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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

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Oakland, CA 94607

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VIA E-FILE

July 16, 2024

Andrew Z. Gordon, Regional Attorney
PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
1515 Clay Street, Suite 2206
Oakland, California 94612-1403

RE: *UCLA Faculty Association v. The Regents of the University of California*
Unfair Practice Charge No. LA-CE-1420-H

Dear Mr. Gordon,

This letter constitutes the position statement of the Regents of the University of California (the "University") in response to the above-referenced Unfair Practice Charge filed on June 3, 2024 by the UCLA Faculty Association (the "Association").

Since the events in Israel and Gaza on and after October 7, 2023, the University has experienced passionate concern regarding the war in the Middle East across its campuses. The University supports free speech and lawful protests. At the same time, however, the University must ensure that all of its community members can safely continue to study, work, and exercise their rights, which is why it has in place policies that regulate the time, place, and manner for protest activities on its campuses. The University has allowed—and continues to allow—lawful protesting activities surrounding the conflict in the Middle East. But when protests violate University policy or threaten the safety and security of others, the University has taken lawful action to

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end impermissible and unlawful behavior.

That is precisely what occurred at UCLA, where administrators took steps to disperse an encampment protesting conditions in Gaza. The Association alleges that through its actions, the University interfered with protected activity and retaliated against its members for engaging in protected activity. But as detailed below, the Association lacks standing to file this charge, and in any case its allegations are wholly without merit. The Association's charge should be dismissed.

Factual Background

1. The UCLA Faculty Association

The Association is a voluntary employee organization representing a small number of UCLA Senate faculty members. Out of approximately 3,800 members of the UCLA Academic Senate, the Association reports that around 150—slightly less than four percent—are members of the Association. The Association has not been certified as the exclusive representative of any bargaining unit and is accordingly not a "Certified organization" within the meaning of Government Code section 3562, subdivision (c).

The Association is also distinct from, and has no affiliation with, the Academic Senate, which, pursuant to the Bylaws of the University's Board of Regents,[1] is the formally recognized body for faculty participation in the shared governance of the University. The Association has no legal authority to speak on behalf of either the Academic Senate or the UCLA faculty as a whole.

2. The UCLA Gaza Encampment

Like all University campuses, UCLA maintains time, place, and manner ("TPM") regulations governing expressive activities

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[1] See Board of Regents Bylaw 40, Academic Senate, available at https://regents.universityofcalifornia.edu/governance/bylaws/bl40.html.

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and other uses of its properties.[2] Among other restrictions, these regulations provide that "No person on University property or at official University functions may: block entrances to or otherwise interfere with the free flow of traffic into and out of campus buildings; . . . knowingly and willfully interfere with the peaceful conduct of the activities of the campus or any campus facility by intimidating, harassing, or obstructing any University employee, student, or any other person having lawful business with the University; . . . [or] camp or lodge, except in authorized facilities or locations[.]"

On April 25, 2024,[3] protesters set up an encampment on UCLA's campus protesting conditions in Gaza. Although the encampment violated UCLA's TPM regulations, including the prohibition on camping on University property, the University did not initially remove the encampment. Consistent 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 to explore constructive ways to end the encampment. The Association was not part of these communications, and as far as UCLA's administrative team members were aware, the Association had no involvement in the protest encampment.

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 break out between opposing rallies, UCLA decided to remove the encampment as quickly as possible, and developed a security plan to do so safely. 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

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[2] UCLA Regulations on Activities, Registered Campus Organizations, and Use of Properties, available at https://sole.ucla.edu/file/4efd2db6-2863-447e-acb3-ca109fa5b33c.

[3] Unless otherwise indicated, all subsequent dates noted in this position statement are in 2024.

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encampment, which had become a focal point of conflict, assailants attacked the encampment that evening of April 30. It took several hours before law enforcement could quell the violence. At the time the violence occurred, UCLA did not know if Association members were involved in the clash.

After the violence on April 30, UCLA took steps to disperse the encampment, which had become unsafe for protesters and other community members. On May 1, the University provided protesters a final opportunity to leave. The UCLA Police notified campers on numerous occasions that they needed to disperse. Starting at approximately 5:50 p.m., the police provided notice every 30 minutes, which it increased to every 15 minutes beginning at approximately 12:30 a.m. on May 2. When more than 200 protesters refused to comply with the orders to leave, law enforcement removed the encampment that night, an action that resulted in arrests of protesters who disobeyed the numerous dispersal orders.

3. Subsequent Events at UCLA

Tensions remained high on campus following the dispersal of the encampment, and on Friday, May 3, UCLA went on a "limited" campus operations status under which most in-person classes were moved to remote instruction. The campus planned to return to normal operations on Monday, May 6. Early that morning, however, UCLA Police responded to a report of a large group of people at a campus parking structure and discovered a group of approximately 40 individuals wearing masks and in possession of metal pipes and tools that could be used to enter and barricade a building. (Exhibit 1.) At around the same time, a group of at least 30 individuals was seen inside UCLA's Moore Hall, during a time when the building was closed to the public. Police also learned of social media posts calling for the occupation of Moore Hall. Officers responded to the building and announced that the occupants were required to leave. The group left Moore Hall approximately 25 minutes later, but next proceeded to Dodd Hall, where they created a disturbance and interrupted at least one midterm exam.

Following these disruptions, UCLA determined that in the interest of protecting the safety of students and community

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members, it would return to "limited operational status" for the remainder of the week, and that classes would once again move to remote instruction, with limited exceptions. While the announcement asked students to avoid certain areas of campus where Facilities Management was conducting repairs, it did not place any limits on protest or other expressive activities.

4. The University refuses to create new exceptions to its disciplinary policies.

Following the events at UCLA on April 30-May 2, as well as similar incidents on other University campuses, various student and faculty groups demanded amnesty for all those involved in the encampment protests. For example, on May 1, the UCSD chapter of Students for Justice in Palestine released a set of demands that included "AMNESTY FOR ALL. Ensure amnesty for all those associated with the Gaza solidarity encampment at UCSD, and stop the repression of Palestinian activism on our campus." (Exhibit 2.) As the Association alleges, on May 4, some UCLA faculty members held a demonstration calling for amnesty for all protesters arrested on campus. And on May 6, UAW Local 4811 ("UAW"), the union representing graduate student workers, postdoctoral scholars, and academic researchers across the University, called for "Amnesty for all academic employees, students, student groups, faculty, and staff who face disciplinary action or arrest due to protest." (Exhibit 3.)

In the wake of these demands, on May 9, the University's Office of the President released a statement announcing "guiding principles for use by UC campuses in determining disciplinary actions." While noting that "UC campuses support and protect nonviolent and lawful protests," the statement emphasized that "[a]ll members of the UC community remain subject to all applicable laws and relevant codes of conduct, even while engaging in protest activities." Accordingly, the statement reaffirmed that, rather than exempting protesters from ordinary disciplinary procedures, the University would continue to apply its existing policies: "[a]ny member of the university community who is arrested for unlawful behavior or cited for a violation of university policy must go through the applicable review process, such as student code of conduct or employee disciplinary

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process."

One week later, on May 16, the University's Board of Regents announced its endorsement of the May 9 statement and "further affirmed that amnesty for students, faculty and staff is inconsistent with this guideline."

5. The University prepares for a strike by UAW.

On May 3, UAW filed an Unfair Practice Charge alleging various unfair practices stemming from the dispersal of the Gaza encampment at UCLA.[4] Three days later, UAW announced that it was holding a strike authorization vote on May 13-15, despite the fact that each of the bargaining units it represented had a closed contract with a no-strike agreement. (Exhibit 4.) UAW members ultimately voted to give the UAW Executive Board the authority to call a strike.

Faced with the possibility of a strike, the University took action to distribute information to its faculty to ensure academic continuity and to prevent faculty and staff from committing any unfair practice in responding to the strike. To that end, the University published a list of Frequently Asked Questions (FAQs) about the strike for faculty.

The FAQs included multiple questions dealing with communications by supervisors to employees concerning the strike. These questions explicitly direct faculty to avoid committing unfair practices by unlawfully polling UAW members about strike activity or engaging in direct dealing with unit members. Relevant excerpts of the FAQs include the following:

"SUPERVISION Q7: Can supervisors ask ASEs, GSRs, Postdocs, and Academic Researchers if they plan to strike?

No. Instructors of Record and Principal Investigators should not survey or communicate with ASEs, GSRs, Postdocs, and Academic Researchers concerning their intention to participate or not participate in a strike, only whether they are planning to be at work on specific dates.

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[4] See PERB Case No. SF-CE-1462-H.

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…
SUPERVISION Q10: What happens if an employee strikes, but they are the primary person responsible for the maintenance and care of biological research materials?
…
PIs and department managers should keep conversations focused on the research project rather than on an employee's intention to strike. PIs and department managers should not ask whether unit-level employees are going out on strike or whether they will be at work.
…
SUPERVISION Q11: What can faculty, Instructors of Record, and/or Principal Investigators say in response to questions from students and employees about the strike?

Faculty, Instructors of Record, and/or Principal Investigators should not comment on the strike to students and employees—even students and employees they do not advise/mentor/teach or supervise—except to direct represented employees to their union for any questions they have, including questions about the strike, union membership, or the University's position on the strike.
…
SUPERVISION Q12: Should Instructors of Record, Principal Investigators, and Department Chairs meet with striking employees to hear their concerns and try to resolve them?

No. Generally it is impermissible to engage in direct dealing with represented employees, such as by soliciting and/or trying to resolve their grievances related to the strike. Regardless of whether the strike is lawful or not, only the Labor Relations team of the Office of the President may meet with the Union to address concerns and resolve disputes related to the systemwide strike. "

On the same day, UCLA sent a letter to its faculty and staff in an effort to prepare for the strike. UCLA's May 16 letter stated, in relevant part, that "*University employees in supervisory or managerial roles should refrain from engaging in conversation with union members about any aspects of the strike, including whether or not union members will engage in strike activities. It is also important that supervisors and managers avoid making statements condemning or*

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praising individuals' strike activities, and to refrain from dealing directly with union members in regard to negotiations or grievances." The letter further emphasized that "*[i]ndividuals are entitled to perform legally protected strike activities during non-work time, including picketing, near the exterior of campus property and campus entrances*."

Discussion

1. The Association lacks standing to file the present charge.

The Association alleges that the University's conduct violates section 3571, subdivision (a), which makes it unlawful for an employer to "[i]mpose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter." As the text of the statute indicates, section 3571, subdivision (a) only protects the rights of statutory employees, not employee organizations. And "[u]nlike the other statutes administered by PERB, HEERA does not grant employee organizations an independent right to represent employees in their employment relations with their employer." (*Regents of the University of California* (2020) PERB Dec. No. 2699-H (*Regents II*)).

The California Court of Appeal has previously held that, with respect to employee organizations like the Association that are *not* certified as the exclusive representative for a unit of employees, significant "effects flow from the Legislature's omission of a 'right to represent'." (*Regents of Univ. of California v. Pub. Emp. Rels. Bd.* (Cal. Ct. App. 1985) 168 Cal. App. 3d 937, 945 (*Regents I*).) While a "nonexclusive employee organization may continue to represent its members in many ways . . . *the initiative for representation must come from the employee*." (*Ibid.*, emphasis added.) On this basis, the court approved a practice whereby, when an employee was notified of proposed changes to employment conditions, the employee could affirmatively request that the employer meet with his or her union to discuss the changes.

In a more recent decision, PERB relied upon the reasoning of *Regents I* in holding that "under HEERA an employee organization that has not been certified as an exclusive

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representative has standing to allege violations of the rights of employees it represents." (*Regents II*, *supra*, PERB Dec. No. 2699-H, p. 4.) But *Regents II* differed from the present case in important respects. Most significantly, *Regents II* arose in the context of an active organizing campaign and involved allegations that University communications about the consequences of union membership interfered with employees' rights under section 3565 of HEERA to "form, join and participate in the activities of employee organizations of their own choosing."

In explaining its holding, the Board emphasized that "allowing a nonexclusive representative to assert the rights of employees is particularly important during an organizing campaign." (*Id*. at p. 8.) In such circumstances, limiting the rights of the union to file charges on behalf of members of the proposed bargaining unit "would leave HEERA-covered employees more vulnerable than other public employees to coercion by their employer during an organizing campaign, with the nonexclusive representative able to allege employer interference with the campaign only if it ultimately becomes the exclusive representative." (*Ibid.*) The Board's opinion cited a previous decision—*Regents of the University of California (Irvine)* (2016) PERB Decision No. 2493-H— in which a nonexclusive representative had filed a charge on behalf of an employee. But that case, too, arose out of an organizing campaign. Indeed, one of its allegations was that the employer retaliated against an employee specifically for attempting to organize his workplace. (*Id.* at p. 37.)

The Board's solicitude for employees who "might be unable or unwilling to file an unfair practice charge" is understandable in the unique context of a union organizing campaign. But the concerns identified in *Regents II* are inapplicable to the present case. The Association is not currently engaged in an organizing campaign,[5] and the allegations in this charge do not implicate employee freedom to elect union representation. There is no reason to believe that UCLA Faculty Association members are

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[5] In FAQs posted on its website, the Association explicitly states that it is *not* currently "trying to 'unionize' faculty." See Frequently Asked Questions, available at https://uclafa.org/about/.

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uniquely susceptible to employer coercion at present. The Board should therefore decline to extend its holding in *Regents II* to cases, like this one, arising outside the context of an organizing campaign. PERB should instead be guided by the instruction of the Court of Appeal that under HEERA, "the initiative for representation [by a nonexclusive representative] must come from the employee." (*Regents I*, supra, 168 Cal. App. 3d at p. 945.)

In this case, there is no indication that any Association members or any other employees sought the Association's representation in this matter. And while the Association identifies some of its members who were present at the UCLA encampment, it is not clear that the Association has authority to speak on behalf of those employees in filing this charge. PERB should therefore dismiss the charge.

2. UCLA's May 16 letter and the University's FAQs did not interfere with protected rights.

Even if the Association had standing to bring this charge – which it does not – the charge itself fails to state a prima facie case of any violations of HEERA and should be dismissed for that reason as well. The Association alleges that the UCLA's May 16 letter to faculty and the University's strike-related FAQs interfered with protected activity. In fact, as the context and full statements make abundantly clear, the communications were specifically tailored to ensure that University personnel would *avoid* interfering with protected activity by unlawfully polling UAW workers regarding their strike activity or engaging in direct dealing.

To establish a prima facie interference case, a charging party must show that an employer's conduct tends to or does result in some harm to protected employee rights. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 36 (*San Diego*).) In an interference case involving employer speech, the surrounding circumstances are relevant to determine if an employee would objectively tend to feel that the communication coerces, restrains, or otherwise interferes with protected rights. (*San Diego*, *supra*, PERB Decision No. 2747-M, p. 37.) Generally, an employer does not commit an interference violation if it expresses or

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disseminates its views, arguments, or opinions on employment matters, unless such expression contains a threat of reprisal or force or promise of benefit. (*Regents of the University of California* (2021) PERB Decision No. 2755, p. 29 (*Regents*).)

In the context of a strike, the University and its agents have an obligation not to "poll" employees about their participation in the strike or other union activities. As PERB has explained, such polling is inherently coercive because it "pressure[s] employees into making an observable choice" about their support for the strike. (*Alliance College-Ready Public Schools* (2020) PERB Dec. No. 2716, p. 28; see also *Circuit City Stores and United Food & Commercial Workers, Local 1776* (1997) 324 NLRB 147.) In addition, the University must not "communicate directly with employees to undermine or derogate a union's exclusive authority to represent unit members." (*City and County of San Francisco* (2022) PERB Dec. No. 2846-M.)

The Association's factual summary omits significant portions of the University's communications that provide important context.[6] Read in the context of the University's FAQs and UCLA's letter in their entirety, the statements to which the Association objects are plainly part of the University's efforts to *prevent* interference with protected activity by ensuring that faculty and staff do not improperly poll potentially striking workers or unlawfully bypass their union. Given these "surrounding circumstances," no reasonable employee would objectively tend to feel that the University's communications tended to coerce, restrain, or otherwise interfere with protected rights. The University's communications sought to clarify the ways in which faculty and staff could safely and legally communicate with UAW-represented employees while ensuring the continuity of operations.

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[6] The Association also seriously mischaracterizes the University's communications. For example, the Association alleges that "the rule explicitly prohibits faculty from teaching or discussing not only about the UAW strike, but also about unions, union activities, and other labor actions." In fact, neither of the communications at issue place any restrictions whatsoever on teaching. A Board agent need not accept the charging party's characterization of documents that are attached to the charge. (*San Diego Unified School District* (2017) PERB Decision No. 2538; *Trustees of the California State University* (2014) PERB Decision No. 2384.)

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Even assuming that the Association's allegations state a prima facie case of interference—which they do not—the University's communications were justified by operational necessity. (See *San Diego*, *supra*, PERB Decision No. 2747-M, p. 36.) As discussed above, the University was bound to comply with the requirements of HEERA with respect to potentially striking workers. Given the size and complexity of the University's operations, and given the large numbers of faculty and staff supervising UAW-represented workers in various capacities, it was imperative that the University quickly disseminate information ensuring that employees in such supervisory roles were apprised of—and prepared to comply with—their legal obligations to avoid polling and direct dealing. Any slight tendency of the University communications to harm protected rights was outweighed by this countervailing necessity to ensure compliance with the law.

3. The University's May 9 statement regarding discipline did not interfere with protected rights.

The Association next argues that the University's May 9 statement regarding discipline interfered with protected rights. But this argument fails because the University's statement merely reiterated that it would continue to follow existing disciplinary policies. As an initial matter, the Association misrepresents the content of the statement, falsely alleging that the "University announced it would discipline those arrested or cited for their participation in the Encampment." The plain language of the statement, evidenced by the Association's own attachment, belies this claim.

In relevant part, the statement provides: "Any member of the university community who is arrested for unlawful behavior or cited for a violation of university policy must go through the applicable review process, such as student code of conduct or employee disciplinary process." On its face, the statement plainly refers only to the continued application of *already existing* policies. Contrary to the Association's allegation, nothing about the statement suggests that every employee arrested will be disciplined. Instead, as is the case whenever the University learns that a member of the community has been arrested or

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cited, the underlying facts of each individual case are assessed to determine what—if any—established review process is "applicable."

This plain-meaning interpretation is supported by the context in which the statement was issued. As the Association alleges, following the arrests at UCLA on May 1, student and faculty groups repeatedly demanded that the University abandon its established disciplinary policies by granting blanket amnesty for all protesters. Responding to this demand, the statement merely affirmed that the University would not create a new "amnesty" policy, but would rather continue to apply its established disciplinary procedures. The Board of Regents' May 16 announcement confirms this understanding of the statement, as the Board "further affirmed that amnesty for students, faculty and staff is inconsistent with this guideline."

In light of these "surrounding circumstances (*San Diego*, *supra*, PERB Decision No. 2747-M, p. 37), it is not plausible that any reasonable employee would objectively perceive the statement as threatening discipline or otherwise interfering with protected activity. The University was simply reiterating that it would continue to adhere to existing policies.

4. UCLA's decision to place the campus on limited operational status did not interfere with protected rights.

On the morning of May 6, UCLA was a few days removed from the events of April 30-May 2, and the administration had made the decision to reopen campus that morning. However, a large group of masked protesters was detained in a campus parking structure with tools that could be used to occupy and barricade buildings. A second large group briefly occupied Moore Hall, before proceeding to Dodd Hall and causing significant disruption, including interrupting at least one midterm exam. Following these events, UCLA determined that in the interest of protecting the safety of its community, it would return to limited operational status and that classes would again move to remote instruction.

The Association now argues that these actions were a "pretext for the University's desire to suppress protest activity and other concerted activity, including that of faculty." But in

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the context of immediately preceding events, the notion that any reasonable employee would objectively view these actions as restraining or otherwise interfering with protected activity strains credulity. To the contrary, it would be readily apparent to any observer that the University's actions were justified—and indeed necessary—to preserve order, head off potential violence, and safeguard community members and University property. Notably, the announcement of a return to limited operational status did not in any way purport to restrict students or faculty from continuing to engage in protest or other expressive activities. And while the Association points to the closure of "traditional forums for conducting protected concerted activity," including Royce Quad, those areas had been damaged by the encampment and were undergoing repairs—a fact noted in the announcement.

In short, nothing about the return to limited operational status harmed any protected right, but even assuming that the Association could state a prima facie case on behalf of any particular Association member (none of whom have been identified for purposes of this charge), UCLA's decision was justified by the operational necessity to protect its community and safeguard its property.

5. The University's response to the protest encampment did not interfere with protected rights.

The Association alleges that the University's response to the protest encampments on the nights of April 30 and May 1 interfered with protected activity under the standards set out in *Public Employees Association of Tulare County, Inc. v. Board of Supervisors of Tulare County* (1985) 167 Cal.App.3d 797, 807 ("*Tulare*") and *Carlsbad Unified School District* (1979) PERB Decision No. 89, p. 10 ("*Carlsbad*").[7] But regardless of the

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[7] As part of this allegation, the Association appears to suggest that the University somehow condoned the April 30 attack on the encampment by counterprotesters, alleging that "UCLA knowingly stood by while counter-protestors attacked the Encampment." The University objects to this suggestion in the strongest possible terms. Indeed, nothing could be further from the truth. The University and UCLA did not approve or condone the violence that occurred on April 30, 2024; it is actively investigating and will

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standard used, this claim is meritless.

The Association primarily relies on the interference standard set out in *Tulare*, which requires a charging party to prove: "(1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons." (*Tulare*, *supra*, 167 Cal.App.3d at p. 807.) In this case, the Association's allegation fails at the first step because participation in the protest encampments was not protected activity under HEERA.

This is true for two reasons. First, to the extent the Association's allegations are premised on faculty "being present at the encampment supporting the demands of students and student employees," such advocacy is not protected under HEERA because it does not relate to the terms and conditions of employment. PERB has rightly pointed out that "there is no more fundamental right afforded employees under the statutory scheme than the right to communicate with others *about working conditions*." (*County of Santa Clara* (2018) PERB Dec. No. 2613-M [emphasis added].) But UCLA had no indication that the Association, or any labor organization, was involved in the encampment or that the protests were in any way connected to the terms and conditions of employment of Association members. To the contrary, as far as UCLA was aware, the protests were organized by students seeking to advance a broader political and social agenda. In efforts to resolve the encampment peacefully, UCLA met with faculty and student protesters about demands such as divestment from companies doing business with Israel and campus boycotts of certain products. Because these issues do not have any bearing on employment conditions, related advocacy is not protected as collective action under HEERA.

Second, participation in the protest encampment was not protected activity because it did not comply with UCLA's time, place, and manner standards. Employees undoubtedly enjoy

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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.

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expansive rights to engage in speech, protest, and other forms of concerted advocacy under HEERA. But those rights are not unlimited. To the contrary, "PERB has repeatedly held that concerted employee activities and union access rights are subject to reasonable time, place and manner standards." (*Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Dec. No. 2485, p. 47; see also *County of Riverside* (2012) PERB Dec. No. 2233-M.) And employers are entitled to protect legitimate concerns, including "ensuring order, production or discipline in work areas," (*ibid.*) and "the health and safety of its employees and the public." (*County of Santa Clara* (2019) PERB Dec. No. 2680-M.)

UCLA, like all other University campuses, has enacted such standards in an effort to maintain order and ensure the safety of its community. Among the TPM standards governing the use of campus property are rules providing that: "No person on University property or at official University functions may: block entrances to or otherwise interfere with the free flow of traffic into and out of campus buildings; . . . knowingly and willfully interfere with the peaceful conduct of the activities of the campus or any campus facility by intimidating, harassing, or obstructing any University employee, student, or any other person having lawful business with the University; . . . [or] camp or lodge, except in authorized facilities or locations[.]" The TPM standards also prohibit anyone from "fail[ing] to comply with the directions of a University official acting in the performance of his or her duties."

The Gaza protest encampment violated these standards. From the beginning, its participants were unlawfully camping on campus. And as the encampment grew, the University received numerous reports that the encampment was "interfere[ing] with the free flow of traffic into and out of campus buildings" as well as "obstructing" students and other community members.

Despite these violations of UCLA's standards and the disruptions caused by the encampment, UCLA made every effort to reach a resolution that would end the encampment amicably. But when those efforts failed, and as the encampment became a focal point for conflict and violence on campus, UCLA was forced to take action and enforce its rules. UCLA gave notice on

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April 30 that the encampment was an unlawful assembly and would be required to disperse. Participants in the encampment continued to refuse to comply with this directive. Nonetheless, before law enforcement took action to clear the encampment, police repeatedly notified protesters that they were required to disperse.

The encampment, therefore, was in clear violation of UCLA's lawful and reasonable TPM standards. Because rights to expression and concerted activity under HEERA are subject to such standards, participants in the encampment, including any Association members who refused orders to disperse, were not engaged in protected activity. The University's actions did not interfere with protected activity under either the *Tulare* or *Carlsbad* standards.

But even assuming that Association members were engaged in protected activities, the University's conduct was plainly "justified by legitimate business reasons." (*Tulare*, *supra*, 167 Cal.App.3d at p. 807.) It is beyond any reasonable dispute that the University has a legitimate interest in enforcing its own rules and regulations, as well as an obligation to protect the safety of its students and staff and maintain order on its campuses. Before taking steps to disperse the encampment, UCLA made every effort to deescalate the situation and reach an amicable resolution. But in the face of an absolute refusal to disperse, together with escalating violence, UCLA had no choice but to take action.

The Association's reliance on *Alliance Environmental Science and Technology High School, et al.* (2020) PERB Decision No. 2717, pp. 22-25 is misplaced, and in fact clearly demonstrates why the University's actions were justified in this case. As the Association points out, *Alliance* involved allegations that an employer asked law enforcement to stop union organizers from handbilling *outside* a school, on non-work time and in a non-work location, where the organizers' actions were peaceful and did not interfere with the employer's operations. (*Id.* at p. 22-25.) In such circumstances, the Board held, "there was no objective reason, let alone operational necessity" to involve law enforcement or direct them to remove the organizers. (*Id.* at p. 25.)

The contrast to the present case could not be more stark.

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Here, the encampment occupied a large area of campus in clear violation of UCLA's TPM standards; it disrupted activities for many members of the University campus and eventually became a focal point for conflict and violence; and its members repeatedly refused lawful directives to disperse, forcing the University's hand. Unlike in *Alliance*, where organizers were engaged in non-disruptive expressive activity, here there was both an "objective reason" and a clear "operational necessity" to ask law enforcement for assistance in clearing the encampment.

6. The University's response to the protest encampment was not retaliation for protected activity.

Lastly, the Association alleges that through its actions in dispersing the encampment, the University retaliated against unidentified employees for exercising protected rights. To prove retaliation, a charging party must show that: (1) one or more employees engaged in activity protected by a labor relations statute that PERB enforces; (2) the respondent had knowledge of such protected activity; (3) the respondent took adverse action against one or more employees; and (4) the respondent took the adverse action "because of" the protected activity, which PERB interprets to mean that the protected activity was a substantial or motivating cause of the adverse action. (*City of San Diego*, *supra*, PERB Decision No. 2747-M, p. 26; *City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 15.) If a prima facie case is established, and the evidence also reveals a non-discriminatory reason for the employer's decision, the respondent may prove, by a preponderance of the evidence as an affirmative defense, that it would have taken the exact same action even absent protected activity. (*San Francisco*, *supra*, PERB Decision No. 2712-M, p. 15.)

This allegation fails for many of the reasons discussed above. First, as already explained, protesters at the encampment, including any Association members, were not complying with UCLA TPM regulations, and thus were not engaged in protected activity. And for the same reason, the University's actions were not taken "because of" any protected activity, but rather out of operational necessity.

In addition, the University's actions did not constitute an

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"adverse action" for the purpose of a retaliation claim. The Board employs an objective standard in determining whether an employer's action is adverse. "The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact *on the employee's employment*." (*Chula Vista Elementary School District* (2018) PERB Decision No. 2586, p. 25 [emphasis added].

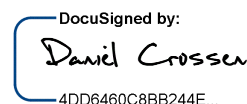
The University's decision to call law enforcement to disperse the encampment was not in any way related to the employment of Association members or any other University employees. The Association does not allege that any of its members were subject to employment discipline for their participation in the encampment protest. The fact that some faculty members were arrested by the police while violating the law and refusing orders to disperse is not an action that a reasonable employee would consider to be adverse *to their employment*.

Finally, even if the Association could establish a prima facie case, the University unquestionably would have taken the same action even absent protected activity. The protest encampment had become a dangerous disruption, and the University had no choice but to take action to protect its campus and its community.

Conclusion

For the foregoing reasons, the Association does not have standing to bring this charge, and its charge does not state a prima facie case of any violation of HEERA. The University respectfully requests that the charge be dismissed.

Respectfully submitted,



Daniel Crossen
Principal Counsel
Labor & Employment

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Declaration

I, Anthony Solana, declare as follows:

I am the Director of Employee & Labor Relations at the University of California, Los Angeles. I verify that I have read the **University of California's Response to Unfair Practice Charge** in PERB case LA-CE-1420-H, and it is true and complete to the best of my knowledge and belief. I make this declaration under penalty of perjury under the laws of the State of California.

Executed this 19th day of July, 2024, at Los Angeles, California.

DocuSigned by:
Anthony Solana, Jr.
2FACC63B316549A...

Anthony Solana

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EXHIBIT 1

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UCLA POLICE DEPARTMENT

Chief John Thomas – 601 Westwood Plaza, Los Angeles, CA 310-825-1491 – police.ucla.edu

NEWS RELEASE

STATEMENT REGARDING THE INCIDENTS ON MONDAY, MAY 6, 2024

UCLA Parking Structure 2 Arrests

On Monday, May 6, 2024 at about 5:50 a.m., a UCLA community member reported a large group of people at Parking Structure 2. UCLA PD officers responded to the location and found **a group of approximately 40 individuals inside the structure wearing masks and in possession of metal pipes**. Other members of the group were also seen leaving the parking structure as officers were arriving. Between 12 a.m. and 6 a.m. every day, University property is closed to individuals who are not affiliated with the University, so officers detained the group to determine if the individuals were students, staff, or faculty. **Most of the individuals initially refused to identify themselves.** Multiple individuals in the group were in possession of tools and items that could be used to **unlawfully enter and barricade a building,** including **heavy-duty metal pipes, bolt cutters, epoxy adhesive, super glue, padlocks, heavy-duty chains, and documentation encouraging violence and vandalism** (photos are included below).

While the group was detained, officers learned of the intrusion at Moore Hall and associated social media post calling for a building occupation at Moore Hall, which is described below. It became apparent that the individuals at Parking Structure 2 had formed a plan to use bolt cutters, padlocks, epoxy adhesive, super glue, heavy duty chains, and metal poles to break into Moore Hall to occupy and vandalize the location. As a result, 42 individuals were taken into custody for **California Penal Code § 182(a)(1) – Conspiracy to Commit a Crime** and two individuals were taken into custody for **California Penal Code § 148(a)(1) – Obstructing a Peace Officer**. The subjects were transported to LAPD Valley Jail by the Los Angeles County Sheriff's Department, where the subjects were booked, cited, and released. **Four of the 44 subjects were also arrested on Thursday, May 2** for failing to leave the Royce Quad encampment after being ordered to disperse. Of the 44 subjects, 35 were UCLA students and nine were not affiliated with UCLA. There were no reported injuries of subjects or officers.

Two individuals in the group stated they were members of the media. Neither of those individuals had press credentials. Those two subjects were also transported to LAPD Valley Jail, but after further investigation **they were released pursuant to California Penal Code § 849(b)(1),** which occurs when a peace officer is satisfied that there are insufficient grounds for making a criminal complaint against the person arrested. One other subject was also released **pursuant to California Penal Code § 849(b)(1)**.

UCLA Moore Hall Intrusion

On Monday, May 6, 2024, at about 6:05 a.m., while the group at Parking Structure 2 was still detained, a group of at least 30 individuals were seen inside Moore Hall. **Moore Hall was closed to the public at that time.** UCPD learned via social media that a **UCLA registered student organization had just posted a statement encouraging people to occupy Moore Hall**. Officers responded to the building and, with the assistance of the Los Angeles Police Department, secured the perimeter to prevent additional access into the building. UCPD officers **announced eight times that the building was closed** and that all occupants were required to leave. After approximately 25 minutes of announcements, and with UCLA Student Affairs present, a group of about 60 individuals exited the building and left the area.

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UCLA POLICE DEPARTMENT

Chief John Thomas – 601 Westwood Plaza, Los Angeles, CA 310-825-1491 – police.ucla.edu

NEWS RELEASE

UCLA Dodd Hall Disruption

On Monday, May 6, 2024, at about 8:30 a.m., the group of about 50-75 individuals who left Moore Hall marched to Dodd Hall and entered that building, which was open to the public and being used for midterm exams. **The group created a disturbance inside the building that interrupted at least one midterm exam**. Officers responded to Dodd Hall to secure the perimeter of the building and prevent additional access into the building. As officers were preparing to enter the building, the group exited, joined a crowd of about 150 protesters outside, and started to protest outside the building. After approximately 10 minutes of protesting, the group marched to Bruin Plaza, where they eventually dispersed. UCLA Student Affairs staff were also present at Dodd Hall and Bruin Plaza.

The investigation into all these incidents is ongoing, and anyone with information is asked to contact the UCLA Police Department. Please reference Report #24-0894.

Photos

Metal pipes (left), epoxy adhesive and super glue (top center), padlocks (top center), bolt cutters (bottom center), heavy duty chains (top right), documentation encouraging violence and vandalism (bottom right)

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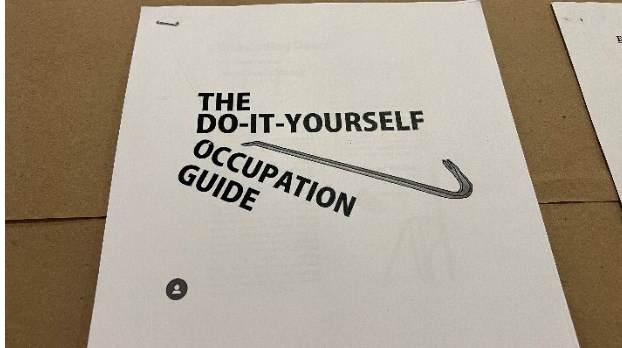

Documentation

Epoxy Adhesive / Super Glue

Bolt Cutters

Heavy-Duty Chains

***

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EXHIBIT 2

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OUR DEMANDS

1. BREAK THE SILENCE.
Affirm Palestinians' right to life and safety, condemn the ongoing genocide in Gaza, and call for a permanent immediate ceasefire.

2. AMNESTY FOR ALL.
Ensure amnesty for all those associated with the Gaza solidarity encampment at UCSD, and stop the repression of Palestinian activism on our campus.

3. CAMPUS-WIDE BOYCOTT.
Permanently sever all institutional ties to Israel and other entities that render our university complicit in the Gaza genocide, including research partnerships with the Israeli Defense Ministry, U.S. Dept of Defense, and private defense contractors.

4. DIVEST FROM DEATH.
Immediately divest all of the University of California's financial holdings from weapons manufacturers and companies that enable and profit from Israeli apartheid, occupation, and genocide.

sjp.ucsd and palestinianyouthmovement

sjp.ucsd JOIN US at Library Walk at UCSD NOW!

UCSD HAS ENTERED THE CHAT!!

UCSD students join the global wave of the student intifada, along students all over the world demanding that these institutions divest from the ongoing Zionist genocide, apartheid, and occupation against the Palestinian people.

WE NEED YOU HERE! We call on our greater San Diego community to come out and support us during our encampment. Even if it's just for a few hours JOIN US.

We will need our community every night throughout the week to hold

22,090 likes

May 1

Log in to like or comment.

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EXHIBIT 3

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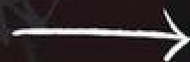
@uaw_4811

UAW 4811 is calling on UC to peacefully negotiate with stakeholders and reach agreement to address these concerns through: (7/9)

1. **Amnesty** for all academic employees, students, student groups, faculty, and staff who face disciplinary action or arrest due to protest.
2. **Right to free speech** and political expression on campus.
3. **Divestment** from UC's known investments in weapons manufacturers, military contractors, and companies profiting from Israel's war on Gaza.
4. **Disclosure** of all funding sources and investments, including contracts, grants, gifts, and investments, through a publicly available, publicly accessible, and up-to-date database.
5. **Empower** researchers to opt out from funding sources tied to the military or oppression of Palestinians. The UC must provide centralized transitional funding to workers whose funding is tied to the military or foundations that support Palestinian oppression.



11:03 AM · May 6, 2024 · **15K** Views

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EXHIBIT 4

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We are holding a Strike Authorization vote May 13-15th. (1/9)

UAW 4811
STRIKE
AUTHORIZATION VOTE
MAY 13–15

30 702 2K 459K

UAW 4811 @uaw_4811 · May 6

On Friday, May 3rd 2024, our union filed Unfair Labor Practice charges in response to UC's actions against peaceful protesters – including UAW 4811 members – over the past week. uaw4811.org/2024-ulp-charg... (2/9)

uaw4811.org
2024 ULP CHARGES — UAW 4811

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Case Name: *UCLA Faculty Association v. The Regents of the University of California* **Case No.** LA-CE-1420-H

DECLARATION OF SERVICE

I, the undersigned, declare that I am over 18 years of age, and not a party to the subject cause. My business address is University of California Office of the General Counsel, 1111 Franklin Street, 8th Floor, Oakland, California 94607-5200, in Alameda County. I served the attached **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S POSITION STATEMENT** by electronic service only to the following:

Andrew Z. Gordon, Regional Attorney
PUBLIC EMPLOYMENT RELATIONS BOARD
San Francisco Regional Office
1515 Clay Street, Suite 2206
Oakland, California 94612-1403
Via PERB ePortal

Julia Lum, Esq.
Hugh Schlesinger, Esq.
Leonard Carder, LLP
1999 Harrison Street, Suite 2700
Oakland, CA 94612
jlum@leonardcarder.com
HSchlesinger@leonardcarder.com

__X__ BY 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 above 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).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 19, 2024 at Union City, California.

DocuSigned by:
Araceli Gelesic
4F02AEC042C944D

Araceli Gelesic