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 ☐ PUBLIC[1] ☐

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: Julia Lum, Attorney
E-mail Address: jlum@leonardcarder.com

Telephone number: (510) 272-0169
Fax No.: (510)272-0174

e. Bargaining unit(s) involved: SX and 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.

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 (Date)

at Oakland, CA (City and State)

Julia Lum (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: jlum@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 (Date), I served the Unfair Practice Charge (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):

X 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 (Date), at Oakland (City) CA (State).

Ariel M. Lopez
(Type or print name)

(Signature)

ATTACHMENT TO UNFAIR PRACTICE CHARGE

I. INTRODUCTION

Charging Party, American Federation of State, County, and Municipal Employees, Local 3299 ("AFSCME" or "the Union") brings this charge against Respondent Regents of the University of California ("UC" or "the University") for refusing to bargain, in violation of Government Code § 3571(a), (b) and (c). UC is systematically refusing to bargain over seven separate decisions to either issue new contracts or renew existing contracts with private vendors to contract out enormous volumes of work performed by classifications the systemwide Service ("SX") bargaining unit as well as the work of many of the titles in AFSCME's Patient Care Technical ("EX") bargaining unit.

Recently released information demonstrates alarming trends. By secretly renewing contracts, UC increases the volume and nature of the work to be performed by contract workers. This erodes the AFSCME bargaining unit, and demonstrates that UC's actual goals are to save on labor costs by cutting back on even the most minimal standards for contract workers. The University accomplishes these goals by keeping its actions secret, often for years, withholding notice from AFSCME and entirely evading the requirement bargain.

UC has spent more and more each year on contracting out work that would otherwise be performed by AFSCME-represented workers. In just one of the seven examples described in this charge, UCSF contracts with MedAssets to provide patient care services at UCSF. Year after year, UC has increased the volume and nature of the work that it contracts out through the MedAssets contract. Using data UC recently provided to AFSCME, the Union determined that between March 2014 to February 2019, UCSF paid MedAssets nearly $64 million, with the spend amount steadily increasing with each passing year. UC paid MedAssets $7.9 million to supply it with contract labor from March to December 2014 (prorated to $9.5 million in annual spend), $14.1 million in 2015, $11.8 million in 2016, $10.5 million in 2017, and $16.8 million in 2018. The number of MedAssets monthly FTEs ("Full Time Equivalents", based on hours worked) performing AFSCME-representing clinical work at UCSF increased from 79 in March 2014 to 155 in January 2019. UC never provided notice or an opportunity to bargain over any UC decision to expand the volume or scope of work to be performed by the vendor or its subcontractors.

The repeated renewals reflect UC's increasing reliance on contract labor to perform a vast array of functions at the campuses chipping away at protections to workers and undercutting AFSCME's bargaining units – and leaving AFSCME in the dark throughout the process. Although the University typically disavows having the goal of saving money by contracting out work to low-wage vendors, the facts reveal that in fact, cost-cutting goals are at the heart of UC's actions. For example, in 2016, UC contracted with Lyon's Security to perform security services at the UC Path Center at UC Riverside. The initial contract required the vendor to comply with Fair Wage/Fair Work, UC's basic minimum wage standard. When UC renewed its contract with Lyon's Security in 2018, however, UC *exempted* the vendor from complying with Fair Wage/Fair Work to the obvious detriment of the University's lowest paid workforce.

PERB should compel the University to cease and desist from unilaterally contracting out bargaining unit work, restore the status quo, and to make whole the affected employees and bargaining units by restoring the value of all work lost as a result of the University's unlawful conduct.

II. STATEMENT OF FACTS

AFSCME 3299 represents approximately 26,000 employees within the University of California system. The Union represents a wide range of UC employees, including a systemwide unit of Service ("SX") and a system-wide unit of Patient Care Technical ("PCT" or "EX") workers. The most recent collective bargaining agreements between UC and AFSCME covering the SX unit expired on June 30, 2017; the EX MOU expired December 31, 2017. Any contractual waivers of the right to bargain over contracting out bargaining unit work expired with each of those MOUs.

A. Lyon's Security - UC Path Center, Riverside

SX-represented security guards perform security services for the University of California, Office of the President ("UCOP"), including in its Oakland, California building. On January 31, 2014, UCOP held a ribbon cutting event for the UC Path Center, located near UC Riverside's campus. UC Path centralizes the University's HR, finance, payroll services, and other programs and is run by UCOP.

UCOP entered into an agreement with Lyon's Security at the UC Path Center on January 18, 2016. (Exhibit 1.) The contract was to run through January 17, 2017, with so-called automatic renewals for two successive one-year periods, i.e., through January 17, 2019. (*Id.*) The contract was explicitly subject to UC's "Fair Wage/Fair Work" policy, which provides contract workers with the very basic protection that the supplier pay the "UC Fair Wage," defined as $13 per hour as of 10/1/15, $14 per hour as of 10/1/16, and $15 per hour as of 10/1/17. (*Id.*, p. 2.) The policy does not require the supplier to provide any specific benefits or paid time off.

UC did not inform AFSCME of any plan to renew the Lyon contract. Just in case UC might be considering contracting out the work again, however, on February 18, 2019, AFSCME sent a demand to bargain to UC Riverside over the renewal of the Lyon's Security contract. (Exhibit 2.) UC Riverside informed AFSCME that it did not have control over operational decisions at UC Path, and to direct the request to UCOP. The following day, on February 19, 2019, AFSCME sent a demand to bargain to Ian Smith, UCOP Labor Relations Manager. (Exhibit 2.) AFSCME submitted an RFI on March 1, 2019. (Exhibit 3.)

UC never responded to the demand to bargain, but almost five months later, on July 5, 2019, UC provided AFSCME with a copy of a new agreement between UC Path and Lyon's Security. (Exhibit 4.) The contract duration is between December 1, 2018 through November 30, 2023, and offers UC the option to renew it for two additional one-year terms. According to the contract, the vendor is **no longer required to comply with UC's Fair Wage/Fair Work policy or otherwise required to pay prevailing wages: UC has explicitly granted Lyon's an exception from either policy**. (See Exhibit 4, 2018 agreement, p. 2.) Whereas the old agreement

required Lyon's to comply with that policy – i.e., to pay a minimum of $15 per hour after October 1, 2017 – now the contract requires the supplier to pay neither UC's "fair wage," or prevailing wages. This telling amendment to the contract demonstrates that UC's primary motivation is to save on labor costs, without any consideration for the private contractors providing the work.

Prior to UC's decision to renew the contract, it did not provide any notice to the Union. AFSCME was unaware the University had renewed the Lyon's security contract until it received the responsive information on July 5, 2019.

UC has also continued to withhold necessary and relevant information related to its work with Lyon. While UC provided a copy of the new contract between UC and Lyon's, it has failed to provide any additional information requested in the RFI. (Exhibit 5.) On August 2, 2019, the Union followed up on the RFI and again requested a response. Smith responded on August 14, 2019, stating that UCOP was still working on the request. UC has provided no additional information since that date.

B. MedAssets – UCSF

Medical assistants, respiratory therapists, MRI technologists, and surgical technicians perform patient care services at UCSF as members of AFSCME's EX bargaining unit. In 2014, UCSF entered a staffing agreement with MedAssets Workforce Solutions.[1] (Exhibit 6.) MedAssets is a labor broker that negotiates agreements with staffing agencies that UCSF uses to obtain nursing, allied health, and other clinical and non-clinical staffing services, and provides overall vendor management services. (Exhibit 7.) Positions provided through the agreement include medical assistants, CNAs, respiratory care practitioners, MRI technologists, surgical technicians, EKG monitor telemetry technicians, and other titles. The contract had an initial term date of June 12, 2014 through June 11, 2019, and provided it could be extended for two consecutive one-year periods.

Year after year, UC has increased contracting out through the MedAssets contract. On December 22, 2017 and March 8, 2019, UC provided information related to the MedAssets contract in response to an RFI requesting all UCSF invoices from MedAssets. Combining the two datasets, which together cover March 2014 to February 2019, the information shows that UCSF paid MedAssets, which is a broker for various labor agencies, nearly **$64 million**. Broken down by year, UC paid MedAssets the following:

$7.9 million from March to December 2014,
$14.1 million in 2015,
$11.8 million in 2016,
$10.5 million in 2017,
$16.8 million in 2018, and so far,
$2.7 million in the first two months of 2019.

[1] Since that time, Vizient Inc. acquired MedAssets. For the purposes of this charge, AFSCME refers to the company as "MedAssets."

In terms of hours worked, the number of contract workers supplied by or through MedAssets to perform AFSCME-represented clinical work at UCSF increased from 79 monthly Full Time Equivalents or "FTEs" in March 2014 to 155 FTEs in January 2019. UC never provided notice or an opportunity to bargain over it decision to expand the use of MedAsset contract work.

On June 9, 2019, the Union demanded to bargain before UC's contract with MedAssets was set to expire. (Exhibit 8.) While the Union received an auto-generated message acknowledging the demand to bargain request, it has not received any substantive request from the University. Although UC withheld notice and has not provided AFSCME with any information about plans to renew the contract, the data demonstrate an increased and expansive reliance on MedAssets, leading AFSCME to believe that the University unilaterally renewed the MedAssets contract.

C. Triage Consulting – UC Davis Medical Center

Patient Billers in AFSCME's EX unit provide patient billing services at UC Davis Medical Center. In response to an RFI, on September 20, 2017, UCDMC provided a list of registries and staffing contracts that UCDMC had entered into with various vendors. One of the contracts was with Triage Consulting Group, which supplies UCDMC with contractors who perform patient billing services. The list UCDMC provided showed that the contract was entered into on December 29, 2009 and the expiration date was December 31, 2018. The contract was valued at over $3.1 million.

UC did not inform AFSCME of any plan to renew its contract with Triage Consulting. Nonetheless, to be on the safe side, on February 15, 2019, the Union demanded to bargain over the expiration and any possible plans to renew the contract. (Exhibit 9.) UC responded the same day that the contract was to expire on July 1, 2019 instead of December 31, 2018, indicating they had already renewed the contract without notice or negotiation, and were poised to do so again. (*Id.*) Julia Johnson, UC Davis Labor Relations Manager, stated that UC would follow up to determine why UC had provided two different expiration dates. (*Id.*) UC did not otherwise respond to AFSCME's demand to bargain. UC has therefore refused to bargain with AFSCME over the contract or provide information responsive to AFSCME's RFI.

D. Maxim - UC Davis Medical Center

Access Representatives in the EX unit obtain and verify a patient's insurance information when they are admitted to the Medical Center. Concerned that Maxim Staffing Solutions was sending workers to Access Representative work in the Medical Center's Emergency Room Department, the Union sent a request for information ("RFI") on December 5, 2018, inquiring about the number of contract workers in the Department and the University's contractual obligations with the vendor. In UC's response, UCDMC indicated that it had 10 contract workers in the ER. (Exhibit 10.) It further stated that the agreement with the vendor was due to expire on January 31, 2019, and that UCDMC would likely seek an extension of its term. Despite AFSCME's request, however, UC has not produced the master contract between UC Davis and

Maxim. Instead, it has provided purchase orders that reflect UC Davis has been using Maxim Staffing Solutions since at least May 3, 2013. (Exhibit 11.)

AFSCME demanded to bargain over the contract's expiration and possible renewal on January 31, 2019. (Exhibit 12.) Ian Smith, UCOP Labor Relations Manager, responded on February 5, 2019, and stated that the contract's expiration date was February 28, 2019 and that the University was working on obtaining additional information about the contract. (*Id.*) On February 11, 2019, the Union submitted an RFI requesting additional information. (Exhibit 13.) Subsequently, UC offered to meet to "clarify its position," but would not acknowledge any obligation to bargain over UC's decision to contract out bargaining unit work for an additional period of time, nor did UC reveal the scope of work of the original contract or any potential renewal.

On March 21, 2019, the Union received a partial response for the RFI. UC included a service contract purchase order for $1,842,954 for "professional services general" for Access Representatives in the emergency department. (Exhibit 11.) UC also provided a second purchase order that authorized up to $2.6 million in spending on unspecified staffing through the Maxim contract. (Exhibit 15.) Needless to say, the Union has never had the chance to negotiate and it has never acquiesced to the arrangement with Maxim, which was adopted in secret. The Union still does not have a copy of the master contract, or any amendments thereto, but it appears that UC unilaterally renewed the Maxim contract, expanding the scope and without providing AFSCME notice or an opportunity to bargain.

E. Swayzer – UCLA

SX-represented Custodians perform cleaning services at UCLA. UCLA's indoor arena, Pauley Pavilion, regularly hosts sporting and other events throughout the year.

On July 8, 2016, UCLA published an RFP for "Janitorial Cleaning Services for Special Events at Pauley Pavilion and other UCLA Recreation Facilities." (Exhibit 16.) UC notified AFSCME of the RFP on July 22, 2016. (*Id.*) On August 24, 2016, AFSCME filed a complaint with Peter Chester, Executive Director of Labor Relations, alleging that the notice failed to comply with Article 5(B) of the parties' contract on the basis that it was provided more than ten business days after it was issued; that it failed to provide notice that demonstrated the appropriateness of the contract as required by Article 5(B)(4); and that did not comply with the substantive restrictions on contracting out as set forth in Article 5(B)(1) through 5(B)(3). (Exhibit 17.)

On January 20, 2017, UC responded to AFSCME's complaint, and represented that the work contracted at the Pauley Pavilion was of "an episodic nature that requires high volume, short turn-over and is of a specialized nature requiring special equipment." (Exhibit 18.)

On October 2, 2018, AFSCME sent an RFI requesting more information regarding the Swayzer contract. On November 27, 2018, UCLA provided AFSCME with an agreement with Swayzer, including blanket purchase order and appendices to the contract. Over AFSCME's objection, UC awarded the contract to Swayzer, with a term from September 1, 2016 to June 30,

2019, with the option to renew for two additional one-year periods. (Exhibit 20, blanket purchase order; Exhibit 19, Appendix to agreement.) The contract provided purchasing authorization up to $1.4 million in custodial services for special events and other events in sports venues at UCLA. (Exhibit 20, Blanket purchase Order.)

On May 29, 2019, in anticipation of the contract's June 30, 2019 expiration, the Union demanded to bargain over any plan to renew the agreement. (Exhibit 22.) UC failed to respond; the Union followed up with UC on June 12 and June 25. (*Id.*) On July 1, 2019, the day after the contract's expiration, UC stated that it "disagrees with AFSCME's contention that it is required to bargain over our longstanding practice of using a third-party entity to meet our short-term, supplemental staffing needs," but that it was willing to meet to "clarify" its position. (*Id.*)

UC therefore refused to bargain with AFSCME over its decision to renew the Swayzer contract, and AFSCME alleges on information and belief that UC unilaterally renewed it in 2019.

F. Aureus Radiology at UC Irvine Medical Center

Radiologic and Ultrasound Technicians in the EX unit perform patient care services at UC Irvine Medical Center. Through the RFI response, AFSCME learned that UCI Medical Center and Aureus had negotiated an initial contract on July 11, 2012 for professional staffing services, and that UCI Medical Center had entered into several subsequent purchase orders after the initial contract. The most recent contract between the parties was an open purchase order agreement in effect between January 1, 2017 to December 30, 2018. (Exhibit 23.) The open purchase order was for Aureus to provide professional staffing services, mainly for Radiologic and Sonographic (Ultrasound) Techs. (*Id.*)

UC did not inform AFSCME of any plan to renew its contract with Aureus. Nonetheless, to be on the safe side, on February 15, 2019, AFSCME sent a demand to bargain letter regarding any plans to enter into a new or renewed contract with Aureus Radiology given that UCI's contract with the vendor had recently expired. (Exhibit 24.) On March 8, 2019, the Union followed up with a request for information. (Exhibit 25.)

On October 4, 2019, apparently in response to the Union's RFI, UC provided a heavily redacted document. (Exhibit 26.) It appears to show a department schedule, but it is impossible to determine which workers are registry or how frequently they are scheduled to work. The document is indecipherable and thus unresponsive to question 12 of the Union's RFI, which requests a copy of the relevant departmental schedules showing the schedules and hours worked by the vendor's employees during each 12-month period. The University has not even attempted to provide information responsive to the remaining questions in the Union's RFI.

The University has failed and refused to respond to AFSCME's demand to bargain over its renewal of the Aureus contract. AFSCME is not informed as to whether UC continues to contract with Aureas, directly or indirectly through a broker or other third party intermediary. To the extent that UC is contracting out Radiologic and Ultrasound Tech work at UCI Medical

Center, however, UC executed that arrangement unlawfully, denying the Union notice and the opportunity to negotiate.

G. GMI Building Services – UC San Diego

SX-Represented custodians perform cleaning services at UCSD, including hard surface floor cleaning. In 2014, UCSD contracted with GMI Building Services to perform hard surface floor cleaning. The contract duration was between June 3, 2014 and May 31, 2017, with the option to renew the contract for two additional one year periods (i.e., until May 31, 2019.) (Exhibit 27.)

UC did not inform AFSCME of any plan to renew its contract with GMI. Nonetheless, to be on the safe side, on May 31, 2019, the Union sent a demand to bargain communication to UCSD. (Exhibit 28.) The Union submitted an RFI on June 3, 2019. (Exhibit 29.)

On July 31, 2019, the University responded and stated that the University had not yet made a decision as to whether to extend the contract for an additional year, that no RFP had issued, but provided no further information. (Exhibit 30.) On August 13, 2019, the University stated that it was working with the Office of the General Counsel at UCOP to clarify the University's position with the demand to bargain, and that it would follow up on a later date. (*Id.*)

The University has provided no additional response to the Union's demand to bargain or RFI. It has therefore unlawfully refused to bargain over the GMI Building Services contract renewal. AFSCME is not informed as to whether UC continues to contract with GMI, directly or indirectly through a broker or other third party intermediary. To the extent that UC is contracting out custodial work such as hard surface cleaning at UCSD, however, UC would have executed that arrangement unlawfully, denying the Union notice and the opportunity to negotiate.

III. ARGUMENT

HEERA, at Government Code Section 3571(c) makes it unlawful for the University to refuse or fail to meet and confer with the Union on all matters within the scope of representation and to implement changes to terms and conditions of employment unilaterally. Section 3571(a) and (b) furthermore makes it unlawful for the University to interfere with or discriminate against employees or unions exercising rights under HEERA. By failing to meet and confer with the Union on matters within the scope of representation and by interfering with employee rights under HEERA, the University has violated these provisions of state law.

In addition, UC has committed at least two distinct unilateral changes.

First, UC is unlawfully failing and refusing to provide AFSCME with notice or an opportunity to bargain over its intent to renew contracts to outsource bargaining unit work that, in multiple cases, have resulted in expanded contracting out of bargaining unit work, substantially increased spending on outsourcing, and material changes to the contracts. (*See* UPC SF-CE-1245-H [Renewals and amendments to preexisting contracts show that UC increased the

volume of work and contracted out additional types of work over time].) During this status quo period, UC is obligated to provide notice and an opportunity to bargain over each and every distinct decision to contract out bargaining unit work as any waiver of the right to bargain over contracting out has expired with the parties' contracts.[2]

Second, UC has unilaterally changed the policies reflected in Article 5 by unlawfully renewing contracts that do not comply with Article 5's prohibition against contracting out to save money on the basis of the provider's lower wages and benefits, and/or that do not fit within any of Article 5 enumerated exception to the general rule that bargaining unit work be performed by bargaining unit personnel. Each of these unilateral changes must be reversed.

UC has also failed and refused to provide AFSCME with information relevant and necessary to representing its members.

Finally, UC has interfered with the rights of employees and the union.

IV. UC HAS UNLAWFULLY REFUSED TO BARGAIN WITH THE UNION AND COMMITTED UNILATERAL CHANGES IN VIOLATION OF THE STATUS QUO

A. UC Is Required to Meet and Confer Regarding Each Decision to Contract Out Bargaining Unit Work

HEERA Section 3571(c) requires higher education employers to meet and confer in good faith with employee organizations about matters "regarding wages, hours, and other terms and conditions of employment." The duty to bargain collectively requires the employer to maintain the status quo without taking unilateral action as to wages, working conditions, or benefits until negotiations reach an impasse. (*San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813, 818-19 [citing *Producers Dairy Delivery v. Western Conference* (9th Cir. 1981) 654 F.2d 625, 627; *Peerless Roofing Co., Ltd. v. NLRB* (9th Cir. 1981) 641 F.2d 734, 736; *Clear Pine Mouldings, Inc. v. NLRB* (9th Cir. 1980) 632 F.2d 721, 729; *NLRB v. Sky Wolf Sales* (9th Cir. 1972) 470 F.2d 827, 980]; *County of Alameda* (2006) PERB Dec. No. 1824-M [citing *San Joaquin*, *supra*, at 819].)

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[2] AFSCME has filed additional charges related to UC's unilateral contracting out of bargaining unit work. *See, e.g.,* SF-CE-1223H (refusal to bargain over its decision to contract out work in UC's joint venture with Kindred Hospital); SF-CE-1228H (unlawful contracting out via Aya Healthcare); SF-CE-1229H (refusal to bargain over systemwide contract to outsource SX unit work); SF-CE-1238H (unilateral change of policy by failing to provide AFSCME with RFPs to outsource bargaining unit work); SF-CE-1241H (failure to bargain over outsourcing of custodians at UCSD); SF-CE-1245H (unilateral change with respect to renewals of contracts over ten years old without engaging in competitive bidding).

B. Where The University Has Contracted Out the Work at Issue Without Notice to AFSCME and Over AFSCME's Objection, It Has Committed A Unilateral Change

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.)

As a matter of law, AFSCME is entitled to notice and the opportunity to bargain before UC contracts out bargaining unit work. In addition to the statutory requirement (*see* Gov. Code § 3571(c)), both the SX and EX MOUs contained language governing decisions to contract out work that provided the University with some amount of discretion to act within limited parameters while also providing for procedural and substantive protections. Article 5's mandatory protections continue with the status quo with the parties' now-expired MOUs: accordingly, UC is obligated to provide AFSCME with a copy of each RFP that seeks to contract out bargaining unit work within ten business days of issuance and to provide "such notice" that demonstrates that the decision to contract out work complies with Article 5's requirements.

1. The University Made a Clear Change by Repeatedly Renewing Contracts to Outsource Work Without Notice or an Opportunity to Bargain

PERB has long held that contracting work out without notice or negotiation constitutes a unilateral change in policy. When an employer decides to replace bargaining unit employees with employees of a private entity while ensuring that there is little change in the services provided to the public, that decision is subject to bargaining. (*Lucia Mar Unified School District* (2001) PERB Dec. 1440E (employer simply replaced its employees with those of a contractor to perform the same services under similar circumstances, thus no need to apply any further test about labor costs as decision is subject to statutory duty to bargain); *Oakland Unified School District* (2005) PERB Dec. 1770 (contracting out services that could have been performed by in-

house employees subject to bargaining); *State of Cal. (Dept. of Veterans Affairs)* (2010) PERB Dec. 2110-S at p. 6 (same).

Each distinct decision to contract out work – or expand the scope of an agreement for the subcontracting of bargaining unit work – requires that the employer provide notice and an opportunity to bargain: "each discrete decision whether to subcontract at a new facility is discretionary and therefore triggers a specific bargaining obligation, absent a clear and unmistakable waiver." (*County of Kern* (2019) PERB Decision No. 2659-M, judicial appeal pending, citing *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, supra*, PERB Decision No. 1689-H, adopting proposed decision, at pp. 29-31 [same].)

Here, the University's first unilateral changes were to renew numerous contracts with private vendors to perform work that would otherwise be performed by UC employees in AFSCME-represented positions without providing notice to AFSCME, let alone the opportunity to bargain. If UC had wished to contract out the same or different work to the same vendor or any other, for a longer period of time, it was 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 Exhibit 31, Article 5(B)(4). 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. Quite apart from the obligation to provide a copy of any RFP, during the status quo period, the contractual reference to providing a copy of the RFP can no longer be read by the University to serve as a waiver of clear notice of each and every decision to contract out work, with or without any RFP.

During the life of the contract, Article 5(B)(4) required the employer to demonstrate that each decision to contract out bargaining unit work – whether by entering into a new contract or by *renewing a pre-existing contract*– complied with. Article 5's prohibition against contracting out to save money on the basis of the provider's lower wages and benefits, and/or that do not fit within any that do not fall under any of Article 5 enumerated and inherently limited exceptions to the general rule that bargaining unit work be performed by bargaining unit personnel.

Article 5(B)(2) makes clear that these contractual provisions are applicable to contracts subject to renewal ("The provisions of Sections A – D of this article shall apply to contracts for services that are subject to renewal"). Only after demonstrated compliance with the procedural and substantive justifications could the University proceed to contract out bargaining unit work.

If the University could not justify the new contract or contract renewal, however, it could not proceed and UC was required to refrain from contracting out or to bring the work back in-house. (*See* SF-CE-1093H, Testimony of Nadine Fishel, Associate Director of Labor Relations, Transcript Vol. VIII, at p. 76-77.)

Now that the MOU has expired, however, UC can no longer rely on contractual waivers of the right to bargain at all. It cannot simply invoke one of the expired exceptions and consider the matter resolved and proceed to contract out bargaining unit work; rather, UC must provide notice – inclusive of but not limited to the contract-soliciting documentation – and bargain with the union before it can proceed to contract out any bargaining unit work, and that is true whether UC is interested in executing a new contract or renewing a pre-existing one.

In addition, the contracts described above did not fall into any enumerated exception in Article 5(B)(2) and would have been non-compliant with the MOU during its lifetime. During the term of the contract and continuing into the status quo period, the employer has a mandatory non-discretionary duty to refrain from entering into or renewing contracts that do not fall under any Article 5 exception. See Article 5(B)(1) and (2). When these agreements expired, the contracts should have been abandoned and the work should have been restored to the union. Had UC wished to work out an arrangement to contract out the work in the meantime, it was required to provide notice and an opportunity to bargain.

2. Irrespective of UC's Erroneous Re-Interpretation of the Now-Expired MOU, Contracting Out Is a Mandatory Subject of Bargaining

It is well settled that decisions to contract out work fall squarely within the scope of representation. PERB recently noted that subcontracting is "generally within the scope of bargaining," and that in a majority of cases, PERB has found subcontracting decisions are negotiable. *County of Kern* (2019) PERB Decision No. 2659-M (judicial appeal pending), *see also Long Beach Community College District* (2008) PERB Decision No. 1941, *Lucia Mar Unified School District* (2001) PERB Dec. 1440.)

Contracting out is a mandatory subject of bargaining where any of the three circumstances apply: (1) a material portion of the concerns underlying the subcontracting decision were amenable to bargaining, (2) the subcontracted employees perform substantially the same types of job duties that bargaining unit employees perform, or (3) the employer unilaterally alters the terms of a written policy or agreement, or applies a policy or agreement in a new way. (*County of Kern* (2019) PERB Decision No. 2659-M, p. 12-24, citing *Rialto Unified School District* (1982) PERB Dec. No. 209, *Lucia Mar, supra,* PERB Dec. 1440.)

All three circumstances exist here. First, in the majority of the contracts renewals cited in this charge, UC has failed to comply with Article 5(B)(4) and demonstrate how the contracting out decision complies with the contract. As such, AFSCME is in the dark as to what it will claim its reasons for contracting out the work might have been and any rationale provided ex post facto in the course of litigation is highly suspect. In certain cases, however, UC's motivation to save on labor costs are obvious. In the case of Lyon's Security, UC's decision to exempt the vendor from its Fair Wage/Fair Work policy in its 2018 renewal is indicative of its desire to save on

labor costs – and its willingness to do so at the expense of contract workers and the erosion of AFSCME's bargaining unit and the standards the Union has fought to obtain.

Second, it cannot reasonably be disputed that the work that UC has decided to contract out pursuant to these contracts falls outside the scope of the EX or SX bargaining units. 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. *See also 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, each of the contracts are for temporary workers to perform work that has customarily been performed by AFSCME-represented workers.

Third, as discussed *supra,* UC unilaterally changed the terms and conditions of the bargaining agreement by failing to demonstrate how each of these renewals complied with Article 5 and by renewing even those contracts that did not comply. Pursuant to Article 5(B)(1) and (2) of the now-expired collective bargaining agreement, UC must repudiate any contract up for renewal that does not comply with the substantive provisions of Article 5. By repeatedly renewing non-compliant contracts, UC has unilaterally altered Article 5.

3. UC Did Not Provide Notice or an Opportunity to Bargain

The University made each of the renewals unilaterally – without proper notice or any 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, no notice was given to the University's decision to renew the contracts. Despite the lack of notice, AFSCME demanded to bargain over the contract expiration and presumed renewal. In the few cases where UC responded at all, it was only to refuse negotiations, stating it "disagreed with" AFSCME's position that it was required to bargain over decisions with respect to the renewals. (*See, e.g.,* Exhibit 22 [Swayzer refusal to bargain]; Exhibit 14 [Maxim refusal].) In each instance, UC denied AFSCME any opportunity to bargain before renewing the contracts described above.

4. Contracting Out Has a Generalized and Continuing Effect

The decision to contract out the work at issue 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 work to a contract employee that would normally have been assigned to the bargaining unit 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.)

In a recent contracting-out case, a PERB ALJ made clear 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 grows or 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, PERB emphasized that:
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> 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*, PERB Dec. No. 1186 (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. (*Id.* at 3.)).

UC's unilateral decisions to contract out work through *at least* 7 contract renewals, across *at least* 5 different campuses, have a generalized effect and continuing impact on terms and conditions of employment. Using contract workers to perform work in these positions, which is work that would normally be assigned to the bargaining unit, has an immediate effect on far more than just one employee. *See City of Davis, supra*, at pp. 24-25. The unilateral transfer of work from AFSCME workers to the contract workers causes a loss of work opportunities and erodes the bargaining unit, both which have a generalized impact on terms and conditions of employment. (*See County of Santa Clara, supra*, SF-CE-1428-M at p. 12.

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Moreover,

> [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*, PERB found this element to have been met because the employer's witness testified that its conduct in announcing a unilateral change "was consistent with the terms of the CBA." (*Id.* at p. 26.) The Board found that the employer had taken the action based on its belief that it had a contractual right to do so, such that it *did* constitute 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, in refusing to bargain with AFSCME over any decision to contract out work, UC explicitly relies on its distorted interpretation of Article 5, asserting its view that Article 5 might be read to have permitted UC to act during the term of the MOU and therefore UC should be free to exercise its discretion to contract out work now, after the MOU has expired, as well. (*See, e.g.,* SF-CE-1245H, UC Position Statement at pp. 39-43; SF-CE-1238H, UC Position Statement at pp. 10-13.) The Union disputes that Article 5 would have permitted UC to act unilaterally during the life of the MOU; but today, the matter is even more clear. As a matter of law, UC cannot rely on any expired contractual waiver of the Union's statutory rights, and certainly cannot claim that it has the unilateral right to expand its contracting out by contracting out new positions after the expiration of the contract.

C. The Parties' MOU and All Purported Contractual Waivers of the Right to Bargain Have Expired

The University has sought to construe Article 5's requirement as one that effectuates a waiver of the Union's statutory right to notice of decisions to contract out if the University chooses to contract out work without issuing any RFP. Even if the University's self-serving position were credited during the life of the MOU, it fails now that the MOUs have expired and with it, all waivers of the right to bargain.

UC cannot rely on any interpretation of the expired MOU language to justify its discretionary decision to unilaterally contract out bargaining unit work without providing notice or an opportunity to bargain to the Union – whether or not an RFP was, in fact, issued. UC appears to believe that during the life of the MOU, it had a "management right" to use its discretion to contract out work, and it now argues that it should be afforded similar discretion to do so after the MOU expired. As a matter of law, however, any and all contractual waivers of the right to bargain expired with the parties SX and EX MOUs. In *Regents of the University of California* (2004) PERB Decision No. 1689-H, at 24-26 ("*UC-AFT*"), the Board recognized that waivers of the right to bargain or a contractual reservation of management rights expire with the

end of the collective bargaining agreement. (*Id.,* citing with approval *Blue Circle Cement Company* (1995) 319 NLRB 954.)

Moreover, Article 5 explicitly provides that any contract that does not comply with the substantive protections of Article 5(B) – namely, that the University has contracted out solely on the basis of costs savings or for one of the enumerated exceptions in Article 5(B)(2) – the University may not proceed with its plan to contract out that work. Article 5 explicitly applies to renewals of contracts, indeed, UC's own negotiator testified under oath that pre-existing contracts would be reviewed for compliance with Article 5 when they came up for renewal. See SF-CE-1093-H, Excerpt of Transcript Vol. VIII, at p. 76-77.) At the expiration of a non-compliant contract, then, the work must be insourced and the contract not renewed.

Here, the decisions at issue are entirely based on the University's discretion. UC is choosing to renew contracts with vendors in order to have contract workers perform a significant amount of Service and Patient Care Technical unit work up and down the state. Through contract renewals and amendments, UC is relying on its own discretion to decide whether to change the scope of work to be contracted out and the length of time for it to be performed by contract labor. Each discretionary decision to contract out work is within the scope of representation and in the absence of any contractual waiver, should be negotiated. *County of Kern* (2019) PERB Decision No. 2659-M, judicial appeal pending, citing *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, supra*, PERB Decision No. 1689-H, adopting proposed decision, at pp. 29-31 [same].

V. EACH OF THE UNIVERSITY'S ACTIONS TO UNILATERALLY RENEW CONTRACTS WITH PROVIDERS OF CONTRACT LABOR UNLAWFULLY INTERFERES WITH THE EXERCISE OF EMPLOYEE RIGHTS UNDER HEERA

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. UC's decisions to contract out work seek an end-run around the hard-won terms and conditions of employment negotiated by AFSCME and UC over decades as contract workers generally lack union representation and work for significantly lower wages, without paid vacation time, family health care or any pension. Bypassing the Union to contract out AFSCME's work threatens all of these 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.

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A prima facie case of interference is established by allegations that an employer's conduct tends to or does result in some harm to employee rights. (*Jurupa Unified School District* (2012) PERB Decision No. 2283, p. 7, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*).) If the harm to protected rights is slight and the employer offers justification based on operational necessity, the competing interests are balanced. (*Cabrillo Community College District* (2015) PERB Decision No. 2453, pp. 13-14.) However, if the harm to employee rights outweighs the asserted business justification, a violation will be found. (*Id.*) Where the employer's conduct is inherently destructive of protected rights, it will be excused only on proof that it was caused by circumstances beyond the employer's control and that no alternative course of action was available. (*County of Santa Clara* (2018) PERB Decision No. 2613-M citing *County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, pp. 36-37.)

An employer's failure and refusal to bargain over contracting out and to instead proceed with its plans unilaterally interfere with workers' rights to be represented and deny the exclusive representative the right to represent employees performing bargaining unit work for the employer's benefit. PERB has held that unilaterally reassigning job duties to workers outside the bargaining unit constitutes interference with employees' rights to be represented. In *Regents of the University of California (CNA)* (1998) PERB Decision No. 1255-H, the University unilaterally reassigned certain duties of UCLA registered nurses in the cardiac catheterization lab to cardiovascular technicians. PERB held that UC's conduct interfered with the RN's rights to have CNA represent them in their employment relations with their employer, a violation of section 3571(a). (*Id.,* proposed dec. at p. 41.)

Moreover, 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, 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).

Here, the University has refused to bargain over its decisions to contract out work. The University's continuous refusal to bargain and each unilateral action taken by the University to assign unit work to non-unit contract labor fundamentally interferes with employee rights in violation of HEERA Section 3571(a), and further violates AFSCME's rights to represent the SX and EX bargaining units. in violation of section 3571(b).

VI. FAILURE AND REFUSAL TO PROVIDE INFORMATION

UC has failed to provide virtually any information responsive to AFSCME's requests about UC contracting out of bargaining unit work. 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).) The fact the employer ultimately provides the information does not excuse an unreasonable delay. (*Chula Vista City School District, supra,* p. 51.)

Here, the University is withholding necessary and relevant to bargaining and has failed to provide *any* information AFSCME has requested regarding Maxim (Exhibit 13) and Aureus (Exhibit 25). While UC has provided the Lyon's contract in response to AFSCME's RFI on this work (see Exhibit 3), it has failed and refused to provide any of the additional information requested in that RFI.

UC's refusal to provide information in response to AFSCME's requests evidences its bad faith.

VII. CONCLUSION AND REMEDIES REQUESTED

UC has repeatedly failed and refused to bargain over contracting out and appears to have entered into new or renewed contracts with multiple vendors over the union's objection, wrongly denying those who perform bargaining unit work the wages, benefits and protections negotiated by AFSCME Local 3299. The Union seeks an order requiring that UC and its representatives to cease and desist from:

1. contracting out SX or EX bargaining unit work

2. refusing to bargain over contracting out of bargaining unit work

3. executing, renewing or amending any contract with a vendor to perform SX or EX bargaining unit work without notice and negotiation;

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

4. rescind each contract unlawfully entered into, renewed or amended in scope;

5. to restore the status quo by making the affected bargaining unit members whole with the value of all lost work opportunities;

6. 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.

7. 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;

8. include interest, at the statutory rate, on each component of the monetary remedy; and

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