Sloan Sakai Yeung & Wong LLP

May 31, 2024

TIM YEUNG
916-258-8803
tyeung@sloansakai.com

Via E-mail

Mary Weiss
Deputy General Counsel
Public Employment Relations Board
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124

Re: ***International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO and its Local Union 4811 v. The Regents of the University of California***
PERB Unfair Practice Charge No. SF-CE-1462-H

Dear Ms. Weiss:

This letter constitutes the position statement of the Regents of the University of California ("University") in response to the above-referenced Second Amended Unfair Practice Charge ("Charge") filed on May 17, 2024, by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO and its Local Union 4811 ("UAW" or "Union").

UAW is currently engaged in an unlawful strike, repudiating the no-strike provisions in its collective bargaining agreements ("CBAs") with the University. The University is prosecuting an unfair practice charge against the Union and seeks to enjoin the Union's unlawful conduct.[1] The Union, however, continues to press its own pretextual and baseless unfair practice charge to justify its unlawful strike. It alleges UCLA, UC San Diego, and UC Irvine changed the terms of Union members' employment and retaliated against Union members when the campuses addressed Middle East-related protest encampments on their campuses. As detailed below, UAW's alleged unfair practices lack any factual support and no complaint should issue. Indeed, condoning UAW's conduct—its pretextual unfair practice charge and unlawful strike—would erode a core tenet of labor law: public entities' ability to obtain labor peace through collectively bargaining with employees. Particularly in today's climate, if UAW (and other unions) can use pretextual unfair practice charges to disregard no-strike clauses, the University—and every other public agency in California—would face constant strikes advancing *political and/or social viewpoints*.

[1] *See The Regents of the University of California v. UAW 4811*, PERB Case No. SF-CO-246-H.

To be clear, UAW members can continue to protest. Groups such as Students for Justice in Palestine remain active on many campuses, organizing protests and even engaging in acts of civil disobedience. HEERA, however, does not protect the conduct to which the Union points in its unfair practice charge and the charge should be dismissed.

UAW may argue that under *Golden Plains School District* (2002) PERB Decision No. 1489 ("*Golden Plains*"), PERB must accept the factual allegations of the charging party as true. While this is true as a general proposition, Golden *Plains* cannot be read to require the acceptance of charging party's facts in every situation. For example, Evidence Code section 702 generally requires that a witness have personal knowledge in order to testify about an event. *Golden Plains* has never been held to require the acceptance of a charging party's facts where those facts have no evidentiary support. Here, UAW has failed to provide a declaration that establishes the necessary foundation for its allegations. Accordingly, UAW's Charge should be dismissed on this ground alone.

I. The University Did Not Change The Terms And Conditions Of Employment In Clearing Protest Encampments

The core of the Charge focuses on UCLA, UC San Diego, and UC Irvine's responses to student encampments on their campuses.[2] The Union accuses these campuses of changing time, place and manner policies when these campuses dispersed protest encampments on their campuses. The Union's allegation is simply not true.

As an initial matter, in its CBAs with UAW units, the University expressly retained the right to set and change the policies the Union now accuses the University of altering. All of UAW's CBAs grant the University the authority to establish and enforce campus access rules. Specifically, each grant the University ". . . the right to establish and enforce reasonable access rules and regulations at each campus and medical center location."[3] Further, each CBA contains strong

[2] Notably, UAW's Charge is verified by its counsel who provides no basis for her knowledge and belief of the allegations in the Charge. While PERB must accept the factual allegations of the charging party as true under *Golden Plains School District* (2002) PERB Decision No. 1489, that case has never been held to require the acceptance of a charging party's facts where those facts have no evidentiary support.

[3] *See* BR Unit CBA, Art. 30; BX Unit CBA, Art. 20; PX CBA, Art, 29; RA Unit CBA, Art. 30, which are all available here: https://ucnet.universityofcalifornia.edu/resources/employment-policies-contracts/bargaining-units/.

management rights provisions that reiterate the University's authority to "establish, maintain, modify, and enforce standards of workplace performance, conduct, order and safety."[4]

Regardless, UCLA, UC San Diego and UC Irvine did not change the terms and conditions of UAW members' employment in dispersing protest encampments on their campuses. Each campus has policies that place reasonable restrictions on the use of campus property.[5] Among other things, these policies prohibit overnight camping, blocking entrances to buildings, and disrupting academic and other University business.[6] While each campus is also committed to freedom of expression and the exchange of ideas, the University places reasonable restrictions on when and where these exchanges can occur.

Each campus followed these policies in its handling of the protest encampments that form the basis of the Unions' Charge.

A. UCLA

On April 25, 2024, protesters set up an encampment on UCLA's campus protesting conditions in Gaza. Although the camp violated UCLA policy—which expressly prohibits camping—the University allowed the encampment to remain. In compliance with University of California systemwide guidance, the University sought to avoid the use of law enforcement, and instead sought to end the encampment amicably. To this end, members of UCLA's administrative team reached out to protesters in the encampment to explore constructive ways to end the

[4] *See* BR Unit CBA, Art. 13; BX Unit CBA, Art. 19; PX CBA, Art, 13; RA Unit CBA, Art. 13, which are all available here: https://ucnet.universityofcalifornia.edu/resources/employment-policies-contracts/bargaining-units/.

[5] *See* CLA Regulations on Activities, Registered Campus Organizations, and Use of Properties, p.2-7-8 (No person on University property or at official functions may: . . . camp or lodge, except in authorized facilities or locations), available at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://sole.ucla.edu/file/4efd2db6-2863-447e-acb3-ca109fa5b33c; UC San Diego Policy and Procedure Manual, Section 516-10.3, available at https://adminrecords.ucsd.edu/PPM/docs/516-10.3.html; UC Irvine Policy Manual, Section 900-10, available at https://ucipolicy.ellucid.com/documents/view/126/?security=99c724392bd4cab38658d7d966fcf9a01251d891.

[6] *Id.*

encampment.[7] UAW was not part of these communications, and as far as team members were aware, UAW had no involvement in the protest encampment.[8]

Over the next few days, the encampment grew to more than 500 protesters, some of whom were not even affiliated with UCLA. As it grew, the encampment disrupted normal access to some classes, which impeded UCLA's educational mission. On April 28, after violence began to breakout between opposing rallies, UCLA decide to remove the encampment, and began developing a security plan to safely do so. Two days later, UCLA gave the protesters written notice that the encampment was an unlawful assembly and that the University would remove it if the protesters did not disperse. But before the necessary police resources could be assembled to remove the encampment, which had become a focal point of conflict, assailants attacked the encampment that evening of April 30. Tragically, it took several hours before law enforcement could quell the violence. At the time the violence occurred, UCLA did not know if UAW members were involved in the clash.[9]

After the violence on April 30, UCLA took steps to disperse the encampment. On May 1, 2024, the University provided protesters a final opportunity to leave. Indeed, the UCLA Police notified campers on numerous occasions that they needed to disperse. Starting at approximately 5:50 pm, the police provided notice every 30 minutes, which it increased to every 15 minutes beginning at approximately 12:30 am on May 2. But, when more than 200 protesters refused the orders to leave, law enforcement removed the encampment that night, an action which resulted in arrests of protesters who disobeyed the numerous dispersal orders.

Contrary to the Union's allegations, in dispersing the encampment, UCLA followed its policies. When faced with an encampment that violated its time, place and manner policy, it first sought to de-escalate the situation by reaching out to the protesters. Unfortunately, violence broke out at the encampment during these de-escalation efforts.[10] Thereafter, UCLA moved to disband the encampment on May 1 and 2. It had become unsafe for protesters and other community members.

---

[7] *See* Declaration of Darnell Hunt in Support of the Regents of The University of California's Request for Injunctive Relief, Case No. SF-CO-246-H ("Hunt Decl.") ¶3

[8] *Id.*

[9] Hunt Decl. ¶4.

[10] The Union, without any evidence, suggests that the University somehow condoned this attack. Nothing could be further from the truth. The University and UCLA did not approve or condoned the violence that occurred on April 30, 2024; it is actively investigating and will subject those involved to appropriate discipline. UCLA's goal throughout—like all other campuses—has been to maintain peace so that community members with differing views can express their positions.

B. UC San Diego

Like UCLA, UC San Diego has time, place and manner polices that prohibit camping on campus. Despite these policies, protesters protesting the conflict in the Middle East set up encampments on campus on May 1, 2024.[11] Rather than immediately disperse the campers, UC San Diego followed University guidance and attempted to peacefully end the encampment. Between May 1 and May 6, the UC San Diego administration had numerous meetings with protest leaders.[12] During these meetings, the University understood that it was meeting with students to discuss their protest positions and ways UC San Diego could peacefully bring the encampments to a close. UC San Diego had no indication the protests were connected to any labor disputes (related to UAW or otherwise), or in any way connected to the terms and conditions of employment of UAW bargaining unit members. To the contrary, the only information that UC San Diego had was that the protests were organized by students.[13]

On May 6, 2024, after assessing the situation, UC San Diego administrators determined that the encampment continued to violate UCSD policies, and posed an increasing safety threat to community members. Additionally, participants denied access to fire marshal and health inspectors, established check points and limited free access to areas of campus. After providing individuals in the encampments with numerous notices that that they needed to disperse, UC San Diego took steps to disband the encampment.[14]

Like UCLA, UC San Diego complied with all University policies and guidelines in its handling of the encampment. It attempted to de-escalate the protest activities. When the protest became dangerous, it provided campus members ample notice to disperse, and then acted lawfully in disbanding the encampment. Contrary to the Union's assertions, UC San Diego in no way changed the terms and conditions of UAW members' employment with the University.

C. UC Irvine

On April 29, 2024—like at UCLA and UC San Diego—protesters set up an encampment on UC Irvine property related to protest activity surrounding the conflict in Gaza. Although the encampment violated UC Irvine's time, place, and manner policies, UC Irvine worked very hard

---

[11] Declaration of Dr. Alysson Satterlund In Support of the Regents of the University of California's Request for Injunctive Relief ("Satterlund Decl.") ¶3.

[12] *Id.*

[13] *Id.*

[14] *Id.* ¶7.

to negotiate with the protesters in the encampment to find a peaceful way to end the encampment.[15] These efforts included engaging in open discussions with student leaders of the demonstration.

During the meetings between UC Irvine and encampment protesters, UC Irvine understood that it was meeting with students to discuss their protest positions and ways UC Irvine could peacefully bring the encampment to a close. UC Irvine had no indication the protests were connected to any labor disputes (related to UAW or otherwise), or in any way connected to the terms and conditions of employment of UAW bargaining unit members. To the contrary, the only information that UC Irvine had was that the protests were organized by students.

UC Irvine negotiated with encampment members for two weeks, during which time the encampment continued to violate University policies. Then, on May 15, 2024, encampment participants dangerously escalated the situation by attempting to move and reestablish the encampment in a way that would block access to an important science lecture hall. UC Irvine determined that this new effort increased the safety threat to community members and posed a serious threat to the rights of students and faculty. After providing individuals in the encampment with notice that they needed to disperse, the campus took steps to disband the encampment. UC Irvine made decisions regarding the encampment based on their understanding of applicable policies and to protect the welfare and rights of students and the broader community.

Like at UCLA and UC San Diego, UC Irvine did not change the terms and conditions of employment in enforcing its policies. The encampment clearly violated University policy. Despite this, UC Irvine worked hard to resolve the encampment peacefully. But when the encampment became untenable, UC Irvine followed procedures in dispersing it.

II. The University Did Not Retaliate Against UAW Members

The Union also alleges that the University retaliated against UAW members for making employment demands during the protests in the encampments at UCLA, UC San Diego, and UCLA. These arguments lack any basis in fact.

As detailed above, UCLA, UC San Diego and UC Irvine met with student protesters about demands such as divestment from companies doing business with Israel, campus boycotts of certain products, and amnesty for campers in protest encampments. These campuses had no indication that UAW or any other labor organization was involved in the protests, or that they were in any way connected to the terms and conditions of employment of UAW bargaining unit

---

[15] *See* Declaration of Hal Stern in Support of The Regents of the University of California's Request for Injunctive Relief, Case No. SF-CO-246-H ("Stern Decl.") ¶3.

members. To the contrary, as far as these campuses were aware, the protests were organized by students seeking to advance a broader political and social issues.

Further, none of the campuses took action because a UAW member engaged in conduct protected by HEERA. If a UAW member participated in an encampment, that member was treated identically to other protesters. Indeed, the campuses had no knowledge whether a protester was or was not a Union member. For example, when each campus dispersed its encampments, some protesters were arrested and issued student discipline. To the extent UAW members were among the protesters who failed to disperse or otherwise violated University policy, they were treated in the same manner as all other protesters.

Finally, the Union alleges that the University disciplined UAW members for engaging in conduct protected by HEERA. Again, the facts simply do not support the Union's allegation. No UAW members have received employment discipline related to the protests. When the campuses dispersed the encampments, some protesters at each campus were arrested, and some students were issued discipline under the University student code of conduct. This is not employment discipline, and the University applied it to UAW members, as students of the University, in the same manner as any other student who violated campus policies during the protest. None of the University's actions in any way relate to the individual's membership in the UAW.

There is simply no connection between the University's actions related to the protest encampments and rights of UAW members protected by HEERA. For this reason, the Union's retaliation charges fail.

III. The Union's Other Alleged Unilateral Changes Are Permitted Under The Parties' CBAs

Perhaps recognizing that its core claims do not support an unfair practice charge, the Union also alleges that the University violated HEERA by making temporary changes to class schedules, class locations, and access to certain buildings. This argument also fails. The University has the right under the UAW CBAs to make these changes. Each CBA's management rights provision vests the University with the authority to determine or modify class scheduling, assign work locations and schedule hours of work, and make other changes to ensure the safety of campus. This is precisely what the campuses did in response to safety concerns surrounding encampments.

IV. The University Had A Right To Send Communications To Employees

Finally, the communications issued by the University related to UAW's unlawful strike did not violate HEERA or the Prohibition on Public Employers Deterring or Discouraging Union Membership ("PEDD") (Gov. Code, §3550 et. seq.). UAW alleges that the University violated Government Code 3553, subdivision (b), by failing to meet and confer prior to sending

communications regarding UAW's unlawful strike. Government Code section 3553, subdivision (b), provides that:

> If a public employer chooses to disseminate mass communications to public employees or applicants to be public employees concerning public employees' rights to join or support an employee organization, or to refrain from joining or supporting an employee organization, it shall meet and confer with the exclusive representative concerning the content of the mass communication. (Gov. Code, §3553, subd. (b).)

This statutory language was enacted in direct response to the United States Supreme Court's decision in *Janus v. American Federation of State, County, & Municipal Employees, Council 31*(2018) 585 U.S. 878, 138 S. Ct. 2448 ("*Janus*"). In *Janus*, the Supreme Court held that the First Amendment barred public sector unions from collecting dues and fees from nonconsenting employees. PERB has held that the PEDD "explicitly aims to protect employee choice as to whether or not to become a union member, unconstrained by employer influence." (*Regents of the University of California* (2022) PERB Decision No. 2835-H, p. 15, citing *Regents of the University of California* (2021) PERB Decision No. 2755-H, p. 28.) As stated in *Regents of the University of California* (2021) PERB Decision No. 2755-H:

> [I]n enacting section 3550 the Legislature intended to prohibit employer influence over certain categories of employee decisions surrounding union contributions and union membership. As explained below, "deter or discourage" means to tend to influence an employee's free choice regarding whether or not to (1) authorize union representation, (2) become or remain a union member, or (3) commence or continue paying union dues or fees.

(*Regents of the University of California*, *supra*, PERB Decision No. 2755-H at 21.)

In determining whether a communication concerns public employees' rights to join or support an employee organization, PERB has held that mass communications regarding the general subject matter of union membership or dues concern these rights. (*Regents of the University of California*, *supra*, PERB Decision No. 2835-H at pp. 13-17.) Here, however, the communications at issue relate to the unlawful strike called by UAW. The University did not send any mass communication "concerning public employees' rights to join or support" UAW. There is no indication that the Legislature intended the PEDD to apply to the types of communications here, which do not relate to employees' decision to authorize, join, or contribute to unions. Moreover, HEERA expressly provides that:

> The expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under any provision of this chapter, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization. (Gov. Code, §3571.3)

This provision in HEERA further demonstrates that the PEDD cannot be read to the communications at issue here. Thus, the communications identified by UAW do not fall under the PEDD and the University was not required to meet and confer with UAW prior to disseminating them.

Sincerely,

Tim Yeung

Declaration

I, the undersigned, certify and declare that I have read the position statement of The Regents of the University of California responding the Second Amended Unfair Practice Charge, No. SF-CE-1462-H, filed on or about May 17, 2024, by UAW.

I am the Associate Vice President, Systemwide Employee and Labor Relations, at the University of California and am authorized to make this declaration. I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 31st day of May 2024, at Oakland, California.

DocuSigned by:
Melissa Matella
803191E0AF71486...

Melissa Matella
Associate Vice President
Systemwide Employee and Labor Relations
University of California

PROOF OF SERVICE

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

On May 31, 2024, I served the following document(s):

UC REGENTS RESPONSE TO SECOND AMENDED UNFAIR PRACTICE CHARGE (SF-CE-1462-H)

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

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

SERVICE LIST

Margo Feinberg Amy M. Cu Daniel E. Curry Schwartz, Steinsapir, Dohrmann & Sommers, LLP 6300 Wilshire Blvd., Suite 2000 Los Angeles, CA 90048 *margo@ssdslaw.com* *amc@ssdslaw.com* *eah@ssdslaw.com* *dec@ssdslaw.com* *lz@ssdslaw.com* *Attorneys for UAW*	

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 31, 2024, at Sacramento, California.

By: */s/ Rochelle Redmayne*
Rochelle Redmayne