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COLLECTIVE BARGAINING COMES TO CALIFORNIA'S
PUBLIC UNIVERSITIES

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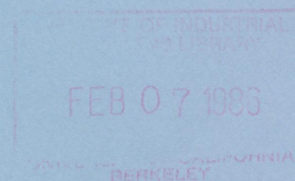
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**COLLECTIVE BARGAINING COMES TO CALIFORNIA'S
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INTRODUCTION

Since the early 1960s California has had a well-defined three-tiered system of public higher education, each with its own mission and governance structure.¹ One tier consists of the 106 two-year community colleges; a second tier consists of the nineteen campus California State University; and a third, the nine campus University of California.

This study is concerned with the emergence of collective bargaining among academic and nonacademic staff at the University of California (UC) and the California State University (CSU). These two university systems have their own State collective bargaining statute, the Higher Education Employer-Employee Relations Act (HEERA), which became effective on July 1, 1979.² Table I compares UC and CSU on a number of characteristics relevant to collective bargaining.

(TABLE I)

The purpose of this paper is to document how the two university systems responded to the move toward collective bargaining, as well as the role and successes of the unions that were involved and the role of the California Public Employment Relations Board (PERB), which administers HEERA. An at-

TABLE I

COMPARISON OF UC AND CSU

	<u>UC</u>	<u>CSU</u>
I. GENERAL INFORMATION		
Governing Board	Board of Regents	Board of Trustees
Legal Status of University	Constitutional	Statutory
Executive Head of System	President	Chancellor
Location of System Headquarters	Berkeley	Long Beach
Number of Campuses	9	19
II. EMPLOYMENT (head count)*		
Academic Staff	29,500	21,600
Nonacademic Staff	86,400**	18,000
Total Employees	115,900	39,600
III. STUDENT ENROLLMENT***		
Graduate and Professional		
Full-time	36,640	14,677
Part-time	1,747	50,000
Undergraduate		
Full-time	93,027	180,894
Part-time	<u>7,724</u>	<u>70,243</u>
Total Enrollment	139,138	315,814

* The figures on employment are for 1984 and were obtained from the Office of Academic and Staff Employee Relations at UC and the Office of Employee Relations at CSU.

** This figure includes the 19,000 employees of the U.S. Department of Energy funded laboratories at Berkeley and Livermore, California.

*** Enrollment figures were obtained from California Legislature, Analysis of the Budget Bill, 1984-85; Report of the Legislative Analyst, Sacramento, Calif., February, 1984, p. 1647.

tempt will also be made to assess the impact of collective bargaining on the governance of the two university systems and on their relations with faculty and staff employees.

THE EVOLUTION OF HEERA

When HEERA took effect on July 1, 1979, the last uncovered category of public employment in California came under bargaining legislation, culminating a sixteen year period of piecemeal enactment.

Chances for a single comprehensive statute covering all public employees had seemed bright when the Assembly Advisory Council on Public Employee Relations submitted its report in 1973.³ At that time, university employees as well as those of the State were covered by the George Brown Act, enacted by the legislature in 1961.⁴ The Brown Act was a limited meet-and-confer statute. It did not make provision for bargaining units, exclusive recognition, good faith bargaining, or the expectation that the meet-and-confer process would lead to written agreements. Scope of representation was defined to include all matters relating to employment conditions and employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment. Although scope was broad, the employers' obligation was limited to consulting with unions before making a decision. UC and CSU adopted the practice of meeting with any employee organization that wished to do so. The Act did not forbid employers from dealing with staff associations and other nonunion groups on wages and working conditions, and the universities placed major emphasis on these relationships. Union membership as measured by payroll deduction was low in both universities.⁵

The governing boards of both university systems (especially the constitutionally autonomous UC Regents) had the authority to voluntarily establish more formal machinery for dealing with unions than the minimum required by

the Brown Act. Although UC considered the possibility, it did not take any formal steps in this direction.⁶ The only way collective bargaining would emerge was if legislation were adopted with procedures for mandatory recognition of bargaining agents.

In 1973, The Assembly Advisory Council recommended that the Legislature adopt a collective bargaining statute covering virtually all categories of local and state employees, including employees of UC and CSU. In response to urging that special treatment be accorded to faculty, the Council concluded that:

...the faculties of State colleges and Universities should have the same rights and protections as other public employees in the State to decide for themselves whether they wish to organize and to engage in collective bargaining with their employers.⁷

The Council, of course, did not express an opinion on the advisability of substituting collective bargaining for existing arrangements. Nor did it find anything intrinsic in the teaching profession in institutions of higher learning that "...absolutely rules out collective bargaining as the alternative to present methods of faculty governance."⁸

The consensus (which included the newly installed Governor, Edmund G. Brown, Jr.) that the managers of S.B. 275, the principal bill drafted to carry out the recommendations of the Advisory Council, had so carefully forged, collapsed in the Legislature in the summer of 1975. It collapsed in part because of opposition from constituencies representing higher education.⁹ What did get enacted in 1975 was the Educational Employment Relations Act (EERA), which established bargaining for the public schools and community colleges. This action effectively ended efforts to adopt a single statute covering all of public employment in California. The Meyers-

Miliias-Brown Act (MMB) covering local government, adopted in 1968, and the George Brown Act, both of which would have been superseded by S.B. 275, were left unchanged in 1975.

In 1977 the Legislature enacted the State Employer-Employee Relations Act (SEERA). That left employees of UC and CSU the only public employees not covered by collective bargaining legislation. There was little doubt that legislation covering these two institutions, either by extension of an existing law, such as SEERA, or separate legislation, would be enacted, although its timing remained uncertain. Once it became clear that UC and CSU would receive separate consideration, the door was opened to consideration of provisions unique to higher education.

Two developments were particularly crucial in increasing the likelihood that a separate law would be enacted. First, Assemblyman Howard Berman, the author of A.B. 1091, which was to become HEERA, understood well the interests of the universities and unions and was open to suggestions for innovative provisions. Second, the UC Board of Regents adopted a resolution in January 1978 which directed the President of the University

...to develop proposals for and otherwise seek to shape collective bargaining legislation which recognizes the specific needs and concerns of the University and its relations with faculty and staff....¹⁰

The UC Administration and all the major unions worked actively with Assemblyman Berman in drafting HEERA. The CSU Board of Trustees remained firmly opposed to any legislation and had little influence in shaping the law into its final form.¹¹ In September 1978, AB 1091 (HEERA) was passed by the Legislature and signed by Governor Brown, with an effective date of July 1, 1979.

Writing shortly after HEERA was adopted, Donald Wollett concluded that the statute:

...is the most thoughtful of the many state statutes that made collective bargaining available to employees of publicly funded higher education institutions. The statute deals in a responsive way with most of the problems which are unique to the way in which our higher education systems are structured and governed. Some of the responses may not be adequate; they may in some instances be mistakes; but they are informed responses. That in itself is a refreshing thing to be able to say about the work of a legislature.¹²

THE PROVISIONS OF HEERA

For a legal analysis of HEERA, see R. Alleyne.¹³ Other aspects of the Act have been discussed by Wollett, Garbarino, Clarke, Lewin, and Kleingartner.¹⁴ With respect to such matters as machinery for administration of the Act, unfair labor practices, conduct before, during and after elections, certification, and impasse procedures, HEERA is not exceptional. Although HEERA uses the term "meet and confer" rather than "collective bargaining" or "collective negotiations" throughout, everyone involved in developing the Act understood that what was being drafted was a collective bargaining statute. HEERA was intended to replace, not perpetuate, the George Brown Act.

It may be true, as Alleyne has pointed out, that "only upon close examination of HEERA are material departures from the NLRA discernible."¹⁵ But these departures have led Garbarino to characterize HEERA as "...easily the most unusual collective bargaining law in the nation."¹⁶ The important innovations of HEERA are in how it treats faculty and the Academic Senate. HEERA has made **Yeshiva** moot in California public higher education in that it explicitly recognizes the dual status of faculty as both managers and employees and still accords them bargaining rights.

The Appendix summarizes selected features which set HEERA apart from the NLRA and which will influence the future shape of collective bargaining

relationships at the universities. On some matters the law treats UC and CSU differently; where these differences exist, they are indicated in the text. The Board of Regents is defined as the employer at UC; at CSU it is the Board of Trustees.

Taken together, these provisions represent a conscious attempt to write legislation recognizing the role of the faculty in the management of the university, but still offering them the right to participate collectively through the bargaining process. The differences in treatment of UC and CSU reflect both perceived differences in the governance of the two institutions and the different role each played in drafting the final legislation.

THE ESTABLISHMENT OF BARGAINING UNITS

Because of the history of representation, the larger number of employees and employee classifications, and different governance structure, determination of units turned out to be a vastly more protracted affair at UC than at CSU. Almost immediately after HEERA went into effect unions began to submit representation petitions. During the first six months, PERB received seven requests for recognition and three petitions for certification at CSU. During the same period twelve requests for recognition and twenty-four petitions for certification were submitted for employees at UC.¹⁷ Altogether during the first two years of the Act over seventy-five petitions for recognition and certification were submitted on behalf of UC employees - more than twice the amount submitted at CSU.

Other than for faculty, HEERA's unit criteria are basically the NLRA criteria as elaborated by the NLRB and the courts but tailored to fit California's higher education systems.¹⁸

Faculty Units

At CSU the most difficult unit issues involved faculty. At UC it was the opposite; none of the faculty petitions required hearings before PERB.

Two days after HEERA went into effect the United Professors of California (UPC)¹⁹ became the first union to file for bargaining rights at CSU when it petitioned for an omnibus university-wide unit of some 21,000 academic employees which did not distinguish between faculty/nonfaculty, senate/nonse-nate, or permanent/temporary academic staff. Its petition was accompanied by a showing of interest which totaled about 56 percent of the unit request-ed.²⁰ The Congress of Faculty Associations (CFA) sought three units - one composed of full-time employees eligible for Academic Senate membership; a second composed of part-time employees also eligible for Senate membership; and a third consisting of academics not eligible for Senate membership.²¹

In hearings before PERB, the CSU administration argued for three aca-demic units, one of which would be restricted to the regular rank permanent and probationary faculty eligible for Senate membership.²² The CSU adminis-tration also urged that chairs of academic departments be excluded from the unit. Both the UPC and the CFA argued that departmental chairs lacked real authority and should be placed in whatever unit was established for faculty.

PERB's final decision on the faculty unit at CSU gave to no one of the contending parties exactly what it had requested. In the process PERB over-ruled the recommendation of its own hearing officer in certain important particulars.²³ PERB established a faculty unit which included all tenure and tenure-track positions, full and part-time temporary instructional per-sonnel, librarians, and coaches. In doing so, PERB rejected the argument that the faculty unit should be coextensive with the Academic Senate, noting in its decision that the "Chancellor and Trustees often ignore the state-wide senate's recommendations on various matters."²⁴ Finally, PERB placed department chairs in the unit over the strong opposition of the CSU adminis-tration, noting in its decision that the bulk of their supervisory duties are "...typically performed on behalf of department faculty rather than the

administration."²⁵

The first petition for representation of faculty at UC was filed in February 1980 by the Berkeley Faculty Association (BFA).²⁶ For UC but not for CSU, HEERA is quite specific that the only unit appropriate for faculty is a unit which is coextensive with membership in the Academic Senate (see the Appendix). Furthermore, while a university-wide faculty unit is permissible, this may only be petitioned for after 35 percent of the total membership of the Academic Senate is represented by campus-based bargaining agents. The University of California has a single Academic Senate with a Division of the Senate located on each of its nine campuses. Thus, when the BFA filed its petition, it was for the 1,450 members of the Berkeley Division of the Academic Senate. Neither at Berkeley, nor later when petitions were filed for Senate members at the Los Angeles and Santa Cruz campuses, were hearings required before PERB. Senate membership is carefully spelled out.²⁷ Potential controversy was over supervisory and managerial exclusions, because most academic administrators are also Senate members. However, the UC administration and the Faculty Associations agreed that department chairs should be in the unit; they also agreed that deans and most other academic administrators whose duties were broader than the academic department should be excluded.

Units for Nonfaculty

By the end of 1981, PERB had established units at CSU which covered all of the eligible workforce. For nonacademic employees PERB followed the pattern it established for similar job classifications for State employees under SEERA. This meant units along broad occupational lines, university-wide, and separate units of professional and nonprofessional employees. Altogether, PERB established nine university-wide units. As noted in the next section, employees in all nine units voted for representation.

Only the establishment of units for faculty and the police was easily and quickly accomplished at UC. For virtually all other categories of employees, the hearings were protracted and often acrimonious, reflecting not only disagreements between the University and the unions, but, as often, inter-union disputes and, not infrequently, dissatisfaction by all parties with the procedures followed by PERB. When the main unit hearings began in April 1980, over twenty different employee organizations, speaking for some forty-eight representation petitions, participated.²⁸ By the end of 1984 PERB had established some twenty-five units, excluding faculty. Ten of the twenty-five were university-wide in scope and covered approximately 42,000 employees. The fifteen campus or laboratory-based units covered some 7,000 employees. A unit covering housestaff at UC's five medical schools was established by PERB, but the California Court of Appeals annulled the PERB decision on appeal by the University.²⁹

PERB's decisions on units at both UC and CSU demonstrate that where the law left room for discretion, decision making became highly political. Although HEERA requires that PERB consider all of the criteria specified in the Act, it does not suggest a weighting. The absence of any weighting, as Alleyne has pointed out, "...compounds the difficulty of finding a principled basis on which to decide unit disputes."³⁰ Especially in the case of UC, where history of prior representation offered little guidance (the crafts being an exception), PERB's rationale for its decisions does not seem notable for consistent application of the criteria contained in the Act. Still, most of the parties got something that was very important to them. The employers as well as the California State Employees Association (CSEA) and the American Federation of State, County, and Municipal Employees (AFSCME), the two unions with most at stake, were interested in having mainly university-wide units, which, where it really mattered, is what

happened. The fact that UC ended up with many more units than did CSU was expected. It reflected the positions taken by the University and the major unions at the hearings, which in turn were a response to the organizational realities of the institution and the multiple sources of funding which characterize UC. In the final analysis, while none of the parties got exactly what it requested, most employee organizations as well as UC and CSU viewed the decisions as reasonable ones. This may be the best vindication of the approach adopted by PERB in carrying out its responsibilities for unit determination.

ELECTION RESULTS

For all practical purposes, by 1983, 100 percent of the eligible workforce at CSU was represented by a bargaining agent. The proportion at UC is much smaller but still substantial, standing at 41 percent of eligible as of December 30, 1984.³¹ Tables II and III display the details of the elections held through 1984.

(Tables II and III)

Several conclusions and implications may be drawn from the tables:

1. At CSU the vote for collective bargaining was decisive. At UC the majority of eligible employees remained unrepresented in 1984, although 75 percent of those involved in elections opted for representation. To be noted, only one of the three UC elections involving faculty resulted in selection of an exclusive agent.

PERB established nine university-wide units covering approximately 33,000 employees at CSU. All nine units voted for representation by a substantial margin. Twenty-eight units have been established at UC. By the end of 1984, elections had been concluded for twenty-five units. Of these twenty-five, ten are university-wide and fifteen are campus or laboratory based. Altogether, the elections

TABLE II
UNIVERSITY OF CALIFORNIA
COLLECTIVE BARGAINING ELECTION RESULTS
(through December 1984)

UNIT NO.	COMPOSITION OF BARGAINING UNIT	GEOGRAPHIC SCOPE OF UNIT	NO. OF ELIGIBLE VOTERS	NO. VOTING ¹ (%)	ELECTION RESULTS		YEAR RESULTS CERTIFIED
					ELECTION WINNER	NO. VOTING FOR NO REPRESENTATION (%) ²	
ACADEMIC	Academic Senate - Faculty	Campus - UCB	1,512	1,009 (67)	No Representation	532 (53)	1980
	Academic Senate - Faculty ³	Campus - UCLA	2,300	1,604 (70)	No Representation	824 (51)	1981
	Academic Senate - Faculty ⁴	Campus - UCSC	292	200 (68)	Santa Cruz Faculty Association	91 (46)	1982
	Professional Librarians	University-wide	401	328 (82)	University Federation of Librarians, University Council, American Federation of Teachers (AFT), AFL-CIO.	158 (48)	1983
18	Nonacademic Senate Instructional (e.g., Lecturers)	University-wide	1,877	1,154 (61)	University Council, American Federation of Teachers (AFT), AFL-CIO	447 (39)	1984
19	Nonsenate Academic Research Professionals (e.g., Researcher, Scientist)	University-wide	4,400		(No election yet; possibly in summer 1985.)		
NONACADEMIC	1 Police	University-wide	277	141 ⁵ (51)	Statewide University Police Association	39 (27)	1980 ⁶
	3 Skilled Crafts ⁷ (e.g., painter, plumber, electrician)	Laboratory-LNL	264	243 (92)	No Representation	186 (77)	1983
	4 Skilled Crafts	Campus/laboratory-UCB & LBL	238	165 (68)	Building & Construction trades Council of Alameda County, AFL-CIO	27 (16)	1983
	5 Skilled Crafts	Campus-UCSF	52	49 (94)	San Francisco Building & Construction Trades Council, AFL-CIO	8 (16)	1983
	6 Skilled Crafts	Campus - UCLA	326	279 (86)	International Union of Operating Engineers, Local 501, AFL-CIO	8 (3)	1983
	7 Printing Trades ⁸	University-wide	95	71 (75)	Printing Trades Alliance, AFL-CIO	2 (2)	
	8 Technical Workers	Laboratory-LNL	1,655		(No election; no union has demonstrated a sufficient showing of support.)		

TABLE II cont.

9	Technical (e.g., technician, firefighter, data analyst)	University-wide	4,093	2,263 (55)	No Representation	1,164 (51)	1983
10	Service (e.g., custodian)	Laboratory-LLNL	461	414 (90)	No Representation	342 (83)	1983
11	Service (e.g., custodian, driver)	University-wide	6,286	3,775 (60)	American Federation of State County & Municipal Employees (AFSCME) - AFL-CIO	921 (24)	1983
12	Clerical & Allied Services (e.g., secretary, library asst.)	University-wide	19,353	11,230 (58)	AFSCME, AFL-CIO	5,255 (47)	1983
13	Patient Care Technical (e.g., medical records, technician)	University-wide	4,109	2,490 (61)	AFSCME, AFL-CIO	812 (33)	1983
14	Residual Patient Care Professional (e.g., audiologist, pharmacist)	University-wide	1,524	1,062 (70)	No Representation	608 (57)	1983
15	Registered Nurses	University-wide	4,420	3,088 (70)	California Nurses Association (CNA)	865 (28)	1983
16	Professional Engineers & Scientists	Laboratory-LLNL	2,746	2,532 (92)	No Representation	1,923 (76)	1983
20	Skilled Crafts	Campus-UCR	39	37 (95)	International Union of Operating Engineers, Local 501, AFL-CIO	16 (43)	1983
21	Skilled Crafts	Campus-UCI	81	74 (91)	International Union of Operating Engineers, Local 501, AFL-CIO	17 (23)	1983
22	Skilled Crafts	Campus-UCSB	49	43 (88)	International Union of Operating Engineers, Local 501, AFL-CIO	4 (9)	1983
23	Skilled Crafts	Campus-UCD	202	180 (89)	No Representation	106 (61)	1983
24	Skilled Crafts	Campus-UCSD	122	105 (86)	International Union of Operating Engineers, Local 501, AFL-CIO	26 (25)	1983
25	Skilled Crafts	Campus-UCSC	23	21 (91)	American Federation of State County & Municipal Employees (AFSCME) - AFL-CIO	9 (43)	1983
27	Research Support Professionals	University-wide	3,400		(Election scheduled for November, 1985)		

NONACADEMIC

NOTES - TABLE II

1. The percentages in this column are the total number of valid ballots cast, divided by the number of eligible voters. Challenged and void ballots are excluded. These tended to be few.

2. The percentages in this column are obtained by dividing the "no representation" votes by the valid ballots.

3. The results presented here are from the runoff election between the UCLA Faculty Association and No Representation. The results of the first election for the Academic Senate Unit at UCLA were as follows:

No. Voting (valid ballots)	1,529
UC Council, American Federation of Teachers	216 (14.1)
UCLA Faculty Association	625 (40.9)
No Representation	688 (45.0)

4. The results presented here are from the runoff election between the Santa Cruz Faculty Association and "No Representation." The results of the first election for the Academic Senate Unit at UCSC were as follows:

No. Voting (valid votes)	205
UCSC Faculty Association	82 (40.0)
American Federation of Teachers (AFT)	49 (23.9)
No Representation	74 (36.1)

5. When challenged ballots are included the proportion voting rises to 73 percent. The reason for the large number of challenged ballots was disagreement over whether sergeants should be in or out of the unit. It was decided to let them vote and that a determination on whether to count their votes would be made if the election were to be affected. As it turned out, the union won the election without any help from the disputed sergeants.

6. Police were the first unit to be certified. They were also the first unit to decertify. In mail ballots counted on September 27, 1984, police officers voted to decertify the Statewide University Police Association (SUPA) as their exclusive representative. The vote was 73 to 59 in favor of ending the exclusive representative relationship.

7. The Campus or Laboratory-based Skilled Craft units at all locations included all Skilled Crafts at that location. This is consistent with the language of HEERA, which provides that "the single unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory" [sec. 3579(d)].

8. The Printing Trades unit is unique in that all of the employees work at two locations - the UC Printing Plant located in Berkeley and a bindery located in Santa Monica, California.

TABLE III
CALIFORNIA STATE UNIVERSITY
COLLECTIVE BARGAINING ELECTION RESULTS

UNIT NO.	COMPOSITION OF BARGAINING UNIT	GEOGRAPHIC SCOPE OF UNIT	NO. OF ELIGIBLE VOTERS	NO. VOTING (%) ¹	ELECTION RESULTS		YEAR RESULTS CERTIFIED
					ELECTION WINNER	NO. VOTING FOR NO REPRESENTATION (%) ²	
ACADEMIC							
3	Faculty ³ (Part & full-time)	University-wide	19,106	13,121 (69)	Congress of Faculty Associations - AAUP-CTA/NEA-CSEA	N/A	1983
4	Academic Support ⁴ (e.g., Counselor, Student Affairs Assistant)	University-wide	1,354	900 (67)	United Professors of Calif., AFT-AFL-CIO	N/A	1982
NONACADEMIC							
1	Physicians	University-wide		105 (76)	Union of American Physicians and Dentists, AFL-CIO	19 (18)	1982
2	Health Care Support ⁵ (e.g., Nurse, Pathologist, Technician)	University-wide	273	189 (69)	Health Care Bargaining Council/CSEA	N/A	1982
5	Operations - Support Services (e.g., Gardener, Custodian)	University-wide	2,108	1,128 (54)	Operations Support Bargaining Council/CSEA	76 (6)	1982
6	Skilled Crafts (e.g., Mechanic, Welder, Painter, Plumber)	University-wide	815	684 (84)	State Employees Trades Council, LIUNA, Local 1268, AFL-CIO	22 (3)	1982
7	Clerical & Administrative Support Services (e.g., Clerk, Guard, Secretary, Payroll & Accounting)	University-wide	6,677	3,817 (57)	Clerical & Administrative Support Bargaining Council/CSEA	700 (18)	1982
8	Public Safety Officers & Investigators (Police)	University-wide	166	101 (62)	Statewide University Police Association/Independent	3 (3)	1980
9	Technical & Support Services Unit	University-wide	2,107	1,205 (57)	Technical Support Services Bargaining Council/CSEA	222 (18)	1982

NOTES - TABLE III

1. The percentages in this column are the total number of valid ballots cast divided by the number of eligible voters. Challenged and void ballots are excluded. These tended to be few.

2. The percentages in this column are obtained by dividing the "no representation" votes by the valid ballots. The results of the first election was used in all cases. None of the runoff elections included "no representation" as a choice.

3. The results presented here are from the runoff election between the Congress of Faculty Associations and the United Professors of California. The results of the first election for the faculty unit were as follows:

No. Voting (valid ballots)	14,983
United Professors of California	6,316 (42.2)
Congress of Faculty Association	6,267 (41.8)
No Representation	2,400 (16.0)

4. The results presented here are from the runoff election between the Congress of Faculty Associations and the United Professors of California. The results of the first election were as follows:

No. Voting (valid ballots)	1,019
United Professors of California	505 (49.6)
Congress of Faculty Association	391 (38.4)
No Representation	123 (12.0)

5. The results presented here are from the runoff election between the Health Care Bargaining Council-CSEA and the United Professors of California. The results of the first election were as follows:

No. Voting (valid ballots)	215
United Professors of California	64 (29.8)
Health Care Bargaining Council-CSEA	96 (44.7)
Professional Division of United Food & Commercial Workers, Locals (Retail Clerks)	14 (6.5)
No Representation	27 (12.5)
(Unaccounted for in PERB reports)	14 (6.5)

covered about 51,000 employees. The ten university-wide units cover 42,000 or 82 percent of all employees for whom elections have been held. In seventeen of the twenty-five elections, (eight university-wide and nine campus units), covering 38,000 employees, an exclusive representative was selected. In seven elections (two university-wide and five campus/laboratory units), covering some 13,000 employees, the majority vote was for no representation.

2. At both universities the elections constituted major gains for AFL-CIO affiliated unions. Ninety-five percent of the employees at CSU are represented by organizations affiliated with AFL-CIO unions.³² The police unit, with its 166 members, is the only exception. Representation rights for police at both UC and CSU were obtained by the Statewide University Policy Association (SUPA), an independent union.³³ Eighty-six percent of employees who selected an exclusive agent at UC are represented by an AFL-CIO affiliated union. The exceptions, in addition to the police, were the nurses (represented by the California Nurses Association) and the faculty unit at the Santa Cruz campus (represented by the Santa Cruz Faculty Association.)
3. The California State Employees Association is the dominant union at CSU. It can lay claim to representing 93 percent of the organized workforce.³⁴ The big winner at UC was the American Federation of State, County and Municipal Employees (AFSCME). AFSCME represents 78 percent of all employees (contained in four units) who voted for representation. In the CSU elections, AFSCME appeared on the ballot of only the Clerical and Administrative Support Service Unit and in that election received 29 percent of the votes. The pattern at UC was quite different. CSEA was slated to

be on the ballot in all the major elections and had been a key participant throughout the unit hearings. In March 1983, the CSEA withdrew unexpectedly from all UC university-wide elections.³⁵ The only UC election in which the CSEA was on the ballot was the Professional Scientists and Engineers Unit at the Livermore National Laboratory. There, more than 75 percent of the employees voted for "no representation."

4. Major differences existed in how the two institutions approached the elections. Despite these differences in approach, the voter turnout was almost identical. Whereas CSU actively opposed the enactment of collective bargaining legislation, it took a neutral stance during the election campaigns; UC, on the other hand, participated actively in the development of HEERA but mounted a vigorous information program during the campaigns which left no doubt of its view that collective bargaining would have little to offer employees that was not already available.³⁶ The percentage of eligible voters who actually cast ballots was almost identical at CSU (65 percent) and UC (64 percent). In both systems most of the elections were conducted by mail ballot, scheduled when it was believed that voters would be in residence. Ample time was provided for ballots to be returned to PERB. The unions conducted active organizing campaigns. Most observers would agree that AFSCME conducted the most sophisticated and expensive campaign (making extensive use of television advertising, for example).
5. In institutional terms the crucial difference between UC and CSU in election results relates to faculty. The question at CSU was never whether faculty members would vote for collective bargaining but, rather, which of two competing unions they would choose, the

UPC or CFA. In the first election "no representation" received only 16 percent of the valid votes cast. In the runoff election, and after protracted negotiations over challenged ballots, the Congress of Faculty Associations was declared the winner over the UPC by a margin of 39 votes out of more than 13,000 valid votes cast.³⁷

HEERA does not permit a university-wide unit of faculty at UC until 35 percent of the Academic Senate members of the entire university are represented by campus-based units. Three campus elections have been held. As shown in Table II, Santa Cruz was the one campus where the faculty voted for representation. "No representation" was the outcome at UCLA and UCB. There is no indication at present that any of the Associations plan to petition for another election. Nor is there any discernible organizing activity on the other UC campuses that would suggest additional elections any time soon.³⁸ For the foreseeable future, the unit at Santa Cruz, which constitutes approximately 5 percent of the total Academic Senate potential, will remain the only faculty bargaining unit at UC.

6. A proxy for overall interest in collective bargaining may be the total votes cast for unions in the elections as against votes for "no representation." Of all valid votes cast in all elections at CSU, 17 percent were for "no representation." At UC, 44 percent of all valid votes were for "no representation." In just the elections which resulted in selection of a bargaining agent at UC, 37 percent of all valid votes cast were for "no representation." By any measure, overall support for collective bargaining at CSU was much stronger than at UC.

UNFAIR LABOR PRACTICE ACTIVITY

The unfair labor practices section of HEERA (Article IV) closely mirrors that found in the NLRA. PERB is given the responsibility of determining charges of unfair practices. An employer, employee organization, or employee may file a charge alleging that an employer or employee organization has committed an unfair practice. Charges can be withdrawn at any stage in the process by the charging party. Table IV shows the ULP activity from the effective date of HEERA through calendar 1983.

(TABLE IV)

The total number of charges filed at UC (207) is substantially higher than at CSU (86). Not only have there been more charges filed at UC than at CSU, but resolution tends to occur at a later stage in the process. At UC, some 54 percent of all charges were resolved at the informal stages. At CSU, this figure rises to 77 percent.

PERB regulations have two major objectives: to make it easy for any of the eligible parties to file a charge, and to obtain resolution through informal means, if at all possible. It appears that both objectives are being realized. Most of the charges to date have been concerned with representation election matters. With the bulk of elections completed, we can expect unfair charges associated with the bargaining process to gain in relative importance. Although the number of unfair charges during the first three and one-half years of the Act seems high, especially at UC, the volume can be expected to decrease as the parties accept the reality of a long term relationship and focus on substantive issues.

DISCUSSION

In a period of about four years CSU went from no collective bargaining to 100 percent unionization. At UC, as of this writing, about 41 percent of the eligible workforce has opted for bargaining. Equally important to the

TABLE IV

UNFAIR LABOR PRACTICES: STAGE AT WHICH SETTLED*

(July 1, 1979 through December 31, 1983)

YEAR	No. of Charges Filed	Preliminary ¹ Investigation	Informal ² Resolution	Formal ³ Resolution	Decision ⁴ by PERB	Still Active
	UC	UC	UC	UC	UC	UC
	CSU	CSU	CSU	CSU	CSU	CSU
1979 (6 months)	8	3	0	0	3	2
	4	2	1	0	1	0
1980	31	24	1	0	6	0
	20	14	1	5	0	0
1981	81	33	15	20	8	5
	24	12	9	3	0	0
1982	50	9	9	22	3	7
	23	7	11	5	0	0
1983	37	10	8	6	0	13
	15	9	0	2	0	4
TOTAL	207	79 (38)	33 (16)	48 (23)	20 (10)	27 (13)
	86	44 (51)	22 (26)	15 (17)	1 (1)	4 (5)

Source: All of the information on which this table is based was obtained from the Public Employee Relations Board's **Annual Reports to the Legislature** or from the PERB staff.

*Numbers in parentheses in last row indicate percentage of total cases settled at each stage.

TABLE IV NOTES

1. Prior to 1982, when a charge was filed it was screened to see that the charge stated a prima facia case. If it did, the charge was allowed to proceed. In 1982 this was changed so that a PERB agent now evaluates both the charge and the underlying evidence to determine whether a prima facia case of unfair practice has been established. This charge should result in many fewer frivolous charges getting into the process.
2. At this stage the parties are called together by a PERB-appointed Administrative Law Judge (ALJ) for an informal conference, at which no record is kept, to settle the matter by mutual agreement.
3. This stage generally involves a hearing before an ALJ at which sworn testimony and other evidence is taken. The decision of the ALJ is binding on the parties unless the decision is appealed to PERB which can decide to modify the decision.
4. PERB decisions are final. Its decisions alone are precedential. They not only bind the parties to the instant dispute but also serve as precedent for similar issues arising in subsequent cases.

quantitative difference between the two systems is the fact that at CSU the faculty as well as the nonacademic staff chose bargaining.

It is too early to say much about the long term impact bargaining will have on salaries and other job-related conditions. By the end of 1983, only one comprehensive agreement had been negotiated at UC and that was for the Police Unit.³⁹ At CSU, on the other hand, agreements had been reached for all nine units by the end of 1983. What can be said about the initial contracts at CSU is that they have not led to salary and fringe benefit packages which would not have been granted without collective bargaining, although some minor realignments have been made. Concerning noneconomic items, most of the contracts repackaged existing personnel rules and procedures, although a few significant additions and modifications have been made. For example, all contracts provide for binding arbitration of grievances, which did not exist before bargaining.

HEERA was intended to provide a statutory framework which provided to employees the fundamental right to decide for themselves whether they wished to be represented by an exclusive agent for purposes of determining their wages, hours, and other conditions of employment. At the same time, and especially for faculty, the law was intended to preserve the fullest opportunity for collegial decision making, recognizing that the intellectual vitality of a university depends ultimately on an explicit recognition that academic employees, while having the traditional concerns of employees everywhere, must also be centrally involved in the core decisions shaping the future of institution as a whole. To the extent that the parties and PERB do not take advantage of the flexibility provided by HEERA, the California experiment in developing legislation tailored to the needs of higher education will have been a failure. California's higher education community has the opportunity to learn from and not necessarily repeat the mistakes of the

universities which have had bargaining much longer.

Both UC and CSU are confronted with a new set of realities which each institution in its own way sought to avoid - CSU by opposing HEERA and UC by discouraging employees from voting for bargaining. A plaintive hope of improved relations as a result of bargaining was expressed by the Chancellor of CSU when she wrote: "We have entered the world of collective bargaining and behind us, hopefully, are years of weary contentiousness."⁴⁰

The extent to which the dual opportunities provided by HEERA to give employees the right to bargain collectively and keep secure the ability of the universities to meet their responsibilities will depend in no small measure on how several matters are handled, including: the role of negotiators, formal vs. informal bargaining, bargaining over economic issues, intra-organizational relations, and faculty bargaining issues.

Role of Negotiators

A serious matter for public organizations generally has been inconsistent and uncertain direction given to those with direct responsibility for negotiations. Negotiators need authority to negotiate effectively on behalf of their principals. This is often undercut by governing bodies and top management, especially when political pressure begins to be applied. Imprudent intervention is not likely to aid the development of sound long term relationships. By the same token, bargainers should not be given a totally free hand. The pressure on bargainers is to reach agreement or, in the jargon of the trade, "to cut deals." The imperatives of the bargaining process, if allowed to follow their own logic, can lead to agreements that do not serve well the interests of the organization on whose behalf they were made. The challenge for unions and management is to have the services of skilled negotiators, but negotiators who in the final analysis are implementers not setters of policy for the organization they represent.

Formal vs. Informal Bargaining

HEERA is unique in that the purpose of the statute is to allow employees the fullest organizational freedom and protection, but it also emphasizes the preservation of traditional informal, consultative approaches to decision making. For faculty, specific language is included to help ensure this. For nonfaculty the spirit of flexibility and consultation suggested by HEERA will be more difficult to implement. One approach is to avoid writing highly specific contractual language covering every conceivable matter within the scope of bargaining. In this writer's view, all parties would be well served over the long run if contract language is written in a way that will allow flexible interpretation at the campus and workplace level. For this to occur will require substantial trust between the parties to the relationship and fairness in application, good employee relations skills by first level supervisors, and a problem solving approach when differences in interpretation occur. HEERA provides substantial encouragement for consultation and informal negotiation between employees and their unions and management on substantive issues after contracts have been signed, whether included in the written agreement or not.

Bargaining over Economic Matters

All of the unions made the prospect of improvements in salaries and benefits through bargaining a priority during the campaigns preceding the elections. This was to be expected, but it is perhaps also misleading in terms of what the bargaining process can deliver. If there are substantial improvements in economic conditions, it is more likely they will result from decisions taken in Sacramento than across the bargaining table. Virtually the entire operating budget of CSU derives from general funds appropriated by the State. Although State general funds provide less than one-half of the UC budget, they constitute the core funding for most activities and es-

tablish the basis on which salaries for most UC employees are set.⁴¹

The way the State funding process works is that little bargaining over economic items can occur until the global amount for salaries and benefits is known. It is also true that CSU has little flexibility in deviating from the economic improvements provided for State employees. Technically, UC can allocate its salary budget from the State in whatever way it wishes, but in practice, its discretion is also limited.

The problem for the Governor and the Legislature is how to allow the CSU Board of Trustees and the UC Board of Regents to bargain with employee groups in good faith without surrendering or rendering pro forma their duty to approve the budgets for the two institutions. The problems for the Trustees and Regents, designated as the employers under HEERA, and eager to protect their autonomy over personnel matters, is how to negotiate responsibly and engage in the give and take of that process without controlling or often even knowing the funds that are available and without surrendering their responsibility in this regard to the Governor and Legislature. Unless these issues can be resolved, negotiations over the "big ticket" economic items will be full of frustration and uncertainty.

Intra-organizational Relations

All of CSU's bargaining units are university-wide. At UC fewer than one-half of the units are university-wide in scope, but they include 96 percent of the represented employees. For the employers a key question is the division of decision-making authority between the university-wide management and the management of each campus or laboratory. Or, to put the question into industrial terms, will industrial relations be run by corporate headquarters or by the plant managers? In a labor intensive industry, which a university is, the answer can have a fundamental impact on the ability of the organization to accomplish its mission successfully. This question in

various permutations has been a major topic of discussion (and contention) within UC since pre-HEERA days. At CSU it has been a matter of less visible controversy, and perhaps of less significance.

Prior to HEERA, the structure of the personnel system for both academic and nonacademic staff at UC was essentially that of the university-wide administration setting the personnel policy framework, and the campuses implementing policy with substantial discretion to recognize local traditions and operational requirements. CSU followed a similar pattern, albeit with less room for campus discretion. This was due in part to the fact that the CSU university-wide administration had less discretion, being linked more closely than UC to actions and standards set by the Legislature and the Governor's office. Changes in personnel policies or new policies at both systems tended to be issued only after extensive consultation between the central administration and the campuses and, to the extent possible, only after a consensus was obtained.

It would appear that with bargaining even greater centralization of the personnel functions in CSU can be expected. Both central management and the unions consult with their relevant constituencies, but local discretion over personnel matters appears to be diminishing.

At UC the situation is less clear, and the stakes for the institution are high. In the unit hearings, the University argued generally for university-wide units. The view held by a significant segment of campus-based management was that the University should seek primarily campus-based units on the ground that this provided the greatest assurance of preserving traditional campus autonomy over the academic and nonacademic workforce, and of protecting the much cherished differentiation among the campuses. The Board of Regents and the President of the University concluded otherwise, largely because of concern over proliferation of units and the potential for whip-

sawing in bargaining. AFSCME and the CSEA petitioned primarily for university-wide units following their own organizational structure. However, there were also numerous petitions for campus units. PERB's decisions resulted in a mixed pattern.

There are undoubtedly advantages in having the bulk of UC employees in university-wide units. But there are also dangers. The distribution of authority and administrative responsibility within UC suggests that much of the responsibility for bargaining as well as contract administration for both university-wide and campus units should be lodged with campus management. This could be accomplished by limiting university-wide negotiations to setting of minimum standards and only with respect to those matters where it is essential to have university-wide uniformity. Examples of issues where university-wide uniformity seems essential include the University of California Retirement System, employee health insurance, and salary scales for those classes of employees paid on a statewide basis. A two-tiered approach to bargaining would seem to hold the greatest promise of protecting campus autonomy and at the same time of not detracting from the fundamental purposes of HEERA. There are certain administrative and funding complexities associated with this approach and it could not be done without the concurrence of the unions, but unions could also gain from this approach.⁴²

Faculty Bargaining Issues

HEERA gives strong support to the proposition that the faculty should be deeply involved in the governance of universities. It also gives to the faculty itself substantial discretion over whether they wish to do this through the Academic Senate or through the bargaining process (even where an exclusive representative exists). Section 3561(b) of HEERA, for example, states:

The Legislature recognizes that joint decision-making and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the educational missions of such institutions, and declares that it is the purpose of this act to both preserve and encourage that process. Nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices....The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved.

In many respects, the differences in how UC and CSU faculty have responded to collective bargaining correspond to the differences in the history of faculty participation in governance and the role of the Academic Senates. UC has a strong Academic Senate, clearly among the strongest of any university in the country. CSU has had an Academic Senate since 1963, but it has not developed the credibility, the broad acceptance, and the stature of the Senate at UC.⁴³

The faculty unit at the Santa Cruz campus of UC, with its 292 members, is too small to have a noticeable impact on the situation of the University as a whole or even on the campus. However, the approach to bargaining being established there may presage what will happen at other UC campuses when and if they should turn to bargaining. The first agreement negotiated between the Santa Cruz Faculty Association and the University runs to only a handful of pages in length and is remarkable not only for its brevity but also for its structure. It is a procedural agreement. Its focus is on the kind of relationship the parties seek to foster and how they plan to interact when either the administration or the association seeks to effect changes on mat-

ters within the scope of representation. Built into the agreement is the assumption that the parties will be able to resolve matters on an informal basis and rely principally on the mechanisms of the Academic Senate rather than on those of the collective bargaining process. However, the agreement does contain a grievance procedure whereby the exclusive representative, but not an individual member, can grieve "misapplication or misinterpretation" of the procedures outlined in the agreement. Such grievances may go to binding arbitration.

More significant than any faculty collective bargaining at UC is the University Committee on Faculty Welfare (UCFW). The UCFW is a standing committee of the Academic Senate and engages in consultation and quasi-bargaining with the administration at the university-wide level on a broad range of economic and work related concerns of faculty.⁴⁴ The UCFW, in the past few years, has had strong leadership and knowledgeable members. For these reasons, and including a preference for dealing with a Senate body rather than risk additional bargaining elections, the university-wide administration gives a great deal of weight to recommendations of the UCFW. Many of the faculty active in the UCFW would be instrumental in providing the leadership for any future collective bargaining elections. The presence of an effective and energetic UCFW blunts the sentiment that exists for additional collective bargaining elections.

CSU is following a different model, one which places it fully in the collective bargaining camp. In 1983 the California Faculty Association (CFA) and CSU signed a three year agreement with provision for reopening on compensation items. The agreement, running to more than 100 pages, is remarkably detailed for a first contract.⁴⁵ It covers not only work-related items, but also contains detailed provisions on such matters as conditions of appointment, probationary period, procedural aspects of tenure review,

selection of peer review committees, post-tenure evaluation, and the like. The workload provision provides that "a full-time faculty employee shall hold a minimum of five (5) office hours per week."

The contract contains a grievance procedure with binding arbitration covering most matters other than "negative decisions on retention, award of tenure or promotion or a punitive reassignment." With respect to these items the contract provides a separate grievance procedure with two options for final resolution. The grievant can select the "peer review option," which has authority to make a recommendation to the chief campus officer, or the "arbitration option." The arbitrator is not empowered to grant tenure, but can "...make a strong recommendation concerning the granting of tenure or promotion." Nowhere in the contract is reference made to the Academic Senate(s) except in the preamble, which states that the "CSU and the CFA recognize the unique roles and responsibilities of the Academic Senates." Nor does the contract deal in any specificity with the division of responsibility between the bargaining agent and the Senate.

To summarize, although one UC campus has selected an exclusive representative, and faculty associations without bargaining rights exist at all but one of the UC campuses, collective bargaining is not a significant factor in determining conditions of employment for faculty there. On the other hand, the faculty associations, through their lobbying efforts in Sacramento, their overlapping membership with the Academic Senate, and the high regard in which much of the leadership is held by faculty colleagues and administrators alike, exert substantial influence on many matters affecting the economic status of faculty. As well, since HEERA was enacted, the role of the Academic Senate in matters which would be within the scope of representation has been strengthened as a result of the work of its Committee on Faculty Welfare. The net effect of this is a type of quasi-bargaining be-

between the UCFW and the Administration. It occurs within the framework of the Academic Senate rather than through the bargaining framework provided by HEERA.

At CSU, the Academic Senate, which was never very strong, has given way to the role of the exclusive representative. The first contract is comprehensive in scope, covering economic as well as many matters at the core of academic activity and decision making. All indications point to further extension of the bargaining process into the vortex of academic decisions. The overwhelming vote in favor of collective bargaining can be viewed as a clear expression of sentiment by CSU faculty that bargaining was the preferred method of participating in the university governance process. The parties appear to be seeking to establish a relationship which deals with various work and professional matters through specific contractual language, but which also provides a framework for resolution of governance issues through consultation and informal interaction that would not necessarily be reduced to contract language. In short, the parties are using collective bargaining to establish (perhaps for the first time) a strong participatory role for faculty in the governance of CSU.

Conclusions

This paper's major purpose has been to analyze the extension of collective bargaining into California's public four year colleges and universities. When HEERA became effective on July 1, 1979 California joined the some twenty-five states that have enabling legislation for higher education collective bargaining.

Spurred by the Yeshiva decision, there is increasing commentary about the decline in growth of collective bargaining in higher education and especially among faculty. Certainly the CSU case represents a strong nudge in the opposite direction.

California is unique in that it is the only state that has tried to write a higher education bargaining statute which took into account the presumed special characteristics of higher education. The law that was finally adopted reflected a substantial consensus of the higher education community in California, including the faculty associations. It was viewed as a law which simultaneously provided to higher education employees the right to select an exclusive bargaining representative and constrained the process to guard against damage to the educational activities and preexisting governance mechanisms of the universities.

With respect to nonacademic staff, there is very little in the statute that derives from higher education as distinct from public employee bargaining considerations generally. In other words, HEERA assumes that no special treatment is required for nonacademic employees and that their circumstances are substantially equivalent to those of the State Civil Service, although nonacademic staff at UC and CSU are not part of the State Civil Service system.

This is not the case with faculty. The provisions in HEERA concerning composition of a faculty bargaining unit (at UC), scope of bargaining, supervisory status of department chairs, and the role of the Academic Senate, are significant departures from the NLRA and bargaining statutes covering faculty in other states. HEERA specifically recognized the managerial status of faculty and sought to structure a bargaining framework which is consistent with the faculty role in governance.

Within the constraints imposed by HEERA, faculty and nonacademic staff at CSU chose to fully avail themselves of the opportunity to deal on a collective basis with the employer. At UC the pattern is mixed, with faculty who are members of the Academic Senate remaining outside of bargaining with the exception of the faculty at the Santa Cruz campus. Academics who are

not eligible for membership in the Academic Senate and where elections have been held (e.g., librarians and lecturers) did vote for representation.

The conclusion which seems warranted is that faculty at both UC and CSU are determined to have a strong voice in governance and in employment matters. The difference between the two institutions is that at UC, with its long history of shared governance, the faculty seems content to have this occur through the Senate. At CSU, with a weak Senate tradition, the faculty, in a vote that was not even close, chose to accomplish this through the collective bargaining mechanism.

It does not seem correct to view the CFA as competing with the Academic Senates for influence within CSU. The CFA is clearly the dominant representational body. Rather, both the CFA and the CSU administration view the Senates as a valuable adjunct to the bargaining process for the purpose of accomplishing the tasks that involve a high degree of academic judgment. These include such matters as the content of courses, curricula, degree requirements, and academic planning. But just as clearly, matters which impinge on the job welfare and rights of faculty will be determined through the bargaining mechanism with the union as the faculty agent.

So far as can be ascertained, the implementation of HEERA at both universities was accomplished without any lasting antagonisms between employees and the administration and without disruption of the academic and administrative activities of the two institutions. Similarly, there is little evidence at this time that the unions and employers will be unable to develop constructive working relations. The large majority of represented employees at both institutions are part of AFL-CIO affiliated unions; it is not clear what difference, if any, this will make in the kind of relationships that develop.

The contracts that have been negotiated to date do not appear to represent any fundamental changes in personnel practices. For the most part they incorporate preexisting personnel policies, with some modifications and additions such as binding grievance arbitration. Although it is too early to offer any assessments of what the full impact of collective bargaining will turn out to be, it seems clear that the changes will be incremental and evolutionary, not revolutionary.

NOTES

1. The California Master Plan for Higher Education was adopted through the Donahoe Act of 1960. Ed. Code sec. 66600 et seq.
2. This statute is also known as A.B. 1091 or the Berman Act after its sponsor, Assemblyman Howard Berman. It is referred to as HEERA throughout this paper. HEERA, in Section 3562(f) defines coverage as restricted to employees whose "employment is principally within the State of California." Thus the employees of the Los Alamos, New Mexico, National Scientific Laboratory which is managed by UC for the United States Department of Energy, are excluded from coverage. HEERA also covers the Hastings College of Law in San Francisco but that institution will not be considered in this analysis.
3. California State Assembly, **Final Report of the Assembly Advisory Council on Public Employee Relations**, March 15, 1973 (Professor Benjamin Aaron, Chairman).
4. The George Brown Act is codified in Government Code Sections 3525-36.
5. At UC, membership in all employee organizations constituted under 10 percent of the nonmanagerial workforce in 1978. Membership was probably higher at CSU, although figures are not available.
6. In the mid- and late 1970s the UC Administration discussed with the Board of Regents on several occasions the possibility of UC setting up its own bargaining framework, including a procedure for recognition of bargaining agents. The dominant sentiment of the Board was opposed to the suggestion. Shortly before HEERA was adopted and as a last effort to forestall legislation, the Chairman of the CSU Trustees pursued a similar strategy. By then it was too late and it was not viewed as a sincere proposal.
7. Ibid., p. 39.

8. Ibid.
9. Perhaps the most significant higher education issues in this regard were student participation in bargaining and special consideration for faculty and the Academic Senate.
10. "Item for Action" presented to members of the Subcommittee (of the Regents Committee on Finance) to consider employee relations legislation, University of California, Systemwide Administration, Office of the President, January 11, 1978, p. 1.
11. See Lewin, David, "The Politics of Collective Bargaining Legislation for Public Higher Education in California," in **Proceedings of Thirty-Second Annual Meeting**, Industrial Relations Research Association, Madison, Wisconsin, 1979, pp. 145-154.
12. Wollett, Donald H., "HEERA: A Look at New York Experience and California Prospects," **CPER**, 39 (December 1978), p. 22.
13. Alleyne, Reginald, "Instituting Collective Bargaining at California's Universities and Colleges: The Outlines of HEERA," **The Hastings Law Journal**, 31 (January 1980), pp. 563-615.
14. See Wollett, op. cit., pp. 7-22; Garbarino, Joseph W., "Proposition 13 and Faculty Organizing Under HEERA," **CPER**, 39 (December 1978) pp. 23-32; Clarke, Carlene A., "The Yeshiva Case: An Analysis and an Assessment of Its Potential Impact on Public Universities," **Journal of Higher Education**, v. 52 (September-October 1981), pp. 449-469; Lewin, op. cit., and Kleingartner, Archie, "Unions and Academics," in **Trade Unionism in The United States: A Symposium in Honor of Jack Barbash**, Industrial Relations Research Institute, University of Wisconsin, Madison, 1981, pp. 60-84.
15. Alleyne, op cit., p. 564.
16. Garbarino, Joseph W., "An Analysis of the Berkeley Faculty Election,"

- CPER, 46 (September 1980), p. 23.
17. Public Employment Relations Board, **Annual Report to the Legislature**, Sacramento, California, 1979, p. 38.
 18. Alleyne, op. cit., p. 575.
 19. The UPC is an affiliate of the American Federation of Teachers, AFL-CIO, and was the first major faculty organization in the CSU System to take a strong stand in support of collective bargaining. For a discussion of the development of bargaining organizations in CSU, see Walter, Malcolm J., "Transition to Bargaining in a Multicampus System," **Industrial Relations**, 13 (February 1974), pp. 23-49.
 20. **CPER**, 42 (September 1979), p. 65.
 21. The Congress of Faculty Associations (CFA) was organized in 1974 and resulted from a joining together of elements from the California State Employees Association (CSEA), the California Teachers Association (CTA-NEA), and the American Association of University Professors (AAUP). For a discussion of the circumstances leading to the CFA, see Walker, J. Malcolm, "Transition to Bargaining in a Multicampus System," op. cit., pp. 23-39. In 1984 the Congress of Faculty Associations changed its name to the California Faculty Association. It retained its affiliation with the CSEA, CTA, and AAUP. In 1984 the CFA became an affiliate of the AFL-CIO by virtue of the fact that in the same year, the formerly independent CSEA, which claimed 92,000 active and retired members, became the largest local union of the Service Employees International Union (SEIU), AFL-CIO. See "CSEA and SEIU: 'For Better or for Worse, Till...,'" **CPER**, 60 (March 1984), pp. 62-63.
 22. **CPER**, 46 (September 1980), p. 59.
 23. For example, Hearing Officer Wilson concluded that a unit which combines tenure track faculty with temporary faculty is inappropriate.

He noted that to combine them "...would necessarily cause an adverse impact upon the meet and confer relationship in that it would create intra-employee organization rivalries and dissensions and would probably cause protracted, difficult negotiations with the employer since trade-offs between these two dissimilar groups would be difficult to achieve" (State of California, Public Employment Relations Board, "Recommendations to the Board Re Professional Employees," (Stuart C. Wilson, Hearing Officer), March 6, 1981, p. 48). The full Board did not give either Senate participation or tenure much weight and established a unit which placed temporary instructional personnel not eligible for either Senate participation or tenure in the same unit with tenured faculty.

24. Quoted in *CPER*, 51 (December 1981), p. 64.

25. Ibid.

26. The Berkeley Faculty Association (BFA) was established in 1972 as an independent association. Interestingly, the BFA was created by the Berkeley Division of the Academic Senate. However, it has always been financed and operated independent of the Senate. The BFA was the model for establishment of faculty associations at seven other UC campuses. In 1979, it entered into an affiliation agreement with the AAUP. AAUP affiliation is expected to be terminated in 1985 because of the financial burden it imposes on the BFA.

27. At the University of California there is a single Academic Senate with a Division of the Senate at each of the nine campuses. Eligibility for membership in the Senate is spelled out in the Standing Orders of The Board of Regents. Various administrators (such as chancellors and vice chancellors at each of the campuses) are Senate

members, but in most cases they are also members by virtue of holding an appropriate faculty title. Senate membership in 1984 on each campus, excluding administrative members, was as follows:

Campus	Senate Leadership in 1984*
Berkeley	1562
Davis	1281
Irvine	623
Los Angeles	2065
Riverside	383
San Diego	761
San Francisco	761
Santa Barbara	612
Santa Cruz	284
Total	8332

*Data are from the Office of the Director of Academic Personnel, Office of the President, University of California, Berkeley.

28. CPER, 45 (June 1980), p. 58.

29. When HEERA was written the UC administration was committed to language which would exclude medical school housestaff as well as teaching and research assistants from coverage. Assemblyman Berman and the unions were committed to their inclusion. The compromise language which was adopted is as shown in the Appendix, item 6.

The housestaff case has been the only PERB unit decision appealed in the courts by either UC or CSU. Interpreting subdivision (b) of Section 3562 of HEERA, the Court of Appeals ruled: "We conclude that the services rendered by students enrolled in the University's residency program are subordinate to their educational objectives, hence such students are not employees for purposes of HEERA." See **The**

Regents of the University of California vs. Public Employment Relations Board, Court of Appeal of the State of California, First Appellate District, Division Two, July 25, 1984. PERB appealed the decision to the California State Supreme Court, and oral arguments were made before the Court in May 1985. The Court had not rendered a decision as of this writing.

30. Alleyne, op. cit., p. 580.
31. This figure was arrived at by dividing the total number of employees represented by an exclusive agent as shown in Table III (37,763) by an estimated total potential of 92,000. This includes the employees who voted for "no representation" (13,102), the employees for whom units have been established but no election held (9,455), and those employees potentially eligible for representation but with no units established by PERB. This is estimated to be about 31,000 employees, a figure obtained from the Office of the Assistant Vice President, Labor Relations, Office of the President, University of California, Berkeley. The police unit, which was decertified in December 1984 (see note 33) was counted as unrepresented.
32. Of course it should be noted that at the time the elections were held the CSEA had not affiliated with the SEIU. This did not occur until 1984 (see note 21).
33. The Statewide University Police Association (SUPA), which represented the 277 police officers in the UC system, was certified as the exclusive representative in August 1980, the first unit certified at UC. It was decertified in 1984 after unit members voted 73 to 59 in favor of ending the exclusive representative relationship. Under HEERA there is a one year bar which prohibits any other organization from petitioning to represent police officers.

34. Included in this figure are the 19,000 faculty represented by the California Faculty Association. The CFA has an affiliation agreement with the CSEA and can be thought of as an AFL-CIO affiliated union. The CSEA has been a local of the SEIU (AFL-CIO) since 1984.
35. In a press statement announcing its withdrawal from UC elections, the President of CSEA said that after five months of organizing activity, the CSEA reached the "disappointing but realistic conclusion that collective bargaining's time has not yet come in the UC system." (President Leo Meyer, quoted in **The Sacramento Bee**, March 17, 1983). Subsequent events demonstrated that Mr. Meyer had underestimated the degree of readiness of UC employees for collective bargaining.
36. The UC campaign during the elections was characterized by the unions as constituting a blatant anti-union effort. The UC administration maintained that its program was informational, intended to help employees become fully informed before they voted.
37. Determination of who should be certified as the faculty's bargaining choice took over nine months to resolve following a runoff election in May 1982. A victor was declared in February 1983 when PERB announced that the CFA had won by 39 votes - 6,580 to 6,541. See **CPER**, 56 (March 1983), p. 58.
38. This, of course, is not to suggest that the faculty associations have slipped into inactivity. As before the elections, they consult with the administrations at the university-wide and individual campus levels on matters of concern to the faculty and carry out lobbying activities in Sacramento. As well, much of the leadership of the associations is active in the University Committee on Faculty Welfare, a committee of the Academic Senate which provides a good deal of de facto union representation. There is little doubt in this writer's

mind that if the welfare committee should begin losing the substantial influence with the administration it now has, we would see representation elections in short order.

39. Agreements covering all of the certified units were negotiated in 1984, but they have not been considered in this analysis.
40. W. Ann Reynolds, "The Chancellor Comments," California State University, October 1983.
41. Major entities at UC that do not receive state funding include the hospitals at UC's five medical schools where employee salaries are paid from hospital generated revenue and the U.S. Department of Energy funded laboratories at Berkeley, Livermore, and Los Alamos, New Mexico.
42. All indications are that bargaining for university-wide units at UC will be done on a centralized basis, which includes detailed written agreements with little room for establishment of employment conditions at the individual campus level.
43. As early as 1969 the CSU Academic Senate went on record as endorsing the need for collective bargaining for faculty largely on the grounds that the administration did little more than give lip service to the role of the Senate. There was also some speculation that the Senate itself would appear on the ballot in a representation election, but this did not turn out to be the case. See J. Malcolm Walker, *op. cit.*, pp. 32-33.
44. The University Committee on Faculty Welfare is a committee of the Academic Senate. Its membership is composed of representatives from each of the nine Divisions of the Senate. In addition, each campus has its own faculty welfare committee which interacts with the administration of the campus. What gives the university-wide committee

particular importance is that most economic work related matters can be effectively dealt with only at the university-wide level. See also note 38.

45. "Agreement Between the Board of Trustees of the California State University and the California Faculty Association," July 1, 1983-June 30, 1986.

APPENDIX

SUMMARY OF SELECTED PROVISIONS OF HEERA

1. Bargaining Units for Faculty

At UC the only appropriate unit for members of the Academic Senate shall be a unit consisting entirely of Senate members. No unit for faculty can be smaller than all eligible members of the Academic Senate of a single campus [3579(e)].

At CSU the unit for faculty is subject to determination on the basis of the criteria specified for other categories of employees. These criteria are very close to those in the NLRA[3579(a)]. Thus, at CSU, the law permits faculty and nonfaculty to be in the same unit.

2. Status of the Academic Senate

The Academic Senate shall not be considered an employee organization and shall not be restricted in any way from participating in the shared governance mechanisms of the university [3562(g)].

3. Department Chairs

Chairs of academic departments shall not be excluded from the faculty bargaining unit solely because of status as department chairs. The presumption seems to be that where the duties are performed primarily on behalf of the members of the academic unit [3562(1)], chairs will be in the unit.

4. Staff Associations

It is an unfair labor practice for the employer to deal with staff associations (Academic Senates being an exception) on matters within the scope of representation where an exclusive representative has been petitioned or selected [(3571(f))].

5. Scope of Representation on Academic Matters

Excluded from the scope of bargaining for faculty are the procedures and policies to be used for appointment, promotion, and tenure [3562(q)(4)] and [3562(r)(4)].

The law differs for the two systems in that, for UC only, the procedures to be used for evaluation of faculty and the procedures for processing grievances of members of the Academic Senate are also excluded from the scope of representation [3562(q)(4)].

In both systems there are no limits on the right of the employer to consult with the exclusive representative on any of the matters excluded from the scope of bargaining.

If the UC Regents or the CSU Trustees withdraw any of the matters specifically excluded from the scope of representation from the responsibility of the Academic Senate, they shall come within the scope of bargaining. However, only at UC is the Academic Senate itself given the right to determine whether any of the members excluded under [3562(g)(4)] shall be within the scope of representation. The Senate can do this irrespective of any actions the Board of Regents may have taken. The theory is that since any faculty unit at UC must be co-extensive with membership of the Senate, it was appropriate for the faculty itself to decide whether it wished to have these matters determined through bargaining or through the consultation procedures of the Senate.

At UC, where the law makes provision for units consisting of members of a single division of the Academic Senate, scope of bargaining for a divisional unit shall be limited to matters that have customarily been determined at the campus level. This effectively precludes bargaining over salaries and fringe benefits by a campus based faculty unit,

"...but the employer shall consult with the exclusive representative of a division on matters which would be within the scope of representation or consultation of a statewide representative" [3579(e)].

6. Housestaff, Teaching Assistants, and Research Assistants

These categories of student employees are covered for purposes of collective bargaining only if PERB finds that the "...services they provide are unrelated to their educational objectives, or, that those educational objectives are subordinate to the services they perform....," and that coverage would further the purposes of the Act [3562(f)].

7. Relations with Legislature and Governor

At UC the employer shall maintain close liaison during bargaining with the State Department of Finance and the Legislature relative to any negotiations which may have fiscal ramifications [(3572.3)(a)].

At CSU the Governor and each House of the Legislature may appoint one representative to participate in the bargaining process on matters which would require a money appropriation or legislative action [3572(a)].