



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

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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  PUBLIC<sup>1</sup>

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: SX

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:

<sup>1</sup> An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.  
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 18, 2019  
(Date)

at Oakland, CA  
(City and State)

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 18, 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;

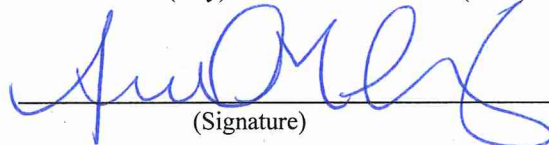
facsimile transmission in accordance with the requirements of PERB Regulations  
32090 and 32135(d).

(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 18, 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 UC Irvine's imposition of one or more unilateral changes by contracting out bargaining unit work – that of Storekeepers who provide linen services at UC Irvine Medical Center– to a vendor called Emerald. This charge addresses UCI's decision(s) to significantly increase the scope of work to be performed by Emerald instead of bargaining unit employees. UCI implemented these decisions slowly such that it has now contracted out significantly more bargaining unit work than originally contemplated.

### II. SUMMARY OF RELEVANT FACTS

#### A. **Within the Past Six Months, AFSCME Has Learned From its Members that UCI is Contracting Out More and More Bargaining Unit Work to a Laundry Vendor**

AFSCME-Represented Storekeepers and Truck Drivers perform linen related services. Bargaining unit members customarily collect and launder soiled linens, deliver clean linens to the medical centers and their various clinics, and distribute medical linens within the facilities.

Here, UC did not provide AFSCME any notice or opportunity to bargain before contracting out a significant volume of linen services work long performed by AFSCME members at UCI to a vendor named Emerald Linen or Emerald Textiles (here, Emerald). Over the past six months, the Union has learned the following information from individual members:

Since approximately January of 2018, UC contracted with a vendor called Emerald to launder UCI Medical Center and clinics' scrubs and other linens offsite and deliver them to UC's Storekeepers to be inventoried, packaged, delivered to the various hospital facilities and clinics and distributed throughout those locations.<sup>1</sup>

Like other vendors before it, Emerald would pick up soiled linens and deliver clean ones to storekeepers at UCI's Central Processing facility, a warehouse in Fullerton California.<sup>2</sup> During the initial months of its contract, Emerald would deliver clean linens, just like other laundry vendors, so that AFSCME-represented Storekeepers (and Assistant Storekeepers) would fill orders for either same day or next day delivery; pairing laundered pants and shirts of the same sizes in bundles of 10; and packaging clean linens into carts. Thereafter, a dedicated AFSCME-represented Truck Driver would deliver the packed carts to the Medical Center where another

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<sup>1</sup> Despite a longstanding information request seeking a copy of the contract, among other documents, UC has not even informed AFSCME whether the contract is with the Regents, UCI, UCI Medical Center.

<sup>2</sup> Historically, AFSCME members laundered medical center linens at the hospital itself, but UCI has contracted out the laundering work – and only the laundering work – to a string of vendors over the past several years, each pursuant to a time-limited contract. Emerald is the most recent of UCI's laundry vendors to have taken up this work. UCI did not provide AFSCME with a copy of the RFP that preceded the 2018 award of the contract to Emerald. Workers report, however, that initially, the scope of work performed by Emerald was limited to laundering, as was true of prior vendors.

group of AFSCME-represented Storekeepers would distribute them throughout the facility and related clinics, filling scrub machines<sup>3</sup> throughout UCI Health facilities. Together, storekeepers would keep an up-to-date inventory of the hospital's linens and would store clean linens for ongoing and future needs.

AFSCME members report that UCI increased the scope of work performed by Emerald slowly and expanded it over time. Early on, managers told workers that Emerald Textiles was going to start "helping" the Storekeepers in the Linen Department, by *pre-packaging* four of the linen/scrub carts, offsite. Slowly, over time, four carts turned into eight and after several months, UCI had arranged for Emerald to pre-package all of the carts of clean linens. Today, Emerald delivers *pre-packaged* linens in carts to the medical center.

In approximately June of 2019, UCI closed the Fullerton warehouse and moved all of its Linen operations directly to the Medical Center. Since the move, UCI has arranged for Emerald Textiles to take up even more bargaining unit work. Specifically, workers report that UCI has now arranged for the vendor to 1) pre-package all the UCI Medical Center linen carts with folded and paired scrubs, 2) deliver the linens to the hospital and all but one of the UCI-affiliated clinics directly and 3) to occasionally distribute the linens throughout the facilities as well and even to stock the scrub machines. UCI never provided notice to AFSCME before contracting out any of this additional work to Emerald, a vendor that UCI has contracted with in secret, without notice or opportunity to bargain at any time.

#### **B. Contracting Out And the Loss of Union Jobs for Linen Workers at UC Irvine**

While contracting out more and more of the work customarily performed by UC employees in AFSCME's bargaining unit, UC is shrinking its own workforce by attrition. UCI has left vacant at least two Storekeeper positions after two workers retired. Where there were ten Storekeepers, there are now only eight. In addition, the AFSCME-represented Truck Driver previously assigned to deliver linens has been reassigned to deliver other supplies as UCI has arranged for Emerald to deliver linens instead of the Truck Driver. And, for the reasons described below, Storekeepers report that they are concerned that UCI may be poised to eliminate their positions altogether in favor of an even more expanded role for Emerald or another contractor, Cintas.

#### **C. UCI Appears to Be Poised to Further Displace Bargaining Unit Employees In Favor of Contracting Out Still More Bargaining Unit Work**

In an ominous sign of things to come, in approximately mid-July of 2019, the UCIMC's Linen Department supervisor retired and UCI took no action to fill the vacancy. Rather, UCI arranged for Storekeepers who have long staffed the Linen Department, to be supervised by the management of the Medical Center's EVS Department.

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<sup>3</sup> These "scrub machines" are essentially sterile vending machines where hospital employees (doctors, nurses, students, etc.) can get their scrubs and select them by size. There are approximately eight of these machines throughout the hospital.

Adding insult to injury, EVS managers are now asking the remaining Storekeepers to clean up the mess that UCI caused by contracting out their work. Workers report that the vendor is not meeting the Medical Center staff's expectations; doctors, nurses and others are complaining that scrubs are being mismatched (the size of shirts and pants are mismatched) and that there are insufficient scrubs and other linens. In late September, for example, SX members discovered that there were not enough scrubs in the scrub machines, such that hospital workers were scrounging for scrubs and taking more than they needed in a single day so that they would have a pair for future use. EVS managers called on Storekeepers to go around the hospital in search of scrubs because they were short in Surgery. Twice, EVS Managers had to go out to buy scrubs because Emerald had not delivered a sufficient supply.

Rather than restoring the Storekeeper and Truck Driver work to the bargaining unit, UCI EVS management is currently considering ways to contract out still more bargaining unit work in order to cut costs. The UCIMC EVS department already contracts with Cintas, another laundry vendor, to clean mop-heads offsite. In August of 2019, an EVS manager (Adrian Pereida) had four linen Storekeepers provide a tour of the hospital to a Cintas representative and told the Storekeepers that the hospital was interested in having Cintas take over the daily work of filling up the scrub machines. Mr. Pereida explicitly admitted that the goal was to cut costs.

**D. UCI Has Failed and Refused to Provide Even the Most Basic Information to AFSCME and Has Dramatically Increased the Scope of Work it Contracts Out Over the Union's Explicit Objection**

UCI has never provided notice or an opportunity to bargain with AFSCME before contracting out bargaining unit work to Emerald as described above, and has yet to provide notice any plan to contract out still more bargaining unit work to Cintas.

To the contrary, UCI has intentionally failed and refused to provide AFSCME with even the most basic information. AFSCME sent UCIMC a request for information to determine UC's understanding of Emerald's specific role and the term of its contract with the vendor on February 4, 2019. Specifically, the Union requested the following documents and information regarding Emerald and any other linen services vendor:

1. Each current contract including all amendments, extensions, and purchase orders;
2. Any contract soliciting documents (RFP, RFQ or other) and the successful linen vendors' submission(s) in response.
3. If UC believes that an AFSCME representative was notified, please indicate when; if not please explain why not.
4. All invoices that each vendor has submitted to UC Irvine;
5. A list of all physical locations each of the vendors provide services for UCI;
6. A description of the services provided by each vendor, including contract duration, options to extend or renew, the monetary value of the contract, and a description of the vendor's scope of work;
7. Staffing requirements, shift schedules, numbers of workers (headcount, FTEs and hours worked) broken down by title, wages, benefits, and other working conditions for contract workers performing linen services;

8. An explanation for why UC believes that “Article 5: Contracting Out” of the expired CBA should be deemed to permit this work to be contracted out, along with any documentation supporting this explanation; and
9. 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.

A copy of the information request is attached as Exhibit 1.

To date, despite repeated prompting, UCI has not produced *any* substantive response or a *single one* of the requested documents.

Out of concern that UC was violating its obligation to bargain, AFSCME took action to protect the bargaining unit work. On April 27, 2019, the Union sent UCI’s Labor Relations manager, Paul Kronheim, correspondence insisting that UCI cease and desist from contracting out any bargaining unit work to Emerald (among others) and reminding the campus that:

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.

Exhibit 2, attached. UCI also ignored the Union’s demand to stop contracting out bargaining unit work to Emerald. Once again, UCI’s strategic silence was used to disadvantage the union and convert middle class jobs into low-wage, low or no-benefit contingent work. To the contrary, since receiving AFSCME’s cease and desist letter, UCI has doubled down, silently contracting out *additional work* to Emerald Textiles over the Union’s explicit objection.

In sum, after executing a contract with Emerald without notice or opportunity to bargain, UCI repeatedly contracted out more and more of the bargaining unit’s work in secret, without providing AFSCME notice or even responding to its requests for information.

### III. DISCUSSION

As a matter of law, the University is required to provide advance notice and an opportunity to bargain before contracting out bargaining unit work. Article 5 of the parties’ now-expired MOU supplements this statutory requirements, specifying that UC is also required to provide AFSCME with a copy of the contract-soliciting documentation (Request for Proposals, Request for Quotations or other). A copy of Article 5 is attached as Exhibit 3.

UCI's conduct violates HEERA in three specific ways:

*First*, UCI proceeded to enter into and expand the scope of its contract with Emerald without notice to AFSCME of any kind, let alone negotiation. UCI did not provide notice – or even a copy of the RFP or any justification for contracting out the work – before executing a contract in approximately February of 2018 and has never provided notice or any opportunity to bargain before contracting out the *additional* work of pre-packaging linens, delivering linens to the medical center facilities and clinics, and distributing linens inside the UCIMC facilities. Each transfer of bargaining unit work to a private vendor constituted a discretionary decision and took place during the hiatus between bargaining agreements when the employer is obligated to honor the status quo. 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.

*Second*, as set forth above and in Exhibit 1, UCI is also failing and refusing to provide information regarding its relationship with Emerald and the changing scope of work that UCI has contracted out.

*Finally*, UC's actions constitute unlawful interference with the statutory rights of employees and the union itself.

**A. UCI had an Obligation to Provide Notice and Bargain But Instead Acted Unilaterally - and Unlawfully - When it Contracted Out Bargaining Unit Work to Emerald and Repeatedly Increased the Scope of Work Assigned to the Vendor**

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.)

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## **1. UC Acted Unilaterally to Contract Out Work Historically and Traditionally Performed by Bargaining Unit Members.**

Here, UCI acted unilaterally when it entered into a contract with Emerald to provide laundry services that were historically performed by bargaining unit members and were only performed by contractors pursuant to time limited agreements. When the last of those agreements expired, the work should have been restored to the union. If UCI had wished to contract out the work – during the term of the MOU or after it expired - it would have been required to provide AFSCME with notice, including a copy of the documentation soliciting proposals (typically, an RFP or RFQ) as required by the terms of the parties' now-expired MOU which states,

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.

See Article 5(B)(4), Exhibit 3. The requirement to provide a copy of the contract-soliciting documentation (typically called an RFP) is mandatory and involves no discretionary decision-making by the employer. Accordingly, this requirement survives contract expiration by operation of law. Nothing in Article 5 serves to waive the union's right to notice and negotiation after contract expiration. Nor does the surviving contractual requirement to provide a copy of "any RFP" serve to waive the union's right to receive notice if UC seeks to contract out work without engaging in competitive bidding.

Thereafter, AFSCME has learned from its members that UCI has incrementally and increased the scope of work it outsources to Emerald, first by transferring a portion – and then all - of the work of pairing and packaging linens into carts, and then by having Emerald, rather than an SX Truck Driver, deliver linens to the hospital and clinics, and most recently, by asking Emerald to distribute medical center linens within the facilities themselves. Each time, UC acted without providing any notice, committing a string of unilateral changes of policy.

## **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).)

Here, when the prior contract with a laundry vendor came to an end, the work of laundering UCIMC linens should have returned to the bargaining unit. Instead, UC acted in secret to execute a contract with Emerald to take up this work. Initially, UCI arranged for Emerald to perform only the work that it had previously contracted out, but over time, UCI acted unilaterally to increase the vendor's scope of work and has transferred to Emerald the work long performed by AFSCME-represented UC employees: that of pairing and packaging linens into carts, delivering them to the hospital and clinics, and distributing those linens through the facilities.<sup>4</sup>

Both of the *Lucia Mar* circumstances exist here. The University provides its patients and staff with identical services after having *contracted with Emerald and after transferring ever-increasing amounts of work to the vendor as it did before*. Moreover, as UCI managers candidly admit, the Medical Center is clearly motivated by saving money on labor costs. By choosing contractors instead of filling vacancies or assigning overtime work to existing employees, the University is curtailing work opportunities for bargaining unit members in the hopes of improving its own already-healthy bottom line.

### **3. UC Did Not Provide 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, UC did not give AFSCME notice of any kind before implementing its various decisions to contract with Emerald or expand the scope of work it arranged for the vendor to perform in lieu of bargaining unit employees.

### **4. Outsourcing 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

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<sup>4</sup> UC cannot conjure up any defense. Its various decisions to contract with Emerald and then to expand the scope of work it assigns to the vendor occurred during the status quo period, when all purported waivers of the right to bargain have expired and the employer is required to provide notice and an opportunity to bargain over every decision to contract out work. Notably, PERB recognizes that even if a party previously may have waived the right to bargain, that would not – and could not – waive the union’s right to notice and an opportunity to bargain over subsequent decisions to contract out work that would otherwise be performed by the bargaining unit. See *County of Kern* (2018) PERB Decision No. 2615-M, pp. 6-9 [employer could not assert a past practice or dynamic status quo defense given that its changes were discretionary]; *Regents of the University of California* (2004), PERB Decision No. 1689-H, adopting proposed decision, at pp. 29-31 (same).

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 without 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, UC did not provide AFSCME with notice of any kind before executing a contract with Emerald that AFSCME has still never seen, nor did it UC provide the Union with a copy of the RFP that gave rise to the new contract, or any notice of its various decisions to increase the scope of work it expected Emerald to perform.

### **B. UCI's Failure to Provide Information Also Violates HEERA**

UCI has failed to provide any information responsive to AFSCME's February 4, 2019 request despite multiple reminders to do so. An exclusive representative is entitled to all the information that is "necessary and relevant" to the discharge of its duty of representation. (*See* Cal. Gov. Code § 3571(c); *also Stockton Unified School District* (1980) PERB Dec. No. 143 at 13.) PERB uses a liberal, discovery-type standard to determine the relevance of the requested information. (*California State University* (1987) PERB Dec. No. 613-H.) The burden rests on the University to justify nondisclosure. (*Modesto City Schools* (1985) PERB Dec. No. 479, p. 10 (citing *Minnesota Mining and Manufacturing Company* (1982) 261 NLRB No. 2; *Press Democrat Publishing Company v. NLRB* (9th Cir. 1980) 629 F.2d 1320; *Johnson v. Winter* (1982) 127 Cal.App.3d 435).)

The employer must provide information regarding matters within the scope of representation unless the employer can demonstrate that the information is irrelevant or burdensome to produce, or otherwise privileged or confidential. (*Chula Vista City School District* (1990) PERB Dec. No. 834 at 52.) An employer moreover must exercise "reasonable diligence" in gathering information and providing it in a useful form. (*Id.* at 68) (employer failed to provide union with copy of insurance contract).)

The employer's duty to provide relevant information arises when the exclusive representative makes a good faith request for the information. (*State of California (DOT)* (1997) PERB Decision No. 1227.) An employer's refusal to provide requested information evidences bad faith unless the employer can demonstrate adequate reasons why it cannot supply the information. (*Chula Vista City School District* (1990) PERB Dec. No. 834.) Once the Union makes a good faith demand for the information, the employer must provide it "promptly and in a useful form." (*Id.* at 51.) Unreasonable delays are "tantamount to a failure to provide the information." (*Id.*) **PERB has held that delays of two months are unreasonable.** (*Regents of the University of California* (1998) PERB Dec. No. 1255-H, p.44; *see also Chula Vista City School District, supra*, p.61 (three-month delay was unjustified).) **Here, more than eight months have passed since AFSCME submitted its request.** If and when UC ultimately provides the information, that will not excuse the unreasonable delay. (*Chula Vista City School District, supra*, p. 51.) Indeed, across the system, UC is engaged in systematic obfuscation of its various decisions to contract out bargaining unit work, knowing full well that the information is time-sensitive and that it has no basis for withholding the requested information.

### **C. UCI'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 string of decisions to contract out work to Emerald and then expand the scope of work it assigns to the private contractor 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 service workers provided to UC by private vendors are paid significantly lower wages than their UC counterparts and receive few if any 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 Linen-related services for UCI Medical Center 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 Emerald perform bargaining unit work without the wages and benefits that attach to that work.

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

1. Contracting out work customarily performed by the SX bargaining unit without providing AFSCME with notice or an opportunity to bargain;

2. Failing and refusing to insource laundry and linen-related services at UCI Medical Center that it has contracted out to Emerald.
3. Refusing to bargain over contracting out of bargaining unit work.
4. Refusing to provide relevant and necessary information.

The remedy should also include the following affirmative orders:

5. To restore the status quo by making the affected bargaining unit whole, restoring the value of all bargaining unit work wrongfully assigned to non-unit personnel with interest at the statutory rate,
6. To restore the work and related jobs to the unit,
7. To restore to the unit the value of all lost work opportunities and make all adversely-affected workers whole,
8. Restore the status quo by compensating the Union for its time and expenses in pursuing the instant unfair practice charge, 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**

# A F S C M E

American Federation of State, County and Municipal Employees, AFL-CIO

## LOCAL 3299

Dear Mr. Kronheim:

February 4, 2019

**Main Office**

2201 Broadway Avenue  
Suite 315  
Oakland, CA 94612  
Ph: 510.844.1160  
Fax: 510.844.1170

**UC Berkeley**

2519 Telegraph  
Ste. B  
Berkeley, CA 94704  
Ph: 510.486.0100  
Fax: 510.486.0111

**UC Davis Office**

2400 O Street  
Sacramento, CA 95816  
Ph: 916.491.1426  
Fax: 916.443.1747

**UC Irvine Office**

1740 West Katella Ave.  
Suite 1  
Orange, CA 92617  
Ph: 714.634.1449  
Fax: 714.634.0705

**UC Los Angeles Office**

5839 Green Valley Circle  
Suite 203  
Culver City, CA 90230  
Ph: 310.338.1299  
Fax: 310.338.1574

**UC Riverside Office**

1280 Palmyra Ave  
Suite F  
Riverside, CA 92507  
Ph: 951.781.0679  
Fax: 951.781.7034

**UC San Diego Office**

2828 Camino Del Rio N.  
Suite 104  
San Diego, CA 92108  
Ph: 619.296.0342  
Fax: 619.702.8311

**UC San Francisco Office/  
UC Hastings**

College of the Law Office  
1360 9th Avenue  
Suite 240  
San Francisco, CA 94122  
Ph: 415.566.6477  
Fax: 415.566.6846

**UC Santa Barbara Office**

900 Embarcadero Del Mar  
Suite E  
Goleta, CA 93117  
Ph: 805.685.3760  
Fax: 805.685.3270

**UC Santa Cruz Office**

501 Mission St #4  
Santa Cruz, CA 95060  
Ph: 831.425.4822  
Fax: 831.316.0049

Pursuant to Article 5, Section B of the collective bargaining agreements 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 contractors at UCI Medical Center providing services customarily performed by AFSCME-represented bargaining unit employees.

For each of the following four vendors: Securitas, security services; Professional Parking (and any of its successors), valet parking; Emerald Linen, linen services; and MedLine, supply packing services:

1. All contracts and/or agreements currently in effect and, any subsequent agreements, amendments, and/or extensions that have been negotiated with each of the four vendors, including, but not limited to, purchase orders. This should include any contracts and/or amendments related to any change in ownership;
2. All proposals and other documents submitted by the vendor 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 each vendor has submitted to UC Irvine for all services rendered since the contract has been in effect;
5. A list of all physical locations each of the four vendors provide services at UCI Medical Center;
6. A description of the services provided by each vendor, including 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. An explanation for why "Article 5: Contracting Out" of the current CBA permits this work to be contracted out, along with any documentation supporting this explanation; and
9. 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.

Sincerely,



Claudia Preparata

Cc: Nadine Fishel, Ian Smith, Seth Newton Patel, Marisa Salgado,



**From:** Claudia Preparata <cpreparata@afscme3299.org>  
**Sent:** Wednesday, February 20, 2019 12:28 PM  
**To:** Kronheim, Paul (pkronhei@uci.edu)  
**Cc:** Ian Smith; Nadine Fishel; Seth Newton Patel; Marisa Salgado  
**Subject:** Re: AFSCME RFI Re: Vendors at UCIMC

Hi Paul

I have not yet received an acknowledgement of this request. Please let me know when we can expect to receive the responsive documents the Union seeks. Also, the Union seeks information on any vendor currently providing linen services to UCI Medical Center, whether it is Empire Linen, Emerald Textiles or any other vendor.

Thank you in advance.

Claudia

> On Feb 4, 2019, at 2:53 PM, Claudia Preparata <cpreparata@afscme3299.org> wrote:

>

> Dear Paul:

>

> Please see the attached RFI re: four vendors at UCI Medical Center providing services customarily performed by AFSCME-represented titles. Let me know if you have any questions.

>

> Sincerely,

>

> Claudia Preparata

>

> <2019.2.4\_UCIMC Contracting Out RFI.pdf>

**From:** Claudia Preparata <cpreparata@afscme3299.org>  
**Sent:** Friday, October 11, 2019 1:03 PM  
**To:** Kronheim, Paul; Marisa Salgado  
**Cc:** pra@uci.edu  
**Subject:** Re: AFSCME RFI Re: Vendors at UCIMC

Hi Paul —

We have not yet received any documentation or substantive response from either the PRA Office or from your office regarding Emerald or any other linen vendor. It is our understanding that Emerald is referred to as either Emerald Linen or Emerald Textiles per my February 20th email. UCI should provide responsive documentation and information for any linen/laundry vendor, including but not limited to Emerald.

Please let us know when we can expect to receive a response from UCI Medical Center.

Thank you in advance.

Claudia

On Mar 1, 2019, at 10:45 AM, Kronheim, Paul <pkronhei@uci.edu> wrote:

Hi Claudia,

I have reviewed your request and I am forwarding it our Office of Public Records for their review and processing. It appears that much of your request is simply for existing documents which would fall within the PRA Office's purview. After that Office has had the opportunity to search for existing records and depending upon their results, I should be in a much better position to be able to address the questions you asked in #8 and #9. Thanks.

**From:** Claudia Preparata <cpreparata@afscme3299.org>  
**Sent:** Monday, February 25, 2019 4:29 PM  
**To:** Kronheim, Paul <pkronhei@uci.edu>  
**Subject:** Fwd: AFSCME RFI Re: Vendors at UCIMC

Hi Paul —

I'm forwarding the original request. Please let me know if you have any questions.

Thank you.

Claudia

# **EXHIBIT 2**

**From:** Marisa Salgado <[msalgado@afscme3299.org](mailto:msalgado@afscme3299.org)>  
**Subject:** Cease and Desist  
**Date:** April 27, 2019 at 7:09:48 AM PDT  
**To:** Paul Kronheim <[pkronhei@uci.edu](mailto:pkronhei@uci.edu)>  
**Cc:** [spatel@afscme3299.org](mailto:spatel@afscme3299.org), [cpreparata@afscme3299.org](mailto:cpreparata@afscme3299.org)

Dear Paul,

AFSCME has recently become aware that UCI is contracting out bargaining unit work to Emerald Textiles, Medline, Securitas, and Gotham Landscaping. 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.

Sincerely,

Marisa Salgado

# **EXHIBIT 3**

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

Service Unit

March 8, 2014 – June 30, 2017

unilaterally implement, and the Union may strike in the event of unilateral implementation.

**C. EFFECT OF ABSENCES FROM WORK**

1. **Leaves of Absence Without Pay** – Approved leave without pay shall not be considered a break in service. The provisions of the applicable retirement plan regulations determine the effects of such leave without pay on retirement benefits.
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 C. AFSCME understands and agrees that the descriptions contained in Appendix C 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 SX 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 16, 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 Section 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 1<sup>st</sup> of each year. For 2014, the University shall provide report no later than April 1<sup>st</sup>.
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 15<sup>th</sup>, 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 1<sup>st</sup> 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 15 – 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 CURTAILMENT**

### **A. CURTAILMENT PERIOD**

1. Consistent with the University's management rights, including its right to determine the orderly, effective and efficient operation of the University, the University may elect at one or more of its locations including the Laboratory, to curtail or shut down some or all of its activities, on a location by location basis, for periods of specific duration. By way of example and not limitation, such periods may represent opportunities for energy/cost savings and/or adjustments to reduce levels of work activity due to transition periods in the academic calendar and/or "seasonal" or "holiday" influences on scheduled work activities and/or the occurrence at or on University facilities of major public events and/or the occurrence of emergency or "forces of nature" situations adversely affecting normal University operations.
2. In the event of such total or partial closure or curtailment of operations, whether or not the University is able to anticipate such event, employees affected shall select one or a combination of the following options to cover their status during such period of time:
  - a. Employees may use accumulated vacation leave during the period. Newly employed unit members would be allowed to use accrued vacation even if the required six continuous months or quadri-weekly cycles on pay status have not been completed. Employees without sufficient accumulated vacation would be allowed to use up to three days vacation leave prior to actual accrual.
  - b. Employees with accrued compensatory time may elect to use it to cover the scheduled time off or to offset the use of vacation time.
  - c. Employees who do not wish to use vacation or compensatory time off may elect to take a leave without pay during the closure. Notwithstanding the provisions of Article 43, Vacation Leave, Section A.2. and Article 38, Sick Leave, Section A. 1., if an employee is in leave-without-pay status due to a location closure which is three consecutive days or less in duration, such a full-time or part-time employee shall not lose hourly vacation or hourly sick leave accruals.
  - d. Employees who do not select from a., b. or c. above or who do not qualify for a., b. or c. above shall, for the period of time necessary, be placed in a leave-without-pay status. The hourly accrual provisions in A.2.c. above related to location closure(s) shall also apply to employees who are placed in leave-without-pay status.