

PUBLIC EMPLOYMENT RELATIONS BOARD

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October 29, 1986

Thomas Dublin, President
University Council, AFT
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Susan M. Thomas, Attorney
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RE: Regents of the University of California
Case No. SF-CE-57-H; PERB Decision No. 359-H

Dear Parties:

The Public Employment Relations Board received on October 27, 1986 Mr. Dublin's letter stating that University Council - American Federation of Teachers withdraws with prejudice the unfair practice charge in Case No. SF-CE-57-H.

Accordingly, the decision in this case, PERB Decision No. 359-H, is hereby vacated.

Sincerely,

Charles L. Cole
Executive Director

VACATED by Cole Letter of October 29, 1986

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNIVERSITY COUNCIL, AMERICAN)
FEDERATION OF TEACHERS and)
AFT LOCAL 2199,)
)
Charging Parties,) Case No. SF-CE-57-H
)
v.) PERB Decision No. 359-H
)
THE REGENTS OF THE UNIVERSITY)
OF CALIFORNIA,)
)
Respondent.)
)
_____)

Appearances: Robert J. Bezemek, Attorney (Bennett & Bezemek) for University Council, American Federation of Teachers and AFT Local 2199; Milton H. Gordon, Attorney for The Regents of the University of California.

Before Tovar, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both the University Council, American Federation of Teachers and AFT Local 2199 (AFT) and The Regents of the University of California (UC or University) to the administrative law judge's (ALJ) attached proposed decision. In general, the University takes exception to the ALJ's findings that it violated subsections 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA)¹ by unilaterally

¹HEERA is codified at Government Code section 3560

reducing the maximum duration of full-time lecturer positions without providing AFT with advance notice and a reasonable opportunity to meet and present its views. AFT's exception seeks modification of the ALJ's remedial order.

The Board has reviewed the record in light of the parties' exceptions and finds that the ALJ's findings of fact are free from prejudicial error and adopts them as the findings of the Board itself.

DISCUSSION

In the main, exceptions raised by the University reiterate contentions raised and fully discussed by the ALJ. For the reasons expressed in the attached proposed decision, we summarily affirm the conclusion that the University was obligated by HEERA to meet and discuss the lecturer policy changes with AFT, the nonexclusive employee representative.

et seq. Unless otherwise indicated, all statutory references are to the Government Code.

Section 3571 provides, in relevant part, as follows:

It shall be unlawful for the higher education employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

State of California (Professional Engineers in California Government (PECG)) (3/19/80) PERB Decision No. 118-S;
California State University, Sacramento (4/30/82) PERB Decision No. 211-H; Regents of the University of California (Lawrence Livermore National Laboratory) (4/30/82) PERB Decision No. 212-H; California State University, Hayward (8/10/82) PERB Decision No. 231-H; State of California, Department of Corrections (5/5/80) PERB Decision No. 127-S; State of California, Franchise Tax Board (7/29/82) PERB Decision No. 229-S.

We also affirm the factual conclusion that the established cumulative practice was to grant lecturers yearly contract renewals for up to eight years, absent class or program changes, poor performance or financial exigency. Those cases cited by the University in its exceptions are, as the ALJ noted, misplaced. AFT's charge is not constitutionally founded nor based on any acquired property right. The charge does not seek job security per se for any individual employees. Rather, AFT charges that UC unilaterally altered the established practice of reappointing lecturers. While such a past practice might not establish a cognizable property interest in future employment, the evidence is sufficient to establish that, in the past, a condition of lecturers' employment at UC included a reasonable expectation that contracts would be renewed for up to eight years.

We likewise reject UC's argument that, since the policy change only affected possible future employment, it did not adversely affect the present employment conditions. This argument is unpersuasive. The critical question is not whether lecturers held iron-clad expectations that they would be reappointed but whether, before the policy change, they could be reappointed. Thus, since the policy reduced the maximum employment period from eight to four years, it clearly effected a fundamental change in working conditions. It imposed a maximum term of employment which reduced the lecturers' reemployment expectancy by one-half.

Citing subsection 3563.2(a),² UC argues that the instant charge is barred by the six-month statute of limitations period. It asserts that the new adjunct and visiting lecturer policy was issued on February 22, 1980, more than six months prior to June 3, 1981, the date the instant charge was filed. In this exception, UC argues that AFT was on notice that the lecturer policy was being altered beginning in 1980, and it failed to file a timely charge.

The ALJ's decision, at pp. 50-54, fully addresses this contention, and we adopt his conclusion that none of the cited events afforded AFT adequate notice of the policy change. The

²In pertinent part, subsection 3563.2(a) precludes the Board from issuing a complaint with regard to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

Sullivan report and subsequent discussions were tentative in nature. These events provided no notice of a specific plan or course of action. Various rumors of which AFT was said to be aware likewise failed to provide sufficient notice. As aptly noted by the ALJ:

[C]onjecture or rumor is not an adequate substitute for an employer's formal notice to a union of a vital change in working conditions (NLRB v. Rapid Bindery, Inc. (2d Cir. 1961) 293 F.2d 170 [38 LRRM 2658].)

We similarly reject UC's contention that various articles appearing in AFT newspapers establish AFT's awareness of the forthcoming change. These articles refer to the possibility of future changes in guidelines for receipt of security of employment; they do not refer to the eight-year rule. Moreover, AFT witnesses unequivocally denied receiving notice and, as the ALJ specifically concluded, their testimony was not discredited. UC witnesses likely to inform AFT testified that they gave no direct, formal notice to the union. Indeed, Thomas Mannix, Director of Collective Bargaining Services for UC, and Philip Encinio, Manager of Employee Relations for UC, testified that they did not know about the policy change until AFT initiated the instant charge. We find from these facts that the University did not afford the employee organization adequate notice in advance of the policy change.³

³While in no way affecting the conclusion reached, we specifically disavow the ALJ's reference to the fact that the

UC also argues that it satisfied any obligation it had to meet and discuss the lecturer policy change. The ALJ concluded to the contrary, finding that the meetings held in 1981 occurred after the new rule had been issued. We agree. UC did not place the policy in abeyance or rescind the newly enacted rule. Whatever input AFT representatives were afforded during these meetings was too late in the process to be more than a request for resumption of the status quo.⁴

UC also disputes the conclusion that it failed to rescind or hold the policy in abeyance. It maintains that, since only the four-year rule fundamentally affected the lecturers' terms

Sullivan report differed from the eventual policy as issued by the University. Our assessment of the sufficiency of the actual advance notice provided does not depend on the form the notification may take. Thus, while conjecture or rumor does not supply sufficient notice (Rapid Bindery, supra), neither is it essential that the union be provided with formal notice of the intended change. See Morris, The Developing Labor Law, Second Edition, Vol. I, p. 648. The pertinent inquiry is whether the employer's conduct was reasonably calculated to advise the union of an impending or contemplated change and of its opportunity to participate in that decision-making process. In the circumstances of the instant case, insufficient notice was provided.

⁴The University objects to the ALJ's finding that the University representatives who eventually met with AFT lacked authority to alter systemwide policies. Mannix testified that he was authorized to carry AFT's suggestions to persons with the authority to alter systemwide policies. We find that no lack of good faith is demonstrated by such an arrangement, particularly where UC's responsibility was to discuss the policy with AFT. However, our agreement with the University's position that its representative did not lack sufficient authority in no way disturbs our conclusion that the discussions which followed the policy enactment failed to satisfy UC's obligations under HEERA.

and conditions of employment, the authority of each campus to "grandfather" the then-employed lecturers evidenced a policy modification akin to rescission or abeyance. This argument is without merit. The University violated HEERA by its failure to meet and discuss the lecturers' policy before unilaterally changing it. The fact that it attempted to afford some relief to those employees harmed by the policy change does nothing to restore the eight-year rule. The ALJ's finding refers to the University's unwillingness to entertain AFT's views in conjunction with bilateral decision making. Authorization to grandfather existing lecturers, decreed by employer fiat, does not disturb or mitigate the unfair practice finding.

UC takes exception to the ALJ's remedy because it applies to all lecturers rather than only AFT members. We disagree. All lecturers employed at UC suffered the 50-percent reduction in maximum duration of employment. UC violated HEERA by effecting that change without first meeting and discussing it with AFT. The basis for imposing this obligation is to afford some input to employee organizations whose members include employees affected by the rule change. While it is true that AFT, as a nonexclusive representative, served as a spokesperson for its members only, we do not believe that the remedy ordered herein, restoration of the status quo ante, should be so limited. Had the University met with AFT as required by HEERA and agreed to retain the eight-year rule, it could not have

implemented the policy only as to AFT members without violating subsection 3571(d)5 which precludes, inter alia, the employer's preference or support for one employee organization over another. Consistent with Board precedent, imposition of the status quo ante remedy shall apply to all employees of the University. The Regents of the University of California (UCLA) (12/21/82) PERB Decision No. 267-H.

UC also contends that the order inappropriately covers lecturers employed as of February 22, 1980, the date the policy issued. It argues that the policy implementation date, July 1, 1980, should be used. We find that the facts support the date used by the ALJ. The official revision of the rule was distributed to campus chancellors on February 22, 1980, and it was accompanied by a letter from President David S. Saxon which announced the new Academic Personnel Manual section to be

⁵Section 3571 provides in pertinent part as follows:

It shall be unlawful for the higher education employer to:

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another; provided, however, that subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

immediately effective. The remedy should thus run from that date.⁶

UC contends that the ALJ's order is overly broad because it applies to lecturers employed at all UC campuses. This contention, too, should be rejected. The essence of the charge complains of systemwide policy change. The order should not be disturbed.

Related to this assertion is UC's contention that AFT failed to demonstrate that the change in policy adversely affected the lecturers employed at the time the change occurred. This argument, while written as an exception to the proposed decision, is more aptly relevant to a compliance hearing. The Board concludes, as a matter of law, that the University altered the lecturer employment policy and it is ordered, *inter alia*, to compensate all individuals harmed by the unilateral change, whether by nonreappointment or by virtue of leaving the University to seek an appointment of longer duration. The question of precisely who those individuals are and to what extent they were harmed may require a factual

⁶In addition, UC claims that, because it was unaware of its obligation to nonexclusive representatives, the Board should issue a prospective remedy only. This request is denied. Among other arguments made by the ALJ, we observe that the Board's decision in Professional Engineers, supra, impliedly modified pre-existing Board precedent and issued only weeks after Saxon's decree in February 1980. After the case issued, UC did not mend its ways but rather continued to issue unilateral clarifications and revisions to the policy without notice to AFT.

determination distinct from that addressed in the instant case.⁷

UC also asserts that, as to the Santa Cruz campus, the policy is yet to be implemented, and the only policy change has been to alter the lecturers' titles. The ALJ's discussion of this issue correctly concludes to the contrary. The evidence supports the finding that the basic terms of the revised lecturer policy had been implemented at Santa Cruz by mid-1981. The heart of the policy was systemwide in nature and provided a four-year employment term. Santa Cruz officials had no control over this provision. The initial reclassification letters sent in 1981 were not subsequently disclaimed nor rescinded. When the parties met on August 5, 1981, the decision to revise the lecturer policy had been made, and AFT's input was limited to local matters traditionally left to campus discretion. The authority of campus officials to discuss the

⁷With regard to AFT's request to clarify the ALJ's proposed remedy, our Order directs reinstatement of lecturers teaching more than 50-percent time beginning February 22, 1980. Individuals may have to participate in a compliance proceeding in order to substantiate their claim that the failure to be reappointed was the result of the reduction in the lecturers' duration of employment.

As to the evidence concerning Merle Woo from the Berkeley campus, however, we reject UC's argument that the basis for her termination was not the altered policy but her criticisms of the program. The ALJ's credibility determination and specific findings of fact are expressly outlined and will not be disturbed by the Board.

grandfathering policy was derived from and did not exceed that permitted by provision of the systemwide policy. AFT was not permitted the opportunity to meet and discuss a uniform grandfathering policy.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to section 3563.3 of the HEERA, it is hereby ORDERED that the Regents of the University of California and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Interfering with the right of employees to representation by arriving at a determination of policy or course of action reducing the maximum duration of employment for lecturers teaching more than 50-percent time without first giving notice to interested employee organizations and, upon request, discussing that subject pending the selection of an exclusive representative for the employees affected;

(b) Denying employee organizations a reasonable opportunity to represent employees by arriving at a determination of policy or course of action reducing the maximum duration of employment for lecturers teaching more than 50-percent time without first giving notice to interested employee organizations and, upon request, discussing that subject pending the selection of an exclusive representative for the employees affected.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

(a) Upon request, reinstate the policy of allowing a maximum duration of eight years' employment for lecturers teaching more than 50-percent time, to be applied retroactively to those so employed on and after February 22, 1980.

(b) Upon request, reinstate those lecturers teaching more than 50-percent time as of February 22, 1980, who are no longer so employed and whose lecturer employment thereafter would not have been terminated but for application of a new policy limiting employment of lecturers teaching more than 50-percent time to a maximum duration of four years.

Reinstatement shall be made at the beginning of the next academic quarter, semester or special session, as appropriate, unless the employer is prepared to offer reinstatement prior to the succeeding academic period. Requests for reinstatement must be made to an employee's previous appointing authority within 45 workdays of service of this Order in this proceeding, provided adequate notice of the Order has been transmitted to said employees at their last known address.

(c) Make reinstated lecturers whole by paying them for any loss of pay and other benefit(s) resulting from termination pursuant to a new policy limiting lecturer employment at more than 50-percent time to a maximum duration of four years. The total amount of this award shall be offset

by the amount of earnings received as a result of other employment during this period. The employer's make-whole obligation shall cease upon occurrence of the earliest of the following conditions: (1) the date on which termination would have been permissible in the normal course of University business; or (2) the effective date of an actual reinstatement offer that is not thereafter accepted; or (3) 45 workdays after service of this Order if no request for reinstatement has been received, provided adequate notice of the Order has been given; or (4) satisfaction of the employer's duty to meet and discuss, upon request, a proposed policy affecting the maximum duration of lecturer employment.

(d) Pay 7 percent interest per annum on the net amount of back pay owed pursuant to the make-whole provision of this Order.

(e) Upon request of the University Council of the American Federation of Teachers or AFT Local 2199, meet and discuss any proposed change in the maximum duration of employment for lecturers teaching more than 50-percent time, providing said organization a reasonable opportunity to present its views prior to the employer's arrival at a determination of policy or course of action.

(f) Within thirty-five (35) days after service of this Decision, prepare and post copies of the Notice to Employees, attached as an appendix hereto, for at least thirty

(30) consecutive workdays at its headquarters offices and in conspicuous places at locations throughout the University system where notices to employees serving as lecturers are customarily posted. It must not be reduced in size, and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(g) Within fifteen (15) days after service of this Decision, prepare and mail a copy of the Notice to Employees to lecturers no longer employed in that capacity by the University, but who were so employed on February 22, 1980. Notice to said employees should be sent to their last known address.

(h) Within twenty (20) days after service of this Decision, give written notification to the San Francisco Regional Director of the Public Employment Relations Board of the actions taken to comply with this Order. Continue to report in writing to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the charging parties herein.

Member Burt joined in this Decision. Member Tovar's concurrence begins on page 15.

Tovar, Member, concurring: As expressed in my concurrence in Regents of the University of California (UCLA) (12-21-82) PERB Decision No. 267-H, my views on the representational rights of nonexclusive representatives under HEERA differ somewhat from those of the rest of the Board. I here reaffirm my position as expressed in the above-noted case. In all other respects, I add my endorsement to the majority opinion.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Case No. SF-CE-57-H, University Council, American Federation of Teachers and AFT Local 2199 v. The Regents of the University of California, in which all parties had the right to participate, it has been found that the Regents of the University of California violated Government Code subsections 3571(a) and (b).

As a result of this conduct, we have been ordered to post this Notice and will abide by the following. We will:

1. CEASE AND DESIST FROM:

(a) Interfering with the right of employees to representation by arriving at a determination of policy or course of action reducing the maximum duration of employment for lecturers teaching more than 50-percent time without first giving notice to interested employee organizations and, upon request, discussing that subject pending the selection of an exclusive representative for the employees affected;

(b) Denying employee organizations a reasonable opportunity to represent employees by arriving at a determination of policy or course of action reducing the maximum duration of employment for lecturers teaching more than 50-percent time without first giving notice to interested employee organizations and, upon request, discussing that subject pending the selection of an exclusive representative for the employees affected.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

(a) Upon request, reinstate the policy of allowing a maximum duration of eight years' employment for lecturers teaching more than 50-percent time, to be applied retroactively to those so employed on and after February 22, 1980.

(b) Upon request, reinstate those lecturers teaching more than 50-percent time as of February 22, 1980, who are no longer so employed and whose lecturer employment thereafter would not have been terminated but for application of a new policy limiting employment of lecturers teaching more than 50-percent time to a maximum duration of four years.

Reinstatement shall be made at the beginning of the next academic quarter, semester or special session, as appropriate, unless the employer is prepared to offer reinstatement prior to the succeeding academic period. Requests for reinstatement must be made to an employee's previous appointing authority within 45 workdays of service of this final Order in this proceeding, provided adequate notice of the Order has been transmitted to said employees at their last known address.

(c) Make reinstated lecturers whole by paying them for any loss of pay and other benefit(s) resulting from termination pursuant to a new policy limiting lecturer employment at more than 50-percent time to a maximum duration of four years. The total amount of this award shall be offset by the amount of earnings received as a result of other employment during this period. The employer's make-whole obligation shall cease upon occurrence of the earliest of the following conditions: (1) the date on which termination would have been permissible in the normal course of University business; or (2) the effective date of an actual reinstatement offer that is not thereafter accepted; or (3) 45 workdays after service of this Order if no request for reinstatement has been received, provided adequate notice of the final Order has been given; or (4) satisfaction of the employer's duty to meet and discuss, upon request, a proposed policy affecting the maximum duration of lecturer employment.

(d) Pay 7 percent interest per annum on the net amount of back pay owed pursuant to the make-whole provision of this Order.

(e) Upon request of the University Council of the American Federation of Teachers or AFT Local 2199, meet and discuss any proposed change in the maximum duration of employment for lecturers teaching more than 50-percent time, providing said organization a reasonable opportunity to present its views prior to the employer's arrival at a determination of policy or course of action.

Dated: _____

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



UNIVERSITY COUNCIL, AMERICAN)
FEDERATION OF TEACHERS (AFT), and)
AFT LOCAL 2199,)
)
Charging Party,) Unfair Practice
) Case No. SF-CE-57-H
)
v.)
)
REGENTS OF THE UNIVERSITY OF) PROPOSED DECISION
CALIFORNIA,) (12/2/82)
)
Respondent.)
_____)

Appearances: Robert J. Bezemek, Bennett & Bezemek, attorney for charging party University Council, AFT, and AFT Local 2199; Milton H. Gordon, attorney for respondent Regents of the University of California.

Before: Barry Winograd, Administrative Law Judge.

PROCEDURAL HISTORY

On June 3, 1981 the University Council of the American Federation of Teachers and its affiliated Local 2199 (hereafter AFT) filed an unfair practice charge against the Regents of the University of California (hereafter Regents or University). The charge alleged, in essence, that the employer had unilaterally altered terms and conditions of employment for University lecturers, including reduction of the maximum amount of time allowed for service in full-time lecturer positions. AFT asserted that this action violated sections 3571(a) and (b)

of the Higher Education Employer-Employee Relations Act (hereafter HEERA or Act).¹

On December 31, 1981 the charging party submitted an amendment alleging that, after the original charge was filed, AFT met with University agents to discuss the lecturer policy changes, but that the University did not participate in the sessions in good faith.²

On June 25, 1981 and January 18, 1982 the Regents filed answers to the charge and the amendment. While admitting certain facts, the answers generally denied the allegations of unlawful conduct and set forth several affirmative defenses.

¹The HEERA is codified at Government Code section 3560, et seq., and is administered by the Public Employment Relations Board (hereafter PERB or Board). Unless otherwise indicated, all statutory references in this decision are to the Government Code. Section 3571 of the Act provides that it shall be unlawful for a higher education employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

²A further allegation that the Regents' conduct violated section 3571(f), by bypassing a petitioning employee organization and conducting talks with employee advisory groups on a matter within the scope of representation, was subsequently withdrawn during the formal hearing.

Admissions, denials and defenses will be considered below as relevant to this decision.

An informal settlement conference was conducted on June 25, 1981 but the dispute was not resolved.

Following the issuance of a complaint, on February 18, 1982, and a notice of hearing, on March 26, 1982, a formal hearing was held at Berkeley, California, on May 25, 26 and 27, and June 30, 1982.³

After each party requested extensions of time, post-hearing briefs were filed and the matter was submitted on November 3, 1982.

FINDINGS OF FACT

A. Background.

In addition to individuals holding tenure in professor ranks, who are thereby entitled to membership in the Academic Senate, the University of California utilizes a substantial number of non-Academic Senate teaching personnel, including lecturers. During the period leading up to the policy changes

³At the end of its case-in-chief, the charging party amended its claim to conform to proof by including an allegation that the employer also met in bad faith with representatives of AFT Local 1474, a Berkeley affiliate, regarding campus-level features of the same lecturer changes described above. The amendment was received, over respondent's objection, on the grounds that the subject matter was closely related to and shed light upon the earlier charge and the first amendment. See San Ramon Valley Unified School District (8/9/82) PERB Decision No. 230 at pp. 9-10.

at issue in this case, there were approximately 1500 to 2500 lecturers, full and part-time, throughout the University system. By and large, their teaching duties involved basic undergraduate courses.

Lecturers teaching more than part-time have typically been hired on one-year contracts without express promise of reappointment. However, the evidence indicated that contract renewal has been common except for instances of class or program cancellations, inadequate performance or department financial cutbacks. Aside from these limits, the only other restraint on reappointment has been regulation of the maximum duration of full-time employment, discussed immediately below. A change in that policy prompted the filing of this charge.

Lecturers (and other professional employees) are subject to the provisions of the Academic Personnel Manual (APM). Until 1980, provisions of APM section 133 controlled the maximum length of lecturer employment.

In the past, APM section 133 permitted retention of lecturers teaching more than 50 percent time (that is, "full-time") for a period no longer than eight years, unless, by that point, the individual was given "security of employment" (or SOE). Security of employment is akin to tenure for non-Academic Senate teaching ranks, and establishes, among other things, a permanent career status that may be disturbed only for good cause. Another related provision, APM

section 135, limited security of employment to appointments made only after periodic performance reviews. Security of employment would be granted if such review showed either exceptional teaching ability or special instructional need. In practice, according to several witnesses, the most significant review took place after six years. Approval at that stage was closely tied to receiving SOE two years later. The APM also required that SOE be based on the existence of a full-time budgeted position, otherwise known as full-time employment (or FTE).

At the times relevant to this case, about 135 University lecturers had security of employment. Regardless, as conceded by University analyst Myron Okada, a principal employer representative familiar with these policies and procedures, all lecturers teaching more than 50 percent time were technically eligible for SOE following satisfactory reviews and assignment of a budgeted position. Many other lecturers, teaching less than 50 percent time (that is, "part-time"), were neither subject to the eight-year cut-off nor eligible for SOE based upon their limited service. Thus, the significance of achieving security of employment by the end of the eighth year was accentuated because reappointment to any full-time lecturer post after eight years was prohibited unless the person also had been given SOE. Without SOE, therefore, ongoing lecturers after eight years were confined to part-time status.

According to APM section 133, the eight-year period was comprised of 24 academic quarters (3 per year), and breaks-in-service did not jeopardize the accrual of the necessary number of quarters. Persons taking job-related leaves of absence could have that period counted toward the total time required. Also, section 133 allowed the computation of time in a lecturer position to be applied toward the distinct eight-year limit for completion of the assistant professor step that preceded granting of formal tenure. Hence, although not frequent nor in the typical line of progression, the lecturer position could be a stepping-stone toward tenured professor status.

Other APM provisions also regulated terms and conditions relevant to lecturers. These sections governed the mechanics of the yearly reappointment process, the salary scale, travel allowances, and other employment matters. Since all lecturers were grouped under the same employee classification, these provisions were uniformly applied to those destined for SOE and those who were not.

B. The Sullivan Report.

In July 1977 University President David S. Saxon created an 11-member academic committee under the chairmanship of law professor Lawrence A. Sullivan. The purpose of the Sullivan Committee was to:

. . . review the current policy on

limitations of period of service and its applicability, . . . assess its usefulness in terms of the University's present circumstances, and . . . recommend . . . changes or clarifications

The Committee's study, popularly known as the Sullivan Report, was sent to President Saxon in January 1978.

The Report cast its analysis in terms of two University personnel goals related to the eight-year principle:

(1) of protecting the individual faculty member from unduly long service at low salary and in insecure status, and (2) of making firm and timely decisions, for the good of the institution, to retain only the best aspirants as permanent members of the faculty. . . . (Report, p. 2.)

The Committee identified four areas where limited-term teaching help was appropriate, up to full-time, on a so-called "temporary" basis: (a) specialized, often practice-oriented instruction; (b) elementary instruction of a repetitive character; (c) substitution assignments for faculty on the professorial ladder; and, (d) experimental programs without permanent funding. However, in the Committee's view, long-term non-tenured instructional faculty, including full-time teachers, were also required for some specialized instruction; for example, in technical or creative fields, or in developing a cadre of elementary language instructors. These long-term employees would be considered "permanent."

Upon reviewing the existing distribution of teaching assignments, the Report stated:

The Committee is unanimous that the current system of titles produces significant procedural problems. . . . more troublesome, is the lack of discrimination within the Lecturer title between non-ladder positions purely temporary in nature and positions that, if the employee proves highly satisfactory, can lead to security of employment. The possibility of permanence for the few creates a false presumption of the possibility of permanence in the minds of the many. (Report, p. 6.)

In a similar vein, another part of the Report noted underlying problems viewed by the Committee:

[F]irst is the need for clarity of mutual expectations. Experience shows that temporary personnel whose employment is renewed for five years or more tend to develop an expectation of continuity even though the terms of employment are to the contrary. Moreover, it becomes harder for all involved in the relationship to terminate it even in the face of clear programmatic need to do so. The University's fiscal and programmatic flexibility is eroded by continuing such appointments beyond the legitimate need for them. Second, persons doing basic teaching of a repetitive nature on a long term basis tend to grow stale in the subject matter unless stimulated by creative activity or graduate level teaching. (Report, p. 5.)

Given the problems it found, the Sullivan Committee made several recommendations to President Saxon. One proposal was that there be a four-year limit for full-time non-tenured teaching work without SOE prospects, and that this "temporary" work be given a separate title from that of lecturer. The suggested new title was "Instructor." A second proposal was that the lecturer title, in the Committee's view, should be

reserved for "permanent" budgeted positions based on an FTE, filled after a formal recruitment search and still subject to the historic eight-year rule. Even though employees on each track could be full-time teachers, only those in the second permanent category could be security of employment candidates within the eight-year limit. Further, it was proposed that those given appointments in the new limited four-year classification would be on a salary scale that started below the then-current scale for lecturers (but was otherwise parallel).

The Report recognized that breaking the existing lecturer ranks into two tracks--one short-term and without possibility of SOE, the other with career SOE potential--could cause transition problems, but there was no consensus on a single device to guard the interests of incumbents:

The majority of the Committee concludes that present Lecturers whose positions are identified as strictly temporary should be reappointed as Instructors subject, however, to an appropriate "grandfather" provision. Such a provision might, for example, protect any present Lecturer who, before implementation of the new system, had been given assurances by responsible campus officials that his or her particular position was one in which security of employment could be attained. One member of the Committee takes the view that any person presently holding the Lecturer title who has held it for more than six years should be granted an immediate formal review for security of employment based on the criteria now stated in the Academic Personnel Manual. Another member of the Committee notes that the actual functions of most

present Lecturers on his campus correspond to those appropriate to temporary Assistant Professors rather than to those of Instructors, and suggests that authority for the assignment of new titles reside at the Chancellor's level in case departments wish to change current Lecturers to temporary teaching/research titles. (Report, p. 10.)

In another area of concern, "time on the clock" for acquiring credit toward tenured faculty positions, a Committee majority took the position that the established practice allowing accrual should be terminated. The majority believed that only time accrued for positions requiring both teaching and research should count, thereby excluding those in either the existing or the proposed lecturer series. The Sullivan Report reasoned that since lecturers were only required to teach, it would be unfair to consume part of their eight years on the professorial clock, which did require research productivity, with the limited function of lecturer service. On this issue, at least two minority views were recorded in the Report, one suggesting a flexible case-by-case approach and the other favoring the already established procedure of counting "service at more than half-time in any academic title." Still, the Committee unanimously proposed that preliminary service as a short-term lecturer would count toward the eight-year probationary period for lecturers later moved to a permanent SOE track. Under this computation, academically-related leaves of absence would also count toward the eight-year maximum, but other types of absences would not.

As evident from this detailed analysis, the Sullivan Report presented proposals that would dramatically alter the employment prospects for a substantial number of employees. Perhaps most striking was the Report's suggestion to cut from eight years to four the maximum length of teaching time for a vast number of lecturers, with an accompanying starting salary reduction as well. As the Report noted, this proposal, if adopted, would also dim implied expectations of many that lengthy service up to an eighth year could lead to security of employment. The Committee was obviously aware of the significance of its study and proposals, and couched its report accordingly:

. . . our final report is, in part, a set of recommendations for change and rationales for these and, in part, a policy planning document which presents some information and analysis and suggests alternative possible responses to relevant policy questions. (Report Cover Letter, p. 1.)

Consistent with this view, the Committee noted:

Our report, therefore, can be no more than the basis for further consultation both with campus and departmental administrators, with appropriate Senate mechanisms, and with representatives of non-Senate teaching personnel. Moreover, we worked rapidly and under considerable time pressure. We stayed at the level of basic policy. We do not profess to have studied all of the issues or implications even at this level or to have explored some other closely related questions. Nor did we consider, in any detail, any of the myriad problems which would arise in the process of implementing our proposals. For example, a variety of the problems would arise during a transition from the present set of titles and policies

to those which we propose. We have no doubt that "grandfather" clauses of some kind would be necessary to assure equitable treatment to some personnel. Our failure to address these questions arose not from insensitivity to them, but from a recognition that particulars like these could be dealt with effectively only after final decisions were made about the long range policy issues. (Report Cover Letter, p. 2; emphasis added.)

A few months after the Sullivan Report was submitted, the University Council AFT requested a meeting to discuss the proposals and their status. A meeting took place on June 14, 1978 with representatives of the systemwide University administration. According to notes of the meeting, offered by respondent and confirmed by testimony from its notetaker, the AFT was assured that implementation of the Sullivan Report would be a gradual process, that there would probably be changes, and that the whole matter would be subject to discussion by campus administrators, Academic Senate members, and employee organizations.⁴ These notes were also confirmed by the testimony of an experienced University staff analyst who served on the Committee and participated in the June 1978 meeting. That witness, Lubbe Levin, stated that the Sullivan Report was not itself in a format comparable to other APM

⁴Inadvertently, these notes (Respondent's Exhibit No. 2) were not officially received in evidence during the hearing, even though the notetaker testified, identified the copy in evidence, and was available for cross-examination. The record should reflect, nunc pro tunc, the receipt of the document.

revisions for the purpose of adoption as a new personnel policy. Most important, University officials indicated that the existing APM provisions would be "operating policy until formally revised."

There was also limited testimony by Levin that she had a second meeting with AFT representatives about six months later. However, she did not recall the identity of participants, specific subjects discussed, or the outcome of the discussion. No notes were introduced from this session. The administrative law judge has therefore concluded that even if the meeting did occur, there is no persuasive evidence that it included a formal expression of AFT views about a pending proposal for a new policy or course of action.

C. The New Policy for Lecturers.

In March 1979, more than a year after the Sullivan Report was submitted, the University's systemwide staff prepared and distributed to campus administrators a draft proposal regarding reclassification for lecturers not on an SOE track. The goal was to receive comments a month later and implement the new policy by July 1979. At this point, and until the final product was completed, the lecturer policy change was under the direction of Edward J. Blakely, the assistant vice-president for academic personnel affairs. Blakely had been the senior staff person serving the Sullivan Committee and was familiar with the details of the study and its recommendations. Members

of his staff wrote the March 1979 draft and coordinated the review of comments from campuses.

The initial draft was not approved as quickly as expected. Questions were raised, particularly about the "Instructor" title change urged by the Committee. Subsequent revisions carried the project into late 1979. By early 1980, however, agreement apparently had been reached among administrative staff throughout the state and an official revision of the APM was prepared.

This revision was distributed to campus chancellors on February 22, 1980, over the signature of President Saxon, and was designated as new APM section 63.⁵ According to Saxon's cover letter, the authenticity of which is not in dispute, the new APM section was "effective immediately." He informed recipients that the new policy had been extensively reviewed by University committees and offices, and that actual inserts for the APM would be forthcoming soon.

As discussed more fully below, neither the preliminary drafts of the new APM section, nor the policy issued in February 1980, were submitted to the AFT for review and comment prior to adoption.

⁵Sections of the APM were recently renumbered and APM section 63 is now section 287. For convenience, the original number, often referred to in testimony and exhibits, will be used in this decision.

APM section 63 did not adopt the "Instructor" title recommended by the Sullivan Committee, but did provide for new classifications of "visiting" and "adjunct" lecturers.⁶ The new classes would be limited to appointment terms not to exceed two years, with a maximum of four years full-time service (that is, 12 quarters), whether continuous or interrupted. It was prescribed that service in the new visiting or adjunct classifications would not count toward professorial tenure,⁷ but that it could be accrued, as part of a maximum of eight years, for a lecturer position on the SOE track. Other terms and conditions of employment, including retirement system eligibility, and a salary scale equivalent to that for lecturers, remained as before.⁸ Interpretative testimony by University officials, borne out by AFT witnesses, indicated

⁶Technically, "senior visiting" and "senior adjunct" titles were also created, thereby retaining a parallel to the graduated "lecturer" and "senior lecturer" structure that existed before and after new APM section 63 went into effect.

⁷A later revision, dated November 11, 1981 and distributed in January 1982, apparently retracted this alteration of past practice, thereby providing that visiting and adjunct lecturer service would count toward time-on-the-clock for tenured professor positions. (See Charging Party Ex. 28.)

⁸Travel expenses for conferences and professional advancement were geared to other APM provisions governing either "visiting" or "adjunct" positions. There was insufficient evidence, however, that this actually limited potential allowances that were traditionally discretionary.

that no change in the substantive content of teaching duties was contemplated as part of the new policy.

Responsibility for establishing specific appointment and review procedures consistent with APM Section 63 was expressly delegated to campus chancellors.

Significantly, the new APM section 63 was silent about grandfathering individuals who were to be reclassified to the new titles. However, on this issue, documentary evidence indicates at least two written clarifications of the APM were distributed after the February 1980 policy was released.

First, in May 1980, Blakely wrote to academic vice-chancellors regarding questions that had been raised about the new titles. Blakely began by summarizing the previous action establishing new visiting and adjunct classes, and its import:

These titles have been developed in order to distinguish two types of appointments which have been made under the title of Lecturer--temporary appointments and appointments which may lead to security of employment. The title of Lecturer is henceforth to be used only when approval has been given for allocation of an FTE to be filled by a permanent appointment as Lecturer with Security of Employment, and the appointee is to be considered as a candidate for advancement to security of employment. My staff is currently working on a revision of the Lecturer title which will formally embody these changes.

The new titles in Section 63 will be used for all temporary appointments. Recognizing the requirement for individual reviews and

fair treatment, the campuses should transfer current temporary lecturers to the new titles as soon as possible.

Blakely then responded to concerns about the grandfathering issue. He informed campuses that full-time lecturers in the new and old titles could be retained for up to eight years:

Service at more than 50% time in any combination of these new titles and the titles Lecturer or Senior Lecturer is limited to a maximum of eight years. Individuals who are currently Lecturers or Senior Lecturers may serve up to four years at more than 50% time in the new titles, but, in all cases the eight year rule applies.

However, grandfathering was not established across-the-board. Blakely gave campuses leeway to,

. . . be more restrictive in your limitation of service in a combination of the lecturer titles. Thus, a campus for many legitimate reasons may choose to limit service in the combined new and old lecturer titles to less than eight years.

A second clarification apparently modifying Blakely's May 1980 interpretation was adopted after this charge was filed, although there is no evidence, other than that circumstance, showing a causal relationship. A revision of APM section 133, dated November 11, 1981 (and distributed in January 1982), contained language distinguishing between persons appointed before and after July 1, 1980, providing that the eight-year rule would still apply to the former. (See Charging Party Ex. 3, App. B.) The import of this change was

that employees previously hired as lecturers were fully grandfathered, even if later reclassified to the new titles.⁹

It should also be noted, regarding formulation of new APM section 63, that University administrators intended to revise the separate APM provision governing lecturers that had previously been in effect for all employees in that title; that is, APM section 283. Blakely referred to this anticipated revision in his May 1980 letter quoted above. According to testimony offered by respondent, this separate policy revision would clarify the existence of dual tracks. As of the formal hearing in this case, the promised revision had not yet been promulgated.

D. Implementation of New APM Section 63.

The documentary material and testimony offered at the

⁹A third clarification regarding new APM section 63 was issued by Blakely on June 22, 1981, shortly after but again without apparent connection to the filing of the present charge. In this letter to academic vice-chancellors, Blakely indicated that,

. . . [s]ince the vast majority of individuals in the Visiting Lecturer and Visiting Senior Lecturer titles are paid according to standardized salary scales, it appears inappropriate to include these titles with those of other visiting appointees whose salaries are negotiated on an individual basis and who are, therefore, ineligible for range adjustments.

The campuses were then informed that salaries for the new classifications could be automatically range-adjusted to allow for cost-of-living raises.

hearing provides persuasive evidence in support of several overall findings about systemwide implementation of the new policy. First, when the new APM section 63 was issued in February 1980 it was "effective immediately," with the systemwide administration expecting reclassifications to follow promptly, as Blakely declared in his May letter. Blakely also testified that any variation or exemption from the new policy would require prior systemwide approval. Second, most campuses republished and redistributed the systemwide pronouncement, perhaps with special provisions for those concerns left by express delegation to local campuses, such as the methods to be utilized for review and appointments. Third, campuses began the reclassification process in Spring 1980, for the 1980-81 academic year, and completed the changeover by Spring 1981 for the succeeding academic year, 1981-82. Fourth, once carried out, reclassification did not change an employee's teaching duties. The new visiting and adjunct lecturers continued to teach the same courses and programs as before.

In regard to the above findings, there was no evidence introduced by respondent that any campus either attempted or had the authority to alter the basic terms of the February 1980 policy issued by President Saxon; in particular, the creation of new academic titles, the four-year service limitation for those titles, and the distinction on eligibility for security of employment.

In addition to testimony and documents relevant to systemwide actions, there was substantial evidence offered about the implementation process at the Berkeley and Santa Cruz campuses. This body of evidence sheds light on the steps taken by the University.

1. Berkeley.

At Berkeley, for example, in April 1980, then Vice-Chancellor Ira Michael Heyman reissued the new APM section 63 for action by deans and departmental officials. Heyman stated that existing review procedures that had been utilized previously at Berkeley would continue in effect. He also stated that "range adjustments will not apply" to the new visiting classifications. (But see fn. 9, supra.)

Almost a year later, in March 1981, another campus-wide memo was issued by Heyman's successor, Roderic B. Park, regarding the reclassification process. Park had viewed the February 1980 release as the actual, final policy. However, he noted that because the new section had been distributed late in the 1979-80 year, prior commitments had prevented full implementation for 1980-81 but that completion of the process was expected by July 1981.¹⁰

¹⁰The Acting Provost and Dean of the College of Letters and Science, Hugh Mclean, also sent a memo to department chairs on January 27, 1981, informing them about the four-year rule, the need for an FTE commitment before proposing a candidate for security of employment, and the possibility of individual salary requests in lieu of automatic range adjustments.

Evidence about one Berkeley employee also illuminated the implementation phase. Merle Woo, a full-time lecturer in Asian-American Studies, a subsection of the Ethnic Studies Department, received notice in April 1980 that she was being reappointed for 1980-81 as a "Lecturer," and that, by the end of the year, she would have accrued nine of twelve quarters of service credit toward security of employment. Previous appointments for Woo made no mention of a twelve-quarter limitation. In May 1981, when Woo was reappointed as a "Visiting Lecturer" for 1981-82, she was told that she would have accrued at the end of that term twelve quarters credit toward SOE. No mention was made at that time regarding termination. Finally, in Spring 1982, Woo was informed that her service would end that June. Her administrative appeal for continued employment beyond the four-year limit was rejected by Provost Robert Middlekauff, after a departmental official disclaimed any authority to alter established University policy.

Some conflicts exist regarding the circumstances surrounding Woo's expectations. Woo testified that she was promised a security of employment position when she was hired in 1978, after nine years of teaching at San Francisco State. The promise was attributed to a personnel committee, and to two department agents, Ling-Chi Wang, then the coordinator for Asian-American Studies, and Ronald Takaki, a professor who later succeeded Wang as coordinator. One of the agents,

Takaki, claimed he was on leave at the time, thereby raising some doubt about Woo's assertion. However, Wang was not called to testify, and no other evidence was offered on this point.

Woo also testified that in Spring 1980 she was reassured about her promised SOE position despite the 12-quarter limit that was first stated in her 1980 reappointment letter as a "Lecturer." Takaki denied giving such reassurance. Woo's next letter in 1981, in which she was given the new title of "Visiting Lecturer," again sparked her concern. But Woo only learned about her pending termination several months later, in February 1982, after inquiring about the status of her next reappointment. Finally, Woo testified, without contradiction, that in May 1982 Provost Middlekauff personally told her that the four-year rule was being applied everywhere, and had nothing to do with Woo's professional qualifications. When asked, according to Woo, Middlekauff asserted that the denial of security of employment was unrelated to any budgetary issue or loss of an FTE position. Middlekauff was not called as a witness by respondent.

On the basis of the testimony offered, as well as respondent's failure to call key witnesses, the administrative law judge finds that Woo was offered a security of employment position when she was hired, contrary to the limited and incomplete denial put forward by the University. The evidence also supports a finding that the new lecturer policy was used

as a basis for her premature termination, in apparent contradiction to the 1981 full grandfathering modification of APM section 133. Woo was specific and forthright when questioned about the circumstances of her hiring and eventual separation. The hiring commitment to Woo was also consistent with her extensive prior teaching experience, and with the fact that, until her last year, she was the sole full-time lecturer within Ethnic Studies. Although departmental officials may have been overeager to hire and retain a skilled teacher, and perhaps erred in making an SOE promise without an underlying budgetary allocation, it is found that Woo's expectations had been impliedly confirmed by department representatives and, as the Sullivan Report suggested, by the momentum of her reappointment process.

These findings are not negated by the fact that Woo, in another proceeding, has charged the University with a discriminatory discharge. Contrary to the argument of University counsel, the claims are not mutually exclusive. Use of the four-year rule as a basis to terminate Woo sheds light on respondent's practice regarding APM section 63, even if it is otherwise shown, in a separate case, that invocation of the rule was pretextual and unwarranted.

Last, regarding implementation at Berkeley, there was evidence about meetings in December 1981 and in March and April 1982, between local campus and AFT representatives. At the first of these meetings, local officials stated they had only limited knowledge about campus prerogatives and had no delegated authority to depart from systemwide policy. The campus representatives promised to get back to AFT about several issues that had been raised. In particular, concerns had been expressed about grandfathering those who had been in the old lecturer titles.

Months later, in Spring 1982, after local officials were finally able to arrange a subsequent meeting to provide more detailed knowledge about the new policy, campus management and AFT representatives were informed by systemwide analyst Okada, to the apparent surprise of one Berkeley personnel agent, that grandfathering was a local matter for decision by the appointment authority; that is, by the department, subject to approval by the campus administration. The inconsistency between (1) the systemwide assertion about preserving local authority, in accord with Blakely's May 1980 memo, (2) the November 1981 APM revision that fully grandfathered pre-July 1980 lecturers, and (3) the claim by Middlekauff to Woo in Spring 1982, referring to a rigid four-year rule applied

everywhere, was never explained by testimony offered by respondent.¹¹

2. Santa Cruz.

Although Santa Cruz officials received the new policy in Spring 1980, local concerns delayed initial implementation steps until Spring 1981. Then, on June 2, 1981, Santa Cruz

¹¹It might be inferred from Park's testimony that the Berkeley campus College of Letters and Science had established a four-year rule by an informal policy revision in 1976 and 1977, and that Middlekauff was alluding to that practice. However, the evidence suggests otherwise. First, the Ethnic Studies department is organizationally separate from the College of Letters and Science. Second, Middlekauff's letter to Woo in 1982 made no mention of a local campus rule and, indeed, referred to Woo's appeal of a "Systemwide University policy." Third, the memo issued by Letters and Science Acting Provost and Dean McLean in January 1981 similarly made no reference to any established local policy within his domain, but mentioned only the reclassification process and four-year rule flowing from new APM section 63, and designed to be effective by July 1, 1981. Fourth, neither Heyman's April 1980 nor Park's March 1981 memos made any mention of a pre-existing four-year rule, albeit of limited applicability. Fifth, although Park testified that business records in the form of routine meeting minutes would support his claim that a fixed four-year policy applied at Berkeley (in Letters and Science) before President Saxon's February 1980 announcement, those minutes were not offered in evidence despite the express opportunity available to the respondent to do so following the close of the formal hearing. It is therefore concluded that even if some departments within Letters and Science had applied a four-year rule before February 1980, as Park testified, it was not shown that this policy was uniformly known to employees, to employee organizations, or, for that matter, to other management officials. For this reason, it is found that such a rule would not constitute an established past employment practice; nor would it serve as a reconciling explanation for otherwise inconsistent University testimony about rigid University policy that restricted grandfathering.

Academic Vice-Chancellor John A. Marcum distributed a proposed Santa Cruz lecturer reclassification policy to other campus management officials. Marcum stated that the new policy would be effective July 1, 1981. The text of the draft was virtually identical in material respects to the draft distributed by President Saxon in February 1980, although some of the provisions were stated in greater detail. One major difference, however, was that the Santa Cruz campus determined to use only the "adjunct" title for reclassified lecturers, instead of also using the "visiting" designation. No reference was made to the grandfathering question.

In June 1981 Marcum also began practical implementation of the changeover by issuing reappointment letters for the upcoming 1981-82 academic year that utilized the new "adjunct lecturer" classification. In one letter introduced from that period, Marcum made no mention about a limitation on years of service.¹²

Shortly thereafter, on July 21, 1981, Santa Cruz personnel and labor relations manager Robert R. Bickal issued a notice

¹²A second letter in evidence, dated November 1981, also used the "adjunct lecturer" title but did refer to a quarter limitation, noting that the appointee could accrue a "maximum sixteen quarters allowed under the University's so-called four-year rule." Marcum's sixteen quarters statement was probably an inadvertent error, since it clearly conflicted with the systemwide computation formula, as well as with the formula in the policy statement he distributed the previous June.

that purported to defer the locally effective date of the new policy to September 1, 1981, still prior to the academic year for which reappointment letters had been issued. This notice, sent to interested employee organizations including the AFT affiliate, invited comment through meeting and discussion. Bickal's notice followed the filing of the instant charge and an attempt at the informal settlement conference to have the parties resolve the dispute. The July notice, however, made no comment rescinding or placing in abeyance the prior appointment letters that reclassified lecturers for the coming academic year. Nor did the notice draw any distinction between matters within local campus responsibility, subject to discussion, and University-wide policy distributed 17 months before by President Saxon and, presumably, not on the table.

Regardless, on August 5, 1981, AFT representatives conferred with campus personnel officials Bickal and Barbara Nielsen. The testimony about that meeting, and the detailed notes taken by an AFT representative and carefully reviewed by Nielsen, substantially support findings that the reclassification and four-year rule were systemwide in nature and that modifications of the basic policy were beyond the authority of the local campus. One substantive issue that was discussed as a local proposition was grandfathering. As to that subject, the AFT was informed that previously employed lecturers working more than 50 percent time could remain,

contingent on performance reviews, for up to six years, with a possibility of remaining through the previous eight-year limit.¹³

Although Nielsen inserted the word "proposed" when she reviewed references to the new policy in the August meeting minutes, she gave the impression that this was a technicality and that the fundamental aspects of the policy revision were, in reality, not tentative at all. Nielsen was not called as a witness to dispute this impression. Also inadequate was Bickals' testimonial effort to support Nielsen's insertion that the new policy was merely proposed in August 1981. Bickal's testimony was weakened by his own noticeable embarrassment attempting to explain the scope of local campus authority. This was also apparent when he was examined about the contradiction between the never-modified Spring 1981 reappointment letters and the subsequent statement(s) that implementation was delayed.

Additionally, as corroborative evidence demonstrating the ongoing implementation and effect of the new APM section 63 at Santa Cruz during this period, AFT offered hearsay testimony

¹³Later, at the formal hearing in May 1982, Bickal stated that the grandfathering policy was actually a full, eight-year maximum, and not simply the six-years referred to in August 1981. The charging party at the hearing and its brief, has literally jumped to accept this additional concession, while claiming that the inconstancy of the Santa Cruz position has caused confusion and distrust on the part of the AFT.

about a lecturer named Donald Rothman, based, in part, on admissions by a Santa Cruz administrator. According to the AFT, Rothman had been promised security of employment and, when the new rule went into effect, was approaching the end of his eight years of service. Instead of simply being transitioned into his permanent status, Rothman was required to compete for an appointment as part of a recruitment search procedure. Although the University offered no evidence to contradict this example, it is given little weight as proof of a systemwide policy altering technical eligibility for SOE. Relevant documents show that the new policy still required a budgeted FTE for such status and continued to allow accrual of temporary lecturer service when an employee switched to the SOE track. Unlike Woo's case, where the new policy was expressly (mis-)applied, Rothman's situation appears to have been a personal grievance unrelated to a new systemwide practice.

Last, regarding implementation at Santa Cruz, Marcum issued another cover letter and draft policy in March 1982, stating that implementation was anticipated no later than July 1, 1982. Organizational comments were invited. No mention was made about the presumed effectiveness of the policy and reappointment letters between September 1, 1981 and Marcum's notice seven months later. A principal difference between the June 1981 and the March 1982 drafts was that the latter document adopted the "visiting" lecturer title in

addition to the "adjunct" description, thereby placing Santa Cruz back in step with the systemwide policy set forth by President Saxon in February 1980. AFT responded to Marcum's March 1982 announcement by meeting with him on April 8, and by drafting a lengthy analysis of local campus policy on quarterly appointments and on measuring quarterly course loads, subjects normally delegated to local authorities by the systemwide administration. Additionally, the AFT's 1982 comments reminded the Santa Cruz administration about the then-longstanding union criticism of the four-year limitation and the pending unfair practice charge which was scheduled for hearing in May 1982.

E. Notice to AFT of the Lecturer Policy Change.

Substantial evidence supports the finding, as AFT claimed, that notice was lacking until shortly before this case was initiated.

First, and most important, Blakely, as well as University officials responsible for labor-management relations, conceded that prior to this charge being filed they gave no official notice to AFT of the APM policy change either while drafts were being circulated in 1979, or, when President Saxon issued the new APM section 63 in February 1980. These officials included Tom Mannix of the systemwide administration, and Philip Encinio at Berkeley, neither of whom, according to their testimony, even knew about the policy change until after the charge was filed. And, although Blakely testified that under normal

procedure a copy of an early draft would have been sent to Mannix' systemwide predecessor for redistribution to interested employee groups, Blakely's recollection was uncertain and there was no additional evidence offered by respondent that the draft actually was passed along. Moreover, as Mannix testified, the University's systemwide administrators did not implement a practice of routine formal notice to non-exclusive employee organizations about proposed policy changes affecting matters within the scope of representation until late 1981. For a period prior to that time certain officials had taken the position that non-exclusive representatives were not entitled to such notice.¹⁴

Second, AFT officials convincingly denied having received notice of the lecturer policy drafts and official revision prior to their own discovery of the fact in mid-1981. According to the charging party, the AFT was not notified about the policy change until Santa Cruz AFT members who were reclassified in Spring 1981 communicated their concerns to the statewide leadership in the University Council, the umbrella organization of AFT affiliates. In turn, the statewide leadership

¹⁴The systemwide policy implemented in 1979, after the HEERA went into effect, halting the prior practice of advance notice to organizations about proposed policy changes regarding matters within the scope of representation, is described in fuller detail in Regents of the University of California (Lawrence Livermore Laboratory) (4/30/82) PERB Decision No. 212 (hereafter Lawrence Livermore Laboratory).

investigated the situation, discovered the new policy, and, ultimately, filed the instant charge in June 1981.

Contrary to the urging of University counsel, the administrative law judge rejects finding that the Sullivan Report constituted actual notice to AFT of the later changes. This rejection is based not only on the lack of consensus and the tentative nature of the Report, but also on the fact that it was not drafted and circulated as an APM revision or even a formal proposal. Instead, the Report was merely the first step in a gradual process and was expressly intended for further meeting and discussion. Indeed, the new policy contained significant differences from the Committee's proposals, including: different titles, retention of the same salary scale, and, ultimately, a full grandfathering policy as well as accrual of lecturer service as time-on-the-clock for professorial appointments.

Third, other evidence offered by respondent to impeach the AFT claim of lack of notice was insufficient. At most, two articles from the statewide AFT newspaper showed inadequate, indirect and unofficial notice after President Saxon's announcement.

The first article, in March 1980, was apparently written after vague rumors of a possible policy change were heard at an AFT conference at Santa Barbara in early February 1980. The article focused on the long-term problems some lecturers had

had in receiving security of employment, and other criticisms of inferior treatment of lecturers by the employer. The article quoted Blakely and a staff associate about possible future changes. Significantly, their comments focused on a forthcoming policy revision that would enhance security of employment potential:

According to Edward Blakely, the administration is developing the policy using the 1978 "Sullivan Report" as a guideline. Blakely said the policy will offer an SOE track for full-time lecturers parallel to the professorial tenure track -- with an SOE review at eight years and an "appraisal" of the candidate's development at four years.

No mention was made in the article, or in Blakely's testimony, that AFT was informed in the pre-publication period of the new APM revision that presumably was in its final drafting stage and was due to be issued imminently.

The second AFT newspaper article, published in November 1980, also fails to indicate actual notice of the policy change set forth in new APM section 63. In general, the November 1980 article was an organizational appeal designed to inspire membership action on a host of employment practices concerning lecturers. Although the article does contain an ambiguous reference to the University contemplating changes to make it more difficult for lecturers to attain SOE, implying thereby that teaching opportunities would be decreased, no specific policy is cited. Indeed, a fair reading of the

article indicates that AFT was concerned with the possible allocation of visiting and adjunct titles to new lecturers, in successive two-year blocks for a total of four years, and was not describing any University plans to reclassify or terminate previously employed lecturers. In any event, the article has limited probative value as evidence of advance notice to the AFT of a policy change since it appeared nine months after Saxon's distribution of the new lecturer policy, and after initial implementation steps throughout the system.

The University also offered a smattering of other evidence to suggest advance notice to AFT. None of it, however, is convincing. For example, the employer points out that one member of the Sullivan Committee was a lecturer. However, this individual was also an assistant academic vice-chancellor at the Irvine campus and there was no evidence that she represented AFT on the Committee or was a member of the organization--assuming participation at that level of policy conceptualization constituted notice of the employer's later action. The respondent also argues that Blakely's yearly appearances before the Legislature after 1979 to discuss academic planning were overheard by AFT persons in attendance, and that he assumed the organization knew of the new plans to put a cap on teaching staff services. Yet Blakely could not identify the AFT persons present, and his recollection about the details of his appearances and the subjects raised was incomplete and vague.

Similarly unpersuasive is the University's suggestion that AFT learned about the policy change when Blakely was examined, with AFT counsel present, during the PERB unit determination hearings in October 1980. Administrative notice has been taken that, at the time, AFT was a petitioner in proceedings concerning the appropriate bargaining unit for non-Academic Senate employees, including lecturers. Blakely's testimony reveals that he did refer to new visiting and adjunct title codes as part of a policy change, but his explanation was insufficient and perhaps unintentionally misleading regarding the immediate ramifications of the change as well as the definition of "visiting" lecturers.¹⁵

¹⁵See In Re HEERA Professional Units, No. PC-1010 et al., Phase II, Vol. 28 at pp. 18-29, 65-72, 93-94. Although APM section 63 was introduced in evidence and Blakely testified that a reappointment transition process was under-way (id. at p. 27), his direct testimony was clouded on cross-examination. For example, Blakely was vague about the impact of the change:

Q. Okay. Now, you talked a little bit about the lecturer series. Is it fair to say that the classifications 1500--I'm sorry, 1600, 1602, 1605, '06, 1610, 1615 and 1619, are classifications which are being phased out?

A. I wouldn't say that. I would say that new classifications are being added.

Q. Is it the intention of the University to retain these classifications?

A. Yes.

Q. So that there will be then, instead of

Finally, little weight can be given to evidence that AFT representatives at Santa Cruz asked personnel agent Nielsen about a possible policy change as early as Fall 1980. This is so, according to AFT's uncontradicted testimony, because Nielsen responded that she wasn't sure what the policy would look like, and that informal talks were still taking place, presumably between local and systemwide officials.

the current seven lecturer classes, there will be 14 lecturer classes?

A. Whatever the number that were recited earlier, they would be added to the list. Now, the distribution of individuals would change, but the classes would remain pretty much the same.

Q. Is it the intention of the University to continue to place individuals in the seven classes that appear on Exhibit 12?

A. Yes. Those--some of those individuals. (Id. at p. 65.)

Later, when asked if a person previously classified as a "lecturer" would be reclassified to visiting status, Blakely replied:

A. It is possible. It is possible, if they are in fact a visitor.

Q. Okay. And when you say if they are in fact a visitor, what do you mean by visitor?

A. If they are here for a temporary purpose, they are replacing an existing faculty member, they're offering courses where we're currently recruiting for someone.

Q. Who makes that determination?

In sum, given the conceded absence of direct and official notice of the substantial change expressed in new APM section 63, the AFT's denial of notice, the insufficiency of the Sullivan Report as a substitute for actual notice of the later change, the failure of the newspaper articles to indicate specific foreknowledge about the revision, and the failure of Blakely or any other witness to convincingly attribute clear knowledge to AFT, it is found that AFT had neither actual nor formal notice of the policy change.

E. AFT Meetings with Employer Representatives.

AFT representatives had meetings about the new lecturer policy on July 28 and September 11, 1981 with systemwide University agents (including Mannix and Okada); on August 5, 1981 with Santa Cruz personnel officials (including Bickal and Nielsen); and on December 21, 1981 and in March and April 1982 with employer representatives at Berkeley (including Okada). The charge, as amended, alleges that discussions were not conducted in good faith by the University because,

. . .the Regents' representatives were not invested with sufficient authority to come to any agreements or understandings, or make decisions based upon the discussion. In addition, the actions which were the subject of the meet and discuss sessions had already been effected, and were not rescinded prior

A. The department, in the manner that I described earlier, they make a proposal. (Id. at p.72.)

to the meetings. The Regents essentially presented Charging Party with a unilateral decision not subject to change as a result of said discussions. (First Amended Charge, p. 2.)

The University, in the testimony offered and in its brief, has conceded that its representatives lacked authority during the meetings to make agreements regarding modification of the systemwide policy decisions. Further, the lecturer policy was not held in abeyance or rescinded prior to the meetings, although the degree of its effectiveness at Santa Cruz was a matter in dispute.

The University claims, for its part, that it was willing to entertain AFT questions at the meetings, and give immediate answers where possible and supplemental responses where required. For example, after the July 28, 1981 meeting at which the range adjustment issue was raised, Mannix supplemented Okada's oral assurance by soon thereafter sending Blakely's June 22, 1981 written clarification to the AFT.

University witnesses also testified that they were prepared to receive any AFT proposals for modifications of the lecturer policy. Mannix, for example, stated that although he lacked authority during the meetings to reach agreements with a non-exclusive representative, he was prepared to convey AFT proposals for consideration by officials responsible for promulgating the lecturer rule change. The record is clear that AFT posed inquiries, and engaged in lengthy dialogues and

critiques about the new rule. However, since the AFT objected that it could not offer proposals in the face of a fait accompli, its representatives refrained from making concrete suggestions.

The principal variation upon this largely uncontested record involved the status of the new policy at Santa Cruz. Throughout the hearing and in its brief, the University took the position that there was (and still is) no revised lecturer policy in effect at Santa Cruz, and thus no fait accompli confronting AFT's representatives. As of the time of the formal hearing, the University contended that, at most, only title changes had occurred and that pre-existing terms and conditions of employment remained in effect.

Persuasive evidence, however, supports a finding that, when the parties met to discuss the issue, the basic terms of the revised lecturer policy had been implemented at Santa Cruz by mid-1981. (See pp.25-30, supra.) First, the heart of the policy at issue in this case was a systemwide policy for a four-year rule over which Santa Cruz officials essentially admitted, on August 5, 1981, they had no control. Second, initial reclassification letters were sent out in 1981. There was no subsequent disclaimer either rescinding the letters or tolling the accrual of quarterly service under the four-year rule. Third, AFT witnesses present at the August 5, 1981 meeting credibly testified, in accord with the notes of the meeting, that revision of the lecturer policy was

predetermined, and that AFT representatives could have influence, if at all, only over subsidiary local matters traditionally left to campus discretion; for example, reappointment review procedures, quarterly course load counting formulas, and so on.

Last, even the authority of Santa Cruz officials to determine a grandfathering limit, first omitted from any reference in the June 1981 draft, then stated as six years in August 1981, and later amended to a full eight years during the formal hearing, was presented as a campus prerogative that flowed from a fundamental systemwide policy determination expressed in Blakely's May 15, 1980 letter. Hence, although AFT could discuss at the local level at Santa Cruz (and Berkeley) the campus grandfathering rules, it was unable to meet and discuss a uniform, consistent statewide policy either prior to the 1980 course of action, or, for that matter, at the meetings with Mannix and Okada in July and September 1981. At those latter meetings, the grandfathering policy was stated as a local discretionary subject and Mannix was unwilling to entertain questions that departed from the systemwide limits of his authority.¹⁶

¹⁶One result of this strict limitation on the meeting agenda was that Mannix eventually terminated the July 28 discussion when he felt that AFT exceeded the scope of the session, as he had fixed it, by raising questions based on local campus examples.

CONCLUSIONS OF LAW

A. Introduction.

The AFT contends that the University unlawfully altered established practice regarding the terms and conditions of lecturer employment, including the maximum duration of full-time service. It is argued that these changes violated the HEERA because the new lecturer policy was adopted without first giving notice to the AFT and an opportunity to meet and discuss the changes. To support this claim, AFT relies on the PERB's decision in State of California (3/19/80) PERB Decision No. 118-S (hereafter Professional Engineers), interpreting the State Employer-Employee Relations Act (Govt. Code sec. 3512, et seq., hereafter SEERA), as well as on subsequent cases applying that precedent under the HEERA. See, e.g., California State University, Sacramento (4/30/82) PERB Decision No. 211-H; Lawrence Livermore Laboratory, supra, PERB Decision No. 212-H; California State University, Hayward (8/10/82) PERB Decision No. 231-H. (Also see Department of Corrections (5/5/80) PERB Decision No. 127-S and Franchise Tax Board (7/29/82) PERB Decision No. 229-S, applying Professional Engineers in other SEERA cases.)

Under this line of authority, an employee organization, though a non-exclusive representative, is entitled to advance notice and a reasonable opportunity to meet and discuss in good faith proposals for fundamental changes in terms and conditions

of employment. The Board's decisions in this area are intended to preserve, pending the selection of an exclusive representative, rights comparable to those that existed under the George Brown Act (Govt. Code sec. 3525 et seq.), the statutory predecessor to the HEERA and the SEERA.¹⁷ The Board has left to case-by-case adjudication a determination of the employment changes covered by this obligation and the precise nature of the duty to provide notice and to meet.

In its opposition brief, the University does not dispute the underlying premise that a non-exclusive representative is entitled to advance notice and an opportunity to meet and discuss proposed changes under the Professional Engineers doctrine. The University contends, however, for a variety of reasons discussed below, that its obligations were satisfied under the facts of this case.

¹⁷Section 3530 states:

The state by means of such boards, commissions, administrative officers or other representatives as may be properly designated by law, shall meet and confer with representatives of employee organizations upon request, and shall consider as fully as such representatives deem reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action. (Emphasis added.)

Also see State Assn. of Real Property Agents v. State Personnel Bd. (1978) 83 Cal.App.3d 206, and East Bay Mun. Employees Union v. County of Alameda (1970) 3 Cal.App.3d 578.

B. Changes in Employment Terms and Conditions.

There is substantial evidence that the University altered an established policy affecting a fundamental aspect of the employer-employee relationship. Specifically, new APM section 63 replaced the eight-year rule limiting the duration of full-time lecturer appointments with a four-year rule for newly classified employees on the visiting or adjunct lecturer tracks. A supplementary grandfathering policy was also adopted to assist implementation of the changeover.

One argument made by the employer, that the continued existence of yearly appointment contracts shows the absence of a change in this case, must be rejected on the basis of the evidence. Although such contracts were used, as provided by the APM, yearly agreements did not represent the sole practice relevant to maximum employment duration for full-time lecturers. If so, this case would not have arisen, nor would the Sullivan Committee have had a reason to exist. Thus, the evidence showed that established cumulative practice was to grant yearly contract renewals, for up to eight years, absent class or program changes, poor performance or financial exigency. The Sullivan Report, as well as numerous witnesses, referred to this practice and the reappointment expectations created thereby. The Board has applied a similar analysis to conclude that the cumulative effect of setting annual wage increases at certain times established a practice that could

not be unilaterally altered without meeting and negotiating. Davis Unified School District (2/22/80) PERB Decision No. 116 at pp. 9-11. Also see San Jose Community College District (9/30/82) PERB Decision No. 240 (yearly school calendar established by cumulative practice).¹⁸

It is also relevant to the issue of whether a change occurred that the duties of lecturers on the dual tracks stayed essentially the same after the new policy was promulgated, and that the crucial distinction involved clarification of those lecturers projected to receive SOE. Therefore, it cannot be concluded, as in a layoff or school closing situation, that the University was redefining the tasks to be performed, perhaps for reasons of economic need, and, in that sense, exercising a

¹⁸On this issue, the University's reliance on Board of Regents v. Roth (1972) 408 U.S. 564 and related authority is misplaced. In that case, a tenure track employee acquired no reemployment property right by virtue of his one-year appointment. His claim for a pre-termination internal hearing was denied. More on point, in terms of long-term employment expectations, is Perry v. Sindermann (1972) 408 U.S. 593, decided the same day as Roth. In Sindermann, the Supreme Court concluded that a non-tenured employee for 10 years was entitled to produce evidence showing that his legally cognizable expectation of reemployment was breached because of his exercise of free speech. In finding a prima facie case, the allegations of longstanding renewal practice conferring an implied benefit were sufficient to overcome the conceded absence of formal reappointment rights under the employee's one-year contracts. In any event, the AFT is not presenting a civil rights claim on behalf of individual employees, but has invoked the PERB's jurisdiction to vindicate an organizational right to represent employees on an employment-related practice controlling the express terms of a personal agreement.

management prerogative over the organization and distribution of work, or over a matter of entrepreneurial necessity. Compare Newman-Crows Landing Unified School District (6/30/82) PERB Decision No. 223; also see First National Maintenance Corp. v. NLRB (1981) 452 U.S. 667.¹⁹

Rather, the change to the four-year rule more closely approximates a new rule on termination or mandatory retirement reflecting an employer's discretionary policy preference about how many years certain work should be performed by a single person. See Holtville Unified School District (9/30/82) PERB Decision No. 250 at p. 8, citing Inland Steel Co. (1948) 77 NLRB 1 [21 LRRM 1316], enf. (7th Cir. 1948) 170 F.2d 247 [22 LRRM 2505]; also see The Shaw College (1977) 232 NLRB 191, 203-205 [96 LRRM 1473] rev. in part (6th Cir. 1980) 623 F.2d 488 [105 LRRM 2509].

Further, since the change involved a reduction by four years, or 50 percent, in the maximum duration of employment, there can be no serious dispute that the change affected fundamental aspects of the employment relationship; the job as

¹⁹Similar or identical provisions of the National Labor Relations Act (NLRA), as amended, 19 U.S.C. sec. 151, et seq., as construed by the National Labor Relations Board (NLRB) and the courts, may be used to guide interpretation of the HEERA. See, e.g., San Diego Teachers Assn. v. Superior Court (1979) 24 Cal.3d 1, 12-13; Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 616.

a whole, as well as wages and hours, in particular. Other PERB cases involving the notice and meeting rights of non-exclusive representatives have concerned changes of comparable or less significance: a yearly wage increase (Professional Engineers); parking spaces (Franchise Tax Board); time clocks (CSU Hayward); access policy (CSU Sacramento).

For these reasons, the decision to make the change, and not merely the effects of the decision, would be within the scope of representation under traditional collective bargaining principles. See, e.g., Anaheim Union High School District (10/28/81) PERB Decision No. 177. In keeping with these principles, the HEERA also provides for representation regarding "wages, hours of employment, and other terms and conditions of employment." (Sec. 3562(g).)

In other respects, however, the AFT has not sustained its burden of showing, by a preponderance of the evidence, that additional changes were made in fundamental terms and conditions within the scope of representation.

For example, AFT argued that opportunities for SOE were restricted by virtue of the new rule. But no alteration was made in APM's longstanding requirement of a budgeted FTE position as a prerequisite for granting SOE. Also, the APM continues to allow lecturers in the new classifications to apply their accrued years of service toward the eight-year limit if eventually assigned to an SOE slot. In that sense,

lecturers in the new classifications remain technically eligible for SOE, as they had been before. And, regarding the claim that a full-scale recruitment search now replaces the prior SOE transition process, there is evidence of only one such instance, involving Donald Rothman at Santa Cruz, and that evidence, aside from being hearsay, has little probative value in showing an alteration of an established systemwide policy.

Sufficient evidence is also lacking that the new APM policy altered such traditional aspects of the employment relationship as salary, retirement benefits, travel allowances, and so on. Although one campus administrator concluded that range adjustments did not apply to newly classified "visiting" lecturers, this decision was reversed, apparently because the new policy expressly maintained a salary scale parallel to the scale for permanent track lecturers. Travel expenses for professional advancement also remained discretionary within the department or laboratory, as they had been in the past. In fact, in most respects, the texts of the new and old policies are identical in specifying terms and conditions.

In one particular, however, APM 133, as revised following the adoption of APM 63, did entail a change; namely, in barring use of accrued time for lecturer service toward computing the eight-year limit for tenured professor appointments. As the Sullivan Report explained, the University rationale for this policy decision was that research was not a required

qualification for lecturer service, but should be a requirement for professors on the tenure track. Thus, it was reasoned that it would be unfair to prejudice those seeking tenure by decreasing the amount of time allowed to meet the productive research qualifications. Nevertheless, by late 1981 this policy change was retracted and professorial time-on-the-clock presently includes, as in the past, service in the new lecturer positions.

Assuming, however, that this modification had not occurred, AFT failed to show that time-accrual for tenure positions was a fundamental lecturer concern. First, promotion to the tenure track apparently has been infrequent and outside the normal line of progression. Second, the scope of representation under the HEERA specifically excludes,

[P]rocedures and policies to be used for the appointment, promotion and tenure of members of the academic senate. . . .
(Sec. 3562(g)(4).)

In any event, even if the subject is within scope, the AFT offered no testimony on this issue demonstrating its fundamental importance. Also, the little evidence presented in respondent's case, derived from the Sullivan Report, suggests a valid management distinction between positions that require research and those that do not.

Similarly, there is insufficient evidence that the mere change in title, by itself, warranted advance notice and

meeting and discussion as a fundamental aspect of employment relations. Although employees may have subjectively preferred an unadorned lecturer title, believing that the new title symbolizes a demotion, an employer is presumably free to designate the titles it uses to keep track of its employees absent evidence that a new title actually affects employee interests. Here, AFT offered no evidence of objective employee interests regarding the importance of the title alone in the professional field. Rather, the evidence shows that the title change was of demonstrable significance only because it was related to adoption of a four-year duration rule distinguishing two employee categories in terms of predetermined SOE eligibility.

Last, the University contends that no change of policy has yet occurred at Santa Cruz. As the evidence demonstrates, however, the systemwide administration's new policy was "effective immediately" throughout the University system and was implemented during the remainder of 1980 and into 1981. The evidence also supports the conclusion that the apparent authority of Santa Cruz officials to delay implementation, and to meet over local issues, did not also extend to altering the four-year systemwide policy distributed by President Saxon.

Local delay in implementation may affect the need to apply a remedy, if a violation is found, but a delay does not alter the basic fact that a statewide change occurred. For example,

in Newark Unified School District (6/30/82) PERB Decision No. 225, the Board affirmed a finding that a school board's unilateral approval of a layoff resolution was unlawful. But, since actual reductions in force were never fully implemented at specific school sites, there was no need for a reinstatement remedy.

C. Notice of the Proposed Policy Change.

In its defense to this aspect of the charge, the University first contends that the Sullivan Report and the follow-up meeting(s) in 1978 provided sufficient notice of the eventual policy change to satisfy the University's duty under the Act. The Report and subsequent discussion(s), however, were tentative suggestions as part of a gradual process leading to a formal policy change. The University also indicated that further discussion would occur with employee organizations as the drafting steps proceeded and that the APM would remain operating policy. In the end, the ultimate policy also differed from the Sullivan Report in several ways: title, salary scale, time-on-the-clock, and grandfathering, among others.

For these reasons, this case is markedly different from Lipow v. Regents of the University of California (1975) 54 Cal.App. 3d 215, cited by the Regents. In Lipow, substantial meeting and discussion had taken place regarding an actual proposal to modify a section of the APM, and some union

suggestions had been accepted by the employer. The court affirmed dismissal of the union's claim that the University did not satisfy its duty to provide notice and to meet with the union in good faith prior to adoption of the proposal.

Additionally, the facts in this case are different from those before the PERB in Franchise Tax Board, supra. There, an actual policy change regarding employee parking privileges had been proposed for future implementation and, after the union had notice of the change, the employer met with the union to consider its views prior to the effective date of the new policy. Here, the initial meetings did not provide advance notice of a specific plan or course of action.

As a second contention, the University claims that the AFT had sufficient notice of the forthcoming change, at least in early 1980. Indeed, the AFT newspaper articles, in March 1980 and November 1980, reveal that the AFT was aware of possible future changes in guidelines for receipt of security of employment. Yet, there was no evidence in those articles that specifically referred to the cut-back of the eight-year rule that had already occurred. Significantly, Blakely, who was interviewed for the articles in question, offered no testimony that AFT was informed of the rule change even though a year-long drafting process had culminated in President Saxon's policy announcement on February 22, 1980.

Other evidence of AFT awareness of rumors of possible

changes amounted to no more than that; for example, the inquiry to Nielsen in Fall 1980 by a Santa Cruz AFT representative, or Blakely's legislative testimony being overheard by AFT members. As stated in similar circumstances:

. . .[C]onjecture or rumor is not an adequate substitute for an employer's formal notice to a union of a vital change in working conditions. . . . (NLRB v. Rapid Bindery, Inc. (2d Cir. 1961) 293 F.2d 170 [38 LRRM 2658 at 1663].)

And, even if Blakely referred to the new policy in the PERB unit hearings in October 1980, his testimony was less than clear as to its scope and impact. Regardless, the employer offered no evidence to support a conclusion that a testimonial disclosure to counsel in a complex, lengthy proceeding provided a satisfactory basis to make an agency finding attributing knowledge to the organization itself. Cf. Los Angeles Community College District (10/18/82) PERB Decision No. 252, at pp. 17-18.

In the final analysis, substantial evidence supports the AFT's claim that advance notice was not given in this case. AFT representatives unequivocally denied receiving such notice. Their testimony was not discredited. And University officials in a position to inform AFT, in accord with the promises made in 1978 after the Sullivan Report issued, testified that they gave no direct formal notice to the union about the later drafts and President Saxon's pronouncement. These officials included Blakely, with chief responsibility for

preparing the rule change, Mannix, the University's systemwide labor relations manager, and Encinio, Berkeley's labor relations coordinator. In fact, Mannix and Encinio testified that they didn't even know about the change until the present charge was filed.

The conclusion that advance notice was not given is also consistent with University policy at the relevant time. In 1979 and 1980, after HEERA went into effect, the University had halted its past practice of providing advance notice to employee organizations regarding changes that affected terms and conditions of employment within the scope of representation. The PERB has held, in Lawrence Livermore Laboratory, supra, that this policy change was itself a violation of the HEERA.

On the notice issue, viewed charitably, the academic policy-making branch of the systemwide administration operated with an unspoken assumption that others within the University apparatus, either systemwide labor officials or local campus managers, were undertaking responsibility for securing employee organization feedback in 1979 and 1980. Unfortunately, and perhaps not surprisingly in such a large institution, this unspoken assumption was not carried out since normal communication procedures were not utilized either by Blakely's office or by local chancelleries. AFT should not be required now, simply because it may have had inklings that changes were

in the wind, to pay the price for the University's failure to provide continuing notice as the University had promised in 1978.

D. Meeting and Discussion About the Policy Change.

The University's first line of defense to this aspect of the charge is that the 1978 meeting(s) after issuance of the Sullivan Report satisfied its duty to meet with the union. As noted above, however, both the Report and the follow-up consultation were cast in a tentative framework and did not involve an actual proposal to modify employment conditions. The University promised that additional opportunities would be available to AFT to comment once the drafting process was further along. Again, the Lipow decision is distinguishable since the union in that case was on notice that formal changes to modify the APM were being discussed and that final adoption was forthcoming.

The University's secondary defense, that the 1981 meetings at systemwide and local levels were sufficient as a good faith means of entertaining AFT views, is also without supportive evidence. As the PERB has stated, in connection with the timing of an employer's action as an indication of its state of mind,

. . . the obligation imposed by the statute . . . with respect to non-exclusive representatives is to provide a reasonable opportunity to meet and discuss wages with them prior to the time the employer reaches

or takes action on a policy decision.
(Professional Engineers, supra, at p. 10;
emphasis added.)

Here, not only did the meetings occur 17 months or more after-the-fact, but the University never gave any indication that the new rule had been placed in abeyance or was rescinded. At best, AFT was in a position in 1981 of consulting about why the status quo should be restored, without any University indication that such a possibility would be seriously considered. For this reason, the facts are distinguishable from those in Department of Corrections, supra, cited by the University. In that case, the employer expressly delayed implementation of new policies regarding on-site organization rights pending discussion of union views.

Additionally, the absence of authority by University representatives to reach agreements modifying the previously adopted systemwide policy is an indication that the employer did not approach the 1981 meetings with the requisite good faith. In comparison, in Franchise Tax Board, supra, the Board found that one factor supporting a good faith finding was that the employer's meeting representatives had the necessary authority to reach modifying agreements with the union.

Even if the absence of authority is not conclusive evidence of an employer's bad faith when meeting with non-exclusive employee organizations pursuant to Professional Engineers, several factors add to the importance of the lack of authority

within the totality of circumstances. These factors include the serious nature of the policy change, the fact that it was 17 months old by the time of the first meeting in June 1981, the admitted lack of official notice of the February 1980 decree, and, possible settlement of the pending unfair practice charge. Taken together these factors warranted a responsive overture by the University beyond the simple motions of attending a meeting prior to reporting to higher officials. See, e.g., NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229, 231-232 [45 LRRM 2829].²⁰

The University nevertheless contends that the AFT did have an opportunity to present proposals to modify the already adopted policy revision and yet declined to offer suggestions, thereby waiving its right to complain about the employer's conduct. But the AFT's failure to make concrete proposals does not bar a finding of employer bad faith since the AFT also stated its objection to meeting over a fait accompli. This conclusion might differ had the employer given some hope or

²⁰The University posture during the 1981 talks was in contrast not only with legal principles requiring good faith, but with everyday understandings about interactions. For example, according to the dictionary, one definition of "listen" is "to hear with thoughtful attention, consider seriously, heed," and a definition of "discuss" implies "a reasoned conversational examining, esp. by considering pros and cons, and an attempt to clarify or settle. . . ." (Webster's International Dictionary, unabridged (1976).)

assurance that the policy would be rescinded or held in abeyance while the union's views were being seriously considered. The University did not choose such a course. Under such circumstances, absent indication of a true open mind on the University's part about a decision not firmly made, the AFT could reasonably believe that formulation of modifying proposals would be futile. See San Mateo County Community College District (6/8/79) PERB Decision No. 94 at p. 22, citing Caravelle Boat (1977) 227 NLRB 1355 [95 LRRM 1003].

In other respects, however, the AFT has not demonstrated bad faith at the campus level regarding matters delegated by the systemwide administration to local management.

To the extent Santa Cruz officials met with the AFT about implementation of local aspects of the new policy, there is insufficient evidence of bad faith by the employer. Testimony and documentary evidence about the August 1981 meeting and the follow-up discussions in 1982 indicate that there was substantial give-and-take over local issues such as course-load and quarterly service formulas. These issues were reserved to local authorities under established policy both before and after the new APM section 63 was adopted.

Less evidence was introduced regarding the Berkeley campus meetings in late 1981 and early 1982. At most, however, the AFT showed only that local officials were unfamiliar with the new systemwide policy, particularly the grandfathering rules,

and were thus unprepared to discuss local aspects of that unilateral decision. Local efforts to get more detailed information from systemwide administrators were unavailing for several weeks. As such, AFT's complaint of bad faith focuses not upon the local agents but upon confusion surrounding initial formulation and implementation of the policy. If not incriminating as to Berkeley, perhaps this evidence adds another indication of systemwide bad faith since local authorities were apparently given little guidance in dealing with union representatives on the issue.

E. Statute of Limitations.

Respondent's final defense is based on section 3563.2(a), of the Act, which provides in relevant part:

. . . that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

AFT's charge was filed on June 3, 1981, clearly more than six months after the February 22, 1980 systemwide policy change announced by President Saxon. However, AFT convincingly denied knowledge of the rule change until Spring 1981, when members expressed their concerns about title changes at Santa Cruz; and, the University's key representatives--Blakely, Mannix--admitted they provided no direct official notice. Nor did respondent introduce any evidence that AFT bore the burden to know about the new policy decree more than six months prior

to the charge. To the contrary, the University's representatives at the June 1978 meeting promised to keep AFT informed and involved in the policy formulation process and, by such conduct, could have lulled AFT into a sense of security about forthcoming opportunities to express union views.

Similarly, neither rumors at Santa Cruz about potential changes in Fall 1980, nor Blakely's interview with the AFT newspaper, nor his legislative testimony, nor the PERB unit hearing record, offer substantial evidence that AFT should have known about the parameters and effect of the new four-year rule. It is striking, on this point, that there was ample opportunity during the relevant time period for Blakely to provide such information to AFT agents. However, as he conceded, he never gave direct, official and unambiguous notice of the policy change and merely assumed that other University officials were informing union organizations.

In sum, since the University has not demonstrated that AFT clearly and unequivocally knew or should have known about the new policy and its effect more than six months prior to filing the charge, the time-bar affirmative defense has not been sustained. ACF Industries, Inc. (1978) 234 NLRB 1063 [98 LRRM 1287]. Alternatively, based on the University's representations in June 1978 promising further opportunity for union comment before an actual policy change was proposed and made, and the AFT's apparent reliance thereon, the employer

should be estopped from asserting the statute of limitations defense. San Dieguito Union High School District (2/25/82) PERB Decision No. 194 at p. 15.

F. Violations.

Based on the above analysis, it is concluded that the University, without justification, failed to give the AFT advance notice and a reasonable opportunity to meet and present its views prior to the employer arriving at a decision to alter a fundamental aspect of the employment relationship.

Under the Professional Engineers doctrine, respondent's conduct was unlawful in two ways. First, the employer's action deprived AFT of its organizational right to represent employees under the Act, in violation of section 3571(b). The AFT was required to rely on the employee grapevine, was hampered by vague and incomplete information, and could meet only over a fait accompli. Second, respondent's action concurrently violated section 3571(a): employees were inherently harmed by interference with their right to be represented by the AFT prior to the employer's decision. This conclusion is reinforced because the AFT was already on record, on behalf of the same employees, as having an interest in the eventual decision. In its response, the University has not come forward with any defense reasonably based on operational necessity sufficient to outweigh the interests of the AFT and lecturer employees, and the balance must therefore be struck in their favor.

REMEDY

Section 3563.3 of the Act states:

The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

The traditional remedy for an employer's unilateral decision to change a term or condition of employment includes an order that the employer cease and desist, meet with the union upon request, and make employees whole by restoring the status quo and other benefits previously received. See, e.g., Oakland Unified School Dist. v. Public Employment Relations Bd. (1981) 120 Cal.App. 3d 1007, 1014, citing Fibreboard Corp. v. Labor Board (1964) 379 U.S. 203 and Office and Professional Emp. Int. U., Local 425 v. NLRB (D.C. Cir. 1969) 419 F.2d 314 [70 LRRM 3047]. Normally, back pay owed as a result of unlawful action would be computed, with interest, from the date on which an employee's job was terminated until the date such termination would have been permissible (for example, for financial reasons, unsatisfactory work, program cancellation, and similar causes); or, until the wrongdoing is cured by an actual reinstatement offer or sufficient employer bargaining with the union. Gorman, Basic Text on Labor Law (1976), p. 533.

The University advances several arguments against utilizing this traditional approach:

. . . given the unusual factual circumstances of the case at bar, the remedy should be quite narrowly drawn. It should affect only those lecturers initially appointed under the "old" rule and adversely affected thereby, i.e. individuals who were not reappointed because of the existence of the new rule. It should not require reappointment of lecturers who would not otherwise be reappointed because of programmatic changes, financial exigencies or unsatisfactory work performance. Further, it should not extend beyond the Berkeley and Santa Cruz campuses since charging party introduced no evidence whatsoever as to the situation existing at any other campus or laboratory of the University of California.

In addition, at the time respondent issued the new policy no obligation to meet and discuss proposed changes affecting an employee's wage or hours had been imposed on public sector employees by the PERB. Instead, the only relevant PERB decision was to the contrary. (Respondent's Brief at pp. 39-40; citation omitted; emphasis in original.)

The University contends, therefore, that any remedy should be restricted along the lines stated, and should include only a limited restoration of the status quo and a partial make whole award. In the University's view, such a remedy would be comparable to the NLRB's in Transmarine Navigation Corp. (1968) 170 NLRB 389 [67 LRRM 1419], cited with approval in Highland Ranch v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 848, 862.

The University's suggested narrowing of the traditional remedial approach is rejected.

First, although the employer correctly observes that the

Professional Engineers decision under SEERA in March 1980, one month after President Saxon's announcement, implicitly modified pre-existing Board precedent under the Educational Employment Relations Act (see San Dieguito Union High School District (9/2/77) PERB Decision No. 22), the lack of clear precedent under the new HEERA does not alone provide a defense to the charge nor grounds for limiting the remedy. Anaheim Union High School District (3/26/82) PERB Decision No. 201 at pp. 6-7.

And, despite early precedent under different legislation, the University was presumably aware of the potential shift in the Board's analysis as well as the remedial hazards for unilateral action denying organizational rights. For example, five months before President Saxon's distribution, in Santa Monica Community College District (9/21/79) PERB Decision No. 103, aff. (1980) 112 Cal.App.3d 684, the PERB had strengthened the representation rights of non-exclusive representatives, distinguishing and limiting San Dieguito in the process. Administrative notice also has been taken of a case relied upon by the University in favor of a narrow remedy. It is revealing that in that case, just three weeks before the new lecturer policy was announced, the PERB secured an injunction against the University to restrain unilateral action that extended the printing plant work week. (See Printing Trades Alliance v. Regents, Case No. SF-CE-5-H, proposed decision 9/28/82; and PERB v. Regents of the

University of California, Alameda County Superior Court,
No. 529-614-1.)

Moreover, the University's new policy under the HEERA of declining to give advance notice of employment changes to non-exclusive representatives was already under attack. (See Lawrence Livermore Laboratory, supra.) It must be assumed the University was on guard about legal dangers it faced if the same policy remained in effect. Also, the February 1980 policy decision was followed within a few weeks by Professional Engineers, but in succeeding months the University distributed clarifications and revisions at systemwide and local levels, again without advance notice to the AFT.

Under such circumstances, when weighing the equitable considerations raised by the employer, it is apparent that the University was not as ignorant of its responsibilities as it presently suggests. Even assuming some uncertainty as to the state of the law, its conduct was not later reformed once there was ample evidence of a change in PERB policy. The University's academic and labor relations staff consciously accepted the remedial risks entailed in the course of action it chose to pursue. At this late date, lecturers affected by the policy switch, whose representative had been promised further opportunity for comment in 1978, should not be denied, on equitable grounds, the full relief to which they otherwise would be entitled.

Second, since it has been concluded that the eight-year rule change involved a decision, and not merely the effects of a decision, that typically would be within the scope of representation, the reference to the Transmarine remedy is misplaced. That remedy is usually reserved for cases involving a decision basic to management's entrepreneurial control, such as a plant closing, business sale or redistribution of productive work (Highland Ranch v. Agricultural Labor Relations Bd., supra, 29 Cal.3d at 862-864), with the related problem, if a full remedy were used, of substantial hardship for third parties working at another location or with new jobs (Solano Community College District (6/30/82) PERB Decision No. 219).

This case involves a different situation. Simply stated, the employer offered no evidence of business necessity for its decision to establish a new policy mandating termination after four years of full-time service. The same work continued to be performed by others with less seniority, or, potentially, by the same employees but working less than 50 percent time. Although the total adjusted payroll for employees doing full-time lecturer work would be lower once four years of additional longevity raises were eliminated, there was no showing that overall cost-savings was a significant factor, much less that economic concerns compelled the decision that was made. Any notion that the University had to act in the fashion and when it did, disregarding a known union interest,

is undermined by the obvious lack of haste in arriving at an institutional change that had its first stirrings in 1977 when the Sullivan Committee was created. It took more than two years, from January 1978 until February 1980, for production of the final APM policy revision; and, after that, nearly two more years, from February 1980 to January 1982, for ongoing revisions and clarifications to be generated.

Regarding a third employer contention, no distinction need be drawn between lecturers hired before and after July 1, 1980, the University's proposed implementation date. All of the employees covered by the changeover were within the group previously represented by the AFT, as well as within a potential bargaining unit, the integrity of which could be adversely affected if only the pre-existing staff were protected against the rule change. If otherwise, what would prevent an employer from continuously whittling away at a potential unit by repeatedly taking actions that would deny future employees the benefits of ongoing representation? Further, the University failed to produce persuasive evidence that the AFT had notice, before Spring 1981, that the employer was no longer applying the eight-year rule across-the-board to new hires after mid-1980. The best evidence demonstrating a clear-cut distinction between the two employee types was not actually in force until the APM was again revised in late 1981. (See Charging Party Ex. 3, App. B.)

In any event, if the University promptly applies the remedy ordered in this case, and, upon AFT's request, satisfies the employer's duty to meet and discuss in good faith a proposed change in the eight-year rule, those employees hired after mid-1980 might still be subject to a shorter duration of employment. If this result comes to pass, and in light of the 1981 APM revision fully reinstating the eight-year rule for lecturers hired prior to July 1980, it is conceivable that the University will not retain anyone longer than it previously intended. It is this irony, in the long run, that shows the limited nature of the AFT's right to meet and present its views. This irony also underscores the University's shortsightedness, once AFT knew of the change and filed its charge in June 1981, in failing to enter good faith talks with a fresh slate by rescinding or holding in abeyance the new duration policy.

The University's fourth suggestion, to restrict any remedy to Berkeley and Santa Cruz, must also be rejected. Since the charging party's allegations referred to unilateral changes "at the University of California and at the Santa Cruz campus," using the conjunctive, the University had adequate notice that an order could apply to a systemwide policy even if the policy required local application to be fully carried out. And, contrary to the claim of the employer's counsel, quoted above, there was substantial evidence regarding implementation of the

policy changes at other University campuses. Testimony by Blakely and Okada showed, without contradiction and in accord with President Saxon's directive, that all campuses (with the possible partial exception of Santa Cruz), had undertaken steps to reissue the new policy and to fully implement the changeover by July 1981. PERB precedent is also consistent with applying the remedy to the systemwide governing level. In Lawrence Livermore Laboratory, supra, a systemwide policy was illuminated by evidence related to implementation at a particular worksite. The ultimate remedy, however, applied throughout the system.

Finally, the University has made a premature proposal to limit reinstatement to those "who would not otherwise be reappointed because of programmatic changes, financial exigencies or unsatisfactory work performance." Questions related to the appropriateness of a remedy for a specific employee within a larger class entitled to relief are best resolved in compliance proceedings after the order has become final. Alum Rock Union School District (9/22/81) PERB Decision No. Ad-115 at p. 9, citing NLRB v. Rutter-Rex Mfg. Co. (5th Cr. 1957) 134 F.2d 594 [40 LRRM 2213]. Nevertheless, to assist the smooth functioning of the reinstatement process, and provide an opportunity for the University to frame its objections in specific cases, former employees will be required to notify respondent of a request for reinstatement within 45

workdays of the final order. Further, to minimize disruption, if the University prefers, reinstatement can take place at the start of the next academic session.

The order should also include a requirement that the University post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the Regents of the University of California indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice will provide employees with notice that the employer has acted in an unlawful manner and is being required take the prescribed remedial measures.

It effectuates the purposes of the HEERA that employees be informed of the resolution of the controversy and will announce the University's 's readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69. Also see Pandol and Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587; NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

For similar reasons, and to assist the reinstatement process, a copy of the notice should be mailed to lecturers no longer employed in that capacity by the University, but who were so employed on February 22, 1980. These former employees may have been affected by the University's unlawful action and would therefore be entitled to relief. Oakland Unified School Dist. v. Public Employment Relations Bd., supra,

120 Cal.App. 3d at p. 1015, aff. Oakland Unified School District (4/23/80) PERB Decision No. 126. Notice to said employees should be sent to their last known address in the absence of present knowledge about a former employee's whereabouts.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to section 3563.3 of the HEERA, it is hereby ordered that the Regents of the University of California and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Interfering with the right of employees to representation by arriving at a determination of policy or course of action reducing the maximum duration of employment for lecturers teaching more than 50 percent time without first giving notice to interested employee organizations and, upon request, discussing that subject pending the selection of an exclusive representative for the employees affected;

(b) Denying employee organizations a reasonable opportunity to represent employees by arriving at a determination of policy or course of action reducing the maximum duration of employment for lecturers teaching more than 50 percent time without first giving notice to interested employee organizations and, upon request, discussing that

subject pending the selection of an exclusive representative for the employees affected.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

(a) Reinstatement the policy of allowing a maximum duration of eight years employment for lecturers teaching more than 50 percent time, to be applied retroactively to those so employed on and after February 22, 1980;

(b) Upon request, reinstate those lecturers teaching more than 50 percent time as of February 22, 1980, who are no longer so employed and whose lecturer employment thereafter would not have been terminated but for application of a new policy limiting employment of lecturers teaching more than 50 percent time to a maximum duration of four years.

Reinstatement shall be made at the beginning of the next academic quarter, semester or special session, as appropriate, unless the employer is prepared to offer reinstatement prior to the succeeding academic period. Requests for reinstatement must be made to an employee's previous appointing authority within 45 workdays of the final order of this proceeding, provided adequate notice of the order has been transmitted to said employees at their last known address if their present whereabouts are unknown.

(c) Make reinstated lecturers whole by paying them for any loss of pay and other benefit(s) resulting from

termination pursuant to a new policy limiting lecturer employment at more than 50 percent time to a maximum duration of four years. The total amount of this award shall be offset by the amount of earnings received as a result of other employment during this period. The employer's make whole obligation shall cease upon occurrence of the earliest of the following conditions: (1) the date on which termination would have been permissible in the normal course of University business; or, (2) the effective date of an actual reinstatement offer that is not thereafter accepted; or, (3) 45 workdays after the order has become final and no request for reinstatement has been received, provided adequate notice of the final order has been given; or, (4) satisfaction of the employer's duty to meet and discuss, upon request, a proposed policy affecting the maximum duration of lecturer employment.

(d) Pay 7 percent interest per annum on the net amount of back-pay owed pursuant to the make whole provision of this order.

(e) Upon request of the University Council of the American Federation of Teachers, meet and discuss any proposed change in the maximum duration of employment for lecturers teaching more than 50 percent time, providing said organization a reasonable opportunity to present its views prior to the employer arriving at a determination of policy or course of action.

(f) Within five (5) workdays after this decision becomes final, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, for at least thirty (30) workdays at its headquarters offices and in conspicuous places at locations throughout the University system where notices to employees serving as lecturers are customarily posted. It must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(g) Within fifteen (15) workdays after this decision becomes final, prepare and mail a copy of the NOTICE TO EMPLOYEES to lecturers no longer employed in that capacity by the University, but who were so employed on February 22, 1980. Notice to said employees should be sent to their last known address in the absence of present knowledge about a former employee's whereabouts.

(h) Within twenty (20) workdays from service of the final decision herein, give written notification to the San Francisco Regional Director of the Public Employment Relations Board of the actions taken to comply with this order. Continue to report in writing to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the charging party herein.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall

become final on December 22, 1982, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board at its headquarters office in Sacramento before the close of business (5:00 p.m.) on December 22, 1982, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305 as amended.

Dated: December 2, 1982

BARRY WINOGRAD
Administrative Law Judge