



PERB Received  
09/04/24 15:12 PM

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

# UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 09/04/2024

**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: California Faculty Association
- b. Mailing Address: 1110 K Street, Sacramento, CA 95814, Sacramento, CA 95814
- c. Telephone number: (916) 441-4848
- d. Name and title of agent to contact: Julia Harumi Mass, Attorney E-mail Address: jmass@rsglabor.com  
Telephone number: (626) 796-7555 Fax No.:
- e. Bargaining Unit(s) involved: Unit 3

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

- a. Full name: Trustees of the California State University
- b. Mailing Address: 401 Golden Shore Long Beach, CA 90802
- c. Telephone number: (562) 951-4500
- d. Name and title of agent to contact: Marc Mootchnik, University Counsel E-mail Address: mmootchnik@calstate.edu  
Telephone number: (562) 951-4500 Fax No.: (562) 951-4956

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:

## 5. GRIEVANCE PROCEDURE

<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

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

Yes  No  Unknown

PERB Received  
09/04/24 15:12 PM

#### 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.)
- One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code., § 98160 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:  
3570 and 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. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

\_\_\_\_\_  
Julia Harumi Mass  
(Type or Print Name)

\_\_\_\_\_  
/s/ Julia Harumi Mass  
(Signature)

\_\_\_\_\_  
09/04/2024  
Date

## STATEMENT OF CHARGE

### *California Faculty Association v. California State University*

#### **The Parties**

1. Charging Party California Faculty Association (“CFA”) is the “exclusive representative” within the meaning of Government Code § 3562(i) of a bargaining unit of approximately 29,000 faculty employees employed by Respondent California State University (“CSU”), an employer within the meaning of Government Code § 3562(g), at its 23 campuses. The CFA-represented CSU employees include Lecturers, Assistant Professors, Associate Professors, Full Professors, Coaches, Counselors, and Librarians who are part of bargaining unit 3 (“Unit 3”).

2. At all times relevant, CFA and CSU have been parties to a collective bargaining agreement (“CBA”) covering the terms and conditions of employment for employees in Unit 3. The CBA includes a grievance process that ends in binding arbitration.

#### **Notice and Demand to Bargain Time, Place and Manner Policy**

3. On August 16, 2024, Erin Eckelman-Ray, a Senior Director of Systemwide Labor & Employee Relations, wrote to CFA, providing notice of a “systemwide Time, Place and Manner Policy pursuant to AB 107, Budget Act of 2024.” Ms. Eckelman-Ray’s cover letter informed CFA that the policy was effective August 15, 2024, for all non-represented employees, students, and non-affiliates, and that existing campus time, place, and manner policies would remain in effect until the meet and confer process was complete. The cover letter also advised that each CSU campus “has submitted an ‘Addendum’ which identifies specific campus procedures regarding the time, place and manner for that campus, as outlined in the Policy.”

4. The systemwide Time, Place and Manner Policy (“Interim Policy”) was attached to Ms. Eckelman-Ray’s August 26 correspondence to CFA. It is a 20-page document, and it includes provisions prohibiting: camping, overnight demonstrations, and the use of camping paraphernalia, such as tents; use of temporary permanent structures, walls, barriers, barricades, or furniture; and masks or disguises for the purpose of evading or escaping discovery, recognition, or identification while violating University policy or local, state, or federal laws, among other provisions.

5. Ms. Eckelman-Ray’s letter to CFA dated August 16, 2024, asked CFA to advise Ms. Eckelman-Ray if CFA “would like to meet and confer over the effects of” the Interim Policy.

6. On August 20, 2024, Kathy Sheffield, Director of Representation and Bargaining for CFA, wrote to Ms. Eckelman-Ray, informing her that CFA did wish to weigh in on the Interim Policy and requesting copies of all then-current campus time, place, and manner policies that the Interim Policy would supersede.

7. On August 27, 2024, Ms. Eckelman-Ray provided CFA with copies of 24 policies and asked CFA for proposed dates to meet and confer in September.

8. Ms. Sheffield responded on August 27, 2024, thanking Ms. Eckelman-Ray for the policies and promising to provide available dates once CFA had coordinated with legal counsel and union leaders at the various campuses about their availability.

### **CSU's Unilateral Imposition of Systemwide Directive**

9. On or about August 28, 2024, emails went out from the administrations of several CSU campuses to campus employees, informing them that the CSU Chancellor had issued a "directive" that prohibited the following on university property:

- **Encampments and camping.** No person shall camp, occupy camping facilities, use camping paraphernalia, or store personal property for camping, whether indoors or outdoors. No one may erect a tent or other temporary housing or occupy any tent or temporary housing structure. No person shall set up a campsite, or bring, leave or maintain furniture or other large household or camping items.
- **Unauthorized structures and barriers.** No person shall build, construct, erect, place, set up, move, deliver or maintain any temporary or permanent tent, platform, bench, building, building materials, wall, barrier, barricade, fencing, structure, sculpture, bicycle rack or furniture.
- **Restricting free movement.** No person shall restrict the movement of another person or persons by any means, including blocking or obstructing their ingress or egress, or otherwise deny a person access to normally unrestricted areas.
- **Masking to conceal identity with intent to violate laws or policies.** No person shall wear a mask or personal disguise for the purpose of concealing their identity with the intent of intimidating any person or group, or for the purpose of evading or escaping discovery, recognition, or identification in the commission of violations of the law or policy.
- **Occupation of buildings and facilities.** No person shall occupy buildings and facilities or engage in trespass or any other violation of applicable law.
- **Vandalism and other damage.** No person shall vandalize, damage or destroy university property.

10. Many of the emails sent to campuses included the above-quoted language and stated, “This directive is in effect immediately for all students and employees, and all other members of the community, *including represented employees.*” (Emphasis in originals.)

11. Many CFA leaders and staff who received the August 28, 2024, emails interpreted them to mean that the Interim Policy, about which CSU had previously communicated an intent to bargain, was being unilaterally implemented.

12. On August 28, 2024, Ms. Sheffield forwarded the first email that came to her attention—from CSU Fullerton—to Ms. Eckelman-Ray, calling her attention to the language that stated the directive was in effect for all members of the community, “including represented employees.” Ms. Sheffield asked if this was a mistake given CSU’s offer to meet and confer with CFA over the Interim Policy at both systemwide and campus levels. Ms. Sheffield asked that Ms. Eckelman-Ray speak to her counterparts at CSU Fullerton and ask them to issue a correction.

13. On August 29, 2024, Ms. Sheffield forwarded similar emails from CSU Sacramento, CSU San Marcos, CSU San Bernadino, CSU Dominguez Hills, CSU Los Angeles, CSU Monterey Bay, and CSU Sonoma to Ms. Eckelman-Ray.

14. Also on August 29, 2024, legal counsel for CFA who had been copied on Ms. Sheffield’s email correspondence with Ms. Eckelman-Ray, wrote to Ms. Eckelman-Ray, asserting that CSU’s unilateral implementation of the Interim Policy, as communicated through the campus-level emails, violated HEERA.

15. Ms. Eckelman-Ray responded on August 30, 2024, that CSU intends to meet and confer over the Interim Policy with CFA and would not implement the Interim Policy until the meet and confer process was complete. She stated that the campus emails were referencing—not the Interim Policy, but—a “directive” issued by Chancellor Mildred García. Ms. Eckelman-Ray asserted that the Chancellor’s directive:

. . . covers items outside the scope of representation or which are already unlawful or otherwise prohibited. The CSU can enforce the prohibited activities absent a time place and manner policy. This is why the directive reiterates that: “It is important that all employees understand that, even though the recently issued systemwide policy describes certain prohibited activities, these activities are also prohibited by law and by systemwide directive.”

16. Because there was no separate “directive” document attached to any of the emails Ms. Sheffield had forwarded to Ms. Eckelman-Ray and because no directive was posted on the CSU’s “Freedom of Expression” webpage, <https://www.calstate.edu/csu-system/transparency-accountability/Pages/campus-climate.aspx>, counsel for CFA responded to Ms. Eckelman-Ray, requesting a copy of the directive and “any system wide employee discipline policies or code(s) of conduct that CSU believes already prohibit the conduct referenced in the directive.”

17. On August 30, 2024, Ms. Eckelman-Ray provided a copy of the Chancellor's directive ("Chancellor's Directive"), a copy of which is attached as Exhibit A, and stated that CSU had relied on "Education Code section 89535 and Article 19 of the CBA."

18. Counsel for CFA responded, noting that neither Education Code § 89535 nor Article 19 of the CBA reference any of the conduct prohibited in the Directive, that CFA should have been given prior notice of the Chancellor's Directive and an opportunity to request bargaining over the decision and/or its implementation and effects prior to implementation, and that the appropriate course would be for CSU to rescind the Directive and comply with its obligations under HEERA.

19. Ms. Eckelman-Ray responded that the CSU disagreed with CFA's counsel's statement and "will not rescind the directive."

#### **CSU Failed to Bargain in Good Faith with CFA Regarding the Chancellor's Directive**

20. As alleged above, CSU failed to bargain in good faith with CFA in violation of Government Code §§ 3570 and 3571(c) in connection with its issuance of the Chancellor's Directive.

- a. The Chancellor's Directive establishes a new code of conduct for CSU employees.
- b. CSU has a duty to bargain over changes to conduct rules that implicate performance and discipline of employees represented by CFA. *San Bernadino City Unified School District* (1982) PERB Dec. No. 255; *Trustees of the California State University* (2001) PERB Dec. No. 1451-H, p. 2 (unilaterally imposed name tag requirement involved employee relationship because violation of policy would subject employees to discipline).
- c. Although some of the conduct prohibited by the Chancellor's Directive is prohibited by state law, other aspects of the Chancellor's Directive involved CSU's exercise of discretion, over which CFA had a right to notice and an opportunity to bargain. *See Trustees of the California State University* (2003) PERB Dec. No. 1507-H (although aspects of policies governing technology may involve managerial prerogatives, other aspects of such policies that relate to discipline are within the scope of representation); *Fairfield-Suisun Unified Sch. Dist.* (2012) PERB Dec. No. 2262 (federal law mandating drug testing regime did not set an immutable standard requiring zero tolerance policy by employer; zero tolerance policy is discretionary and negotiable because it relates to discipline).
- d. Even if CSU had no obligation to engage in decisional bargaining prior to imposing the Chancellor's Directive (which it did), CSU had a duty to provide

notice and an opportunity for CFA to request to bargain over effects and implementation of the Chancellor's directive.

21. Having violated Government Code § 3571(c) by unilaterally imposing new standards of conduct on CFA's members without providing notice and an opportunity to meet and confer over the decision and/or effects and implementation of the Chancellor's Directive, CSU also interfered with the rights of employees to be represented by CFA and denied CFA its right to represent employees, in violation of § 3571(a) and (b), respectively.

22. As a remedy, CFA seeks an order requiring CSU to (1) cease and desist from implementing any unilateral changes, including the Chancellor's Directive; (2) restore the status quo ante, including providing any appropriate make-whole relief to affected employees; (3) provide CFA with notice and an opportunity to bargain over any proposed changes within the scope of representation; (4) post a notice in conspicuous places regarding its violations of HEERA; and (5) provide such other relief deemed proper by the Public Employment Relations Board.

THE CALIFORNIA STATE UNIVERSITY  
OFFICE OF THE CHANCELLOR



BAKERSFIELD

August 27, 2024

CHANNEL ISLANDS

CHICO

Dear CSU Presidents:

DOMINGUEZ HILLS

On August 15, 2024, I wrote to you regarding the requirements of California's Budget Act of 2024 ([Senate Bill 108](#)) regarding campus climate and safety expectations set forth in the law and required notification of these expectations to all students by the beginning of the fall 2024 term. The CSU must submit a report to the legislature on how it has met these requirements by October 1, 2024.

EAST BAY

FRESNO

FULLERTON

HUMBOLDT

Among other things, this legislation requires that the California State University foster freedom of expression and the free exchange of ideas that complies with state and federal law and CSU policies *while always protecting student, staff, and faculty safety and access to educational opportunities*. It also requires the CSU to develop a *systemwide* framework to provide for consistency with implementation and enforcement, by fostering healthy discourse and bringing campus community members together, even when viewpoints are ideologically different, to best promote the educational mission of the CSU in a safe and peaceful manner.

LONG BEACH

LOS ANGELES

MARITIME ACADEMY

MONTEREY BAY

To that end, together we developed and issued a systemwide Time, Place and Manner policy. The policy is not new and merely restates and clarifies what have always been well-established values, rules and expectations throughout the CSU for decades. Namely, to uphold the constitutionally protected rights of all students, employees and members of the community regarding free expression, speech, and assembly, and to do so in a safe and peaceful manner. The policy is effective with respect to all students and unrepresented employees and will be applicable to represented employees once the meet and confer process is complete.

NORTHRIDGE

POMONA

SACRAMENTO

SAN BERNARDINO

It is important that all employees understand that, even though the recently issued systemwide policy describes certain prohibited activities, these activities are also prohibited by law and by systemwide directive.

SAN DIEGO

SAN FRANCISCO

SAN JOSÉ

Making CSU's expectations understandable and clear is critical for promoting the necessary balance between free expression and the need for safety and uninterrupted university operations. Therefore, I am directing each university president to notify and remind all employees that the following activities are **strictly prohibited on university property**:

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS



- **Encampments and camping.** No person shall camp, occupy camping facilities, use camping paraphernalia, or store personal property for camping, whether indoors or outdoors. No one may use or erect a tent or other temporary housing or occupy any tent or temporary housing structure. No person shall set up a campsite, or bring, leave or maintain furniture or other large household or camping items.
- **Unauthorized structures and barriers.** No person shall build, construct, erect, place, set up, move, deliver or maintain any temporary or permanent tent, platform, bench, building, building materials, wall, barrier, barricade, fencing, structure, sculpture, bicycle rack or furniture.
- **Restricting free movement.** No person shall restrict the movement of another person or persons by any means, including blocking or obstructing their ingress or egress, or otherwise deny a person access to normally unrestricted areas.
- **Masking to conceal identity with intent to violate laws or policies.** No person shall wear a mask or personal disguise for the purpose of concealing their identity with the intent of intimidating any person or group, or for the purpose of evading or escaping discovery, recognition, or identification in the commission of violations of the law or policy.
- **Occupation of buildings and facilities.** No person shall occupy buildings and facilities or engage in trespass or any other violation of applicable law.
- **Vandalism and other damage.** No person shall vandalize, damage or destroy university property.

This directive is in effect immediately for all students and employees, *including represented employees*. Violation of these directives (or any other illegal activity) is a violation of the law and will be enforced accordingly.

My expectation is that you will communicate this directive and enforce this directive so that we can maintain our universities where free expression and safety are equally protected. I greatly appreciate the work you have done thus far and believe that, with a consistent approach, we can achieve a welcoming and inclusive environment for all, making the California State University system a model for the state and the nation. The Chancellor's Office team stands ready to assist you in these important efforts.

Warmly,



Mildred García, Ed.D.  
Chancellor

## PROOF OF SERVICE

I declare that I am a resident of or employed in the County of \_\_\_\_\_,  
State of \_\_\_\_\_. I am over the age of 18 years. The name and address of my  
Residence or business is \_\_\_\_\_

On \_\_\_\_\_, I served the \_\_\_\_\_  
(Date) (Description of document(s))

\_\_\_\_\_ in Case No. \_\_\_\_\_  
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

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;

electronic service - I served a copy of the above-listed document(s) by  
transmitting via electronic mail (e-mail) or via e-PERB to the electronic service  
address(es) listed below on the date indicated. *(May be used only if the party  
being served has filed and served a notice consenting to electronic service or has  
electronically filed a document with the Board. See PERB Regulation 32140(b).)*

*(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)*

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct and that this declaration was executed on \_\_\_\_\_,  
(Date)  
at \_\_\_\_\_  
(City) (State)

(Type or print name)

(Signature)