STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES LOCAL 3299, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (LOS ANGELES), Respondent.	Case No. SF-CE-1435-H PERB Decision No. 3003-H February 9, 2026

Appearances: Leonard Carder by Micah Clatterbaugh and Julia Lum, Attorneys, for American Federation of State, County & Municipal Employees Local 3299; Quarles & Brady by Sandra McDonough and Kelly Kagan, Attorneys, for Regents of the University of California.

Before Banks, Chair; Krantz, Paulson, and Krausse, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Respondent Regents of the University of California, Los Angeles (UCLA or University) and cross-exceptions by Charging Party American Federation of State, County & Municipal Employees Local 3299 (AFSCME) to the proposed decision of an administrative law judge (ALJ). The charge and complaint concern the University's responses to two employee delegations, or "marches on the boss" in January and May 2023, as well as a two-day tabling event AFSCME held on the Bruin Walk in June 2023. Concerning the delegations, AFSCME alleged that the University violated the Higher Education Employer-Employee

Relations Act (HEERA) when it issued counseling memoranda and negative performance evaluations in retaliation for employees' protected activity, interfered with union and employee rights, and unilaterally changed terms and conditions of employment.[1] Concerning the tabling incident, AFSCME alleged that the University interfered with its right to reasonable access to the employer's facilities and unilaterally changed terms and conditions of employment. After a formal hearing, the ALJ upheld AFSCME's retaliation and interference allegations, but dismissed both unilateral change allegations. Having reviewed the proposed decision, the record, and the parties' arguments, we affirm the ALJ's proposed decision except for its discussion of AFSCME's unilateral change allegation related to employee delegations. For that allegation, we reverse. We also affirm the ALJ's proposed remedy but supplement it to better effectuate HEERA's purposes.

FACTUAL AND PROCEDURAL BACKGROUND

The University is a higher education employer within the meaning of HEERA section 3562(g). AFSCME is the exclusive representative of the systemwide service (SX) bargaining unit of University employees. The SX unit includes custodians in the Facilities Management department at UCLA.

The University and AFSCME are parties to a collective bargaining agreement (CBA) governing terms and conditions of employment for employees in the SX unit. The CBA in effect at all relevant times had a term running from January 31, 2020 through October 31, 2024.

[1] HEERA is codified at Government Code section 3560 et seq. Undesignated statutory references are to the Government Code.

Article 1 of the parties' CBA is entitled "Access and Union Rights." Subsection A.1 of Article 1 recognizes that "it is in the Union's interest that it be granted access to University facilities for the purposes of ascertaining whether the terms of this Agreement are being met; engaging in the investigation, preparation, and adjustment of grievances; conducting Union meetings; explaining to bargaining unit members their rights and responsibilities under the Agreement; and informing bargaining unit employees of activities." Subsection A.2 provides that AFSCME "will abide by the reasonable access rules and regulations promulgated at each campus. . . ." Subsection B.1 provides that "[d]esignated Union representatives who are not University employees, or who are not employed at the facility visited, may visit the facility at reasonable times and upon notice to discuss with the University or bargaining unit members[] matters pertaining to this Agreement." It further provides that "[i]n the case of visits for the purpose of conducting unscheduled meetings with bargaining unit members, the Union representative shall give notice upon arrival in accordance with local campus/medical center/Laboratory procedures."

Subsection B.2 provides that "[i]nternal" AFSCME business, including "membership recruitment, campaigning for Union office, hand billing or other distribution of literature, and all other Union activities" must take place during "non-work time," which includes employees' rest and meal periods. Subsection B.3 requires AFSCME to provide an annual written list of designated AFSCME representatives. Subsection B.4 requires the University to provide AFSCME with a copy of "the Access Rules and Regulations in place at each location" within 45 days of ratification of the CBA.

Subsection C of Article 1 provides that the University "retains" the right to impose reasonable sanctions for violations of access rules, including temporary or permanent denial of access for AFSCME representatives, discipline of employees, and "loss of University facility privileges" for a specified time period.

Article 15 of the CBA provides for regular, formal "Labor-Management Meetings" (LMMs) between the parties. It provides for one annual "University-wide" LMM, as well as "local" LMMs which "shall be held quarterly, unless mutually agreed otherwise by the parties." Article 15 requires the parties to submit items to place on the agenda for a local LMM seven days before the scheduled meeting date. It includes a non-exclusive list of "appropriate" agenda items including "administration of the [CBA]," "health and safety matters regarding bargaining unit employees," "giv[ing] representatives an opportunity to express their views, or to make suggestions on subjects of interest to employees of the bargaining unit, including topics such as alternate work schedules and child care," and "provisions of the contract which call for local mutual agreement."

At all relevant times, the University also maintained several written policies regarding activity of employee organizations on campus and/or their access to University facilities. One such policy is entitled "UCLA Policy 860: Organized Events" (Policy 860).[2] It establishes "conditions under which University and non-University groups may utilize University facilities for extracurricular purposes . . . ." Policy 860 defines "extracurricular use" to include all use of any University facility including

[2] The version of Policy 860 that is relevant to the instant dispute was effective from September 23, 2008 until September 4, 2024.

“campus open-space areas,” for events or activities other than “academic instruction,” or events or activities which do not “carry academic credit.” It imposes four requirements for any such “extracurricular use.”

First, the event or activity must have a “University Guarantor” that “bears financial, legal and procedural responsibility for all University costs and commitments” resulting from the event. The guarantor may be a University unit or department or may be “a non-University group,” including the group that proposed the event. Even where an outside group acts as the guarantor, the group must submit a proposal to the UCLA Events Office, which must be approved by the Chancellor or their designee, who has sole authority to “grant an Institutional Guaranty.”

Second, the event must be registered through the University’s online event registration system at least 10 working days in advance.

Third, once a request for an extracurricular event is submitted through the University’s Events Online event registration system, the request must be reviewed and approved by the Events Office.

Fourth, the event must satisfy several “Conditions of Use,” including that University facilities may only be used “in furtherance of the University’s teaching, research or public service mission”; “in the best interests of the University” in light of “the intended purpose, function, and availability of the facilities”; or in a manner that “provides financial resources” for the University.

The University also maintains a written policy entitled “UCLA Regulations on Activities, Registered Organizations, and Use of Properties.” Section IV, subdivision A.2 of this policy prohibits all “individuals” on University property from blocking

entrances and exits, interfering with the free flow of vehicular or pedestrian traffic, engaging in abusive, threatening, harassing or intimidating conduct, and failing to comply with directions from University officials.

Finally, the University maintains another written policy entitled “UCLA Interim Policy 852: Public Expression Activities.” Section IV, subdivision A.2 of this policy contains provisions similar to the same section in the UCLA Regulations on Activities, Registered Organizations, and Use of Properties, including the prohibitions on blocking entrances or the free flow of traffic, harassing or intimidating conduct, and failing to comply with directions from University officials.

University’s Past Treatment of AFSCME Activities

In recent years, AFSCME has organized “tabling” events at UCLA in which it sets up a table in a public area of campus to distribute literature or promote initiatives such as, for example, supporting a candidate for elected office. AFSCME has conducted over 30 such events in the past 13 years.

AFSCME often sets up its tables at a location known as “Bruin Walk” near the center of campus. AFSCME organizers and participating employees wear t-shirts and hang signs, banners, or canopies with an “AFSCME” logo to identify themselves. Organizers have seen University managers or supervisors observing the tabling events and occasionally visiting AFSCME’s table to speak with organizers or employees.

AFSCME has never requested advance permission from University management before setting up a table.

There is no evidence indicating that any employees who participated in tabling events were ever on duty when they did so.

AFSCME has also organized regular demonstrations known as “delegations” or “marches on the boss.” These typically involve a group of employees visiting a particular supervisor or manager in their office, presenting a written message regarding the employees’ concerns about working conditions, and reading the message aloud. AFSCME has organized over 40 such delegations in the last 13 years, including over 20 delegations to speak with managers in the Facilities Management department.

Managers or supervisors in the Facilities Management department share a common office area on the second floor of the Cogen Hall building, which is located near the center of the UCLA campus. Employees are permitted to enter the supervisors’ office area for various purposes. For example, they can visit to check calendars that are posted in that area.

Some Facilities Management supervisors or managers also have offices in the University’s Royce Hall building, and employees have conducted delegations to those offices as well.

When AFSCME conducts delegations, a group of employees and one or more AFSCME organizers typically meet in front of the building and wait for their coworkers to gather. One employee acts as the leader of the delegation and leads the group upstairs to the second floor, where they look for the manager to whom they want to present their concerns. Then the leader reads the group’s message aloud. The manager typically greets the group, listens while the employees read their message

aloud, and thanks the group once they complete their statement. The employees then leave.

At least one employee in a delegation generally records their interactions with management by taking pictures or videos with their cell phone. Before 2023, the University never complained about employees taking pictures or videos during a delegation or directed employees not to record.

Employees typically chant “AFSCME 3299” while entering the building, stop when they reach their supervisor’s office, and then resume their chanting when exiting the building. In some past delegations, employees banged drums and made noise. When employees conduct a delegation and the manager they intend to address is absent, they sometimes deliver their message to someone else nearby, such as an assistant who works with a particular supervisor. Prior to the events at issue here, the most recent time employees delivered a message to a non-manager was in September of 2022.

While an AFSCME organizer typically accompanies the employees and will sometimes speak during a delegation, they do not present the written message or make comments about working conditions. If they speak at all, their comments are generally aimed at facilitating the employees’ presentation of their message, such as by informing managers and employees about the employees’ rights.

The parties dispute whether, prior to the events of this case, the University ever communicated its argument that AFSCME was required to give advance notice and/or obtain permission before setting up a table or organizing a delegation.

The University's Employee and Labor Relations Advocate, Brittany Jones, testified that the University expects AFSCME to "go through the events office" before setting up a table or engaging in other on-campus activities, including "passing out pamphlets" or distributing "information to the community." By contrast, for delegations, Jones stated that AFSCME is expected to "notify" the University's Employee and Labor Relations Office (Labor Relations) that AFSCME representatives are going to be on campus. She clarified that the University does not believe the access rules apply to a group of employees who visit their manager *on their own* to present concerns in a similar manner as in the delegations. Rather, Jones opined that the access rules apply only when the delegation is organized by AFSCME or when the employees are accompanied by an AFSCME staff member.

Jones acknowledged that AFSCME often would not give advance notice when conducting delegations, but testified that the University's practice is to send a "reminder" any time their "access rules" have been violated.

AFSCME's witnesses—three AFSCME organizers and two bargaining unit employees who have participated in numerous tabling events and delegations—uniformly testified that they never provided advance notice or requested permission before holding those events. AFSCME Organizer Janeth Vasquez recalled receiving "reminders" from the University about "time/place policy," but whenever the University mentioned these requirements, she would respond that AFSCME would not comply with them and would instead "follow past practice."

The University produced several past e-mails and warning letters sent to AFSCME regarding purported violations of access rules. These included four letters

sent in 2011 and 2012 asserting that AFSCME organizers had violated access rules by attempting to speak with employees during work time and "disrupting" their work, and by engaging in "aggressive" behavior. A fifth letter from 2012 accused an organizer of violating access rules by entering a dining hall without notifying Labor Relations. None of these letters dealt with a delegation to managers' offices or a tabling event, but they did explain that the University believes AFSCME organizers should provide some kind of notice when visiting campus to meet with bargaining unit employees during their breaks.

The University also produced four letters sent between August of 2018 and March of 2019 which cited the University's policies governing "extracurricular activities on the Campus," including "setting up tables or tents to promote an event or organization, demonstrations, and gatherings." These letters referenced a page on the UCLA website that contained links to a number of University policies, including Policy 860, and explained that AFSCME is required to contact the UCLA Events Office before holding such activities.

In November of 2021, the University wrote to AFSCME again in reference to its ongoing picketing activity, noted that AFSCME had not informed UCLA's Events Office or obtained approval for "amplified sound or banners," and requested that AFSCME provide "advance notice of any activity that will require compliance with UCLA's time, place, and manner restrictions" going forward. Finally, in February of 2022, Jones e-mailed AFSCME organizer Gabriela Romo and asserted that unnamed employees informed their supervisors that union representatives had stopped the employees during their shifts and caused them to report to work late or to miss work time. Jones

directed Romo to comply with unspecified "reasonable access rules and regulations" pursuant to section 1.A of the CBA.

The ALJ found that the University's letters of 2018 and 2019 "put [AFSCME] on notice" that the University expected AFSCME to comply with Policy 860 when holding certain on-campus events including tabling, and that such compliance included registering the event in advance with the UCLA Events Office. However, the ALJ did not find that the University communicated that it expects AFSCME to provide advance notice before accompanying employees on a delegation to managers' offices. The letters from 2011 and 2012, and the more recent letter from 2022, did not involve delegations. While the letters advised that AFSCME must provide some kind of notice when visiting campus to meet with bargaining unit members, they did not make clear the University's view that such meetings include accompanying a group of employees in a delegation to managers' offices where the employees present their own message to their supervisor, particularly in light of the fact that organizers have accompanied employees on more than 40 delegations over the last 13 years without giving advance notice.[3]

January 2023 Delegation

On January 31, 2023, employees conducted a delegation to Royce Hall to discuss labor issues with supervisors. They went to the office of a supervisor named

[3] The University excepts to the ALJ's finding that organizers did not provide advance notice of delegations. However, the evidence showed only that organizers historically provided "basic" notice, generally weekly, that they would be on campus. The evidence did not show that organizers provided specific advance notice of delegations.

Pablo Nicholas, and shared a statement about working conditions. The primary concern the employees raised related to “swinging” or “area coverage,” a staffing practice where employees are required to do work that would normally be done by employees who are absent, or when a custodial position is vacant, before completing their own normal workload. The employees explained that this practice had resulted in heavy and inequitable workloads, and that they were concerned about the potential for injury. One custodian described how this practice had required her to walk a long way between different buildings across campus at night, and that she was concerned for her personal safety.

The employees who participated in the January delegation began congregating outside Royce Hall between 4:45 and 5:00 p.m. After entering the building and walking to Nicholas’s office, the employees began presenting their statements at about 5:20 p.m., and were done by around 5:25 p.m.

The parties dispute whether some of the employees who participated in this delegation were on duty at the time. Senior Custodian Davina Woods participated in the delegation before clocking in to begin her shift, which began at 5:30 p.m. She testified that none of the other employees who participated in the delegation were on duty. Romo also testified that all the employees who participated in the delegation began their shift after the delegation concluded.

Jones testified that “supervisory staff” reported to her that some of the employees present at the time of the delegation were “not on authorized breaks.” The ALJ found that Jones’s testimony was ambiguous as to whether the employees who were reportedly on work time were AFSCME members who were part of the

delegation, or other staff present in the office when AFSCME members arrived. Furthermore, apart from Jones's hearsay testimony, the University did not provide any evidence that any employees participating in the January 31 delegation were on duty at the time.

May 2023 Delegation

On April 19, 2023, a group of employees held their quarterly meeting with management, accompanied by Romo. The primary concern employees raised related to staffing practices.

On April 24, Romo sent Jones a set of "demands" and "questions" about the University's staffing practices, and requested to schedule an additional in-person meeting. On May 23, Jones responded, indicating that the University would respond to Romo's requests for information, but would not agree to an additional in-person meeting.

That same day, May 23, 2023, a group of around 15 employees, accompanied by Romo and AFSCME Lead Organizer Jacinto Lopez, participated in another delegation to Cogen Hall. They planned to present a message to Custodial Services Manager Lizett Martinez. The group chanted "AFSCME 3299" as they entered Cogen Hall, and stopped chanting when they entered the office area.

The group then saw that Martinez was not present in her office, and approached the nearby office of Administrative Analyst Daisy Garcia, who works with Martinez. Garcia's duties consist of administrative work such as onboarding and offboarding for employees in Facilities Management, and answering questions from supervisors about human resources issues. She does not supervise any employees or

exercise any authority regarding hiring, firing, or discipline. She occasionally fields questions from individual bargaining unit employees about various topics.

Garcia's office door opens into a large room mostly filled with open cubicles. Directly outside her door is a narrow hallway running adjacent to a row of cubicles.

Garcia was sitting at her desk facing her open office door when she heard the group chanting outside. Romo and Senior Custodian Salvador Aparicio began to enter Garcia's office, and she walked to the doorway to meet them in the hallway. Garcia testified that she felt nervous and walked to the doorway because if "anything escalate[d]. . . the cameras in the hallway [would]. . . record it." Aparicio introduced himself, shook Garcia's hand, and then shook hands with two other supervisors who were also present, Almilcar Barrientos and Brian Avakian.

Garcia noticed Woods and another individual taking pictures or recording videos with their cellphones, asked Woods to stop, and asked Romo to direct the other employees not to record her. Woods stopped recording, but the other individual who was recording continued to do so, walking past Garcia in the narrow hallway, causing her to lean back to avoid potentially coming into contact with them.

The employees asked if Martinez was available, and Garcia said she was not. Aparicio then began to read aloud a message written on his phone, in Spanish. AFSCME introduced into evidence a video of the incident, which appears to begin immediately after Aparicio started reading his statement.

Aparicio's message was about "area coverage." Garcia listened as Aparicio read the message, and she initially responded politely (also in Spanish) to some of the points he raised. At some point before Aparicio had finished reading out his message,

Garcia interjected to ask that he send her the text version of the message rather than continuing to read aloud. Aparicio initially hesitated, saying that his message was "not that long." Garcia repeated that she would prefer the employees send her the message in writing. Aparicio then stopped speaking. At some point while Aparicio was reading his message, Custodial Supervisor Avakian passed by the group in the hallway, and was clearly able to hear and see their interaction with Garcia. Avakian did not stop or speak to the employees or Garcia, nor did she speak to him. A few seconds later, an employee in the group passed through the hallway from one side of Garcia's office door to the other side. After Aparicio stopped reading aloud, Romo told Garcia that AFSCME had requested "a meeting" with Martinez and asserted that "this isn't coming from us." Garcia repeated that she would prefer the employees send her their comments on "paper" so she could pass it on to Martinez, and the parties could "go from there." Woods then asked, "where is she?" Garcia responded that Martinez was home sick.

An employee then handed Garcia a piece of paper containing a written statement from the employees. The employee's action depicted in the video recording was not aggressive or hostile in any way. He extended his hand with the piece of paper, and Garcia immediately took the paper from his hand.[4]

[4] During Garcia's testimony, she recalled that "he really just gave me the paper and I just accepted it. That's all." She did not describe the interaction as aggressive or threatening. The video recording confirms this, as the employee maintained a respectful distance from Garcia, who had to lean forward to accept the paper.

Another individual asked Garcia if she would set up a meeting with Martinez. Garcia responded that AFSCME or employees should go through Labor Relations to set up that meeting. The employees then left Cogen Hall, chanting “AFSCME 3299.”

The delegation began at around 4:55 or 5:00 p.m., and was over by around 5:10 p.m. The employees who participated did not start their shift until 5:30 p.m., after they had left Cogen Hall.

Garcia was upset about the delegation. She had never observed a similar delegation. She felt that the employees forced her to listen to their message without her consent. She also felt that the employees should not have taken a video recording without her consent. She texted Martinez about the delegation while it was happening, and wrote an e-mail to Labor Relations immediately afterwards describing the interaction.

Garcia also testified that other employees in the Facilities Management offices came out of their offices during the delegation, and expressed surprise afterwards.

Since the May delegation, Garcia no longer keeps the back door of her office open, because she is worried that employees might enter through that door and try to speak to her again. She also recalled feeling nervous when she went to the parking lot that day.

June 2023 Tabling Events

AFSCME also organized tabling events that took place on June 6 and 7, 2023. It did not give advance notice or request permission from the University. It set up tables at several locations on campus, including at “the Bear,” a site along the Bruin Walk near the middle of the UCLA campus where AFSCME had engaged in tabling on

prior occasions. The event was organized around an election for members of AFSCME's bargaining team. AFSCME included canopies for their tables and signs labeled "AFSCME," as with prior tabling events.

Woods testified that during the time she attended the tabling event, it was "slow," "normal," and "no different from any other day."

By contrast, Jones testified that AFSCME's tables on June 6 and 7 disrupted or interfered with other events happening on campus organized by groups or vendors that had reserved particular spaces in advance. Jones spoke to unnamed AFSCME representatives and asked them to move their tables, but they refused. She did not personally observe AFSCME's canopy or behavior, however, explaining that "videos and pictures" of the event were "shown to her" by an unidentified person.

Warning Letters, Counseling Memoranda, Posted Notices, and Performance Evaluations

The University took several actions in response to the employee delegations in January and May 2023, as well as AFSCME's June 2023 tabling event.

On February 1, 2023, Jones sent a letter to Romo with the subject line "Warning Letter: Improper Access Violation & Direct Dealing" (First Warning Letter) regarding the January 31 delegation at Royce Hall. Jones asserted that the delegation was in violation of the CBA and the University's access rules and regulations because AFSCME had not informed UCLA's Events Office "or any other UCLA institution" in advance. She also asserted that the delegation was improper in that it took place "during work time." She directed Romo to provide advance notice before accessing University facilities.

Jones's letter also asserted that "all managers and supervisors are exclusively represented" by Labor Relations, accused AFSCME of "circumventing our office and directly dealing" with supervisors, and directed Romo to contact Jones by e-mail if she wanted to "discuss any labor relations matters impacting the terms and conditions of employment" or "speak to any managers and supervisors at the University."

On February 16, 2023, AFSCME's counsel sent a letter to Jones, responding to her assertions that the January delegation was unlawful and in violation of University policies. The letter argued that the University's directive requiring advance notice for employee delegations, and its characterization of employees' participation in such delegations as "direct dealing," violated HEERA.

On May 31, 2023, Jones sent another letter to Romo with the subject line "Second Warning Letter: Illegal Recording & Direct Dealing" (Second Warning Letter) regarding the May 23 delegation at Cogen Hall. This letter accused employees of refusing Garcia's requests to leave her office and to stop recording her without her consent. It asserted that the recording violated California law and demanded that AFSCME delete all audio and video recordings. It characterized the delegation as amounting to unlawful "direct dealing" with management. Finally, the letter asserted that all requests for a meeting with management must be directed to Labor Relations, while also asserting that the CBA requires the parties to "mutually agree" on any meetings apart from the annual and quarterly LMMs required under Article 15.

In June of 2023, the University issued "counseling memoranda" to the 16 custodians in the UCLA Facilities Management department who participated in the May 23 delegation at Cogen Hall. The headings of the memoranda indicated that they

were from each participating employee's direct supervisor, but the text of the memoranda were identical, and they were signed by Martinez. The memoranda accused the employees of refusing requests by Garcia to leave her office, and behaving in a "confrontational" manner, including by using "rude language" and "mak[ing] demands." The memoranda claimed that an employee "shov[ed] a piece of paper" at Garcia, and that at least one employee took video and audio recordings of their interaction with Garcia "without obtaining [her] explicit consent." The memoranda asserted that the employees' actions violated Article 1 of the CBA, the "UCLA True Bruin Value Statement," "Regents Policy 1111: Statement of Ethical Values," and the "UCLA Principles of Community," and that the recording violated "State law."

Additionally, on or about June 7, 2023, the University posted copies of a notice at various locations on campus where employees work, including at Royce Hall and Cogen Hall. The notice was written by Martinez in both English and Spanish. It referenced the May 23 delegation at Cogen Hall, calling it "unconstructive," and asserted that the University had already provided "answers" to the employees' "demands" in May of 2023. The message directed employees to schedule a meeting with management through AFSCME if they believed a meeting was necessary. It further asserted that employees had behaved in a "confrontational" manner contrary to the UCLA True Bruin Values and Principles of Community.

On June 26, 2023, Jones sent a letter to Lopez (Third Warning Letter), asserting that AFSCME's tabling event on June 6 and 7 did not comply with "reasonable access rules and regulations" under section 1.A of the CBA because AFSCME did not "inform" the University of its planned events. The letter further

asserted that AFSCME violated access rules by failing to register and obtain advance approval for the events through the University's Events Online event registration system, as required by Policy 860.

The Third Warning Letter also referenced a demonstration that apparently took place at around 2:30 a.m. on June 16 at the residence of the UCLA chancellor. The letter asserted that demonstrators banged pots and pans, creating a noise disturbance in violation of section 415 of the California Penal Code.

The parties stipulated that at some point later in 2023, all employees who received counseling memoranda regarding the May 23 delegation at Cogen Hall were issued performance evaluations that included negative comments similar to those included in the counseling memoranda.

Procedural History

On August 25, 2023, AFSCME filed an unfair practice charge over the above-described events. On April 30, 2024, OGC issued a complaint. The complaint alleged that the University interfered with employee and employee organization rights in violation of HEERA when it (1) issued the First Warning Letter concerning the January delegation; (2) issued the Second Warning Letter concerning the May delegation; (3) posted the June 8, 2023 notice from Martinez to custodians concerning the May delegation; (4) issued the June 15, 2023 counseling memos to various employees concerning the May delegation; (5) issued the June 22, 2023 performance evaluations to seven employees referencing those counseling memos; and (6) issued the Third Warning Letter concerning AFSCME's June 6 and 7, 2023 tabling on

campus.[5] The complaint further alleged that the University issued the counseling memos and performance evaluations in retaliation for employees' protected activities. Finally, the complaint alleged that the University unilaterally changed terms and conditions of employment without adequate notice or an opportunity to bargain when it issued the Third Warning Letter. On May 20, 2024, the University filed its answer to the complaint.

The parties participated in an informal settlement conference but were unable to resolve the dispute. Thereafter, the ALJ conducted a formal hearing on October 28 and 29, 2024.

Regarding the interference allegations, the ALJ found that HEERA protects employees' right to advertise grievances to, and solicit support from, other employees and members of the public, and generally to speak on matters of legitimate concern to employees as employees. The ALJ also found that HEERA grants employee organizations a right of access to employer facilities, subject to reasonable regulation by the employer. The ALJ concluded that the University's conduct in issuing each of the letters, memos, evaluations, and notices at issue in the case had a tendency to interfere with the exercise of these protected rights. The ALJ rejected the University's affirmative defenses that it was reasonably enforcing access restrictions, that AFSCME's or employees' conduct lost protection due to its "opprobrious" or illegal nature, that AFSCME's conduct was "direct dealing" with University managers and supervisors, and that AFSCME contractually waived its right to challenge the

[5] AFSCME did not challenge the portion of the June 26 letter concerning the June 16 incident at the chancellor's residence.

reasonableness of the University's restrictions. Thus, the ALJ found that the University committed the interference violations alleged in the complaint.

For similar reasons, the ALJ upheld AFSCME's retaliation allegation, finding that the employees participating in the May 23 delegation were engaged in protected activity, and that the University issued the counseling memos and negative performance evaluations expressly because of that protected activity. The ALJ rejected the University's affirmative defense that it acted for non-discriminatory reasons.

The ALJ found that AFSCME did not establish all the elements of its allegation that the University unilaterally changed its policies or practices around access when, in the Third Warning Letter, it insisted that AFSCME comply with Policy 860 when holding tabling events on campus. This is because, since at least 2018, the University has been stating that it expects AFSCME to comply with that policy. Thus, the ALJ found, there existed no enforceable past practice in 2023 whereby AFSCME was permitted to hold tabling events on campus without complying with Policy 860.

Finally, the ALJ analyzed AFSCME's second unilateral change allegation that the University unilaterally changed a policy or practice allowing employees to participate in delegations without discipline or threat of discipline, an allegation which was not included in the complaint. After finding that the elements of PERB's unalleged violation doctrine were satisfied, and that the allegation could thus be considered, the ALJ ultimately rejected it. Although AFSCME established that the University had maintained a practice of allowing employees to participate in delegations, the ALJ found that AFSCME did not show that the University changed that policy when it

issued counseling memos, performance evaluations, and notices to employees. Both parties filed exceptions.

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) However, to the extent that a proposed decision has adequately addressed issues raised by certain exceptions, the Board need not further analyze those exceptions. (*Ibid*.) The Board also need not address alleged errors that would not affect the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

In Part I below, we address all allegations related to the employee delegations of January and May 2023. Part II deals with all allegations related to AFSCME's June 2023 tabling event. Part III discusses the appropriate remedy.

I. Allegations Relating to Employee Delegations

A. Interference

To establish a prima facie interference case, a charging party must show that an employer's conduct tends to or does result in some harm to protected union and/or employee rights. (*Regents of the University of California* (2023) PERB Decision No. 2880-H, p. 7.) A charging party need not establish that the employer acted because of an unlawful motive. (*Ibid*.) If the union establishes a prima facie case, the burden shifts to the employer. (*Ibid*.) The degree of harm dictates the employer's burden. (*Ibid*.) If the harm is "inherently destructive" of protected rights, the employer must show that the interference results from circumstances beyond its control and that no alternative course of action was available. (*Id.* at pp. 7-8.) For conduct that is not

inherently destructive, the respondent may attempt to justify its actions based on operational necessity. (*Id.* at p. 8.) In such cases, PERB balances the asserted business need against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, PERB finds a violation. (*Ibid*.) Within the category of actions or rules that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its business need was important and that it narrowly tailored its actions or rules to attain that purpose while limiting harm to protected rights as much as possible. (*Ibid.*)

PERB-administered statutes, including HEERA, protect most union and employee speech related to legitimate labor and employment concerns. (*Mount San Jacinto Community College District* (2023) PERB Decision No. 2865, p. 18 (*San Jacinto*); *Rancho Santiago Community College District* (1986) PERB Decision No. 602, p. 12 (*Rancho Santiago*).) An employee is typically protected in criticizing working conditions, management, or union leadership, if the criticism relates to advancing employee interests or is a logical extension of group activity. (*San Jacinto*, *supra*, p. 18.) And while HEERA section 3568 specifically affords union representatives access to the University's property, even under PERB-administered statues lacking such a specific grant, "both employees and nonemployee union representatives have a presumptive right of access to the public employer's premises" (*Palomar Health v. National Nurses United* (2023) 97 Cal.App.5th 1189, 1207), subject only to narrowly drawn restrictions. (See *post*, Part I(a)(iv) [discussing permissible regulation of unions' access rights].)

Protected expressive activity may include employee delegations on University property to express dissatisfaction with working conditions. (*Regents of the University of California* (2018) PERB Decision No. 2601-H, pp. 17-18.) Indeed, the University's exceptions concede that delegations to a supervisor's office to complain about workplace issues, as well as employees' recording of their interactions with supervisors, generally constitute protected activity.

Moreover, although labor and employment disputes may engender ill feelings and strong responses, the law encourages "uninhibited, robust, and wide-open debate," to overcome these disputes. (*Carpinteria Unified School District* (2021) PERB Decision No. 2797, pp. 13-14 (*Carpinteria*), citing *City of Oakland* (2014) PERB Decision No. 2387-M, p. 23.) Thus, employees' right to engage in concerted activity permits some leeway for impulsive or intemperate behavior. (*Carpinteria*, *supra*, pp. 13-14.) Protected speech may lose its status as such only if the employer meets its burden to prove the speech was "maliciously dishonest or so insubordinate or flagrant as to create a substantial disruption or the serious risk thereof." (*SunLine Transit Agency* (2024) PERB Decision No. 2928-M, p. 18 (*SunLine*), citing *San Jacinto*, *supra*, PERB Decision No. 2865, pp. 21-22.) Where the employer claims that speech was so flagrant or insubordinate as to disrupt operations, PERB conducts a fact-intensive inquiry that considers all relevant circumstances, including but not limited to: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of what occurred; and (4) the extent to which the speech or conduct at issue can fairly be said to have been provoked by the employer. (*Carpinteria*, *supra*, p. 14.)

We readily find that employees participating in the January 31 and May 23 delegations were engaged in protected activity in attempting to raise issues with management. In both instances, employees sought to present complaints about staffing practices. Because this expressive activity addressed matters of legitimate employment concerns, it falls under the protection of HEERA section 3565. (*Regents of the University of California*, *supra*, PERB Decision No. 2601-H, pp. 17-18.) In the May delegation, Martinez was unavailable and all partes—including Garcia—acknowledged that Garcia was a reasonable conduit for the complaint because she works closely with Martinez. The fact Garcia preferred to be given the complaint in writing does not change the protected nature of the delegation's presentation in Spanish to Garcia, who is bilingual.

We also find that the video recording of both the January and May delegations was prima facie protected by HEERA section 3565. Although we are not aware of any prior Board decision to specifically reach this holding, the principle is apparent upon reviewing PERB precedent and persuasive federal precedent. First, the Board "must adapt its jurisprudence to address changing circumstances in the workplace." (*Los Angeles Unified School District* (2018) PERB Decision No. 2588, p. 5.) As technological changes have created new forums for communication, PERB has recognized that employees will use that technology for protected purposes and has adapted its caselaw accordingly. (See, e.g., *SunLine*, *supra*, PERB Decision No. 2928-M, pp. 21-22 [because social media has become a fundamental forum for employee communication, PERB-administered statutes protect social media activity related to protected activity, absent special circumstances]; *Napa Valley Community*

College District (2018) PERB Decision No. 2563, p. 19 [employer cannot, absent special circumstances, restrict employees' use of employer-owned e-mail systems for protected communications].)

Second, statutory language protecting the right to "form, join, and participate" in the activities of an employee organization includes individual concerted activity for mutual aid and protection and/or to protect the employment interests of the entire group. (*Fresno County In-Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M, p. 29; *Modesto City Schools* (1983) PERB Decision No. 291, p. 62.) As shown in this case, employees may photograph or record incidents in furtherance of protected activity. And as we discuss in greater detail *post*, Part I.A.i, the recordings served to rebut the University's inaccurate characterization of employees' conduct during the delegations. Such recordings commonly protect employees' ability to present grievances to management and discuss legitimate employment concerns, while allowing employees to communicate those issues, and management's response, to their colleagues. Thus, in the current smartphone era in which we live, it is critical to protect employees' right to make audio and video recordings, or take photographs, related to protected activity. (See, e.g., *Stericycle, Inc. & Teamsters Local 628* (2023) 372 NLRB No. 113, p. 10, fn. 18 ["In a society where smartphone cameras have become ubiquitous and, accordingly, where there is increased utilization of these devices to document complaints with photographs, audio, and videos, a rule that prohibits the use of cameras has a very definite impact on protected activity"]; *Whole Foods Market Group, Inc.* (2015) 363 NLRB 800, 802 ["Photography and audio or video recording in the workplace, as well as the posting of

photographs and recordings on social media, are protected by Section 7 [of the National Labor Relations Act] if employees are acting in concert for their mutual aid and protection and no overriding employer interest is present. . . . Such protected conduct may include . . . documenting and publicizing discussions about terms and conditions of employment . . . or recording evidence to preserve it for later use in administrative or judicial forums in employment-related actions."]; *Stephens Media, LLC* (2011) 356 NLRB 661 [employee was protected in making secret recording of meeting with supervisor where state law permitted such recording].)[6]

Therefore, the employees who participated in and recorded the delegations in January and May of 2023 were engaged in activities protected by HEERA unless the employer can establish that they lost protection due to special circumstances. We turn to the University's various arguments urging us to conclude that either or both employee delegations were unprotected, or that its various actions in response did not violate HEERA.

i. Claimed Serious Disruption or Risk Thereof

First, the University claims that "some" employees participating in the January delegation were on work time. The ALJ rejected this argument because: (1) two AFSCME witnesses testified to the contrary; and (2) the University's sole evidence was ambiguous, and, in any event, constituted hearsay unsupported by any

[6] California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, and PERB accordingly considers federal precedent only for its potential persuasive value. (*City and County of San Francsico* (2025) PERB Order No. Ad-532-M, p. 7.)

non-hearsay evidence. (See *State of California (Correctional Health Care Services)* (2021) PERB Decision No. 2760-S, p. 29, fn. 22 [hearsay cannot form the sole basis for a material factual finding] (*CCHCS*).) Moreover, the University controls the relevant employee time records, yet it never tried to introduce such records into evidence. We agree with the ALJ that the University failed to prove its argument.

The University's arguments concerning the May delegation are even more divorced from the evidentiary record. At various points in its exceptions, the University claims that the employees "encircled," "attacked," and "degraded" Garcia, "held [her] against her will," and "shoved" a piece of paper at her. These claims blatantly misrepresent the actual nature of the May delegation as depicted in the video evidence and witness testimony to create a false impression of menace on the part of the custodians. They did not "encircle" Garcia, who was never surrounded. Neither is there any evidence of Garcia being attacked or degraded in any way, and the University does not specify what conduct merits these extreme descriptions. Nor did the employees falsely imprison Garcia, who testified that she could have closed the door to her office and ignored the delegation, but was motivated by professionalism and a sense of ethics to receive them in Martinez's absence. And, despite the University's claims, no witness used the word "shove" to describe what the video shows to be a custodian, standing at least 4 or 5 feet from Garcia, slowly extending his hand holding a piece of paper toward her, and Garcia leaning toward him to accept the paper before they both return to their original positions. Indeed, Garcia requested "a paper," listing the employees' workplace concern, and when one employee obliged, Garcia said "ok," and that she would relay the information to Martinez. The first usage

of the word “shove” to describe this incident appears to be in a counseling memorandum, authored by Martinez, who did not witness the event. Garcia’s own testimony that the custodian “just gave me the paper and I just accepted it,” is consistent with the video evidence but lacks any of the aggressive implications the University attempts to conjure.

We therefore reject the University’s various exceptions and rhetorical misrepresentations regarding employee conduct during the May delegation. The evidence conclusively shows that the delegation solely addressed working conditions and was respectful and non-aggressive in nature.[7] None of the evidence comes close to meeting the University’s burden.

Moreover, we caution that while zealous advocacy involves some amount of artful pleading, editorialization, and argumentative language, the University’s misrepresentations of evidence in this case go well beyond that. Here, the University frames the custodians participating in the May delegation as having “barged into” Garcia’s office and “shoved” paper at her, while claiming that Garcia was “subjected to intimidation,” “degraded,” and “held against her will.” These claims are patently baseless and caused us to expend great effort to sort fact from fiction in the

[7] Our conclusion does not contradict Garcia’s testimony concerning the discomfort she felt. However, whether otherwise protected speech is substantially disruptive is an objective test and does not depend on a witness’ subjective reaction. (See *Carpinteria*, *supra*, PERB Decision No. 2797, p. 14; see also *Rancho Santiago*, *supra*, PERB Decision No. 602, p. 14.) Indeed, the evidence shows that both Garcia and the custodians participating in the delegation acted professionally and courteously, regardless of the emotions any of them might have felt about the event and its causes.

University's exceptions. At a minimum, these tactics distract from legitimate questions posed by the events in question and the legal positions of the parties. Due to the extreme misrepresentations by the University of the custodians' conduct, in Part III, *post*, we ensure that the 16 employees who participated in the May delegation are personally informed of our decision in this matter by requiring the University to mail a copy of it to each employee.

ii. Claim of Improper Video Recording

We held above that the recordings of the employee delegations were themselves protected under HEERA. However, this holding does not mean that an employer can never adopt restrictions on photography or recordings in working areas. As with other work rules that restrict protected activity, an employer would have the burden to prove special circumstances, which typically means that its no-recording policy was (1) based on important business needs, and (2) narrowly tailored to avoid overbroad, unnecessary interference with protected rights. (*Regents of the University of California*, *supra*, PERB Decision No. 2880-H, pp. 8-10.) Here, the University cannot meet this burden because it did not assert that it has any policy banning otherwise lawful video recording in the locations where the delegations took place, much less that it has such a policy that is based on important business needs and narrowly tailored to avoid unnecessary interference with protected rights.

The University instead claims that the recordings violated state criminal law, asserting without argument that this conduct violated Penal Code section 632. The ALJ found that section 632 applies only to confidential communications, and that Garcia could not have had an objectively reasonable expectation that her interaction

with the delegation was not being overheard, since it took place in an office hallway with numerous observers, and within earshot of others. Moreover, the employee recording the delegation did so openly, standing only a few feet away.

The University's exceptions reiterate a further argument it first made in its reply brief, that the recording violated the Workplace Violence Safety Act (Code Civ. Proc., § 527.8). The University's sole authority on this point is an inapposite case involving stalking, and as above, we patently reject the University's misrepresentations of the delegation.

We find no cause to depart from the ALJ's well-reasoned conclusions. The University has not shown that the recording violated state law.

We therefore conclude that the University's First (February 1) Warning Letter, its Second (May 31) Warning Letter, the 16 counseling memoranda issued in June 2023 to employees participating in the May delegation, the similar negative comments in the same employees' performance evaluations, and the June 7 notice postings all interfered with employees' exercise of their rights. These actions were directly targeted at employees' conduct during the delegations. Individually or taken together, the University's actions interfered with employees' rights to participate in the activities of their employee organization.

iii. Claim of Direct Dealing by AFSCME

The University's First Warning Letter and Second Warning Letter accused AFSCME of "circumventing [UCLA Labor Relations] and directly dealing with our managers and supervisors." The University argued that the delegations amounted to unlawful bypassing or direct dealing by AFSCME.

"An exclusive representative has a right to engage in direct and indirect advocacy with an employer's elected and unelected officials, up to and including the employer's highest levels, provided that the exclusive representative does not make new collective bargaining proposals that the exclusive representative has not already made in negotiations with the employer's chosen bargaining team." (*County of Tulare* (2020) PERB Decision No. 2697-M, p. 8.) Thus, in evaluating a claim of direct dealing by a union, the dividing line is clear: advocacy is permitted, but if the union makes a new collective bargaining proposal, it must do so first with the employer's chosen bargaining representatives. (*Id.* at pp. 8-9.)

In this case, the University focuses on the fact that AFSCME's delegations, in complaining about working conditions, demanded better treatment. The University frames these demands as if they were new collective bargaining proposals that AFSCME had not previously made. We find this framing untenable. Complaints about working conditions typically include an explicit or implicit "demand" for better treatment, but that does not turn the complaint into a collective bargaining proposal. The University's argument, if adopted, would eviscerate employee protections central to HEERA: the right to present complaints about working conditions to their supervisors or managers. (See *Regents of the University of California*, *supra*, PERB Decision No. 2601-H, pp. 17-18.) The University never attempts to reconcile its argument with this obvious problem. Regardless, we find that the employee delegations, including the participation of union representatives, did not have the

potential to subvert the statutory scheme by undermining the relationship between the University and its designated labor representatives.[8]

The University's argument also fails on its own terms. Even if we were to accept that employee demands for better working conditions could be unlawful bypassing if made for the first time to supervisors or managers, the record does not show that this occurred. At the delegations, employees complained of staffing practices that, the University admits, it previously brought up with Labor Relations at "every single meeting." Thus, even if we were to distinguish between negotiating and advocacy in the context of an employee's speech to a supervisor, the delegations were plainly advocacy. (*County of Tulare*, *supra*, PERB Decision No. 2697-M, pp. 8-9.)

Finally, though the University claims that AFSCME is violating its duty to negotiate in good faith by bypassing UCLA Labor Relations, it did not file an unfair practice charge. Instead, it acted unilaterally (discussed *post*, Part I.C) to restrict employees' right to be represented by AFSCME in their employment relations with the University. AFSCME's participation in the January and May delegations was not unlawful direct dealing, but any such credible allegations should have been brought as an unfair practice charge and would not excuse the University's unlawful responses to such actions.

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[8] Furthermore, the University's argument would appear to treat standard supervisory conduct as unlawful direct dealing unless a union representative is present. If employees' demands to supervisors for better treatment were considered direct dealing, then supervisors' routine conversations correcting work technique or giving instructions, direction, or training would also be unlawful unless a representative was present. But HEERA does not require this. (See *State of California (California Correctional Health Care Services)* (2024) PERB Decision No. 2888-S, p. 18.)

iv. Claim of Reasonable Access Rules

HEERA section 3568 provides that "[s]ubject to reasonable regulations, employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes and other means of communication, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by [HEERA]." An employer must allow an exclusive representative reasonable access to employer property to communicate with bargaining unit employees, distribute literature, investigate workplace conditions, and assess contractual and statutory compliance. (*County of San Joaquin* (2021) PERB Decision No. 2775-M, pp. 26-39.) An employer bears the burden of proving that a restriction on access to its premises is: (1) necessary to safe or efficient operations; and (2) narrowly drawn to avoid overbroad, unnecessary interference with protected rights. (*Id*. at pp. 26-27; *County of Riverside* (2012) PERB Decision No. 2233-M, pp. 7-8, 13.) These principles apply irrespective of whether the person seeking access is a bargaining unit member or a union representative who does not work for the employer. (*County of San Joaquin*, *supra*, p. 27.)

Moreover, there is extensive precedent involving these parties and other University unions with CBAs containing comparable language. Such precedent leaves no doubt that, in allowing reasonable access rules, the parties' CBA merely incorporates the standard set forth in HEERA section 3568; the CBA language does not waive that standard. (*Regents of the University of California (Irvine)* (2018) PERB Decision No. 2593-H, pp. 11-12; *Regents of the University of California* (2012) PERB

Decision No. 2300-H, pp. 27-28; *Regents of the University of California* (2004) PERB Decision No. 1700-H, adopting proposed decision at p. 55.)

Applying these principles, PERB has upheld employer rules requiring union representatives to identify themselves upon arrival, as long as those rules are not applied to employee organizations differently from other visitors. (*Regents of the University of California*, *supra*, PERB Decision No. 1700-H, adopting proposed decision at p. 53; *Long Beach Unified School District* (1980) PERB Decision No. 130, p. 15 (*Long Beach*).) Such rules are reasonable because they protect the employer's legitimate interest in monitoring visitors. (*Long Beach*, *supra*, pp. 15-16.) However, rules requiring *advance* notice of unscheduled visits by union representatives, whose availability is "sporadic and unpredictable," are unreasonable. (*Regents of the University of California*, *supra*, adopting proposed decision at p. 71.)

In the First Warning Letter, the University directed AFSCME to "provide advance notice. . . if you wish to access [UCLA] facilities." The Second Warning Letter similarly directed AFSCME to "schedule an appointment [through] the correct channels," which it identified as UCLA Employee & Labor Relations. The counseling memoranda faulted employees for not scheduling an appointment. The notices to employees specifically directed them to schedule a meeting and not to come to the Facilities Management building unscheduled to speak with managers. The University did not cite any provision of its existing access rules that provide for these various, inconsistent requirements.

The requirement to provide advance notice is overbroad and thus unreasonable. (*Regents of the University of California*, *supra*, PERB Decision

No. 1700-H, adopting proposed decision at p. 71.) Along the same lines, the University cannot prevent employees and their representatives from visiting their supervisors' offices without approval from UCLA Labor Relations.

At hearing, the University contended that its advance notice requirement only applied to AFSCME-organized delegations, and not to sporadic, employee-led delegations. As noted above, the counseling memoranda and notices to employees made no such distinction. Furthermore, such a distinction would be arbitrary, because a union's access rights extend to employees and non-employee representatives alike. (*County of San Joaquin*, *supra*, PERB Decision No. 2775-M, p. 27.) And as the ALJ correctly held, such a rule would impermissibly infringe on employees' right to seek their union's assistance in addressing workplace issues. (See *Regents of the University of California (UC Davis Medical Center)* (2013) PERB Decision No. 2314-H, p. 9.)

Therefore, the ALJ correctly concluded that neither the First Warning Letter, nor the Second Warning Letter, nor the counseling memoranda, nor the notices to employees, were justified based on reasonable access rules.

B. Retaliation Against Protected Activity

PERB applies one of two tests to discrimination allegations. Where the charging party alleges that circumstantial evidence shows that an employer took action against an employee or employees because of protected activity, we apply the framework set forth in *Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*) and its progeny. (*Regents of the University of California (Berkeley)* (2018) PERB Decision No. 2610-H, p. 76; *Los Angeles County Superior Court* (2018) PERB Decision

No. 2566-C, pp. 14-15 (*LA Superior Court*).) To establish a prima facie case under the *Novato* framework, a charging party must prove four elements: (1) one or more employees engaged in activity protected by a labor relations statute that PERB enforces; (2) the respondent had knowledge of such protected activity; (3) the respondent took adverse action against one or more of the employees; and (4) the respondent took the adverse action "because of" the protected activity, which PERB interprets to mean that the protected activity was a substantial or motivating cause of the adverse action. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 26.) If the charging party has established a prima facie case but the evidence also reveals a non-discriminatory reason for the employer's decision, the respondent has the burden to prove that it would have taken the exact same action even absent protected activity. (*Ibid*.) In such "mixed motive" or "dual motive" cases, the question becomes whether the adverse action would not have occurred "but for" the protected activity. (*Ibid*.)

If an employer's conduct facially or inherently discriminates based on protected activity, that is "discrimination in its simplest form," and PERB may infer unlawful discrimination without further evidence of motive. (*County of San Joaquin* (2021) PERB Decision No. 2761-M, p. 27; *LA Superior Court*, *supra*, PERB Decision No. 2566-C, p. 14.) Common examples of facial discrimination include: (1) providing different pay, benefits, or other working conditions based explicitly on union membership or other protected activity; and (2) changing policies in response to protected activity. (*Contra Costa Fire Protection District* (2019) PERB Decision No. 2632-M*; City of Yuba City* (2018) PERB Decision No. 2603-M, pp. 10-11.) The conduct at issue may, but need not, involve disparate conduct toward different

employee groups. (*Regents of the University of California (Berkeley)*, *supra*, PERB Decision No. 2610-H, p. 81; *LA Superior Court*, *supra*, PERB Decision No. 2566-C, p. 15.)

i. Custodians Participating in the Delegations Were Engaged in Protected Activity

As we explain *ante* in Part I.A, employees participating in the May delegation were engaged in protected activity by attempting to discuss their concerns about working conditions with University management. Additionally, the unnamed employee who recorded this event was also engaged in protected activity.

We also discussed *ante* in Part I.A.i that the employees did not engage in the conduct the University claimed would cause it to lose statutory protection. Nor did the recordings violate any state law or lawful University policy.

These same findings apply equally to AFSCME's retaliation claim.

ii. The University's Counseling Memoranda and Negative Performance Evaluations Were Adverse Actions

The ALJ found that the University conceded that the counseling memoranda and negative comments in performance evaluations constituted adverse actions. In its exceptions, the University disputes that it did so, based on a single sentence in its post-hearing brief which asserted that counseling memoranda "are not considered 'discipline' at UCLA." We agree with the ALJ that the University did not argue that the counseling memoranda were not adverse actions for purposes of the retaliation analysis. Because this issue was not raised below, it is forfeited. (*LA Superior Court*, *supra*, PERB Decision No. 2566-C, p. 12.)

Even if the issue was properly before us, we would reject the University's argument. PERB applies an objective test for whether employer conduct is an adverse action. (*City of San Diego*, *supra*, PERB Decision No. 2747-M, p. 27.) "The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment." (*Ibid*.) Context is highly relevant in determining whether non-punitive directives are adverse. (*Ibid*.) In some circumstances, a threat constitutes adverse action whether or not it is carried out. (*Id.* at p. 29.) Under this standard, counseling memoranda, whether or not they are disciplinary in themselves, have been found to be adverse because they contain a threat of possible future discipline. (*Claremont Unified School District* (2019) PERB Decision No. 2654, p. 14.) Indeed, that is exactly what occurred here, as the same employees who received counseling memoranda also received negative comments in their performance evaluations with similar language. Negative comments in performance evaluations are also adverse actions where a reasonable employee would consider such comments to have an adverse employment impact. (See *State of California (Department of Youth Authority)* (2000) PERB Decision No. 1403-S, adopting proposed decision at p. 33.)

iii. The University Issued the Counseling Memoranda and Negative Performance Evaluations Because of Employees' Protected Activity

Where there is direct evidence of discrimination, such as when the employer's words or conduct reveal that an adverse action was based on an employee's protected activity, no further evidence of nexus is required. (*County of San Joaquin*, *supra*, PERB Decision No. 2761-M, p. 66; *Mount San Jacinto Community College*

District (2018) PERB Decision No. 2605, p. 20.) That is the case here. As is clear from the contents of the counseling memoranda themselves, the University issued the counseling memoranda and placed derogatory comments in employees' evaluations because of their participation in the May delegation. Because we have found the employees' conduct during the delegation to be protected, AFSCME has established that the University knew about and took adverse action because of that same protected activity.[9]

The University argues that it would have taken the same actions even absent the employees' protected activity, claiming that it was motivated only by their "unprotected" activity. As noted above, in a "mixed motive" case where the evidence shows both lawful and unlawful reasons for the employer's adverse action, the respondent employer has the burden to prove that it would have taken the exact same action even absent protected activity. (*City of San Diego*, *supra*, PERB Decision No. 2747-M, p. 26.)

However, this is not a mixed motive case. Rather, the counseling memoranda unequivocally cite employees' protected activity as the reason the University issued them. In contrast with cases where there is direct evidence an employer is motivated "in part" by employees' protected activities, alongside nondiscriminatory motives (see,

[9] This includes the University's reference to the single employee's protected recording in the counseling memoranda it issued to every one of the 16 employees participating in the delegation. We note that even if the University were correct in arguing that the recording was unprotected, it had no apparent basis to punish the other 15 employees who were not recording for this conduct. Indeed, the University's punishment of the entire group for the actions of one employee reinforces the inference that it was motivated by the group's protected activities.

e.g., *Regents of the University of California* (2012) PERB Decision No. 2302-H, p. 4), here the University failed to show that any of the employees' conduct giving rise to the counseling memoranda was unprotected. Because the employees' protected activity is the only basis for the adverse actions, the University cannot prove that it would have taken the same actions in the absence of the employees' protected activity. (*Mount San Jacinto Community College District*, *supra*, PERB Decision No. 2605, p. 20; *State of California (Department of Corrections & Rehabilitation)* (2012) PERB Decision No. 2282-S, p. 4.)

C. Unilateral Change in Policy or Practice of Permitting Employees to Participate in Delegations

The ALJ dismissed AFSCME's allegation that the University unilaterally changed terms and conditions of employment by no longer permitting employees to participate in delegations. Although this allegation was not included in the complaint, the ALJ found that AFSCME had satisfied the unalleged violation doctrine and thus considered the allegation on the merits. The University did not file exceptions to this finding, and, in any event, the ALJ correctly applied the unalleged violation doctrine.

A unilateral change to a matter within the scope of representation is a per se violation of the respondent's duty to bargain in good faith. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 22.) Because a unilateral change has an inherently destabilizing and detrimental effect upon the parties' bargaining relationship, it is unlawful irrespective of intent. (*City of Montebello* (2016) PERB Decision No. 2491-M, p. 10; *County of Riverside* (2014) PERB Decision No. 2360-M, p. 18.) To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party union that exclusively represents a bargaining unit

must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9 (*Bellflower*).)

The ALJ correctly noted that PERB recognizes three categories of changes in policy or deviations from the status quo: (1) changes to the parties' written agreements; (2) changes in established past practices; or (3) newly created policies, or application or enforcement of an existing policy in a new way. (*Id.* at p. 10.)

On the merits, the ALJ found that AFSCME had provided evidence that the University had historically allowed employees to participate in delegations. The University did not file exceptions to this finding. However, the ALJ found that AFSCME had not shown that the University changed this practice. Although AFSCME had alleged that the counseling memos and the notices to employees posted at time clocks show a change in this practice by purporting to disallow delegations, the ALJ found that the University was concerned only with the employees' specific conduct at the May delegation. The ALJ further relied on Jones's testimony that employees are permitted to go to a manager's office and present concerns without notice to find that the University had not banned participation in delegations outright, but rather viewed

the May delegation as "uniquely unacceptable." AFSCME filed exceptions to this conclusion.

We reverse the ALJ's conclusion that the University did not change its practice of permitting employees to participate in delegations. The notices to employees from Martinez, posted at the time clocks after the May delegation, specifically direct employees, "If a meeting is needed, please schedule a meeting through your union representation. Coming to the Facilities Management Building without a meeting is unconstructive." The counseling memoranda also fault employees for not "schedul[ing] an appointment through the proper channels." A reasonable employee would view these directives as prohibiting participation in any future unscheduled delegation. To the extent Jones's testimony retreated from this position, the University did not rescind its prior directives that employees must schedule meetings before they speak to managers about working conditions, or clarify that employees have a right to participate in delegations. Even if Jones's testimony could be viewed as a return to the status quo, this would only be relevant to potential remedies, but the University would remain liable for the unilateral change. (*Palomar Health* (2024) PERB Decision No. 2895-M, p. 40.) The University's notices also constitute a change in the status quo in that they announce newly created policies or application or enforcement of an existing policy in a new way. (*Id*. at pp. 39-41; accord *Regents of the University of California*, *supra*, PERB Decision No. 2300-H, pp. 25-26 [by threatening to arrest employees engaged in leafletting in front of University hospital, the University "effectively imposed a new additional rule on the Union, forbidding leafleting in this particular place, where there had been no previous prohibition"]; *Regents of the*

University of California, *supra*, PERB Decision No. 1700-H, adopting proposed decision at p. 62 [in a letter to a local union representative, the University effectively adopted a new rule when it stated it would not permit demonstrations inside the administration building at its Davis campus].)

AFSCME also satisfied the remaining elements of a unilateral change. First, access issues fall within the scope of bargaining. (*Regents of the University of California*, *supra*, PERB Decision No. 2300-H, pp. 20-22 [citing other authority].) The University's actions had a generalized effect or continuing impact on employees because it expressly directs them to refrain from future protected activities. Finally, it is undisputed that the University issued these directives without providing AFSCME advance notice and an opportunity for bargaining.

For the foregoing reasons, the University violated HEERA section 3571(c) when it unilaterally directed employees to schedule meetings rather than participate in unscheduled delegations to discuss working conditions with University management.

II. Allegations Relating to AFSCME Tabling

As described above, on June 6 and 7, 2023, AFSCME organized tabling events concerning an election for members of its bargaining team. It set up tables with canopies along the Bruin Walk near the middle of the UCLA campus with signs labeled "AFSCME."

In response to "various reports" that AFSCME's tables were interfering with other events on campus, Jones told unnamed AFSCME representatives that because they had not coordinated through the campus Events Office, they would need to move their tables, but they refused. On June 26, 2023, Jones sent Lopez the Third Warning

Letter asserting that the tabling events violated campus access rules because they were not submitted to or approved by the UCLA Events Office in adherence to Policy 860.

AFSCME makes two allegations regarding the Third Warning Letter: (1) that by this conduct the University interfered with its statutory right of access to the University's facilities; and (2) that by this conduct the University unilaterally changed its policy or practice around AFSCME's access to its facilities without notice and an opportunity to bargain.

A. Interference

As we discussed above, HEERA section 3568 requires an employer to allow an exclusive representative reasonable access to employer property to communicate with bargaining unit employees, distribute literature, investigate workplace conditions, and assess contractual and statutory compliance. (*County of San Joaquin*, *supra*, PERB Decision No. 2775-M, pp. 26-39.) An employer may promulgate reasonable access rules, but bears the burden of proving that a restriction is: (1) necessary to safe or efficient operations; and (2) narrowly drawn to avoid overbroad, unnecessary interference with protected rights. (*Id*. at pp. 26-27.) While rules requiring union representatives to identify themselves upon arrival are generally reasonable, rules requiring advance notice of unscheduled visits are not. (*Regents of the University of California*, *supra*, PERB Decision No. 1700-H, adopting proposed decision at pp. 53, 71.)

The ALJ found that the University's insistence that AFSCME adhere to Policy 860 before conducting any "extracurricular events and activities" interfered with

AFSCME's presumptive right of access because the policy is both extremely broad and significantly more onerous than an advance notice requirement. Policy 860's definition of "extracurricular use" of University facilities includes use of any University facility or campus open-space area for an event or activity that is not academic instruction or which does not carry academic credit. Such a broad definition could conceivably sweep in virtually any activity AFSCME seeks to conduct on University property, subjecting it to four conditions. The four conditions—obtaining a "University Guarantor" approved by the chancellor, 10-day advance registration through the Events Office, approval by the Events Office, and vague "conditions of use" that the event be "in the best interests of the University"—are individually and collectively significantly more onerous than even advance notice requirements.[10]

In its exceptions, the University does not attempt to defend the reasonableness of Policy 860 in its broad application. Instead, the University contends that it requires adherence to Policy 860 for AFSCME to utilize a "specific space."

Certainly, competing demands on limited space may justify a system whereby persons or organizations planning significant events or gatherings must reserve specific spaces or facilities. Public safety concerns may also inform regulations on the types of temporary structures an organization is permitted to erect on campus. But as noted above, the four onerous conditions in the Third Warning Letter went far beyond

[10] The ALJ noted that the University has, since the events at issue in this case, revised Policy 860. That revision, which is the subject of a separate unfair practice charge not presently before us, is substantially different in multiple respects. The ALJ noted one difference, which is that the new policy applies only to certain categories of planned gatherings, such as those involving "tenting."

such narrowly tailored considerations. Moreover, there is no competent evidence in the record that AFSCME's June 6 and 7, 2023 tabling event caused any interference with the University's efficient operations.[11] Nor did the University actually allege, in the Third Warning Letter, that AFSCME's tabling was disruptive. Instead, as Jones admitted, the problem as the University saw it was simply that AFSCME had failed to comply with the terms and conditions of Policy 860. Because that categorical policy is unreasonably overbroad, the University's Third Warning Letter interfered with AFSCME's protected right to access to University facilities pursuant to HEERA section 3568. (*County of San Joaquin*, *supra*, PERB Decision No. 2775-M, pp. 26-27; see also *Regents of the University of California*, *supra*, PERB Decision No. 1700-H, adopting proposed decision at p. 60 [University's legitimate concerns about loud, disruptive demonstrations in its administration building, as well as concerns about blocking of ingress and egress, would have justified narrowly tailored rules addressing such issues but did not allow a categorical ban on all demonstrations in the building].)

B. Unilateral Change in Policy or Practice around Tabling

The ALJ found that AFSCME did not establish that the University unilaterally changed its policy around application of Policy 860. AFSCME had contended that there existed a past practice whereby it was regularly permitted to set up tables on campus without complying with Policy 860.[12] However, the ALJ found that since

[11] Jones's hearsay testimony that she received "various reports from campus" that AFSCME's tabling was interfering with unspecified "other events" and "other vendors" nearby cannot, without further evidence, establish the truth of those "reports."

[12] Article I.B.1 of the parties' CBA states that AFSCME may use a table "in or near the main cafeteria at each facility, or in or near the lunchroom where no cafeteria

August 2018 the University had consistently attempted to enforce the policy. Thus, the ALJ concluded, there was no binding past practice in 2023 whereby the University had acceded to AFSCME's setting up tables without following Policy 860. (See *Palomar Health*, *supra*, PERB Decision No. 2895-M [status quo for unilateral change purposes established by past practice that is sufficiently "regular and consistent" or "historic and accepted"].) AFSCME filed exceptions to this finding.

AFSCME contends that notwithstanding the University's letters demanding it comply with Policy 860 before tabling, it never did so. It contends that its persistence in spite of the University's demands became a "course of conduct or way of doing things over an extended period of time," that was now binding on the parties, citing *County of Riverside* (2013) PERB Decision No. 2307-M, p. 21.

We deny AFSCME's exceptions for two reasons. First, the evidence AFSCME relies on does not clarify to what extent the various tabling events during the period 2018-2023 were covered by Article I.B.1 of the parties' agreement and thus not relevant to the past practice it sought to establish. Second, *County of Riverside*, *supra*, PERB Decision No. 2307-M, is distinguishable. In that case, a union alleged that for many years, an employer paid shift differentials or special pay premiums to employees on union release time. (*Id*. at pp. 20-21.) Then, during bargaining for a successor agreement, the employer unilaterally stopped paying employees these special pay premiums and shift differentials for time spent on certain release time activities. (*Id.* at p. 21.) The employer contended that it had not known of these pay practices and

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exists." AFSCME's allegation of a past practice pertained to places on campus not expressly covered by the agreement.

ceased them when it became aware. (*Ibid.*) PERB agreed with the union that the employer "had to have known" of its own pay practices, especially since at one point it proposed to change them during negotiations. (*Ibid.*) In this case, there is no dispute that the University is aware that AFSCME is not adhering to Policy 860 before tabling. But unlike the employer in *County of Riverside*, the University has consistently stated its position that such adherence is necessary, as seen in the letters it has sent AFSCME since at least 2018 complaining about just that. Because the University's position in the Third Warning Letter is not materially different than the one it has taken since at least 2018, the University did not change a "regular and consistent" or "historic and accepted" past practice.

III. Remedy

Under HEERA section 3563.3, PERB has the remedial authority:

> "to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter."

We have found the University to have interfered with employee and union rights guaranteed by HEERA in violation of HEERA section 3571(a) and (b), by: (1) issuing warning letters to AFSCME that included overbroad directives requiring AFSCME to provide advance notice or obtain advance approval before accessing any University facility at any time, and implicitly threatened to sanction AFSCME or employees for engaging in protected communications with supervisors; and (2) issuing counseling memoranda to employees, posting notices in employees' work locations, and including negative comments in employees' performance evaluations, which erroneously

characterized employees' protected communications with supervisors as unlawful or unprotected activity that could lead to discipline. In addition, we have found the University to have retaliated against employees by issuing the aforementioned counseling memoranda and negative comments on performance evaluations because of their exercise of rights guaranteed by HEERA in violation of section 3571(a). Finally, we have found the University to have unilaterally changed terms and conditions of employment by posting notices to employees, directing them that they may not have unscheduled discussions with managers or supervisors about working conditions in violation of HEERA section 3571(c).

In cases involving violations of access rights, the Board will typically order the employer to cease and desist from failing to provide the union with reasonable access to facilities where access was unlawfully denied. (*County of San Joaquin*, *supra*, PERB Decision No. 2775-M, pp. 45–47.) Here, it is appropriate to order the University to cease and desist from issuing or enforcing overbroad directives requiring AFSCME or employees to provide advance notice or advance approval before accessing any University facility at any time, or any other requirement that denies AFSCME reasonable access to University facilities.

Where an employer has enforced an unlawful policy that interferes with employee rights, in addition to the Board's standard notice posting remedy and order to cease and desist the specified conduct, the Board may order that the policy be rescinded. (*Rio Hondo Community College District* (1983) PERB Decision No. 292, p. 32.) In addition, where an employer has taken disciplinary or other adverse action against employees that interferes with employee rights, the Board may order that the

discipline be rescinded, and may order other relief to make the employee whole for any harm caused by the employer's unlawful action. (*County of San Joaquin (Sheriff's Department)* (2018) PERB Decision No. 2619-M, pp. 12-14.) Where disciplinary action is based in part on an employee's protected conduct and in part on unprotected conduct, rather than attempt to determine what portion of the discipline was attributable to the protected conduct, PERB may order rescission of the entire penalty. (*Ibid.*)

Additionally, in cases involving unlawful discrimination or retaliation, the Board will order relief to the extent needed to make affected employees whole. (*CCHCS*, *supra*, PERB Decision No. 2760-S, p. 41.) This may include rescission of unlawful directives and disciplinary action, where appropriate. (*Regents of the University of California*, *supra*, PERB Decision No. 2601-H, pp. 19-21 [where employee was discriminated against for participating in a delegation to management, employer was ordered to rescind unlawful notice of investigatory leave and written warning].) Here, we will order the University to rescind the counseling memos and performance evaluations issued to employees who participated in the May 2023 delegation, and to remove all posted notices regarding that incident.

In cases finding an unlawful unilateral change, PERB's standard remedy is a cease-and-desist order, a notice posting, restoration of the status quo ante, appropriate make-whole relief including back pay and benefits with interest, and an order to bargain with the union upon request. (*Regents of the University of California (Los Angeles)* (2025) PERB Decision No. 2942-H, p. 21.) This is an alternate basis for

us to order the University to rescind the counseling memos and posted notices regarding the May 2023 delegation.

"An unfair practice finding creates a presumption that employees suffered some financial loss as a result of the employer's unlawful conduct." (*Palomar Health*, *supra*, PERB Decision No. 2895-M, p. 65, citing *San Jacinto*, *supra*, PERB Decision No. 2865, p. 40 [internal citation omitted], and *Desert Sands Unified School District* (2010) PERB Decision No. 2092, pp. 31-32.) The same presumption of financial loss as a result of the employer's unlawful conduct also flows to the union. (*Palomar Health*, *supra*, p. 65.) Consistent with this presumption, it is appropriate to give AFSCME an opportunity to establish in compliance proceedings that AFSCME and/or bargaining unit employees suffered losses from the University's interference or retaliation. (*Ibid.*) Recovery of such losses shall include interest accrued to the date of payment at an annual rate of 7 percent, compounded daily. (*Id.* at p. 69.)

Finally, AFSCME requests an order requiring the University to conduct a live spoken notice reading of the remedial notice. The ALJ declined AFSCME's request, finding that the Board's customary notice postings were sufficient, but AFSCME renews its request in its exceptions. We are concerned that the harm from the University's grossly inaccurate statements, including accusations of potential criminal conduct directed at custodians participating in the May 2023 delegation, may persist. To cure the chilling effect the University's extreme and unfounded allegations likely had on the employees' willingness to participate in protected activity (see *San Jacinto*, *supra*, PERB Decision No. 2865, p. 42), we will order the University to supplement the standard notice posting by: (1) conducting a live reading by Custodial Services

Manager Lizett Martinez or her successor in that position of the attached Notice to employees of the UCLA Facilities Management Department, (2) mailing a copy of this decision to the last known address on record for each employee who received a counseling memorandum related to the May 2023 delegation, and (3) meeting and conferring with AFSCME for 30 days to draft an apology letter in English and Spanish, from Martinez or her successor in that position, to be sent to those same employees who participated in the May 2023 delegation, overseen by PERB's compliance officer. If the parties are unable to agree on the contents of the apology letter after 30 days, the compliance officer will determine whether the University's proposed language complies with our Order and will direct any edits needed to achieve compliance. The University shall enclose the apology letter in the mailing described above to each employee who received a counseling memorandum related to the May 2023 delegation.[13]

ORDER

Based on the foregoing and the entire record in the case, the Public Employment Relations Board (PERB) finds that the Regents of the University of California, Los Angeles (UCLA or University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a) and (b) by: (1) issuing Warning Letters to AFSCME that included overbroad directives

[13] The University requested oral argument in this case. The Board typically denies such requests if there is an adequate record, the parties had a reasonable opportunity to present briefs, and the issues before the Board are sufficiently clear that oral argument is unnecessary. (*City of Culver City*, *supra*, PERB Decision No. 2731-M, p. 2, fn. 2.) Based on these criteria, we deny the request for oral argument.

requiring AFSCME to provide advance notice or obtain advance approval before accessing any University facility at any time, and implicitly threatened to sanction AFSCME or employees for engaging in protected communications with supervisors; and (2) issuing counseling memoranda to employees, posting notices in employees' work locations, and including negative comments in employees' performance evaluations, which erroneously characterized employees' protected communications with supervisors as unlawful or unprotected activity that could lead to discipline. In addition, the University retaliated against employees by issuing the aforementioned counseling memoranda and negative comments on performance evaluations to employees because of their exercise of rights guaranteed by HEERA, in violation of HEERA section 3571(a). Finally, the University unilaterally changed terms and conditions of employment when it directed employees that they could not seek unscheduled meetings with supervisors or managers, in violation of HEERA section 3571(c).

Pursuant to HEERA, Government Code sections 3563(h), (j) and (m), it hereby is ORDERED that the University, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with the statutory rights of bargaining unit employees and AFSCME by: (a) issuing warning letters to AFSCME that include overbroad directives requiring AFSCME to provide advance notice or obtain advance approval before accessing any University facility at any time, and implicitly threatening to sanction AFSCME or employees for engaging in protected communications with supervisors; and (b) issuing counseling memoranda to employees, posting notices in

employees' work locations, and including negative comments in employees' performance evaluations, which erroneously characterize employees' protected communications with supervisors as unlawful or unprotected activity that could lead to discipline.

2. Retaliating against bargaining unit employees because of their exercise of statutory rights by issuing counseling memoranda and negative comments on performance evaluations to employees because of their protected communications with supervisors or other activities protected by HEERA, in violation of HEERA section 3571(a).

3. Failing and refusing to meet and confer in good faith with AFSCME before changing terms and conditions of employment.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF HEERA:

1. Rescind and expunge from all files it maintains the counseling memoranda issued in June of 2023 to 16 employees in the UCLA Facilities Management department regarding their activity at Cogen Hall on May 23, 2023, and the performance evaluations issued to those same employees which included comments referencing that activity.

2. Within 10 workdays after this decision is no longer subject to appeal, begin meeting and conferring with AFSCME for 30 days to draft an apology letter in English and Spanish from Custodial Services Manager Lizett Martinez or her successor in that position to the 16 employees who received the June 2023 counseling memoranda described in section B.1. If the parties are unable to agree on the contents of the apology letter, OGC will determine whether the University's

proposed language complies with this Order and will direct any edits needed to achieve compliance. The University shall mail the apology letter, together with a copy of this decision, to the last known address on record for each employee who received a counseling memorandum related to the May 2023 delegation.

3. Rescind and expunge from all files it maintains the Warning Letters issued to AFSCME on February 1, May 30, and June 26, 2023.

4. Remove all notices posted in employees' work areas regarding the incident that occurred at Cogen Hall on May 23, 2023.

5. Make affected employees whole for any losses suffered as a result of the unlawful counseling memos and/or performance evaluations, including interest compounded daily at the rate of 7 percent.

6. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to employees in the University's systemwide service unit are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the University must sign the Notice, indicating that the University will comply with the terms of this Order. The University will maintain the posting for a period of 30 consecutive workdays. The University shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. In addition to physically posting this Notice, the University shall communicate it by electronic message, intranet, internet site, and other electronic

means the University uses to communicate with employees in the University's systemwide service unit.[14]

7. Within 60 workdays after this decision is no longer subject to appeal, or, at the request of AFSCME, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached Notice (the Appendix) is to be read aloud to Service Unit employees in the UCLA Facilities Management Department by Custodial Services Manager Lizett Martinez or her successor in that position. An AFSCME representative shall be allowed to attend the meeting or meetings.

8. Notify OGC of the actions the University has taken to comply with this Order by providing written reports as directed by OGC and concurrently serving such reports on AFSCME.

Chair Banks and Members Krantz and Krausse joined in this Decision.

[14] Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SF-CE-1435-H, *American Federation of State, County & Municipal Employees Local 3299 v. Regents of the University of California*, in which all parties had the right to participate, the Public Employment Relations Board found that the Regents of the University of California, Los Angeles (University or UCLA) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3560 et seq. when it: (1) interfered with protected rights by issuing warning letters and counseling memoranda, and posting notices to AFSCME and bargaining unit employees directing employees to refrain from having unscheduled discussions with supervisors or managers over working conditions; (2) retaliated against employees by issuing counseling memoranda and negative comments in performance evaluations for their protected activity in participating in delegations to managers; (3) unilaterally changed terms and conditions of employment by directing employees to refrain from having unscheduled discussions with supervisors or managers over working conditions; and (4) interfered with protected rights by sending a warning letter to AFSCME concerning its tabling activities in an open-space area on campus.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Interfering with the right of bargaining unit employees to be represented by the employee organization of their choosing and participating in the activities of that employee organization

2. Retaliating against bargaining unit employees for their exercise of protected activity.

3. Unilaterally changing terms and conditions of employment without first meeting and conferring with AFSCME in good faith to impasse or agreement.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS TO EFFECTUATE THE POLICIES OF HEERA:

1. Rescind and expunge from all files we maintain the counseling memoranda issued in June of 2023 to 16 employees in the UCLA Facilities Management department regarding their activity at Cogen Hall on May 23, 2023, and

the performance evaluations issued to those same employees which included comments referencing that activity.

2. Within 10 workdays after this decision is no longer subject to appeal, begin meeting and conferring with AFSCME for 30 days to draft an apology letter in English and Spanish from Custodial Services Manager Lizett Martinez or her successor in that position to the 16 employees who received the June 2023 counseling memoranda described in section B.1. Following instructions from the compliance officer, we will mail the apology letter, together with a copy of the Board's decision, to the last known address on record for each employee who received a counseling memorandum related to the May 2023 delegation.

3. Rescind and expunge from all files we maintain the Warning Letters issued to AFSCME on February 1, May 30, and June 26, 2023.

4. Remove all notices posted in employees' work areas regarding the incident that occurred at Cogen Hall on May 23, 2023.

5. Make affected employees whole for any losses suffered as a result of the unlawful counseling memos and/or performance evaluations, including interest compounded daily at the rate of 7 percent.

Dated: _____ Regents of the University of California

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.