



## President's Corner

C. Wood, President

### It Pays to Look Ahead

I have watched a grand parade of my friends take golden handshakes and join the ranks of the perennially contented. I am delighted at their happiness and hope my own future might hold some such nicety. At the same time I note a troublesome complication that has affected a few of them. The details of the matter resemble a dense thicket buried within a maze. I think it might be useful if I paint a picture of it with a broad brush. The details can be ferreted out with help from the Benefits Department if conditions seem to apply to you.

### The Basic Premise

Many of us have availed ourselves of the opportunity to shelter some income in a plan 403(b) investment. This money, placed in an investment fund of some kind, earns tax-free income until its withdrawn at some later date. The funds thus invested do not appear on the W-2 form, thereby decreasing one's present tax liability. Pay fewer taxes now and use the money to earn tax free income until withdrawn after retirement. All agree it's about the best investment you can make. Such a (leveraged) deal. And therein lies the rub.

### The IRS at (Its Devious) Work

Because this money lies for a long time outside the clutches of the IRS, that body could not rest easy until some form of retributive confiscation could be devised. The IRS has declared that it can interfere with a contract you thought was strictly between you and the university. They have placed an absolute limit on the amount of money you can receive from your pension plan. They do this without regard to the amount the plan says you are eligible for (in terms of a percentage of your highest three-year average salary).

### Its the Limit!

Simply put, the limit is the lesser of two amounts. The first amount is given in a table (age dependent and indexed yearly) and is an absolute maximum income you can receive. This would likely affect early retirees with high salaries. (In 1990 these values ranged between \$30,782 at age 50 and \$102,582 at age 65; a complete table is available at

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the Benefits office). The second amount is taken as the three year average of your gross income as reported on your W-2 forms for the last three full years before your retirement. This is the value most likely to affect a lab retiree with an active 403(b) whose retirement "income" approximates 90-100% of final pre-retirement income.

### What Does it Mean to Me?

It means there is now an independent dollar limit on your retirement pay. Let's consider a greatly simplified example. A 67 year old who makes \$4000/mo salary is well under the fixed dollar table amount. If, by UCRP or PERS rules she's eligible to retire with 100% of her salary, she should take home \$4000/mo. But if her 403(b) contributions have been \$600/mo, the amount shown on her W-2 form as income will be \$3400/mo (\$40,800/yr). By IRS decree, she can receive no more than that amount in retirement income. The loss of \$600/mo for the rest of her life seems like a rather stiff penalty for sheltering income according to IRS rules! This example ignores deductions and all complications arising from before- and after-tax contributions of various kinds. Those are all matters for detailed calculation with help from Benefits (I hope they don't hate me for this), tailored to your specific situation. I'm only trying to show the basic idea.

### What Can I Do to Be "Saved"?

If you are affected, a simple approach to the problem would be to stop making contributions to a 403(b) plan three years prior to retirement. This would increase the amount reported on your W-2 forms for those years (and thereby increase one possible limit on your retirement take-home pay). Another method would be to take a loan against your 403(b) about five years prior to retirement. The amount of your contribution would then go to pay off the note (with interest being paid to yourself), the amount on your W-2 form would rise (together with your taxes), and you would have the capital amount of the loan to use however you wish. Of course, you may be more creative than I in finding a solution if you find you have the problem. And finally, the commercial: If you see problems at the lab and are trying to find solutions, join SPSE and share your insight with us. We need each other. ■

**Remember Fungibility!**

## Petition Results

In August, SPSE sent petitions expressing the continued support of UC management of the Lab to 5,200 employees. Over 2,000 signed petitions were returned.

### The Petition

We affirm our belief in the value of the continued management of the Los Alamos and Lawrence Livermore National Laboratories by the University of California. This long standing arrangement has proven itself by the outstanding successes of the two laboratories for nearly half a century.

The existing arrangement with the University was started for a good and valid reason which in our opinion still exists, to wit, the endeavors of the Laboratories are at a scientific and intellectual level that requires a non-governmental, apolitical, and non-industrial environment. The University of California has the necessary capabilities to make the Laboratories function at the highest level. In fact, one may make the claim that the present and future endeavors of the Laboratories require, even more than originally, the environment and interactions provided by the University of California.

Consequently, we strongly urge that the management of the Los Alamos and Lawrence Livermore National Laboratories remain with the University of California.

### Results Sent to President Bush

The petitions, accompanied by a transmittal letter were mailed to the President in early September. SPSE President Calvin Wood wrote,

Since the petitions were signed and collected, the DOE has renounced its intention to put the contract out to bid and negotiations have begun between DOE and UC. This is good news. However, we continue to be concerned about trends in the DOE to place increasingly restrictive bureaucratic controls over scientific research at LLNL. We feel that the past successes at LLNL and LANL are proof of the productivity of this arrangement. Substantial changes in this relationship may result in the loss to the nation of a very valuable asset. ... Therefore, we urge you to use your influence to ensure that only the most productive scientific oversight be maintained at the national laboratories.

A copy of the transmittal letter, and a sample of the petition were mailed to our Senators, and local Representatives. The Directors of the Labs, the UC president, and Secretary Watkins of the DOE also received copies. ■

## Grievance Report

### Computations Directorate-ADD Department Cited for Discrimination and Retaliation.

On October 28, arbitrator Wilma Rader delivered decisions in three grievances filed by an employee of the Applications Development Department (ADD). Ms. Rader found ADD discriminated on the basis of sex in setting the employee's rank and salary. Further, she ruled that two unsatisfactory performance appraisals retaliated for the employee's discrimination complaint and were contrived only to defeat the employee's grievance. Part of the decision is final and binding, part is advisory to LLNL Director John Nuckolls.

### Excellent Performance History

The grievant was a computer scientist in the Applications Systems Division. She consistently received "very-good" and "outstanding" performance ratings during thirteen years of service at LLNL. In 1987 she became concerned that her low salary did not seem to match her performance appraisals and job responsibilities. She discussed the matter with her supervision who agreed that she was underpaid relative to similarly ranked co-workers.

Efforts to correct her salary began in October 1988; she received a 9.1% increase. In May 1989 she received an additional 3.5% increase to align her salary with the salaries of similarly qualified males.

Six months later (October 1989) the grievant received a raise so small that it almost completely undid the corrections made by the previous two raises. She asked her supervisors why the raise was low.

### Rank Drops Despite Good Performance

Her supervisors told her that her rank dropped by two peer groups and her salary was well above the target for her group. This occurred despite the facts that her performance appraisal remained "very-good" and did not mention any negative factors, she had taken a new assignment that her supervisors advised was a high-visibility career-advancing position, and her work pleased her customers.

ADD Department Head Diana Sackett explained that the division ranked some new higher valued employees for the first time and they pushed the grievant and all her peers down in rank. She claimed that the grievant was ranked with the same people in 1989 as in the previous year. (Ranking information revealed during the hearing showed this was untrue.)

### Discrimination

Further probing by the grievant convinced her that males, previously ranked with her, did not move down in rank because of the ranking of new employees. Also, she learned from her former division leader, that the division management did not

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use the same criteria in evaluating her performance as were used to evaluate her male co-workers.

She filed a grievance alleging discrimination. The Lab's Staff Relations Office rejected her grievance because, they claimed, it was untimely. (Staff Relations works hand in hand with departmental managements and "untimeliness" is a common ploy they use to avoid addressing the issues of a grievance.) She appealed to the University's Vice-President for Employee Relations who overruled Staff Relations and required them to process the grievance.

### **Retaliation**

At about the same time as the UC decision came, the grievant received the first less than satisfactory appraisal in her career at the Lab. Suddenly her performance rating dropped to "marginal." Her communications skills, which had always been rated "excellent," were now unsatisfactory. Her productivity, previously always high, was judged to be unacceptably low. She was criticized for volunteer activities that were previously praised.

She was placed in the ninth ranking group of nine, the only person in ADD in this group. She received a minimum raise (\$35) because, ADD management said, her salary was now more than \$800 monthly above the target for her ranking group.

### **More Retaliation**

She was slated to have a special six-month mid-year evaluation. She worked hard to please her management during this period. At the end of this period, the top level department and division managers reviewed the entire body of her work.

The review was picayune. It berated every detail of her work. She was even wrongly accused of falsifying time cards and a travel request. ADD incorporated the review and accusations into a formal letter of warning that threatened dismissal unless performance improved.

### **The Arbitrator's Decision**

The arbitrator heard four days of testimony and reviewed more than 500 pages of documentation. She read written arguments by both the Laboratory's counsel and the grievant's representative. She devoted eight days to reviewing the case and writing her decision. After this careful consideration, she sustained the grievant in all three grievances.

Regarding the first grievance, which alleged discrimination, Ms. Rader wrote: *"After (the grievant) filed her initial grievance, instead of initiating an investigation to determine the truth or falsity of the claim, ...it appears that the Laboratory reacted defensively acting only to defeat the claim without any regard for whether or not it had merit."*

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She concluded: *"since the Employer failed to establish a rational basis for its action and in view of the statistical evidence of gender bias and evidence of disparate treatment the arbitrator finds that (the grievant's) ranking was the result of sex discrimination in violation of University policies."*

Regarding grievances two and three, which concerned unsatisfactory appraisals and the warning letter, Rader decided: *"In conclusion, throughout her entire work history, the only negative evaluations (the grievant) has ever received were those that immediately followed the filing of her first and then, second grievances. They are clearly aberrational and reflect the hostility and defensiveness of her supervisors towards her after she filed her grievance ... these evaluations ... were clearly retaliatory in violation of Laboratory policy. (The Grievant's) low ranking in FY 91 (9th peer group) and minimal salary increase and the warning letter that was issued were actions that flowed from those evaluations. The evaluations and these actions should be set aside."*

### **Final Award**

The arbitrator's order to rescind the letter of warning and the actions that flowed from it is binding upon the Director. The arbitrator's recommendations regarding correction of the discrimination are advisory to Director John Nuckolls. He may accept them, reject them, or modify them. If he accepts the arbitrator's recommendations, the grievant's rank for FY's 90-91 will be changed, she will receive approximately \$6000 in back pay, and all unsatisfactory appraisals will be removed from her files.

### **Discrimination Against other Women**

The arbitrator went beyond our arguments and did her own analysis of the Lab's ranking data. She concluded that (at least for FY's 89 and 90), the ranking and changes in ranking showed evidence of broader sex discrimination. The proportion of high ranked women was appreciably lower than high ranked men. The proportion of women who moved down in rank from '89 to '90 was appreciably more than for men. Rader wrote *"The arbitrator also strongly recommends that the Laboratory hire outside consultants to investigate the reasons for the disparity in rankings between male and female computer scientists in the Department and that the appropriate corrective measures be implemented."*

We will report upon the Director's actions in our next newsletter.

*Julia Giller, formerly of the Staff Relations Division, represented the Laboratory in this grievance. Richard White, chair of SPSE's grievance committee, represented the grievant. SPSE and the Laboratory shared arbitration costs. ■*

## Laboratory Ethics and Ranking

### Whistle Blower Policy

The Laboratory has recently adopted a whistle blower policy. While the goal of protecting whistle blowers is a laudable one, no policy can work in the context of current laboratory operations. If the name of the whistle blower is not withheld, the secret ranking process affords management ample opportunity to get even with a person perceived to have caused trouble or embarrassment. But withholding the name of the whistle blower also allows abuse; management could use the process to discredit an employee, all under the veil of secrecy. The employee would be denied a basic right of an accused person; that of facing his accuser. The easiest way to solve this dilemma is to open up the ranking process so that no covert retribution could take place. While highly desirable, this change does not appear to be in the offing. Therefore, no whistle blower policy appears workable at this time.

### Credit Attribution

Protection of whistle blowers should be viewed in the light of generally encouraging ethical behavior at the Laboratory. A specific need in this area is a clear Laboratory policy to have those performing work

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report its results, both in writing and in briefings. Clearly, not everyone involved in a team effort can expect to report on a portion of a project at every briefing. But reasonable procedures should be set up to give proper attribution in these situations. Such a policy would prevent abuse of professional employees by their managers. Anyone who has worked here has witnessed managers taking credit for work that they have contributed little or nothing to, beyond assigning it to an individual. This practice is clearly unethical, and every effort should be made to remedy the situation. ■

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## 1992 Executive Board Candidates

### Officers: (one year term)

President-elect: Richard White  
Secretary: Steve Muelder  
Treasurer: Bruce Kelly

### Executive Board: (two year term)

John Creighton John Hobson  
Paul Spencer Jorge Vernazza  
Calvin Wood

Ballots will be mailed to SPSE members by November 15th. Write ins are allowed. The completed ballots must be returned by December 1st. All members are encouraged to vote.