

**PUBLIC EMPLOYMENT RELATIONS BOARD**

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September 12, 2013

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428 J Street, Suite 400  
Sacramento, CA 95814

Re: *AFSCME Local 3299 v. Regents of the University of California*  
Unfair Practice Charge No. SF-CE-1033-H

Dear Parties:

The Office of the General Counsel has issued the enclosed COMPLAINT in the above-entitled matter. The Respondent is required to file an **ANSWER** within twenty (20) calendar days from the date of service of the COMPLAINT, pursuant to PERB Regulation 32644.<sup>1</sup> The required contents of the **ANSWER** are described in PERB Regulation 32644(b). If you have not filed a Notice of Appearance form, one should be completed and returned with your **ANSWER**.

An informal settlement conference will be scheduled shortly. Please direct all inquiries, filings and correspondence to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Z. Davis".

Laura Z. Davis  
Senior Regional Attorney

Enclosure

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<sup>1</sup> PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95811-4124, and the text is available at [www.perb.ca.gov](http://www.perb.ca.gov).

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



AFSCME LOCAL 3299,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Respondent.

Case No. SF-CE-1033-H

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of California Government Code section 3571, the General Counsel of the Public Employment Relations Board (PERB), pursuant to California Government Code sections 3563(h) and 3563.2 and California Code of Regulations, title 8, section 32640, issues this COMPLAINT on behalf of PERB and ALLEGES:

1. Charging Party is an exclusive representative within the meaning of Government Code section 3562(i) of Respondent's EX and SX units, both of which are appropriate units of employees.
2. Respondent is an employer within the meaning of Government Code section 3562(g).
3. From approximately June 2012 through April 2013, Charging Party and Respondent were negotiating over a successor collective bargaining agreement governing Respondent's Patient Care Technical unit, including by participating in and completing statutory impasse procedures.
4. On or about April 11 or April 12, 2013, Respondent, acting through its agent, Nadine Fishel, stated that both Respondent and Charging Party had negotiated in good faith.

5. On or about April 26, 2013, Respondent, acting through its agent, Margarita Baggett, sent an e-mail message to all employees at UC San Diego Medical Center (UCSD) stating, in part, "State law requires that strikes be considered only as a last resort after all other options have been exhausted. UC does not believe that AFSCME leadership has, in good faith, explored all options." This statement contradicted Respondent's position as described in paragraph 4.

6. In or around May 2013, Respondent posted a document on its website, which stated, in part: "UC also believes AFSCME has not, in good faith, explored all options throughout the bargaining process." This statement contradicted Respondent's position as described in paragraph 4.

7. On or about May 10, 2013, Respondent, acting through its agent, Peter Chester, sent a letter to AFSCME president Kathryn Lybarger regarding the participation of AFSCME-represented employees in a sympathy strike. The letter misrepresented the law and threatened discipline against employees who engaged in a sympathy strike.

8. On or about May 14, 2013, Respondent posted a bulletin at UC Davis Medical Center (UC Davis) stating, in part: "If an employee fails to report to work on one or more days between May 20 and 23, their absence will be considered unauthorized, they will not be paid, and they may be subject to disciplinary action."

9. On the following occasions, Respondent sent written inquiries to bargaining unit employees regarding their participation in the strike, without assuring employees that their responses were voluntary; without assuring employees that no reprisals would be taken against them for their responses; without explaining fully the purposes of the questioning; and/or without refraining from creating a coercive environment:

- a. In or around May 2013, Respondent sent a form to employees in the CT Section of the Radiology department at UCLA Medical Center (UCLA);
- b. On or about May 13, 2013, Respondent, acting through its agent, Kimberly Ablog-Shapiro, sent an e-mail message to employees in the ER Registration Department at UC Davis;
- c. On or about May 16, 2013, Respondent, acting through its agent, Rosalie Kopp, sent an e-mail message to employees in the Emergency Registration Department at UC Irvine Medical Center (UCI);
- d. On or about May 15, 2013, Respondent, acting through its agent, Margie Wilson, sent an e-mail message to employees in the Ophthalmology Department at UCI;
- e. On or about May 15, 2013, Respondent, acting through its agent, Mary Horan, sent an e-mail message to employees in the Nursing Float Pool at UCLA;
- f. On or about May 15, 2013, Respondent, acting through its agent, Florencio De Dios, sent a letter to employees at UCLA;
- g. On or about May 13, 2013, Respondent, acting through its agent, Lisa Braca, sent a text message to employees in the Outpatient Registration Department at UCSD;

10. On the following occasions, Respondent verbally questioned bargaining unit employees regarding their participation in a threatened strike, without assuring employees that their responses were voluntary; without assuring employees that no reprisals would be taken against them for their responses; without explaining fully the purposes of the questioning; and/or without refraining from creating a coercive environment:

- a. On or about May 13, 2013, Respondent, acting through its agent, Susan Vega, questioned employees in the Radiology Department at UC San Francisco Medical Center (UCSF);
- b. On or about May 13, 2013, Respondent, acting through its agents, Michelle Deng and Kethen So, questioned pharmacy technicians at UCSF;
- c. On or about May 14, 2013, Respondent, acting through its agent, Liza Shapiro, questioned employees in the Admissions Department at UCSF;
- d. On or about May 14, 2013, Respondent, acting through its agent, Julie Koppel, questioned employees in the Admissions Department at UCSF;
- e. On or about May 16, 2013, Respondent, acting through its agent, Laura Jacobson, questioned employees in the Emergency Department at UCSF;
- f. On or about May 15, 2013, Respondent, acting through its agent, Ellen Bristol, questioned employees at UCI;
- g. On or about April 4, 2013, Respondent, acting through its agent, Patricia Peyreya questioned employees at UCI;
- h. On or about May 15, 2013, Respondent, acting through its agent, Deborah Lorick, questioned employees at UCLA;
- i. On or about May 15, 2013, Respondent, acting through its agent, Deborah Miller, questioned employees in the Surgery Department at UCLA;
- j. On or about May 17, 2013, Respondent, acting through its agent, Maria Patina, questioned employees at the UCLA School of Dentistry;
- k. On or about May 15, 2013, Respondent, acting through its agent, Shannon Ruiz, questioned employees in the Ims/Geri Suite at UCLA;

- l. On or about May 20, 2013, Respondent, acting through its agent, Sandra Delgato, questioned employees at UCLA;
- m. In or around May 2013, Respondent, acting through its agent, Kia Winlock, questioned employees at UCLA;
- n. In or around May 2013, Respondent, acting through its agent, Sharon Lanzetta, questioned AFSCME-represented employee Ofelia De Leon at UCLA;
- o. On or about May 15, 2013, Respondent, acting through its agent, Norvie Gobaton, questioned employees at UCSD;
- p. On or about May 13, 2013, Respondent, acting through its agent, Elaine Gregory, questioned employees in the Lewis Family Medicine Department at UCSD;
- q. On or about May 14, 2013, Respondent, acting through its agent, Mercedes Ramil, questioned employees in the Patient Access Department at UCSD;
- r. On or about May 13, 2013, Respondent, acting through its agent, Angela Beach, questioned employees in the Infusion Center and MCC Multi-Specialty Clinic at UCSD;

11. Respondent threatened adverse action against employees for participating in a strike on the following occasions:

- a. On or about May 15, 2013, Respondent, acting through its agent, Demetria Westmoreland, told bargaining unit employees at UC Davis that she would write down the names of the strikers so that she would know whose employment should be terminated;

- b. On or about May 15, 2013, Respondent, acting through its agent, Cindy Allen, stated that bargaining unit employees at UCSD would receive an “occurrence” if they participated in the strike;
- c. On or about May 15, 2013, Respondent, acting through its agent, Hillal Latif, told AFSCME-represented employees Craig Bruno, Chris Terry, and Meg Milbanks that absences during the strike would be considered “unexcused.”

12. On or about April 21, 2013, Respondent, acting through its agent, Tom Bell, asked AFSCME-represented employee Valerie Seng whether she intended to vote to authorize a strike, and if she knew how others were going to vote.

13. On or about May 14, 2013, Respondent, acting through its agent, Julie Koppel, told AFSCME-represented employee Jose Quioc that he would need a doctor’s note if he went on strike.

14. In or around May 2013, Respondent, acting through its agent, Sherri Pena, told AFSCME-represented employee and AFSCME vice president Tim Thrush that he was “causing conflict” by telling employees that they did not have to answer questions regarding participation in the strike. Pena also told Thrush that management would be documenting employees who went on strike and counting their absences as “unauthorized.”

15. On or about May 16, 2013 and May 20, 2013 Respondent, acting through its agent, Cheryl Boney, sent an e-mail message to bargaining unit employees in Student Health and Counseling Services at UC Davis stating that employees who were absent during the strike could be subject to disciplinary action.

16. On or about May 21, 2013, Respondent, acting through its agent, Gary Rowley, spoke to AFSCME-represented employee Michael Insalaco regarding Insalaco’s participation

in the strike. Rowley stated he would send his manager an e-mail message about Insalaco's behavior.

17. On or about May 17, 2013, Respondent, acting through its agent, Vina Chin, stated in the presence of AFSCME-represented employees that employees had to notify management individually if they intended to strike, and that employees who participated in the strike would be disciplined.

18. By each of the acts and conduct described in paragraphs 5 through 17, Respondent interfered with employee rights guaranteed by the Higher Education Employer-Employee Relations Act (HEERA) in violation of Government Code section 3571(a).

19. This conduct also denied Charging Party its right to represent employees in violation of Government Code section 3571(b).

20. Dinora Jimenez is an employee within the meaning of Government Code section 3562(e).

21. On or about May 15, 2013, Jimenez exercised rights guaranteed by the HEERA by informing her supervisor, Deborah Lorick, that she intended to participate in the strike.

22. On or about May 16, 2013, Respondent, acting through its agent, Lorick, took adverse action against Jimenez by giving her a verbal warning regarding attendance.

23. Respondent took the actions described in paragraph 22 because of the employee's activities described in paragraph 21, and thus violated Government Code section 3571(a).

24. By the acts and conduct described in paragraph 23, Respondent interfered with employee rights guaranteed by the HEERA in violation of Government Code section 3571(a).

25. This conduct also denied Charging Party its right to represent employees in violation of Government Code section 3571(b).



26. Taleaha Owens is an employee within the meaning of Government Code section 3562(e).

27. On or about May 21 and May 22, 2013, Owens exercised rights guaranteed by the HEERA by participating in the strike. Alternatively, by her absence on the days of the strike, Owens was perceived to be exercising rights guaranteed by the HEERA.

28. On or about May 16, 2013, Respondent, acting through its agent, Kia Winlock, took adverse action against Owens by marking her attendance records as “no call/no show” for the days of the strike.

29. Respondent took the actions described in paragraph 28 because of the employee’s activities described in paragraph 27, and thus violated Government Code section 3571(a).

30. By the acts and conduct described in paragraph 29, Respondent interfered with employee rights guaranteed by the HEERA in violation of Government Code section 3571(a).

31. This conduct also denied Charging Party its right to represent employees in violation of Government Code section 3571(b).

32. Sammy Sabillo, Rafeal Liwag, Denis Avila Sosa, Candace Jones, Solomon Okevu-Ojo, Frank Burgin, Ellis Arkliss, Eva Dominguez, Ofelia De Leon, Edward Mendez, and Brice Viray are employees within the meaning of Government Code section 3562(e).

33. On or about May 21 and May 22, 2013, the employees listed in paragraph 32 exercised rights guaranteed by the HEERA by participating in the strike. Alternatively, by their absences on the days of the strike, the employees were perceived to be exercising rights guaranteed by the HEERA.

34. On or about May 28, 2013, Respondent, acting through its agent, Sharon Lanzetta, took adverse action against the employees listed in paragraph 32 by marking their attendance records as “no call/no show” for the days of the strike.

35. Respondent took the actions described in paragraph 34 because of the employees' activities described in paragraph 33, and thus violated Government Code section 3571(a).

36. By the acts and conduct described in paragraph 35, Respondent interfered with employee rights guaranteed by the HEERA in violation of Government Code section 3571(a).

37. This conduct also denied Charging Party its right to represent employees in violation of Government Code section 3571(b).

38. On May 23, 2013, Respondent permitted four licensed vocational nurses in the Ims/Geri Suite at UCLA who did not participated in the strike to take the day off. In doing so, Respondent violated its own policy. Respondent thus treated more favorably a group of employees who did not engage in protected activity.

39. By the acts and conduct described in paragraph 38, Respondent unlawfully discriminated against bargaining unit members represented by Charging Party in violation of Government Code section 3571(a).

40. This conduct also denied Charging Party its right to represent employees in violation of Government Code section 3543.5(b).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: September 12, 2013

M. SUZANNE MURPHY  
General Counsel

By   
\_\_\_\_\_  
Joseph Eckhart  
Regional Attorney

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1330 Broadway, Suite 1532, Oakland, CA 94612-2514.

On September 12, 2013, I served the Letter regarding Case No. SF-CE-1033-H on the parties listed below by

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.

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Arthur Krantz, Attorney  
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Oakland, CA 94612-2513

Timothy G. Yeung, Partner  
Erich Shiners, Attorney  
Renne Sloan Holtzman Sakai LLP  
428 J Street, Suite 400  
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 12, 2013, at Oakland, California.

C.E. Johnson  
\_\_\_\_\_  
(Type or print name)

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