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November 28, 2022

VIA E-MAIL ONLY

Martha Kim, Principal Counsel, Labor & Employment
UC Legal
Office of the President
1111 Franklin Street
Oakland, California 94607

**Re: Interference and Threats of Retaliation at Various UC Locations
– Demand to Cease and Desist**

Dear Ms. Kim:

The Regents of the University of California (“the University” or “UC”) has unlawfully interfered with, attempted to intimidate, and threatened to impose reprisals against UAW bargaining unit members for exercising their rights as employees to engage in protected concerted activities. Such actions violate the Higher Education Employee-Employer Relations Act (“HEERA” or the “Act”) and must be stopped.

Specifically, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO and its Local Unions 2865, 5810, and Student Researchers United (collectively, “UAW” or “Unions”), have received numerous accounts of UC Principal Investigators (“PIs”) and Professors *threatening to withhold future work appointments* next quarter for employees who have chosen to strike this quarter. The University’s pervasive threats to deny employees the opportunity to earn wages and to continue their research and teaching work *expressly because of their decision to engage in protected concerted activity* are unlawful and must be rectified immediately.

Examples of such threats from PIs and Professors include:

- Stating that the strike is a “shitshow” and threatening that “there **will** be consequences” including the “next time any of these [striking] students come to me for a fellowship, TAship....”
- Threatening “consequences” such as “failing” the employee and “replacing” the employee with someone else if the employee continues to strike.
- Numerous threats that employees who continue to strike this quarter will be ineligible for appointments next quarter.
- Threatening negative evaluations for continuing to strike to hinder future employment.
- Threatening that an employee who strikes this quarter will be ineligible for work funded by a grant next quarter.

Moreover, the University has unlawfully threatened Graduate Student Researchers and Teaching Assistants that they will **fail** courses ***in retaliation for continuing to participate in the strike***. The University’s arbitrary attempt to segregate out solely ***student*** status for reprisal results in adverse action for engaging in the fundamental right to strike as an ***employee***.

Such actions—which are occurring at multiple campuses throughout the UC system—are inimical to HEERA and the rights and protections afforded therein for UAW bargaining unit members. Therefore, ***we demand that you cease and desist from threatening adverse actions against UAW bargaining unit members and provide me with assurances that the University will no longer interfere with appointments and grades because of an employee’s choice to participate in the strike.***

California Government Code section 3562(e) defines “employee” or “higher education employee” as “***any employee, including student employees*** whose employment is contingent on their status as students,” and such definition expressly applies to students employed by the Regents of the University of California. (Emphasis added)

One of the explicit purposes of HEERA is to provide an “atmosphere which permits the fullest participation by employees in the determination of conditions of employment which affect them” where the right of employees to “full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of representation in their employment relationships with their employers” is recognized. (Cal. Gov. Code, §3560(e))

Section 3571(a) makes it an unfair labor practice for employers to impose 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 under HEERA. Section 3571(a) specifically states that the definition of employee “includes an ***applicant for employment or reemployment.***” (Emphasis added)

Higher education employees have the right to participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. (Cal. Gov. Code, § 3565) This includes employees exercising their fundamental right to strike. “A prima facie case of interference will be found when the employer has engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by the statute.” (*Regents of the University of California (Irvine)* (2018) PERB Decision No. 2593-H at p. 7)

In particular, PERB has found that failing to hire or rehire an employee in retaliation for engaging in a protected activity constitutes unlawful interference. (*Trustees of the California State University* (2008) PERB Decision No. 1970-H) In *Trustees of the California State University*, PERB found that the higher education employer engaged in an unlawful adverse action by denying an employee the opportunity to interview for a permanent position when he had held the same position previously as a temporary employee. The Board found that the employee’s participation in a protected activity was the “driving force” behind the employer’s decision. (*Id.* at p. 5)

Similarly here, employees have exercised their protected right to strike and that is the “driving force” behind the University’s threats to withhold appointments and reappointments. The present situation is even stronger than in *Trustees of the California State University* because here there is no question about the nexus between the protected activity and the adverse action—PIs and Professors have stated that their refusal to hire or rehire employees for the next quarter is ***expressly because of their participation in the strike.***

Moreover, any attempt by the UC to justify denying employees who strike this quarter employment or reemployment next quarter due to federal award requirements is similarly pretext for unlawful retaliation because of exercising the right to strike. Academic workers at the UC, whose work is funded by federal grants, have the right to engage in lawful strikes and other protected concerted activities. With regard to funding for next quarter, under the Code of Federal Regulations provisions relating to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and related OMB Circulars, there is no language prohibiting a PI from paying a student employee next quarter through a federal grant if the student employee participates in a strike this quarter.

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An employer engages in unlawful interference when it promulgates ambiguous language which may be broadly interpreted to effectively restrain employees from engaging in protected conduct or which may result in a chilling effect on employees' protected rights. (*Santee Elementary School District* (2006) PERB Decision No. 1822 at pp. 11-12) Thus, broad threats relating to "consequences" for striking or threatening to "fail" student employees for striking chill protected activity and constitute unlawful interference.

Indeed, an employer "may not single out union activities for special restriction, or enforce general restrictions more strictly with respect to union activities.... Whatever the occasion or cause, if the limited intrusion into worktime and work areas is permitted, it cannot be denied for other, equally or less intrusive solicitation or concerted employee activities." (*Regents of the University of California (Irvine)* (2018) PERB Decision No. 2593-H at p. 8, internal citations omitted) The University has not issued similar warnings and threats to withhold appointments regarding missing work for non-strike-related events. The University's threats targeting strike activities reveals the University's animus and discriminatory application of attendance and appointment practices.

The University must cease and desist from its unlawful actions to protect employee free choice so that bargaining unit members can openly engage in activities of their Union without fear of retribution. We expect the University to adhere to its legal obligations and look forward to hearing from you soon.

Sincerely,

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Margo A. Feinberg

MAF:lz

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