



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

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

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 PUBLIC¹

a. Full name: American Federation of State, County and Municipal Employees - Local 3299

b. Mailing address: Leonard Carder LLP, 1330 Broadway, Suite 1450
Oakland, CA 94612

c. Telephone number: (510) 272-0169

d. Name and title of person filing charge: Kate Hallward, Attorney E-mail Address: khallward@leonardcarder.com
Telephone number: (510) 272-0169 Fax No.: (510)272-0174

e. Bargaining unit(s) involved: EX

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

a. Full name: Regents of the University of California

b. Mailing address: Office of the General Counsel, University of California Office of the President, 1111 Franklin St., 8th Fl.,
Oakland, CA 94607

c. Telephone number: (510) 987-9800

d. Name and title of agent to contact: Allison Woodall, Deputy General Counsel, E-mail Address: allison.woodall@ucop.edu
Telephone number: (510) 987-0412 Fax No.: (510) 987-9757

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:

¹ 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.
PERB-61 (7/22/2014)

5. GRIEVANCE PROCEDURE

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

Yes No

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.)
- 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: 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

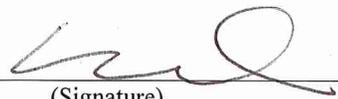
DECLARATION

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 and that this declaration was executed on October 25, 2019

at Oakland, CA
(City and State)

(Date)

Kate Hallward
(Type or Print Name)


(Signature)

Title, if any: Attorney

Mailing address: Leonard Carder, LLP, 1330 Broadway, Suite 1450, Oakland, CA 94612

Telephone Number: (510) 272-0169 E-Mail Address: khallward@leonardcarder.com

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, 1330 Broadway, Suite 1450,
Oakland, CA 94612

On October 25, 2019, I served the Unfair Practice Charge
(Date) (Description of document(s))

(Description of document(s) continued)

on the parties listed below (include name, address and, where applicable, fax number) by (check
the applicable method or methods):

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;

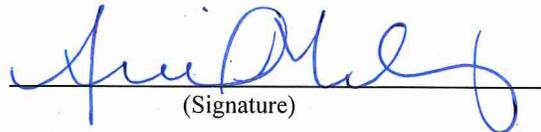
facsimile transmission in accordance with the requirements of PERB Regulations
32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Allison Woodall, Attorney
Office of the General Counsel
UC Office of the President
1111 Franklin Street, 8th Floor
Oakland, CA 94607

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on October 25, 2019, at Oakland CA
(Date) (City) (State)

Ariel M. Lopez
(Type or print name)


(Signature)

ATTACHMENT TO UNFAIR PRACTICE CHARGE

I. INTRODUCTION

AFSCME Local 3299 brings this charge regarding UCSD Medical Center and UC Davis Medical Centers' imposition of unilateral changes by contracting out bargaining unit work – that of Biomedical Technicians who repair and maintain medical equipment in the hospitals – to a vendor called Multi Medical Systems (“MMS”). This charge addresses UC’s unilateral decision(s) to contract out this work at both medical centers without notice or an opportunity to bargain as required by statute.

II. SUMMARY OF RELEVANT FACTS

A. AFSCME Recently Learned that UC is Contracting Out Biomedical Technician Work at Two Medical Centers to a Vendor Called MMS

1. UCSD Medical Center

AFSCME-represented BioMedical Technicians, aka “Biomed Techs” repair and maintain medical equipment. Currently, there are approximately twenty AFSCME-represented BioMed Techs who are directly employed by UC to work at either the Hillcrest or La Jolla Medical Center locations.

Until recently, AFSCME understood that all Biomed Tech work was performed by union members employed directly by the University and had not heard reports of UC contracting out this work to private vendors. That changed on October 3, 2019, when an AFSCME-represented BioMed Technician who works at UCSD Hillcrest Medical Center informed the union, with alarm, that over the course of the last few months, her department Biomed Equipment Services has brought on twelve (12) full-time BioMed Techs from a private vendor, Multi Medical Systems (MMS), to do bargaining unit work at UCSD Medical Center’s Hillcrest and La Jolla facilities. AFSCME has learned that on a date unknown, UCSD contracted out a significant volume of work that would otherwise be performed by bargaining unit members in two titles: BioMed Equipment Technician 2 & BioMed Equipment Technician 3.

UC’s rationale, as explained to AFSCME-represented Bio Med Technicians, is that more equipment has been added but no permanent positions have been approved. In other words, the Finance Department of the Medical Center is approving of the use of funds to have Biomed Tech work performed by contract labor but is *refusing* to “fund” positions in the budget for directly-employed workers that are undisputedly needed. These are discretionary decisions well within the University’s control, but experience has shown that these decisions are driven by the University’s significant interest in cutting costs by refraining from “funding” positions for employees who will accrue valuable benefits is a powerful motivator.

///

///

2. UC Davis Medical Center

At the UC Davis Medical Center, the Clinical Engineering Department has also contracted out to the same contractor as that which supplies UCSD Medical Center: MMS. Specifically, there are two contract workers who are helping to maintain and service IV pumps, work that is done by AFSCME-represented BioMed Technicians.

Within the past few months, two AFSCME-represented BioMed Techs were promoted. Although it is clearly necessary for UCDMC to fill their vacant positions, the Medical Center recently, within the past two months, decided to contract out the work instead. Today, two contractors from MMS are performing the bargaining unit's work.

The Director of the Clinical Engineering Department claims that he cannot justify having the two positions remain in the budget, asserting that the Department reduced the number of full time equivalents (FTEs) should suffice to get the work done. And yet, pursuant to UC policy, the Director would have signed off on the request to pay for contract workers to perform the work in lieu of bargaining unit employees. Accordingly, the Director must acknowledge that the work of repairing and maintaining IV pumps and other equipment is not, in fact, getting done with the reduced workforce, and the University is clearly willing to pay to have the work done, but wishes to pay less by contracting with a vendor that pays less. To the extent that the contracted workers may be working through a backlog of work or otherwise working for a time-limited purpose, there is no reason whatsoever that UCDMC could not have hired them as per diem or limited appointees. The only barrier is cost: per diems and limited employees earn higher wages than contract workers and eventually, they become eligible to earn benefits as well.

To date, UCDMC has not provided notice or any opportunity to bargain over the decision to transfer bargaining unit work to a private vendor. In fact, management has offered no communication with the Union about its use of contract labor at all.

3. AFSCME's Cease and Desist Letter and Request for Information

The University is simply replacing the services performed by unit members with those performed by contract labor. Although the University had already acted unilaterally and the change was enacted as a *fait accompli*, the Union nonetheless sent a letter insisting that both medical center cease and desist from contracting out the work of BioMed Techs on October 21, 2019 and sent the University a request for information. See Exhibit 2, attached. The University has not responded.

III. DISCUSSION

By contracting out bargaining unit work, the University (at both UCSDMC and UCDMC), has violated HEERA's requirements.

First, to date, neither UCSDMC nor UCDMC have provided any form of notice to AFSCME about the decision to contract out this work. They did not provide notice as required by statute, nor even a copy of any preceding solicitation of bids (RFP, RFQ or other) as required

by statute. Neither one made any attempt to justify contracting out the work under the expired terms of Article 5 that are no longer operative.¹ Even during the life of the parties' MOU, however, UC could not have invoked any provision of Article 5 to justify contracting out this work. And now that the parties are bound by the status quo and the employer is not free to make discretionary changes without bargaining, there is no question that UC could have and should have provided notice and an opportunity to bargain. In both cases, the medical center enacted a discretionary decision and took place during the hiatus between bargaining agreements. Accordingly, UC cannot rely on any purported contractual "waiver" of the right to bargain. Rather, UC implemented a string of unilateral changes, each a per se violation of HEERA's requirement to bargain in good faith. Both medical centers' actions and failure to bargain constitute unilateral changes, each a per se violation of HEERA's requirement to bargain in good faith.

Second, at both medical centers, UC's actions constitute unlawful interference with the statutory rights of employees and the union itself.

A. UCSDMC and UCDCMC Were Each Required to Provide Notice and Bargain But Instead Acted Unilaterally When They Contracted Out Biomedical Technician Work to MMS

HEERA section 3570 requires the University to meet and confer with the employees' exclusive bargaining representative on all matters within the scope of representation, and section 3571(c) makes it unlawful for the University to fail or refuse to do so. In determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "*per se*" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. *Trustees of the California State University* (2009) PERB Decision No. 1876a-H, at 8 ("*Trustees*"). Unilateral changes are inherently destructive of employee rights and considered a *per se* violation of the duty to negotiate in good faith. (*Id.* at 8-9; *California State University* (1990) PERB Decision No. 799-H, at 25.)

To prevail on a unilateral change allegation, the charging party must prove that: (1) the employer took action to change policy or made a firm decision to do so; (2) the change in policy concerns a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; (4) the action had a generalized effect or continuing impact on terms and conditions of employment. (*See, e.g., Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 11 (*Pasadena Area CCD*); *City of Sacramento* (2013) PERB Decision No. 2351-M, p. 13; *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13.)

///

///

///

¹ A copy of the expired MOU's Article 5 (Contracting Out) is attached as Exhibit 1.

1. UCSDMC and UCDMC Acted Unilaterally to Contract Out Work Historically and Traditionally Performed by Bargaining Unit Members.

Here, both UCSDMC and UCDMC have clearly taken action to change policies when they entered into one or more contracts with MMS to provide each of the medical centers with Biomedical Technicians to perform services that fall squarely within the definition of bargaining unit work. The University has yet to inform AFSCME of when or how it acted or what the scope of work is that each medical center purports to have transferred to a private sector vendor. AFSCME only learned of each medical center's actions from bargaining unit members.

2. Contracting Out Work Is Within the Scope of Representation

Decisions to outsource bargaining unit work and related notice procedures fall well within the scope of representation. In *Lucia Mar Unified School District* (2001) PERB Dec. 1440 (“*Lucia Mar*”), PERB found that the employer's decision to unilaterally contract out student transportation services was a negotiable subject, because the employer continued to provide transportation services but performed the work by simply substituting contract workers for its employees. Contracting out is negotiable “(1) where the employer simply replaces its employees with those of a contractor to perform the same services under similar circumstances; or (2) where the decision was motivated substantially by potential savings in labor costs.” (*State of Cal. (Dept. of Veterans Affairs)* (2010) PERB Dec. 2110-S at p. 6, citing *Lucia Mar*; *Oakland Unified School District* (2005) PERB Dec. 1770 (contracting out services that could have been performed by in-house employees subject to bargaining).)

Both of the *Lucia Mar* circumstances exist here. The University provides its patients and staff with identical services after having *contracted with MMS as it did before*. Moreover, both UCSDMC and UCDMC clearly need more Biomedical Techs to get their work done. But departmental managers turned to contract labor in order to get necessary work done because the financial managers who oversee the budget refused to “approve” or “fund” even these undisputedly necessary positions for directly employed UC employees in AFSCME's EX bargaining unit.

3. Neither UCSDMC nor UCDMC Provided Notice or an Opportunity to Bargain

An employer must provide “reasonable” notice to make such a change, which must be “clear and unequivocal” and “clearly inform[s] the employee organization of the nature and scope of the proposed change.” (*Lost Hills Union Elementary School District* (2004) PERB Decision No. 1652, Proposed Decision at p. 6; *Santee Elementary School District* (2006) PERB Decision No. 1822 (*Santee*); *Victor Valley Union High School District* (1986) PERB Decision No. 565 (*Victor Valley*).) Here, UCSDMC and UCDMC did not give AFSCME notice of any of their decisions to contract with MMS or to give this work to the vendor instead of new or existing bargaining unit employees.

///

4. Contracting Out Bargaining Unit Work Has a Generalized and Continuing Effect

Each decision to contract out bargaining unit work has a generalized effect and/or continuing impact on terms and conditions of employment. (*Lucia Mar, supra*, PERB Decision No. 1440E, p. 26.) Indeed, PERB recognizes that transferring bargaining unit work to a contract employee has the potential to significantly erode the bargaining unit, thereby affecting its viability. (*Rialto Unified School District* (1982) PERB Dec. No. 209, p. 6-7.)

PERB recognizes that the loss of work opportunities for even a single bargaining unit member on a single shift constitutes a change in policy with a generalized and continuing impact. (*County of Santa Clara*, Proposed Decision (May 21, 2018) SF-CE-1428-M at p. 10-11 [“The installation of a deputy sheriff at VHCD (in lieu of a bargaining unit security officer) constituted a change in policy with a generalized and continuing impact on the bargaining unit due to the loss of work opportunities there.”].) There, the ALJ also recognized that stunting the growth of a bargaining unit as the work extends to new locations has a cognizable impact on the unit as a whole:

The County’s contention that there was no diminution in the level of PSO staffing as a result of the change is without merit. The new work would normally have been assigned to the bargaining unit rather than to a contract employee. (*Rialto Unified School District* (1982) PERB Dec. No. 209, p. 6.) Such transfers have the potential to significantly erode the bargaining unit thereby affecting its viability. (*Id.* at p. 7.) Even, as here, if only one position is at stake, the union’s silence in the face of such action can lead to unilateral transfers in the future based on the waiver doctrine.

County of Santa Clara, supra, SF-CE-1428-M at p. 12. In another recent case, the PERB Board emphasized that:

Even temporary employer conduct having an immediate effect on one employee can meet this standard. (*City of Davis, supra*, at pp. 24-25.) Thus, regardless of how narrowly the District attempts to define its conduct in this case, we agree with the ALJ that the District implemented a change in policy with a generalized effect or continuing impact.

(*San Bernardino CCD* (2018) PERB Dec. No. 2556M; *see also Hacienda La Puente* (1997) PERB Dec. No. 1186, p. 3 [PERB rejected the employer’s argument that changing an employee’s shift was merely an isolated contract breach and not a change in policy having any generalized effect or continuing impact upon bargaining members’ terms and conditions of employment.]).

Moreover, the fact that UC asserts that it is somehow “permitted” to contract out this and other bargaining unit work pursuant to its unilaterally adopted interpretation of the parties’ now-expired MOU further emphasizes the effect and impact of its actions. PERB has repeatedly reminded employers that:

[T]he generalized effect or continuing impact element of the prima facie case is satisfied when the employer's action is based on its belief that it had a contractual or other right to take the action with negotiating with the union.

(*Oroville UHSD, supra*, PERB Dec. No. 2627, pp. 25-26 [citing *City of Montebello* (2016) PERB Decision No. 2491-M, p. 15; *County of Riverside* (2003) PERB Dec. No. 1577-M.]) In *Oroville UHSD*, the employer's witness testified that the employer's conduct in announcing a unilateral change "was consistent with the terms of the CBA." (*Id.* at p. 26.) The Board found that because the employer had taken the action based on its belief that it had a contractual right to do so, it constituted an unlawful unilateral change with generalized or continuing impact on the unit. (*Id.* at 4 [citing *Moreno Valley Unified School District* (1995) PERB Dec. No. 1106].)

Here, both UCSDMC and UCDCMC denied AFSCME notice of any kind before executing one or more contracts with MMS – contracts that AFSCME has still never seen. Nor did either medical center – or anyone at UC - provide the Union with a copy of the contract-soliciting documentation (RFP, RFQ or other) that gave rise to the new contract(s). Accordingly, the contract(s) with MMS should be rescinded and all affected must be made whole.

B. UCSDMC and UCDCMC's Conduct Constitutes Unlawful Interference with Employee Rights and Those of the Union

AFSCME has spent years fighting to improve minimum labor standards at UC, to lift wages for the lowest paid University employees, to compel UC to provide career opportunities, job security, family healthcare benefits, and a secure retirement for those who work at one of the greatest universities in the country. UC's decision(s) to contract out work to MMS instead of bargaining unit employees demonstrate its attempt to circumvent all of the hard-won terms and conditions of employment negotiated by AFSCME and UC over decades. It is widely known and well-understood that workers provided to UC by private vendors are paid significantly lower wages than their UC counterparts and receive few if any benefits and that finance department managers are reluctant to "approve" or "fund" positions for UC employees precisely because those employees will accrue valuable benefits. Bypassing the Union to contract out AFSCME's work threatens all negotiated standards and fundamentally interferes with employees' rights as well as the rights of the Union itself.

HEERA section 3571, subdivision (a) makes it unlawful for a higher education 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 [HEERA]." Additionally, HEERA section 3571, subdivision (b), makes it unlawful for a higher education employer to deny organizational rights guaranteed by HEERA. Unilateral changes by the employer during status quo periods interfere with the exclusive representative's right to represent its members, and interfere with the right of bargaining unit members to be represented. In *UC-AFT, supra*, PERB Decision No. 1689-H, at 24-26, for example, PERB held that UC's unilateral changes to healthcare benefits during the status quo period interfered with UC-AFT's right to represent its members, in violation of section 3571(b) and interfered with the right of the bargaining unit to be represented by UC-AFT, in violation of section 3571(a). PERB should reach the same conclusion here: that

UC unilateral changes by contracting out bargaining unit work during the status quo period interfered with AFSCME's right to represent those who perform biomedical technician services for UCSD and UC Davis Medical Centers and interfered with workers' rights to be represented.

IV. REMEDY REQUESTED

The University should be ordered to restore the status quo and make whole all adversely affected workers employed directly or indirectly by the University. Existing bargaining unit members have been wrongly deprived of work opportunities and have been compelled to work short-staffed while workers nominally paid by MMS perform bargaining unit work without the wages and benefits that attach to that work.

AFSCME respectfully seeks an order requiring that UC and its representatives to cease and desist from:

1. Contracting out EX bargaining unit work without providing AFSCME with notice and negotiation;
2. refusing to bargain over contracting out of bargaining unit work;
3. executing, renewing or amending any contract with a vendor, directly or through a third party, to perform EX bargaining unit work without notice and negotiation;
4. requesting contract labor through by way of any purchase order, directly or through a third party, without notice and negotiation;

The remedy should also include an affirmative order requiring the University to:

5. rescind each contract unlawfully entered into, renewed or amended in scope, and to also rescind all purchase orders and requests for contract labor;
6. to restore the status quo by making the affected bargaining unit members whole with the value of all lost work opportunities;
7. to immediately restore the work to the appropriate bargaining unit and insource the workers who have performed that work while wrongly denied the contractual wages, benefits, rights and privileges of union representation; all workers wrongly denied these negotiated terms must be provided the differential between contractual wages and benefits and those actually paid by vendors, and each must be afforded credit towards career status for all hours worked at any University location.
8. restore the status quo by compensating the Union for its time and expenses in pursuing the instant UPC, including attorneys' fees and costs, and for lost dues

for all periods of time that non-unit personnel performed work that should have been performed by AFSCME-represented employees; and

- 9.** such other relief as PERB deems just and proper.

EXHIBIT 1

University of California
And
American Federation of State, County
and Municipal Employees
(AFSCME)

Patient Care Technical Unit

March 28, 2014 – December 31, 2017

2. **Family Medical Leave Act** – Retirement benefits shall be continued in accordance with the provisions of the applicable retirement plan regulations.

D. ENUMERATION OF UNIVERSITY BENEFITS

1. For informational purposes only, a brief outline of UCRS programs in effect on the date the Agreement is signed is found in Appendix B. AFSCME understands and agrees that the descriptions contained in Appendix B do not completely describe the coverage or eligibility requirements for each plan, the details of which have been independently communicated to AFSCME.
2. Specific eligibility and benefits under each of the various plans are governed entirely by the terms of the applicable Plan Documents and regulations, and state and federal laws. Employees in an ineligible classification are excluded from coverage, regardless of appointment percent and average regular paid time. For details on specific eligibility for each plan, refer to the applicable documents, agreements, regulations, or contracts.

**ARTICLE 5
CONTRACTING OUT**

A. GENERAL PROVISIONS

1. Nothing in this article shall be interpreted as prohibiting action which must be taken to establish or maintain eligibility for any federal program, contract or grant - including the contract requirements contained in the agreement between the University and the Department of Energy- where ineligibility would result in a loss of federal funds to the University of California.
2. The provisions of Sections A – D of this article shall apply to contracts for services that are subject to renewal.

B. CONTRACTING OUT

1. The University of California will not contract out services solely on the basis that savings will result from lower contractor pay rates and benefits for services customarily performed by bargaining unit employees or that result in the layoff of bargaining unit employees.
2. Examples of instances in which the University is permitted to contract out services include but are not limited to the following:
 - a. The need to obtain special services and equipment that are not available internally;
 - b. The need to obtain special expertise or efficiencies that are better provided through an outside contractor than by the University;
 - c. The need to provide short-term, temporary staffing in order to meet operational or business needs;
 - d. Financial necessity, where the services being provided would not be economically feasible or would result in significant additional expense if the services had to be performed by bargaining unit employees;
 - e. Contracts at facilities that are not owned or operated by the University or where a UC owned facility, or part thereof, has been

leased or otherwise transferred to a third-party, or where the University leases a facility and the services are provided by the landlord; or

- f. Contracts at remote facilities that are not within a 10 mile radius of the contracting campus, medical center, or Laboratory.
3. Where financial necessity is the reason for the exception, before contracting for work which is fully or partially supported from State funds, including those at the teaching hospitals, the University shall first seek funding from the legislature to address the financial necessity.
 4. When the University has determined to contract for services that are customarily provided by AFSCME unit employees, subject to the restrictions contained in this article, it will provide AFSCME's Local 3299 Director or Designee with a copy of any RFP as soon as feasible but no later than ten (10) business days after it is issued. Such notice shall demonstrate the appropriateness for the contract, in accordance with section B above.
 - a. Upon request from AFSCME, the University will provide all existing relevant non-confidential written information pertaining to prospective third-party contracts for services that involve work customarily provided by the EX bargaining unit, which may include the cost analysis used by the University to evaluate the need for contracting out and copies of consultant reports, if any used by the University in making its decision regarding contracting out.
 - b. If AFSCME asks to meet with the University about the proposed contract for services, such a meeting will occur as soon as practicable following the University's receipt of the request. The meeting will not delay the commencement of the contract.
 - c. If AFSCME believes that the University failed to comply with the provisions of Section B above, it can file a formal complaint with the Office of the President, Office of Labor Relations. The Office of the President shall make the final determination as to whether the contract meets the conditions in Section B. The Office of the President decision shall not be grievable or arbitrable.

C. EFFECT OF CONTRACTING OUT ON EMPLOYEES

When a bargaining unit employee who is notified of layoff or released because the University entered into a contract for services that s/he performed, the University will make available another bargaining unit position for which the employee is qualified. The position will be at the same campus/medical center/Laboratory from which the employee was laid off or released. Where the provisions in this article are inconsistent with the provisions of Article 15, Layoff and Reduction in Time, the provisions of this Article and Section shall control.

1. The available position shall be offered at the same duration, percent time, and appointment type held by the employee when s/he was displaced (probationary, limited, per diem, or career).
2. The available position shall be offered at the same base rate of pay earned by the employee when s/he was laid off or released.
3. The right to be offered a position pursuant to this section shall begin on the date an employee is notified of her/his layoff or release.

4. The right of an employee to be offered a position pursuant to this section shall terminate upon acceptance or refusal of the offered position at the same base rate of pay.
5. A non-probationary career employee who refuses an offered position at the same base rate of pay shall be placed in layoff status. Probationary, limited, or per diem employees who refuse an offered position at the same base rate of pay shall be released.
6. This §C is subject to the grievance and arbitration provision of this Agreement.

D. NEW FUNDING TO BRING CONTRACTED WORK BACK TO UC

1. In the event the State of California provides the University of California with sufficient additional new 19900 funding specifically identified to cover the cost of establishing contracted custodial positions, the University will establish such positions. Such funding must cover all salaries, benefits, capital equipment, supervision, and capital/real estate costs, at the same staffing levels as were provided under the contract. On a case by case basis, the University may agree with AFSCME to create UC positions for work contracted out even where the new 19900 funding does not fully cover all costs referred to above.
2. AFSCME and the University will work together to secure the sufficient additional funding.

E. SYSTEMWIDE REPORTS AND SYSTEMWIDE MEETINGS

1. The University shall provide AFSCME with the Contracting Out for Services at Newly Developed Facilities report submitted to the State Legislature each year no later than February 1st of each year. For 2014, the University shall provide report no later than April 1st.
2. Upon request, the University shall provide AFSCME with relevant non-confidential written information and/or supporting data including but not limited to the original RFP.
3. The above-referenced data shall be provided no later than April 15th, provided it is requested within thirty (30) days from AFSCME's receipt of the report.
4. The University and AFSCME shall convene two (2) systemwide Labor Management Meetings per year, the first no later than June 1st of each year to discuss contracts at University locations listed in the report, provided the union submits a timely request by May 1st, including its agenda for discussion.
5. The University and AFSCME may schedule further Labor Management Meetings as needed.
6. The University shall release AFSCME employees in a without-loss-of-straight-time-pay status for systemwide meetings in accordance with Article 14 – Labor Management Meetings Section A.2.
7. Any agreements reached by the parties will be reduced to writing as side letter agreements.
8. The timelines may be mutually extended by the parties.

9. This section E is subject to the grievance and arbitration provisions of this Agreement.

ARTICLE 6 DEVELOPMENT

A. GENERAL CONDITIONS

1. Employees are encouraged to pursue professional development and education in relation to their career in health care.
2. Employees shall be reimbursed for the costs of educational programs required and approved by the University. Time spent in such educational programs shall be considered time worked.
3. Employees attending University courses or seminars shall be eligible for fee reductions applicable to other employees at their campus/medical center/Laboratory. Employees attending University courses or seminars shall not be eligible for the services or facilities or counseling centers, gymnasias, or student health services incidental to such reduced-fee registration.
4. Nothing in this Article shall preclude the University from granting additional development opportunities.

B. RELEASE TIME AND SCHEDULING

1. An employee who has completed her/his probationary period, who wishes to participate in a professional development and educational leave program and who meets the qualifications listed below, shall request advance approval in accordance with departmental procedures. Such requests shall only be denied based on operational considerations.
2. Professional Development and Educational Leave:
 - a. May not be accumulated.
 - b. Must be scheduled according to staffing requirements, however, the University shall make reasonable efforts to accommodate requests.
 - c. When used for Continuing Education Units, must be used to take available UC-sponsored courses.
 - d. Must be documented with proof of participation.
3. Forty (40) hours paid professional development and educational leave relating to the employee's patient care technical career will be provided to full-time employees per contract year.
 - a. A contract year is normally defined as October 1 – September 30. If a contract year begins after October 1, a proportionate number of professional development and educational leave hours will be provided based on the actual duration of the contract.
 - b. In addition, a part-time career employee's yearly entitlement shall be prorated based on her/his appointment rate.

EXHIBIT 2

From: Zachary Freels <zfreels@afscme3299.org>
Date: October 21, 2019 at 2:00:42 PM PDT
To: Stephen Green <smgreen@ucdavis.edu>, Danielle Louise Kehler <dlkebler@ucdavis.edu>
Cc: Seth Patel <spatel@afscme3299.org>, Claudia Preparata <cpreparata@afscme3299.org>, HS-HR Request for Information <hs-hrrequestforinfo@ou.ad3.ucdavis.edu>
Subject: Cease and Desist: Outsourcing in Clinical Engineering at UCDMC

AFSCME has recently become aware that UC Davis Medical Center is contracting out bargaining unit work to Multi Medical Systems [MMS]. UC has a statutory obligation to bargain over each and every decision to contract out bargaining unit work. All waivers of the Union's right to bargain expired with the contract, including the limited "exceptions" or "justifications" for contracting out after proper notice and other procedures specified in Article 5.

The University should not proceed with assigning any more bargaining unit work --i.e. work comprised of duties customarily assigned to the bargaining unit— to a contractor by executing any contract, "order", "purchase order," "change order" or any other contractual instrument without meeting and conferring with AFSCME.

Additionally, pursuant to Article 5, Section B of the collective bargaining agreement between AFSCME Local 3299 and the University of California, as well as under the authority of HEERA and the California Public Records Act, Government Code Section 6250 et seq., we request the information below for *any* outside contractor, not just limited to MMS, providing Biomed Tech services customarily performed by AFSCME-represented bargaining unit employees in the Clinical Engineering Department.

1. All contracts and/or agreements currently in effect and, any subsequent agreements, amendments, and/or extensions that have been negotiated with the vendor(s), including, but not limited to, purchase orders.
2. All proposals and other documents submitted by the vendor(s) in response to any RFP or RFQ for the outsourced work, along with a copy of the RFPs or RFQs soliciting the work;
3. If a RFP or RFQ for the outsourced work was published, indicate whether an AFSCME-representative was notified and the date of the notification. If no notification was provided, please provide an explanation;
4. Copies of all invoices that the vendor(s), or any entity, on its behalf, has submitted to UCDCM for all services rendered since the contract has been in effect;
5. A list of all physical locations the vendor(s) provides services at UCDCM;
6. A description of the services provided by the vendor(s), or any entity on its behalf, including the duration of the contract, its annual monetary value, and terms regarding extensions for each contract, if not included in the items listed above, since the original contractor and/or agreement first went into effect with said vendor. If a "Statement of Work" (also called "Scope of Work") exists, please provide it;
7. Staffing requirements, shift schedules, numbers of workers, and full-time equivalents and/or hours worked, broken down by title, wages, benefits and other working conditions for workers performing the contracted services;
8. Since January 1, 2017, the number of budgeted FTEs in each AFSCME-represented classification in any department where MMS (or any other contractor performing the work of BioMed Tech titles) has been performing work;
9. For the past 24 months, indicate whether there have been any job openings for AFSCME-represented BioMed Techs at any location where the vendor(s), or any entity on its behalf, has been performing work customarily performed by AFSCME-represented titles. For each opening, indicate the classification, the date the job was posted, the date the job was filled, if applicable.
10. An explanation for why "Article 5: Contracting Out" of the CBA between AFSCME and UC permits this work to be contracted out, along with any documentation supporting this explanation; and,
11. A detailed explanation of the impact of the decision to contract out this work upon the hiring and/or retention of AFSCME employees who customarily perform or previously performed the work, including both regular and limited workers.

Please provide the information as it becomes available, rather than waiting to send all of it together. In your acknowledgement of this request, please include a time estimate for production of information and documents. If there are items that do not exist, please confirm that in writing. If there are items that exist, but that you are refusing to provide, please provide the basis for your refusal.

--
Zach Freels
Lead Organizer
AFSCME 3299
(415) 580-1683
zfreels@afscme3299.org