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Re: HEERA and the UCRS Advisory Board

At the UCRS Advisory Board meeting in September 2010, the Board requested guidance about the provisions of the Higher Education Employer-Employee Relations Act (HEERA) that shape how the Board may interact with University management.

HEERA contains two separate provisions that limit how advisory groups and University management may interact. The first provision prohibits an employer from dominating, interfering with, or contributing financial or other support to any employee organization. (Gov't Code § 3571, subd. (d).) The second provision prohibits an employer from consulting with any academic, professional or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative. (Gov't Code § 3571, subd. (f).)

The principal issue with respect to the first HEERA provision, section 3571(d), is whether the UCRS Advisory Board meets HEERA's definition of an "employee organization." If so, then any University support for the Board, such as providing staff assistance, travel reimbursement, or staff support, would be prohibited. An employee organization is "any organization of any kind" in which employees participate and "which exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours and other terms and conditions of employment of employees." (Gov't Code § 3562, subd. (f)(1).)

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The primary factor in determining whether an advisory group constitutes an employee organization under HEERA is whether the employer is “dealing with” the advisory group over terms and conditions of employment. Determining whether an employer is “dealing with” an advisory group is context specific. It involves a bilateral pattern or practice where the group, over time, makes proposals and recommendations to management about terms and conditions of employment, and management responds to those proposals and recommendations in some fashion. The Public Employment Relations Board (PERB) and its administrative law judges have issued several decisions addressing whether certain interactions between an employer and an advisory group transformed the group into an “employee organization” under HEERA. (*Regents of the University of California* (1996 – ALJ Decision) 20 PERC ¶ 27052; *California State University* (1998 – ALJ Decision) 22 PERC ¶ 29071; *California State University* (2006) PERB Decision No. 1876-H (affirming ALJ decision 28 PERC ¶ 169).)

When an advisory group qualifies as an “employee organization” because it deals with the employer over the terms and conditions of employment, then the employer cannot dominate or provide support for the advisory group. Unlawful support can take a range of forms, including providing financial assistance, paid release time, use of facilities, staff support, reimbursement for travel, and use of campus computers and email.

Not all interactions between an employer and an advisory group will rise to the level of “dealing with” each other. Certain safe havens have been recognized, including brainstorming, question and answer sessions, and information gathering. A brainstorming group, for example, is not “dealing with” the employer because it is developing a host of ideas. If, however, proposals from the group are injected into the process, then the brainstorming group would likely be “dealing with” the employer.

Under the second HEERA provision, section 3571(f), an employer may violate HEERA if it consults with an advisory group over matters within the scope of representation for employees who already are represented. This HEERA provision may be violated even if the employer is not “dealing with” the advisory group and the group does not constitute an “employee organization” under HEERA.

An employer “consults with” an advisory group if the employer seeks the advice or opinions of the group, or exchanges views, confers with, or deliberates together over matters that are subject to negotiation for represented employees. Similar to the safe havens that exist with respect to

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“dealing with” an employer, an employer may engage in discussions, brainstorming, and questions and answer sessions with advisory groups over matters within the scope of representation for represented employees without violating the HEERA provision against consultation. Also, an employer is permitted to consult with advisory groups on matters outside of the scope of representation, or on matters that pertain to unrepresented employees only.

Around the time of HEERA’s enactment in 1979, and in light of these HEERA constraints, the University adopted *Guidelines for Relations with Employee Associations/Advisory Groups* in August 1979. These *Guidelines* state that advisory groups “aid the administration in gathering the views of affected employees” regarding matters of concern, and “help publicize policy, procedures, and other information of interest to employees.” The *Guidelines* provide that the University may exchange information of interest and consider “as fully as reasonable communications from association members.”

The UCRS Advisory Board Handbook similarly identifies the purpose of the Board as being to develop ideas or new approaches to the provision of UCRS benefits, discuss concerns relating to members and beneficiaries, and exchange ideas with the President and the UCRS Plan Administrator. (Handbook, page 4) Additionally, the Board’s responsibilities include, among other things, assessing the quality of service provided and providing feedback, providing information regarding the formulation of goals and objectives and setting priorities for UCRS, and developing concepts for benefit changes.


The purpose and responsibilities of the Board as described in the Handbook appear consistent with HEERA’s constraints. The Board may share information and concerns with the President and Plan Administrator and develop ideas and concepts. The Board should not, however, make proposals or recommendations about UCRS matters.

As it relates to the Post Employment Benefits Task Force Recommendations, the Board may discuss the recommendations and share comments on those recommendations with the President and Plan Administrator. In sharing this information, the Board may communicate the nature of the discussions and the views of the Board’s members. For example, if four members of the Board strongly support a particular Task Force recommendation, but three other members express reservations about it, the communication to the President or Plan Administrator may detail that nature of the discussion, the views expressed and the rationale articulated for those views. If the Board, in discussing the Task Force recommendations, comes up with other ideas

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or concepts, it may communicate those ideas or concepts, provided that the Board is not making a proposal or recommendation about those ideas or concepts.

Finally, you asked whether there is a distinction under HEERA between the Board initiating recommendations to the President about post-employment benefit changes and commenting on the recommendations put forth by the Task Force. There is a distinction if the Board's comments on the Task Force recommendations are designed to share information with the President rather than to make particular proposals or recommendations as the Board itself. Initiating recommendations or proposals to the President would risk running afoul of HEERA. Providing information and feedback to the President about the recommendations issued by the Task Force should be consistent with HEERA if the Board does not make its own recommendations or proposals.



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