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STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

# UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 05/15/2024

**INSTRUCTIONS:** File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES  If so, Case No \_\_\_\_\_ NO

1. CHARGING PARTY: EMPLOYEE  EMPLOYEE ORGANIZATION  EMPLOYER  PUBLIC<sup>1</sup>

- a. Full name: University Council-American Federation of Teachers
- b. Mailing Address: 1999 Harrison Street, Suite 2700, Oakland, CA 94612
- c. Telephone number:
- d. Name and title of agent to contact: Jennifer Keating, Attorney E-mail Address: jkeating@leonardcarder.com  
Telephone number: (510) 272-0169 Fax No.:
- e. Bargaining Unit(s) involved:

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION  EMPLOYER

- a. Full name: Regents of the University of California
- b. Mailing Address: 1111 Franklin St., 8th Floor Oakland, CA 94607-5200
- c. Telephone number:
- d. Name and title of agent to contact: Allison Woodall E-mail Address:  
Telephone number: Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name:
- b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

- a. Full name:
- b. Mailing Address:
- c. Agent:

## 5. GRIEVANCE PROCEDURE

<sup>1</sup>An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes  No  Unknown

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## 6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code., § 98160 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:  
HEERA, Gov. Code Sections 3571(a), (b) and (c)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge:***)

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

See attachment

## DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

Jennifer Keating  
(Type or Print Name)

/s/ Jennifer Keating  
(Signature)

05/15/2024  
Date



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STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD  
**UNFAIR PRACTICE CHARGE**

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IS THIS AN AMENDED CHARGE? YES  If so, Case No. NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION  EMPLOYER PUBLIC<sup>1</sup>

a. Full name: University Council-American Federation of Teachers  
 b. Mailing address: Jennifer Keating, Leonard Carder, LLP, 1999 Harrison Street, Suite 2700, Oakland, CA 94612  
 c. Telephone number: (510) 272-0169  
 d. Name and title of person filing charge: Jennifer Keating, Attorney E-mail Address: jkeating@leonardcarder.com  
 Telephone number: (510) 272-0169  
 e. Bargaining unit(s) involved: Unit 17 and Unit 18

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION  EMPLOYER

a. Full name: Regents of the University of California  
 b. Mailing address: Allison Woodall, UC General Counsel Office, 1111 Franklin St., 8th Fl, Oakland, CA 94607-5200  
 c. Telephone number: (510) 987-0933  
 d. Name and title of agent to contact: Allison Woodall, Attorney E-mail Address: allison.woodall@ucop.edu  
 Telephone number: (510) 987-0933

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:  
 b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:  
 b. Mailing address:  
 c. Agent:

<sup>1</sup> An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

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Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes  No  Unknown

6. STATEMENT OF CHARGE

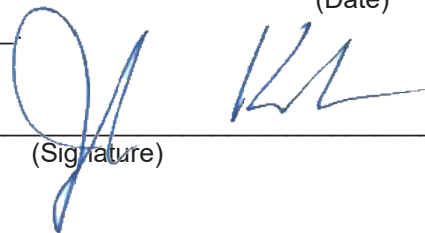
- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
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  - Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
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  - One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), and Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.)
  - The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Supervisory Employees of the Los Angeles County Metropolitan Authority (Pub. Util. Code, § 99560 et seq.)
  - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
  - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: HEERA, Gov. Code Sections 3571(a), (b) and (c) Unknown
- c. For MMBA, Trial Court and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):**
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)* See attached   
Please see attached

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 5/15/2024 \_\_\_\_\_  
(Date)

at Oakland, CA  
\_\_\_\_\_  
(City and State)

Jennifer Keating, Attorney  
\_\_\_\_\_  
(Type or Print Name and Title, if any)

  
\_\_\_\_\_  
(Signature)

Mailing Address: 1999 Harrison St., Suite 2700, Oakland, CA 94612

E-Mail Address: [jkeating@leonardcarder.com](mailto:jkeating@leonardcarder.com)

Telephone Number: (510) 272-0169

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,  
State of California. I am over the age of 18 years. The name and address of my  
Residence or business is Leonard Carder, LLP; 1999 Harrison St., Suite 2700,  
Oakland, CA 94612

On 5/15/2024, I served the Unfair Practice Charge  
(Date) (Description of document(s))

\_\_\_\_\_ in Case No. \_\_\_\_\_  
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- 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).)

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Allison Woodall, Attny  
UC General Counsel Office  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200  
email: allison.woodall@ucop.edu

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 5/15/2024,  
(Date)  
at Oakland CA.  
(City) (State)

Lorelei Badar

(Type or print name)



(Signature)

## ATTACHMENT TO UNFAIR PRACTICE CHARGE

### I. INTRODUCTION

Charging Party University Council – American Federation of Teachers (“UC-AFT” or “the Union”) brings this charge against Respondent Regents of the University of California (“UC” or “the University”) for unilaterally changing terms and conditions of employment for employees represented by UC-AFT and interfering with UC-AFT members’ exercise of protected rights in violation of HEERA, Gov. Code Sections 3571(a), (b) and (c).

### II. FACTUAL BACKGROUND

UC-AFT represents approximately 6,500 employees in two system-wide bargaining units at the University of California campuses – Unit 17 includes all librarians and Unit 18 consists of non-tenure-track faculty members known as non-Senate Faculty (“NSF”) or Lecturers. The Memorandum of Understanding (“MOU”) between the University and UC-AFT for Unit 17 expires on May 31, 2024 and the parties are in negotiations for a successor agreement. The MOU between the University and UC-AFT for Unit 18 is in effect through June 30, 2026.

Article 9 of the Unit 17 MOU provides in part:

The University agrees that it has the responsibility and will make reasonable efforts to provide, maintain, and supervise working conditions and equipment and will comply with appropriate and applicable federal, state, and local statutes and regulations regarding health and safety conditions.<sup>1</sup>

The Unit 18 MOU provides in part:

In compliance with campus health and safety policies and procedures, the University shall make reasonable attempts to maintain safe conditions and required safety equipment to carry out assigned duties.<sup>2</sup>

#### A. University Policy Regarding De-Escalation and Limited Use of Force in Response to Campus Protests

Following high-profile incidents in 2011 at UC Berkeley and UC Davis, where video of campus police pepper-spraying peaceful protesters went viral, the University commissioned a review and report to identify best practices for responding to campus protests and civil disobedience. The resulting report was “premised on the belief that free expression, robust discourse, and vigorous debate over ideas and principles are essential to the mission of our University” and emphasized the importance of engaging in dialogue and de-escalation and

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<sup>1</sup> A true and correct copy of the Article 9 of the Unit 17 MOU is attached as **Exhibit 1** hereto.

<sup>2</sup> A true and correct copy of the Health and Safety provision of the Unit 18 MOU is attached as **Exhibit 2** hereto.

limiting the use of force.<sup>3</sup> The University and its campuses implemented the recommendations contained in the report in 2013 to “ensure that we have a viable and fair set of best practices that preserve and promote the rights and responsibilities of free speech on the campuses, respond fairly and reasonably to civil disobedience when it occurs, and also provide safety and security to all the students, faculty, staff, and visitors on our campuses.”<sup>4</sup>

In 2021, “in a systemwide effort to reimagine our approach to campus security and security” in light of “the hard truth that systems of policing and law enforcement have not safeguarded people equally,” the University developed a “UC Community Safety Plan” with input from University stakeholders and external experts.<sup>5</sup> One of the overarching guidelines set out in the Plan states in part: “The University will reinforce existing guidelines that minimize police presence at protests, follow de-escalation methods in the event of violence and seek non-urgent mutual aid first from UC campuses before calling outside law enforcement agencies.”<sup>6</sup>

## **B. The University’s Repudiation of Its Safety Policy Regarding Campus Protests**

On about April 25, 2024, UCLA students, employees and community members created an encampment on Royce Quad to protest the violence in Palestine and make demands on the University. Among these were a number of demands related to the terms and conditions of employment for University employees, including: creating an employee personal conscious right to opt out of participation in military-funded research as part of employment; opposing the discrimination and hostile work environment directed towards Palestinian, Muslim, and pro-Palestine Jewish employees and students; requesting the disclosure and divestment of University funds from Israel’s war effort; and opposing the University’s disparate negative treatment of employee pro-Palestine speech in the workplace.

A number of UCLA faculty and staff, including members of Unit 17 and Unit 18, went to the encampment for the purpose of supporting their students, assisting them in maintaining a peaceful protest and/or joining them in their demands of the University. UCLA initially appeared supportive of the rights of students and employees to protest peacefully.

Between April 25 and April 30, 2024, UCLA students, employees and community members were harassed and attacked by anti-Palestinian counter-protesters. On about April 28, 2024, UCLA permitted a group of counter-protesters, many of whom were not members of the University community, to erect a jumbotron next to the encampment that transmitted images and sounds of rape, violence and crying children and blasted loud music night and day. UCLA did little to de-escalate the situation, aside from erecting metal barricades around the encampment

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<sup>3</sup> A true and correct copy of the report entitled “Response to Protests on UC Campuses” issued on September 13, 2012 by Christopher F. Edley, Jr. and Charles F. Robinson is attached as **Exhibit 3** hereto.

<sup>4</sup> A true and correct copy of the report on the implementation of the Robinson/Edley Report recommendations, issued on February 14, 2014, is attached as **Exhibit 4** hereto.

<sup>5</sup> A true and correct copy of the 2021 “UC Community Safety Plan” is attached as **Exhibit 5** hereto.

<sup>6</sup> Exhibit 3 at p. 4.

apparently intended to protect students and employees from the counter-protesters' attempts to breach the encampment.

On about April 30, 2024, UCLA Chancellor Gene Block reversed course and declared the encampment "unauthorized."<sup>7</sup> UC President Michael Drake issued a similar statement on April 30, describing the encampment as "unlawful."<sup>8</sup>

That night, encouraged by the effective withdrawal of University protection, a group of counter-protesters violently attacked the students and employees at the encampment with wooden planks, metal pipes, chemical irritants and fireworks, causing serious injuries. For hours, the University failed to respond to this violent assault and protect students and employees. Campus police and private security personnel hired by UCLA either left the scene or stood by and watched the attack while doing nothing to intervene. To the Union's knowledge, not a single person has yet been held accountable for the attack on the encampment.

The following night, after widespread recognition that UCLA had failed to protect students and employees from violent attacks, the University summoned multiple police forces to forcibly evict the protesters from the encampment. Police in riot gear warned students and employees that they risked serious injury if they failed to disperse, then used flash bang grenades, teargas, batons and rubber bullets against protesters and ultimately arrested more than 200 people, including members of Unit 17 and Unit 18. Police clearly used excessive force in dispersing and arresting protesters and seriously injured multiple people.

Since the forcible clearing of the encampment, there has been a significant law enforcement presence on campus. On May 5, Chancellor Block announced that he had created a new "Office of Campus Safety," with no explanation regarding how that office would function.<sup>9</sup>

On May 6, police in riot gear dismantled a similar encampment on the UCSD campus, using batons and pepper spray against protesters with snipers stationed on rooftops.

### **C. The University Unilaterally Required Faculty to Move to Online Instruction and Denied Some Members Access to their Offices**

UCLA unilaterally cancelled all classes scheduled on May 1, 2024 and announced that all classes scheduled for May 2 and 3 were required to switch to online remote instruction. On May 6, UCLA again unilaterally announced that classes would remain remote through May 10 and that Royce Hall and Powell Library would remain closed. Employees with offices in Moore Hall were "encouraged to work remotely wherever possible" and Unit 18 members were prevented from accessing their offices if they did not have a faculty ID and a key to the building. The

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<sup>7</sup> A true and correct copy of Chancellor Block's April 30, 2024 statement is attached as **Exhibit 6** hereto.

<sup>8</sup> A true and correct copy of President Drake's April 30, 2024 statement is attached as **Exhibit 7** hereto.

<sup>9</sup> A true and correct copy of Chancellor Block's May 5, 2024 statement is attached as **Exhibit 8** hereto.



University announced and implemented these changes without notice to the Union or opportunity to bargain over the changes and/or their effects.

### III. DISCUSSION

An employer commits a unilateral change when it (1) changes or deviates from the status quo; (2) the change or deviation concerns a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate notice of the proposed change and bargaining in good faith over the decision. (*Regents of the University of California* (2023) PERB Decision No. 2852-H, p. 9.)

A charging party can establish that an employer changed or deviated from the status quo by showing any of the following: (1) deviation from a written agreement or written policy; (2) a change in established past practice; or (3) a newly created policy or application or enforcement of existing policy in a new way. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9) PERB has held that a single contract breach may constitute a policy change where either the "contract breach changes a policy or employment term applicable to future situations," or "the employer acts unilaterally based on an incorrect legal interpretation or insistence on a non-existent legal right that could be relevant to future disputes." (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 8.)

Here, the University committed unlawful unilateral changes to Unit 17 and Unit 18 members' terms and conditions of employment by repudiating its obligation to maintain safe working conditions, disregarding its stated policies on free speech and protest on campus, and unilaterally requiring bargaining unit members to switch to remote online work.

#### A. The University Repudiated its Obligation to Maintain Safe Working Conditions

Pursuant to its collective bargaining agreements with Unit 17 and Unit 18, the University has an obligation to make reasonable efforts to maintain safe conditions. This obligation is clearly within the scope of representation, both as a general matter of workplace safety and as a term and condition of employment that has been agreed to by the parties. (See, e.g., *City of Santa Maria* (2020) PERB Decision No. 2736-M, p. 23 ["workplace safety is firmly within the scope of representation"], citing *International Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd.* (2011) 51 Cal.4<sup>th</sup> 259, 275.)

The University's stated policies and practices for maintaining a safe environment for students and employees in the event of protest and civil disobedience call for minimal police presence and de-escalation. The University altered this status quo by permitting anti-Palestinian counter-protesters to attack the UCLA encampment and failing to take any steps to protect protesters and then intentionally escalating the potential for violence by calling on law enforcement to forcibly evict protesters from the encampment. The fact that the University failed to use de-escalation methods and called in riot police to clear the encampment at UCSD a few days later demonstrates that this was not an isolated breach of the University's policy, but is a policy change of continuing effect, thus constituting an unlawful unilateral change.

## **B. The University Disregarded its Stated Policies on Employees' Free Speech Rights**

Under existing University policy, employees have the right to engage in peaceful protest at the worksite and the University is obligated to respond to non-violent employee protests with de-escalation and minimal outside police presence. The University is also barred by its own policies from “prohibiting speech or other forms of expression [by students, faculty, or staff] based on the viewpoint of the speaker.”<sup>10</sup> These policies fall within the scope of representation because they pertain to member rights protected by HEERA.

By inviting law enforcement onto the UCLA campus to violently evict pro-Palestinian protesters only a day after anti-Palestinian protesters were permitted to attack the encampment with impunity, the University favored anti-Palestinian speech while attempting to forcibly prohibit pro-Palestinian speech, violating its own free speech policies. The University's use of riot police to violently evict protesters at the UCLA and UCSD campuses also clearly violated the University's stated policy requiring that it “minimize police presence at protests, follow de-escalation methods in the event of violence and seek non-urgent mutual aid first from UC campuses before calling outside law enforcement agencies.”

The University's choice to disregard its policies regarding employee free speech and protest on campus has a generalized effect on bargaining unit members' rights to engage in concerted activity and represents an unlawful unilateral change in members' terms and conditions of employment. As a result of the University's unilateral change in policy, multiple bargaining unit members were forcibly arrested for participating in non-violent protest.

## **C. The University Unilaterally Required Bargaining Unit Members to Switch to Remote Online Work**

The University committed an unlawful unilateral change when it announced that all classes were required to switch to online remote instruction and barring bargaining unit members from accessing their offices if they did not have a faculty ID and a key to the building. This change was clearly within the scope of representation, as it affected employee schedules, hours and workload.

## **IV. CONCLUSION**

The University must be ordered to remedy, and cease and desist from, all of its unlawful conduct. The University must restore the status quo, rescind its unilateral changes, and bargain in good faith with UC-AFT until agreement or impasse. The University should make whole all affected employees and be required to give electronic and physical notice to all members of Unit 17 and Unit 18.

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<sup>10</sup> A true and correct copy of the October 2, 2023 Announcement regarding “Rights and Responsibilities Related to Free Expression” is attached as **Exhibit 9** hereto.