles Regional Office
 3530 Wilshire Blvd., Suite 1415
 Los Angeles, CA 90010-2534
 (213) 736-3127

San Francisco Regional Office
 1330 Broadway, Suite 1532
 Oakland, CA 94612-2514
 (510) 822-1016

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 2865 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 Eborn
(Type or print name)


(Signature)

2
3
4 **DECLARATION OF SERVICE BY MAIL**

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

11 Margo A. Feinberg, Attorney
12 Schwartz, Steinsapir, Dohrmann & Sommers
13 6300 Wilshire Boulevard, Suite 2000
14 Los Angeles, CA 90048

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

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

19 
20 _____
21 Lucy Adams

Exhibit F
Testimony of Stanton Glantz

My name is Stanton Glantz. I am a Professor of Medicine and American Legacy Foundation Distinguished Professor in Tobacco Control at UC San Francisco, since I joined the faculty in 1977 following a postdoctoral fellowship here from 1975-7. I am also a member of the UCSF Cardiovascular Research Institute, Institute for Health Policy Studies and co-director of the UCSF Comprehensive Cancer Center Tobacco Program. I have enjoyed strong research support from both the National Institutes of Health as well as state agencies and foundations. I am also a past chair of the University of California Systemwide Committee on Planning and Budget and am familiar with a broad range of financial issues facing the University of California and higher education in general.

During my time at UCSF, I have also supervised dozens of researchers, including Postdoctoral Scholars, working on numerous projects in my areas of specialty, cardiovascular research and tobacco control. I am the program director for a postdoctoral training program in tobacco control currently funded by the National Cancer Institute.

UC San Francisco is a world-class research university. In fiscal year 2009, for example, UCSF won more National Institutes of Health research grant money than any other public institution in the nation. As a whole, the University of California system has been a world leader in research and scientific innovation for decades.

Postdoctoral Scholars play a central role in making UC such a top-notch research institution, working on topics ranging from heart and cancer research to public policy issues surrounding health care reform to climate change. They do much of the day-to-day work on our cutting-edge research projects happening and are the source of some of our best and most innovative ideas. Postdoctoral scholars also help train graduate and undergraduate student researchers, and contribute to writing the grant proposals that continue to generate UC's robust research revenues. Without Postdoctoral Scholars, UC would not be the world-class research university it is.

A world-class research university such as UC needs to pay stipends and salaries to the researchers that match the quality of the pivotal work they do. UC's salaries tend to be low, so I am confident that funding agencies (who pay the great majority of stipends and salaries for Postdoctoral Scholars) would approve

research grant budgets that include fair increases in salaries and benefits to these front-line researchers as long as they are approved by the University. The granting agencies expect these costs; indeed, the University will not permit faculty to submit grants unless the budgets allow for anticipated increases in salaries and benefits.

Not only does UC have the capacity to agree to fair increases for Postdoctoral Scholars, but it is also critical to establish and maintain competitive salaries and benefits that will attract the best and brightest researchers to UC and help us continue to be a world leader in the realm of science.