

December 19, 2022

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Jessica Kim, Administrative Law Judge  
Public Employment Relations Board  
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*Via e-PERB Portal*

**Re: *Trustees of the California State University and California State University  
Employees Union, SEIU Local 2579***

**PERB Case Nos. LA-UM-1009-H, LA-UM-1010-H, LA-UM-1011-H, & LA-UM-1012-H**

Dear Ms. Kim:

The employer, California State University (“CSU”), hereby provides this Statement of Issues pursuant to your November 22, 2022 letter.

## **I. INTRODUCTION**

On or about March 3, 2021, the California State University Employees Union, SEIU Local 2579 (“CSUEU”) filed four unit modification petitions seeking to add various Student Assistants to CSUEU represented bargaining units 2 (Health Care Support), 5 (Custodians/Cooks), 7 (Administrative/Clerical Support), and 9 (Technical Support) at CSU.

The parties and the Board agent then spent many months exchanging information regarding the Student Assistants subject to the petitions. That extensive history is not repeated here.

On or about October 13, 2022, the Office of the General Counsel referred these petitions to you for formal hearing. In the transmittal letter to you, PERB General Counsel Felix De La Torre noted that, “... CSU objects to these petitions on several grounds that require hearing for resolution, including unit appropriateness.” As set forth below, CSU’s objections on unit appropriateness involve all the criteria set forth under the Higher Education Employer-Employee Relations Act (“HEERA”).

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## II. COMMUNITY OF INTEREST FACTORS UNDER HEERA

HEERA provides that:

(a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(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.

(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.)

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### **III. STATEMENT OF ISSUES**

CSU submits that all of the criteria set forth in HEERA section 3579 are at issue in this hearing.

#### **A. Internal and Occupational Community of Interest Among Employees (Section 3579(a)(1)).**

While there are some Student Assistants who perform jobs similar to those in CSUEU represented bargaining units, the Student Assistants' primary role is that of a student and not a traditional employee. CSU intends to introduce evidence of the differences between a student and a non-student employee, including testimony on the job duties of the Student Assistants at issue, the job duties of the incumbent employees in the affected bargaining units. CSU will also introduce evidence of the terms and conditions of employment of Student Assistants as compared to employees in the bargaining units represented by CSUEU. These differences are significant enough to establish that there is not the required community of interest between these two groups of employees, even if they are performing similar jobs.

#### **B. Effect on Meet and Confer Relationships (Section 3579(a)(2)).**

CSU intends to introduce evidence that the inclusion of Student Assistants into the bargaining units represented by CSUEU would negatively affect the parties' meet and confer relationships. This is because many of the provisions in the current collective bargaining agreements ("CBAs") with CSUEU would not readily be applicable to students. Therefore, CSU intends to introduce evidence of key provisions in its existing CBAs with CSUEU, the history of those provisions, and the potential conflict between those provisions and the existing terms and conditions of employment of Student Assistants.

CSU intends to demonstrate that having to negotiate new or altered provisions in the affected CBAs establishes that Student Assistants do not share the required community of interest with employees in the CSUEU bargaining units.

#### **C. Effect on Efficient Operations (Section 3579(a)(3)).**

This criteria is closely related to HEERA section 3579(a)(2). In short, as discussed above, the inclusion of Student Assistants into a bargaining unit of non-student employees would likely necessitate negotiating separate provisions just for the Student Assistants. This would result in essentially two separate bargaining units in one, which necessarily has a negative effect on the efficient operations of CSU. CSU will introduce evidence of key provisions in the affected CBAs that conflict with the existing terms and conditions of employment of Student Assistants, and will introduce evidence why these differences will affect CSU's operations.

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**D. Effect on Representation (Section 3579(a)(4)).**

As noted in the transmittal letter, the exact number of employees subject to the petitions is unknown. This is in large part due to the fact that it is not entirely clear which Student Assistants the union seeks to accrete into which unit. While the number of employees subject to the petition may or may not be relevant for purposes of proof of support, the number of employees is relevant for purposes of determining effective representation, and on the meet and confer relationship. Therefore, CSU believes that it is important for the parties to have a better understanding of the number of employees affected by these petitions.

**E. Impact of Proliferation and Fragmentation.**

The impact on CSU of accreting Student Assistants into the CSUEU represented bargaining units must be balanced against whether another appropriate unit exists. This necessarily requires balancing an interest in avoiding unnecessary proliferation of units versus ensuring that a sufficient community of interest exists among employees in a bargaining unit. CSU intends to introduce evidence regarding the impact, or lack thereof, of accreting Student Assistants into established units versus other options.

**F. Whether a More Appropriate Unit Exists.**

CSU also reserves the right to present evidence that consideration of the community of interest criteria under HEERA must result in a finding that Student Assistants belong in a bargaining unit other than one of the current CSUEU represented bargaining units.

**II. CONCLUSION**

In summary, CSU intends to present evidence that all the community of interest factors under HEERA weigh against inclusion of Student Assistants into the bargaining units represented by CSUEU.

Very truly yours,



Timothy G. Yeung  
Managing Partner

**PROOF OF SERVICE**

I, the undersigned, declare that I am employed in the County of Sacramento, State of California. I am over the age of 18 years and employed by Sloan Sakai Yeung & Wong LLP and my business address is 555 Capitol Mall, Suite 600, Sacramento, California 95814.

On December 19, 2022, I served the following document(s):

**RESPONDENT CALIFORNIA STATE UNIVERSITY’S STATEMENT OF ISSUES TO BE DETERMINED AT HEARING, CASE NOS.: LA-UM-1009-H; LA-UM-1010-H; LA-UM-1011-H; AND LA-UM-1012-H**

on the parties listed below by the following method(s):

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;

electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

electronic transmission (courtesy copy)

**SERVICE LIST**

<p>Kerianne R. Steele, Esq. Xochitl Lopez Weinberg, Roger &amp; Rosenfeld 1375 – 55<sup>th</sup> Street Emeryville, CA 94608 Email: ksteele@unioncounsel.net XLopez@unioncounsel.net perb@unioncounsel.net</p> <p><i>Attorneys for CSUEU</i></p>	
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 19, 2022, at Sacramento, California.



Angela M. Adame