

**Testimony of Dwaine Duckett
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Committee on Education & Labor
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Mr. Chairman, and members of Congress, I am Dwaine Duckett, Vice President of Human Resources at the University of California. I am pleased to be here today to discuss the collective bargaining process to date between the University and the United Auto Workers union, which represents Postdoctoral Scholars at the University. With me today is Gayle Saxton, Director of Labor Relations, who is responsible for executing the collective bargaining negotiations at the University. She is also the University's chief negotiator in the negotiations with the UAW for the Postdoctoral Scholars unit.

The University and the UAW have made great progress in these negotiations. At this point, we have resolved 29 articles, ranging from union security to professional development and time off work. There are six articles outstanding including appointments, benefits, compensation, duration of agreement, layoff, and strikes. These are key issues to be resolved, but we feel confident in each side's commitment to good faith bargaining and desire to reach agreement. We will continue to work hard to reach an agreement that meets the needs of both the University and the Postdoctoral Scholars.

Before discussing the details of these negotiations, I would like to provide some background information about the University and its collective bargaining history. I believe this information provides important context for understanding the negotiations between the University and the UAW.

The University of California consists of ten campuses and five medical centers, and is involved in the management of three national laboratories on behalf of the federal government. The UC system includes more than 220,000 students and employs more than 135,000 faculty and staff. In fact, the University is one of the State of California's largest employers.

The National Labor Relations Act of 1934 regulates private sector employer-employee relations and exempts government employers. Like many states, California has adopted its own labor laws for public sector employers. The University of California, as a higher education employer, is governed by California's Higher Education Employment Relations Act, or HEERA.¹ HEERA guarantees employee rights related to joining and participating in employee organizations, and requires employers and employee organizations to bargain in good faith over wages, hours, and

¹ California Government Code sec. 3560-3599

other terms and conditions of employment.² California's Public Employment Relations Board (PERB) enforces and administers HEERA.³

Although many similarities exist between the National Labor Relations Act and HEERA, there are some significant differences as well, particularly in the area of resolving bargaining impasses. Under HEERA, once the parties reach an impasse in bargaining, PERB appoints a mediator. If mediation does not result in a settlement, then the impasse may be referred to a fact-finding panel that may conduct hearings and investigations, make findings of fact, and issue advisory recommendations regarding potential settlement terms.⁴ Impasse resolution procedures are not complete until the parties have considered the fact-finding report in good faith. Impasse under HEERA is a continuation of dispute resolution efforts. Under the statutory timeframes built into HEERA, the impasse procedures usually take a minimum of two months' time to complete, and occur only after the parties have engaged in a robust bargaining process and concluded that further meetings would be futile. We have not reached impasse in the negotiations involving the Postdoctoral Scholars, and we hope to avoid impasse and work toward our goal of a settled contract.

In the 30 years since HEERA's passage, the University of California has recognized a number of different unions as the exclusive representative of thousands of University employees. Currently, the University has 13 system-wide bargaining units covering 78,000 employees as well as a number of local bargaining units at each location covering, for example, employees in the skilled crafts. The University entered into its first collective bargaining agreement in 1984, and has successfully negotiated many agreements with its unions since that time. In every case involving first contracts, the University has a track record of completing negotiations and reaching agreement with the union. We are optimistic about our ability and committed to reaching agreement in these initial negotiations with the UAW for the Postdoctoral Scholar unit.

The University and the UAW already have a long-standing and positive relationship as a result of the UAW's representation of many of the University's graduate students. The UAW became the exclusive representative for the graduate student bargaining unit in 1999. The University and the UAW completed their negotiations for an initial contract in 2000 after more than a year of bargaining, and have bargained two successor agreements since that time.

The UAW initially sought to represent the Postdoctoral Scholars in 2006, but withdrew its petition for recognition. It filed another petition with PERB in 2008. Following the submission of valid authorization cards, PERB certified the UAW as the exclusive representative on October 30, 2008. Formal negotiations began in February 2009.

The University of California is one of the world's preeminent public research university systems, and Postdoctoral Scholars are important contributors to the research enterprise. Postdoctoral Scholars hold temporary appointments, usually lasting one to three years, which are designed to give them opportunities to conduct research under the guidance of faculty mentors. The University limits the time in the Postdoctoral Scholar title to five years, which follows the nationwide standard. The time spent as a Postdoctoral Scholar is in preparation for career progression in academe, industry, government, or the nonprofit sector. For many, especially

² California Government Code sec. 3565, 3567

³ California Government Code sec. 3563-3563.3

⁴ California Government Code sec. 3590-3594

those in the physical and life sciences, Postdoctoral Scholar work is a critical step in securing future employment. All Postdoctoral Scholars must have a doctoral-level degree.

The University has approximately 6,500 Postdoctoral Scholars in three different titles, each of which is exclusively represented by the UAW. The difference in titles arises primarily from their source of funding.

- The first category is an Employee Postdoctoral Scholar, which is a person who receives funding from a University source that provides discretionary funds in support of the training of Postdoctoral Scholars, or from an agency that requires or permits the person to be a University employee. The majority of Employee Postdoctoral Scholars are funded through federal contracts and grants such as the National Institutes of Health, the National Science Foundation, and the Department of Energy. Other sources include the State of California, private grants and private foundations. The Employee Postdoctoral Scholar is paid through the University payroll system. About 77% of the bargaining unit are in the Employee title.
- The second type of Postdoctoral Scholar is a Fellow. Fellows have been awarded funding by an extramural agency and the funding, which flows through the University, is paid as a stipend rather than as pay. Many of these awards carry restrictions about the Fellow holding appointments supported from other fund sources. The majority of Fellows in the life sciences are supported by NIH funds, although other sources of support for non-life science Fellows include private grants or other private sources.
- The third type of Postdoctoral Scholar is known as a Paid Direct. Paid Directs receive funding from an extramural agency or country, which pays the funding directly to the scholar rather than through the University.⁵ The funding/payment *does not* flow through the UC system and cannot be tracked by the University.

Postdoctoral Scholars must publish and participate in the research enterprise of the University. Postdoctoral Scholars come from all over the world to engage in research under the direction of faculty advisors. The faculty advisor is the Principal Investigator (PI) on the grant, runs the laboratory or research project where the Postdoctoral Scholar pursues his or her research, and assumes responsibility for the conduct of the approved funded research. In some cases, the University selects the Postdoctoral Scholar to support the research conducted by the faculty advisor because the person's skills and areas of expertise benefit the University's research. In some cases, Fellows and Paid Directs seek out positions at the University to work with particular faculty advisors. These Fellows and Paid Directs are often funded from sources different than those administered by their PI, and may or may not work directly on the research funded by the PI's grant.

Ongoing across-the-board approaches for Postdoctoral Scholar salary increases are difficult, in part because many Postdoctoral Scholars have different sources of funding throughout their term at the University. For example, a Postdoctoral Scholar may be appointed as an Employee

⁵ Some of the representative agencies currently supporting Paid Direct Postdoctoral Scholars at the University include the Fulbright Foreign Scholarship Board, the Hewitt Foundation, the Japan Society for Promotion of Science, European Molecular Biology Organization, Wellcome Trust, the Natural Sciences and Engineering Research Council for Canada, and the China Scholarship Council.

Postdoctoral Scholar one quarter, and a Fellow the next. In some cases, a person may have a dual appointment as a Paid Direct and an Employee Postdoctoral Scholar. Salaries for Fellows and Paid Directs are set by the funding agency. Fund sources often place restrictions on how funds are spent.

- For example, grants awarded by the federal government will only allow that grant's funding to be spent on research directly related to the grant. Because grant funding cannot be moved between research projects, federal funds cannot be pooled to provide across-the-board salary increases in a case where a particular grant may not have sufficient funds available for that purpose.
- Most of the training grants that fund research through the PIs (generally funding Postdoctoral Scholars in the "Employee" title, or research to which no Postdoctoral Scholar is assigned) require that the grant funds be spent only on research and materials directly associated with the research funded by that grant. Thus, a PI who has two Fellows working in her or his laboratory but not directly on the research for which the grant was issued cannot use her/his grant money to fund a wage increase for the Fellows.
- Some fellowships disallow the use of use of federal funds to supplement the fellowship. As such, other fund sources, such as University or State of California funds, must be found for such supplementation. As we know, both the University of California and the State have a significant budgetary shortfall, and such funds are not available.⁶

Proposals on wages also pose a significant risk to the University if a type of increase is disallowed under a certain type of grant/funding arrangement. Any short-falls would be covered by state funds that are scarce and shrinking.

The different categories of Postdoctoral Scholars, the incredible diversity of discipline-specific research projects, the wide variety of funding sources, the external restrictions on many of the fund sources, and the fact that almost all Postdoctoral Scholars have a different faculty advisor, create a level of complexity in the negotiations between the UAW and the University that is unique to this bargaining unit. This complexity has required a commitment by both sides to learn about and understand the Postdoctoral Scholar relationship with the University, the limitations placed upon the advisor/Principal Investigator, the differences within the Postdoctoral Scholar unit, and the differences between Postdoctoral Scholars and graduate students who are already represented by the UAW. Both bargaining teams rose to this challenge admirably, engaging in detailed discussions, analysis and evaluation of the issues presented.

In spite of the enormous learning curve we all confronted, the negotiations proceeded at a brisk and productive pace. The University and the UAW met often, typically for two to three days at a time, and at regular intervals of approximately twice a month or more. From the early stages of negotiations, we engaged in open and often lengthy discussion of the reasons behind the proposals being made by both parties, and demonstrated flexibility in addressing each others' concerns. The University and the UAW have successfully negotiated all but six of what will be

⁶ The University has lost millions of dollars of funding from the State of California, which loss has required measures such as furloughs and salary reductions for large segments of its workforce. These furloughs and salary reductions did not apply to the Postdoctoral Scholars.

35 separate articles. The remaining articles are Wages, Benefits, Appointments, Layoff, No Strikes, and Duration.

Some of the issues required solutions unique in the bargaining environment. One example pertains to the issue of “time worked and time off.” In most labor agreements, these provisions are fairly standard. However, Postdoctoral Scholars are not only professionals exempt from Fair Labor Standards Act overtime requirements, but they are also individuals who come to this University (and any other University) with the objective of obtaining as much knowledge and completing complicated research as *soon as possible* in order to move on to other – permanent – employment. As a result, the parties had to move away from “normal” hours of work rules. We worked collaboratively to incorporate language that acknowledges the over-40 hours per week research standard and also protects the Postdoctoral Scholar against abuse.

In these negotiations, each party also had issues of critical importance that required flexibility and a willingness to compromise.

- One critical issue for the UAW was the matter of union security. Under HEERA, represented employees who are not active union members must pay a fair share fee to the union, and the University must deduct that fee from the employee’s paycheck. However, two categories of Postdoctoral Scholars do not receive a paycheck from the University: the Fellows and the Paid Directs. This presented significant challenges in finding a workable solution that would address the UAW’s interest in receiving membership dues or fair share fees from those Postdoctoral Scholars in the bargaining unit. The NIH does not consider Fellows (who are paid a stipend) to be “employees” and has regulations concerning the application of “employee” rules to Fellows. The automatic deduction of fees from a Postdoctoral Scholar’s stipend would not be permissible under the NIH rules. To address the UAW’s interest, the University consulted with the NIH and developed a process by which the UAW dues or fair share fee deductions could be made for the Fellows as a mandatory service to them by the University. The University also agreed to allow the UAW on-the-job access to the Paid Directs to collect contributions.
- A critical issue for the University, on the other hand, has been the preservation of “academic judgment” as applied to research and mentoring because it could affect the faculty’s ability to set academic goals and performance. Academic judgment pertains to the various decisions made by faculty in their oversight and supervision of research and scholarly activities. The UAW expressed its concern that Postdoctoral Scholars should have some protections built into the contract to ensure the fair exercise of academic judgment. After many lengthy discussions on this topic, the parties agreed to establish the processes that faculty should follow in the exercise of their academic judgment, while agreeing that the judgment itself would remain exclusive to the faculty.

This commitment by the University and the UAW to the bargaining process and to sharing information and interests resulted in a large number of tentative agreements over the course of eight months of regular bargaining even though the parties could not simply import language from other contracts and apply it to this group. Every article of the contract required extensive consideration and evaluation to ensure that the language crafted would accurately reflect the realities of how Postdoctoral Scholars perform their work. Every article also required extensive consultation with the faculty to ensure that any contract language being considered did not unduly interfere with the research enterprise.

Despite these complexities and challenges, we have made great progress in these negotiations. After many months of regular meetings, in October 2009, we mutually agreed to a hiatus in bargaining over the holiday period, with a commitment to return to the table in January 2010. UC contacted the UAW and proposed to meet in January, but the UAW was not available. In February, the parties changed a bargaining session to an informal session, in an effort to explore settlement opportunities. Formal bargaining meetings recently occurred on April 15, 16 and 23 and the negotiations are now focused on the six remaining issues. The University will continue with the same strong commitment to good faith bargaining and resolution of these matters as we work through these final articles.

Again, while there are key issues to be resolved, the University remains confident in each side's commitment to good faith bargaining and desire to reach agreement. We will continue to work hard to reach a mutually acceptable agreement for both the University and the Postdoctoral Scholars.

Thank you to the Committee for the opportunity to join you here today and discuss first contract negotiations with the UAW for the Postdoctoral Scholar bargaining unit. I look forward to answering any questions that you may have.