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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 02/02/2024

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No _____ NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

- a. Full name: The Regents of the University of California
- b. Mailing Address: 1111 Franklin Street, 12th Floor, Oakland, CA 94607
- c. Telephone number: (510) 987-9080
- d. Name and title of agent to contact: The Regents of the University of California E-mail Address: Melissa.Matella@ucop.edu
Telephone number: (510) 987-9080 Fax No.:
- e. Bargaining Unit(s) involved: Health Care Professionals - HX Unit

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

- a. Full name: UPTE-CWA Local 9119
- b. Mailing Address: 2855 Telegraph Ave Berkeley, CA 94705
- c. Telephone number: (510) 704-8783
- d. Name and title of agent to contact: Dan Russell, UPTE President E-mail Address: president@upte.org
Telephone number: (510) 704-8783 Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name: The Regents of the University of California
- b. Mailing address: 1111 Franklin Street 12th Floor, Oakland, CA 94607

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

- a. Full name:
- b. Mailing Address:
- c. Agent:

5. GRIEVANCE PROCEDURE

¹An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

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

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Yes No Unknown

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
- One of the following Public Utilities Code Transit District Acts: San Francisco Bay Area Rapid Transit District Act (SFBART Act) (Pub. Util. Code, § 28848 et seq.), Orange County Transit District Act (OCTDA) (Pub. Util. Code, § 40000 et seq.), Sacramento Regional Transit District Act (Sac RTD Act) (Pub. Util. Code, § 102398 et seq.), Santa Clara VTA, (Pub. Util. Code, § 100300 et seq.), and Santa Cruz Metro (Pub. Util. Code., § 98160 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:
Gov. Code sections 3571.1(c).

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (***a copy of the applicable local rule(s) MUST be attached to the charge:***)

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent’s conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

See Attachment - Statement of Charge

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

(Type or Print Name)

/s/
(Signature)

02/02/2024
Date



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STATE OF CALIFORNIA
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IS THIS AN AMENDED CHARGE? YES If so, Case No. NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: The Regents of the University of California
b. Mailing address: 1111 Franklin St., 12th Floor, Oakland, CA, 94607
c. Telephone number: (510) 987-9080
d. Name and title of person filing charge: Melissa Matella, Associate Vice-President
E-mail Address: Melissa.Matella@ucop.edu
Telephone number: (510) 987-9080
e. Bargaining unit(s) involved: Health Care Professionals - HX Unit

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

a. Full name: University Professional and Technical Employees - CWA Local 9119
b. Mailing address: 2855 Telegraph Ave., Berkeley, CA, 94705
c. Telephone number: (510) 704-8783
d. Name and title of agent to contact: Dan Russell, UPTe President
E-mail Address: president@upte.org
Telephone number: (510) 704-8783

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name: The Regents of the University of California
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4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

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

Yes No Unknown

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 - The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Supervisory Employees of the Los Angeles County Metropolitan Authority (Pub. Util. Code, § 99560 et seq.)
 - Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
 - Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Gov. Code sections 3571.1(c). Unknown
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge)**:
- d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)* See attached
See Attachment

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on 02/02/2024

at Sacramento, California
(City and State)

(Date)

Timothy G. Yeung, Managing Partner

(Type or Print Name and Title, if any)

(Signature)

Mailing Address: 555 Capitol Mall, Suite 600, Sacramento, CA 95814

E-Mail Address: tyeung@sloansakai.com

Telephone Number: (916) 258-8803

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is 555 Capitol Mall, Suite 600, Sacramento, CA 95814

On 02/02/2024, I served the Unfair Practice Charge and
(Date) (Description of document(s))

Statement of Charge in Case No. TBD
(Description of document(s) continued) PERB Case No., if known)

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

- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

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

Dan Russell, UPTe President
UPTe - CWA Local 9119
2855 Telegraph Avenue
Berkeley, CA, 94705
Telephone: (510) 704-8783
Email: president@upte.org

Arthur Liou Esq
Leonard Carder LLP
1999 Harrison Street, Suite 2700
Oakland, CA 94612
Email: aliou@leonardcarder.com

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 02/02/2024,
(Date)
at Sacramento, California.
(City) (State)

Angela M. Adame



(Type or print name)

(Signature)

STATEMENT OF CHARGE
Section 6(d)

I. INTRODUCTION

1. In 2022, the Regents of the University of California (“University”) accepted a unit modification petition filed by the University Professional and Technical Employees, CWA Local 9119 (“UPTE”) related to Optometrist titles in the Healthcare Professionals (“HX”) unit. (Exh. 1.)¹ The University did not dispute this petition and accepted that under clearly settled law, as the of the date of the unit modification order, these valued employees are covered by the HX unit collective bargaining Agreement (“CBA”).
2. Since that time and because these employees are covered by the HX unit CBA, the University has been bargaining in good faith with UPTE to negotiate terms that are specific to these accreted employees, such as salary steps, not already covered by the CBA. Other terms and conditions of employment currently covered by the CBA will be subject to negotiation by the parties during successor bargaining for the HX unit, which starts in June of 2024.
3. The parties have engaged in 11 bargaining sessions, but there are sticking points. For example, the UPTE is asking that this small group of employees have a different leave accrual process that mirrors the terms they were offered as unrepresented employees. This Optometrist carve out would effectively create a micro unit within the HX unit that is not consistent with the CBA nor is it something that the University can implement effectively for this group of employees or the many other accreted employees that UPTE represents. The parties are also far apart on salary steps.
4. Due to these disputes, and despite ongoing bargaining, UPTE has announced, and presumably intends to engage in, a two-day strike on February 6 and 7, 2024. Pursuant to the strike notice, the strike will be limited to UPTE-represented Optometrist titles in the HX unit. (Exh. 2.)
5. According to UPTE, the Optometrists are going on strike because the University has allegedly engaged in bad faith bargaining during “accretion bargaining.” Specifically, UPTE alleges that the University has engaged in “bad-faith bargaining tactics including failing to provide requested information, refusing to bargain over step placement, making predictably unacceptable proposals, and making unilateral changes.” UPTE claims that it has “no choice” but to call a two-day strike to protest the University’s conduct. (Exh. 2.) Nothing could be further from the truth.
6. The University has at all times engaged in good faith bargaining with UPTE during the accretion bargaining process. What UPTE alleges as bad faith bargaining is the

¹ To avoid unnecessary pages, exhibits A through P have been removed from the petition and only 1 page from exhibit Q is included.

University simply insisting that the terms and conditions in the parties' CBA—which apply to all 6,500 existing HX unit members—should also apply to the approximately 81 newly accreted Optometrists. For example, the CBA provides for both vacation and sick leave, as opposed to Paid Time Off (“PTO”). Some of the newly accreted Optometrists were on a PTO system. During accretion bargaining, UPTE proposed that those Optometrists on a PTO system be able to remain on such a system. The University rejected this proposal as “grandfathering” in a PTO system poses substantial administrative issues for the University. Moreover, in its unit modification petition UPTE submitted proof of support from the affected Optometrists wherein they acknowledged that UPTE had “won excellent raises and preserved superb benefits and pensions” for its bargaining unit members. Therefore, the University’s position of insisting on the terms and conditions in the CBA is more than reasonable. There was no bad faith bargaining; UPTE just didn’t agree with the University’s position.

7. As discussed below, the University strongly disagrees that the forthcoming strike was caused by its alleged unfair practices. To the contrary, the University alleges that the forthcoming strike is not motivated by any unfair practices but is an ***unlawful pre-impasse strike*** intended to act as an unlawful pressure tactic.
8. Indeed, UPTE does not, and cannot, allege that the parties are at impasse because there has been no impasse declaration by PERB. Accordingly, this pre-impasse strike is presumptively unlawful.
9. Moreover, UPTE completely ignores that the parties have a CBA in place with a broad no-strike provision. Article 21 of the CBA clearly and unambiguously prohibits any lockout or strike during its term. There is no exception for newly accreted employees. Therefore, the forthcoming strike is unlawful regardless of whether it is pre-impasse or not.
10. Accordingly, the University has stated a ***prima facie*** case that UPTE has engaged in bad faith bargaining in violation of Government Code section 3571.1, subdivision (c), by: 1) calling for and presumably engaging in a strike in violation of the parties’ CBA; and 2) calling for and presumably engaging in a pre-impasse strike.

II. JURISDICTIONAL ALLEGATIONS

11. The University is an employer subject to the Higher Education Employer-Employee Relations Act (“HEERA”) (Gov. Code, §3560 et. seq.) (Gov. Code, §3562, subd. (g).) The University operates a health care system (“UC Health”) that is the fourth-largest health care delivery system in California. UC Health includes six academic health centers (UC Davis Health, UC San Diego Health, UCI Health,

UCLA Health, UCR Health, and UCSF Health), 20 health professional schools, four children’s hospital campuses and a Global Health Institute.

12. UPTE is the “recognized organization” that is the exclusive representative of the HX unit, a statewide bargaining unit of licensed health care professionals. (Gov. Code, §3562, subd. (p).) There are approximately 6,500 employees in the HX unit. The vast majority of HX unit employees are located at the health centers.
13. As set forth in more detail below, the material allegations alleged in this unfair practice charge occurred within the last six months of the filing of this unfair practice charge.

III. STATEMENT OF FACTS

14. The University and UPTE are parties to a Collective Bargaining Agreement (“CBA”) with a term from August 8, 2019, through September 30, 2024. Article 21 of the parties’ CBA expressly prohibits strikes by UPTE during the term of the CBA. Specifically, Article 21 states, in relevant part:

ARTICLE 21 NO STRIKES

A. During the term of this Agreement or any written extension thereof, the University agrees that there shall be no lockouts by the University. UPTE, on behalf of its officers, agents, and members agrees that there shall be no strikes, stoppages or interruptions of work, or other concerted activities, including sympathy strikes, which interfere directly or indirectly with University operations during the life of this Agreement or any written extension thereof. UPTE, on behalf of its officers, agents, and members, agrees that it shall not in any way authorize, assist, encourage, participate in, sanction, ratify, condone, or lend support to any activities in violation of this Article.

...

(Exh. 3.)

15. On April 1, 2022, UPTE filed a unit modification petition seeking to accrete approximately 75 employees in the following titles:
 - a. Optometrist 3 (Title Code 9303)

- b. Optometrist 4 (Title Code 5805)
- c. Optometrist EX (Title Code 7930)
- d. Optometrist SR (Title Code 9192)
- e. Optometrist (Title Code 9193)

(Exh. 1.)

16. In its petition, UPTE claimed that the petitioned-for Optometrists “share a strong community of interest with other HX Unit members ...” (Exh. 1, at Attachment, p. 1.) UPTE also submitted purported proof of support where allegedly 83% of Optometrists acknowledged that UPTE has “won excellent raises and preserved superb benefits and pensions” for its bargaining unit members. (Exh. 1, Exhibit Q.)
17. The University did not file an opposition to UPTE’s petition. On July 5, 2022, PERB issued a Unit Modification Order modifying the HX unit to include the petitioned-for Optometrists. (Exh. 4.)
18. The parties then began the accretion bargaining process. The parties agreed that the terms and conditions set forth in the existing CBA should apply to the newly accreted Optometrists whenever applicable. Among the main issues raised by UPTE during accretion bargaining were: 1) step placement; and 2) vacation/sick leave v. PTO. (*See UPTE v. Regents*, PERB Unfair Practice Charge No. SF-CE-1450-H.)
19. On the step placement issue, the University’s proposal was to place Optometrists on the step closest to, but not less than, their current salary. The University’s proposal was consistent with maintaining the “status quo” on salaries. The Optometrists would then, of course, be entitled to any raises applicable to the HX unit.
20. In contrast, UPTE viewed the accretion process as an opportunity to negotiate substantially better terms and conditions for Optometrists than the status quo, and even better than those terms and conditions in the CBA. With respect to salary steps, UPTE wanted to place Optometrists on steps that correlated to their experience, which would result in substantial increases for some Optometrists and not others. The University rejected this proposal because the Optometrists had already received raises as unrepresented employees prior to accretion and would be eligible for raises under the CBA in the future. In addition, to the extent UPTE believed the step placement of Optometrists was inequitable, UPTE could avail itself of the “equity” review process already in the CBA. Accordingly, the University rejected UPTE’s step placement proposal and thoroughly explained the reasons for its rejection.

21. On the vacation/sick leave versus PTO issue, as noted above, UPTE proposed that Optometrists on a PTO system be able to stay on such a system. UPTE argued that the University had allowed employees to remain on a PTO system in the past. However, the University explained that there have been administrative issues associated with tracking PTO for UPTE-represented employees. Specifically, the tracking of PTO for UPTE-represented employees must be done manually as the automated system is designed for vacation and sick leave. While the University agreed to exceptions in the past, it stopped making exceptions several years ago. The University thoroughly explained the reasons for its rejection of UPTE's proposal to maintain PTO for certain Optometrists.
22. Moreover, UPTE's insistence on maintaining a PTO system is confounding as UPTE had bragged to the Optometrists that it had negotiated superior benefits in the CBA. According to the unit modification petition, UPTE had "won excellent raises and preserved superb benefits and pensions" for its bargaining unit members. (Exh. 1, Exhibit Q.) UPTE also claimed in its unit modification petition that the petitioned-for Optometrists share a strong community of interest with other HX unit members. If that is true, there is no reason why the terms and conditions of the CBA should not equally apply to the newly accreted Optometrists.
23. The parties have met several times for accretion bargaining. The last bargaining session was held on December 19, 2023. The University remains willing to bargain with UPTE over any and all accretion issues, although where the University has already rejected a proposal, the University stands by that rejection.
24. Neither party has sought an impasse declaration from PERB and PERB has not declared an impasse. Accordingly, UPTE's declared strike is a presumptively unlawful pre-impasse strike.
25. On January 10, 2024, UPTE filed an unfair practice charge over the accretion bargaining for Optometrists. (*See UPTE v. Regents*, PERB Unfair Practice Charge No. SF-CE-1450-H.) Presumably, UPTE will argue that the University's alleged unfair practices caused the forthcoming strike. The University strongly denies that the strike is caused by any alleged unfair practices.
26. For example, UPTE alleges that it took many months for the University to begin providing contact information for the newly accreted Optometrists. UPTE goes on to allege that the lack of contact information from the University "prevented UPTE from being able to communicate with its own member at the outset of accretion bargaining, severely hampering the Union's ability to formulate proposals and evaluate the University's." (*UPTE v. Regents*, PERB Unfair Practice Charge No. SF-CE-1450-H, at p. 4.) UPTE apparently forgot that in its unit modification petition it claimed that **83%** of the petitioned-for Optometrists had signed proof of

support cards. (Exh. 1, at p. 3.) UPTE even attached the proof of support to its petition. A review of that proof of support demonstrates that almost every employee provided UPTE with their home address, home phone number, personal email, and cell phone number. Thus, UPTE's claim that it was prevented from being able to communicate with the newly accreted Optometrists—made under penalty of perjury—seems highly suspect.

27. Nevertheless, even though UPTE clearly had contact information for the vast majority of Optometrists, the University acknowledges its obligation to provide contact information directly to UPTE as required by law. However, as the University explained, it takes time to add non-represented employees to the systems utilized to provide information for represented employees. While this process may have taken longer than UPTE desired, UPTE admits in its unfair practice charge that it has the requested contact information. Thus, the lack of contact information cannot be a basis for any unfair practice strike.
28. The University similarly denies that any of the other alleged unfair practices set forth in UPTE's unfair practice charge are the cause of the forthcoming strike. To the contrary, the University alleges that the strike is purely a pressure tactic to support UPTE's demands at the bargaining table. However, because the parties have a no-strike clause in effect and because the parties are not at impasse, UPTE's strike as a pressure tactic is unlawful.

IV. UPTE'S STRIKE IS UNLAWFUL

29. It is undisputed that the parties have agreed to a CBA that is currently in effect. That CBA contains a broad no-strike clause. (Exh. 3.) It is further undisputed that as of July 5, 2022, the Optometrists at issue were accreted into the HX unit. Under PERB precedent, the terms and conditions of any existing CBA automatically apply to newly accreted employees unless there is a conflict with the employees' pre-accretion terms and conditions of employment. (*Teamsters Local 2010 v Regents of the University of California* (2023) PERB Decision No. 2884-H.) Here, there is no conflict. The no-strike provision in the CBA must apply to the Optometrists in the same way that the grievance and arbitration provisions in the CBA apply to them.
30. UPTE may argue that the no-strike provision does not apply to accretion bargaining. However, UPTE cannot provide any legal support for such a proposition because none exists. Moreover, even if the Board agent believes this area of law is unclear, the University has articulated a viable theory of law upon which a complaint must be issued. In *City of Pinole*, the Board cautioned the Office of the General Counsel that, "... the role of a Board agent is to investigate the charge to determine if an unfair practice has been committed, but the Board's

- regulations do not ‘empower agents to on ultimate merits of a charge.’” (*City of Pinole* (2012) PERB Decision No. 2288-M, at p. 11-12.) The Board went on to hold that, “where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing.” (*Ibid.*)
31. PERB has also held that a strike prior to the exhaustion of statutory impasse procedures creates a rebuttable presumption that the employee organization is refusing either to negotiate in good faith (if the strike occurs before impasse is declared) or to participate in the impasse procedures in good faith. (*Regents of the University of California* (2010) PERB Decision No. 2094-H (“*Regents*”), at p. 32; *see also Sacramento City Unified School District* (1987) PERB Order No. IR-49; *Westminster School District* (1982) PERB Decision No. 277; *Fresno Unified School District* (1982) PERB Decision No. 208; *Fremont Unified School District* (1980) PERB Decision No. 136.)
 32. The presumption of illegality is rebuttable, however, by proof that the strike was provoked by the employer’s unfair practices and that the employee organization in fact negotiated and/or participated in impasse procedures in good faith. (*Regents*, at p 32.) Absent such proof, the presumption stands, and a violation is established.
 33. At the initial pleading stage, the Office of the General Counsel must investigate whether an unfair practice charge establishes a *prima facie* case. (*See Long Beach Community College District* (2003) PERB Decision No. 1568, at pp. 14-15, overruled on other grounds in *Long Beach Community College District* (2008) PERB Decision No. 1941.) In making this determination, the Board agent must accept all of the charging party’s material allegations as true. (*Ibid.*) With a limited exception, once the Board agent determines that the charging party has established a *prima facie* case, a complaint will be issued regardless of whether the respondent has proffered an affirmative defense. The exception is where an affirmative defense involves a question of law. (*Ibid.*)
 34. Here, the University has established a *prima facie* case by alleging that UPTE has called for a strike before the declaration of impasse and the completion of impasse procedures. This is sufficient by itself to warrant issuance of a complaint. While UPTE may argue that it can rebut the presumption of unlawfulness, the burden of proof on UPTE is akin to a party alleging an affirmative defense. In other words, UPTE’s defense must be adjudicated at a formal hearing and not at this stage where only a *prima facie* case is required. Moreover, UPTE’s defense is not one that can be applied as a matter of law, but rather involves a factual inquiry best adjudicated in a formal hearing.

35. Further, although not required, the University has denied that UPTE's strike is caused by alleged unfair practices. The University has also provided specific examples refuting the unfair practices alleged by UPTE. Where a union cannot establish any unfair practice, it necessarily follows that any strike cannot be provoked by the alleged unfair practice.
36. Accordingly, UPTE has violated Government Code section 3571.1, subdivision (c), by: 1) calling for and presumably engaging in a strike in violation of the parties' CBA; and 2) calling for and presumably engaging in a pre-impasse strike.

V. RELIEF REQUESTED

1. An Order directing UPTE to cease and desist from engaging in any future strikes in violation of the no-strike provision in the parties' CBA during its term;
2. An Order directing UPTE to cease and desist from engaging in any future strikes before the declaration of impasse by PERB and the completion of any statutory impasse procedures;
3. An Order directing UPTE to post a notice at all places where notices to UPTE bargaining unit members are customarily posted stating that UPTE violated the HEERA. If UPTE regularly communicates with bargaining unit members electronically, UPTE should also be ordered to transmit the notice to employees electronically in the same manner;
4. A finding that UPTE's violation was willful and sufficiently egregious to warrant the imposition of additional sanctions, including the payment of attorneys' fees and costs incurred by Charging Party;
5. Any other relief the Board deems just and proper.

PERB Received

02/02/24 11:58 PM

Regents v. UFF

Statement of Charge

February 2, 2024

Page 9

DECLARATION

I, Kevin Young, am an Associate Director in the Human Resources – Labor Relations Unit of the University of California - Office of the President. I declare under penalty of perjury under the laws of the State of California that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief.

Executed on February 2, 2024, at New York City, New York.

DocuSigned by:

Kevin Young

4FAE9D64E192450...
Kevin Young, Associate Director
Human Resources – Labor Relations Unit
University of California - Office of the President

PERB Received
02/02/24 16:58 PM

EXHIBIT 1



PERB Received
02/02/22 16:68 PM

UNIT MODIFICATION PETITION

PERB Filed
04/01/22

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 04/01/2022

INSTRUCTIONS: A petition for unit modification must be filed with the appropriate PERB regional office (see PERB Regulation 32075). A petition which is not jointly filed must be served on all parties. Proof of service must accompany the petition. Attach additional sheets if more than one exclusive representative and/or more than one established unit is affected by the unit modification petition, or if additional space is required. Individual employees MAY NOT file a unit modification petition.

Employer (Name, address, telephone number)

Name: Regents of the University of California
Address: 1111 Franklin Street, 8th Floor, Oakland, CA 94607
(510) 987-0933

Email (optional): UCPERB@ucop.edu

Employer's agent to be contacted: Allison Woodall

Title: General Counsel
Address and telephone, if different:
1111 Franklin Street, 8th Floor, Oakland, CA 94607
(510) 987-0933

Exclusive Representative (Name, address, telephone number)

Name: University Professional & Technical Employees, CWA
Local 9119, AFL-CIO
Address: 1999 Harrison St., Suite 2700, Oakland, CA 94612
(510) 272-0169

Email (optional): dli@leonardcarder.com

Agent to be contacted: Danica Li

Title: Attorney
Address and telephone, if different:
1999 Harrison St., Suite 2700, Oakland, CA 94612
(510) 272-0169

3. TYPE OF PETITION

This petition is filed pursuant to PERB Regulation(s): Add employees to unit (PERB Regulation 32781(a)(1).)

4. PETITION FILED BY: (Check one only.)

- Both (or all) Parties
- Exclusive Representative
- Employer

5. APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT:

5500

6. NUMBER OF EMPLOYEES INVOLVED IN THE MODIFICATION REQUEST:

75

7. DESCRIPTION OF ESTABLISHED UNIT:

Residual Patient Care Professional Employees

Los Angeles Regional Office
425 W. Broadway, Suite 400
Glendale, CA 91204-1269
(818) 551-2822

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, CA 95811-4124
(916) 322-3198

San Francisco Regional Office
1330 Broadway, Suite 601
Oakland, CA 94612-2514
(510) 622-1016

PERB Received
02/02/22 16:58 PM

PERB Filed
04/01/22

8. DATE EXCLUSIVE REPRESENTATIVE WAS RECOGNIZED OR CERTIFIED: _____

9. IF A CURRENT WRITTEN AGREEMENT/MEMORANDUM OF UNDERSTANDING EXISTS COVERING THE ESTABLISHED UNIT(S), INDICATE:

AGREEMENT/MOU EFFECTIVE DATE: 08/09/2019 EXPIRATION DATE: 09/30/2024

10. DESCRIPTION OF THE UNIT MODIFICATION REQUESTED:

Please see attached.

11. STATEMENT OF REASONS FOR THE REQUEST TO MODIFY THE UNIT(S):

Please see attached.

12. ANY OTHER ORGANIZATION(S) KNOWN TO HAVE AN INTEREST IN REPRESENTING ANY EMPLOYEES COVERED BY THIS PETITION:

Name of Organization: _____

Address: _____

Telephone: _____

DECLARATION

I (we) declare that the statements herein are true to the best of my knowledge and belief.

NAME OF PETITIONING PARTY: University Professional & Technical Employees, CWA 9119, AFL-CIO

SIGNATURE OF AUTHORIZED REPRESENTATIVE: /s/ University Professional & Technical Employees, CWA 9119, AFL-CIO

Title: Attorney

Date: 04/01/2022

NAME OF PETITIONING PARTY _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

Title: _____

Date: _____

NAME OF PETITIONING PARTY _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

Title: _____

Date: _____



PERB Received
02/02/22 16:68 PM

PERB Filed
04/01/22

UNIT MODIFICATION PETITION

DO NOT WRITE IN THIS SPACE: Case No. _____ Date Filed: _____

INSTRUCTIONS: A petition for unit modification must be filed in accordance with PERB Regulation 32110. A petition which is not jointly filed must be served on all parties. Proof of service must accompany the petition. Attach additional sheets if more than one exclusive representative and/or more than one established unit is affected by the unit modification petition, or if additional space is required. Individual employees MAY NOT file a unit modification petition.

<p>1. <u>EMPLOYER</u> (Name, address and telephone number)</p> <p><u>Regents of the University of California</u></p> <p><u>1111 Franklin Street, 8th Floor</u></p> <p><u>Oakland, CA 94607</u></p> <p><u>(510) 987-9800</u> Ext. _____</p> <p>Email (optional): <u>allison.woodall@ucop.edu</u></p>	<p>Employer's agent to be contacted: <u>Allison Woodall</u></p> <p>Title: <u>General Counsel</u></p> <p>Address and telephone, if different:</p> <p>_____</p> <p>_____</p> <p>() _____ Ext. _____</p> <p>Email (optional): _____</p>
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<p>2. <u>EXCLUSIVE REPRESENTATIVE</u> (Name, address and telephone number)</p> <p><u>University Professional & Technical Employees</u></p> <p><u>CWA Local 9119, AFL-CIO</u></p> <p><u>1999 Harrison St., Suite 2700</u></p> <p><u>Oakland, CA 94612</u></p> <p><u>(510) 272-0169</u> Ext. _____</p> <p>Email (optional): <u>dli@leonardcarder.com</u></p>	<p>Agent to be contacted: <u>Danica Li</u></p> <p>Title: <u>Attorney</u></p> <p>Address and telephone, if different:</p> <p>_____</p> <p>_____</p> <p>() _____ Ext. _____</p> <p>Email (optional): _____</p>
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3. TYPE OF PETITION

This petition is filed pursuant to PERB Regulation(s): 32781(a)(1) and (b)(3)

<p>4. <u>PETITION FILED BY:</u> (Check one only.)</p> <p><input type="checkbox"/> Both (or all) Parties</p> <p><input checked="" type="checkbox"/> Exclusive Representative</p> <p><input type="checkbox"/> Employer</p>	<p>5. APPROXIMATE NUMBER OF EMPLOYEES IN THE UNIT:</p> <p style="text-align: center;">5,500</p>	<p>6. NUMBER OF EMPLOYEES INVOLVED IN THE MODIFICATION REQUEST:</p> <p style="text-align: center;">75</p>
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7. DESCRIPTION OF ESTABLISHED UNIT:

Residual Patient Care Professional Employees

<p>Los Angeles Regional Office 425 W Broadway, Suite 400 Glendale, CA 91204-1269 (818) 551-2822</p>	<p>Sacramento Regional Office 1031 18th Street, Suite 102 Sacramento, CA 95811-4124 (916) 322-3198</p>	<p>San Francisco Regional Office 1330 Broadway, Suite 1532 Oakland, CA 94612-2514 (510) 622-1016</p>
---	--	--

8. DATE EXCLUSIVE REPRESENTATIVE WAS RECOGNIZED OR CERTIFIED: 09/15/1997

9. IF A CURRENT WRITTEN AGREEMENT/MEMORANDUM OF UNDERSTANDING EXISTS COVERING THE ESTABLISHED UNIT(S), INDICATE:

AGREEMENT/MOU EFFECTIVE DATE: 08/09/2019

EXPIRATION DATE: 09/30/2024

10. DESCRIPTION OF THE UNIT MODIFICATION REQUESTED:

Please see attached.

11. STATEMENT OF REASONS FOR THE REQUEST TO MODIFY THE UNIT(S):

Please see attached.

12. ANY OTHER ORGANIZATION(S) KNOWN TO HAVE AN INTEREST IN REPRESENTING ANY EMPLOYEES COVERED BY THIS PETITION:

Name of Organization: _____

Address: _____

Telephone: (_____) _____

DECLARATION

I (we) declare that the statements herein are true to the best of my knowledge and belief.

NAME OF PETITIONING PARTY: University Professional & Technical Employees, CWA 9119, AFL-CIO

SIGNATURE OF AUTHORIZED REPRESENTATIVE: 

Title: Attorney Date: 4/1/2022

NAME OF PETITIONING PARTY: _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

Title: _____ Date: _____

NAME OF PETITIONING PARTY: _____

SIGNATURE OF AUTHORIZED REPRESENTATIVE: _____

Title: _____ Date: _____

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Alameda,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is Leonard Carder, LLP, 1999 Harrison St.,
Suite 2700, Oakland, CA 94612

On 4/1/2022, I served the Unit Modification Petition
(Date) (Description of document(s))

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

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

- placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- personal delivery;
- electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

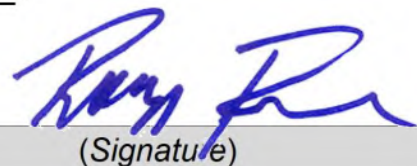
(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Allison Woodall, Deputy General Counsel
UC Regents
Office of the General Counsel, 8th Floor
1111 Franklin Street
Oakland, CA 94607
Email: Allison.Woodall @ucop.edu
Email: UCPERB@ucop.edu

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 4/1/2022,
(Date)
at Oakland CA
(City) (State)

Rosemary Prem

(Type or print name)



(Signature)

ATTACHMENT TO UNIT MODIFICATION PETITION

10. Description of the Unit Modification Requested

University Professional and Technical Employees, CWA Local 9119 (“UPTE” or “Union”) requests that PERB modify the Healthcare Professionals Unit (“HX Unit”) at the University of California (“UC” or “University”). UPTE is the HX Unit’s exclusive representative.

Specifically, pursuant to PERB regulation 32781(a)(1), (b)(2) and (b)(3), UPTE requests the addition of five titles to the HX Unit:

Optometrist 3 (title code 9303)
Optometrist 4 (title code 5805)
Optometrist EX (title code 7930)
Optometrist SR (title code 9192)
Optometrist (title code 9193)

None of these five titles were in the unit when the HX Unit was originally determined. (*See* Exh. A, *Unit Determination for Professional Patient Care Employees of the University of California* (1982) PERB Dec. No. 248-H, Appx. B pp. 1-2 [appended hereto as Exhibit A][“1982 Unit Determination”].)

PERB placed similar positions, the Staff Pharmacist I and II, Senior Pharmacist, and Pharmacist Specialist (“Pharmacist”) positions (title codes 9247, 9248, 9246, and 9245¹ respectively), and the Psychologist I and II (“Psychologist”) titles (title codes 9384 and 9383 respectively), within the HX Unit in PERB’s original unit determination. These title codes remain in the HX Unit to this day. The Physician Assistant (“Physician Assistant”) titles (title codes 9202, 9203) and Orthoptist titles (title codes 8982, 8983) have also been included in the HX Unit in the decades since the unit’s creation.

Optometrists perform work within the scope of the HX Unit and share a strong community of interest with other HX Unit members. By this petition, UPTE requests that PERB modify the HX Unit to include the Optometrist series.

11. Statement of the Reasons for the Request to Modify the Unit

Optometrists share a strong community of interest with other HX Unit members, as they, like HX Unit members, perform specialized patient care work. Optometrists conduct examinations of patients, formulate treatment plans for patients, and render prescriptions as needed. As discussed below, similar patient care duties are performed by titles within the HX Unit, including by Physician Assistants, Psychologists, Pharmacists, and Orthoptists. Optometrists are likewise patient care employees who share a community of interest with other

¹ The modern title code for this position is now 0784.

employees represented by the HX Unit.

A. Employees in All Five of the Optometrist Titles Perform Patient Care Work as Defined by PERB in Creating the System-wide HX Unit

All five of the Optometrist titles perform duties fitting within PERB's definition of patient care work. In 1982, PERB defined the residual patient care unit as encompassing patient care employees "[who] share a common goal and perform functionally related patient care services." (Exh. A, p. 11.) Such employees possess "advanced training and experience and/or education which enables them to provide specialized patient care." (*Ibid.*) "All work in medical settings, some performing 'hands-on' patient care and others performing vital laboratory functions in furtherance of the common health care goal." (*Ibid.*) Their performance of such specialized health care services "takes them into the clinics and hospitals to interact with other patient care professionals." (*See ibid.*) The University's job descriptions for the Optometrist series track this description.

The University's job descriptions demonstrate that the Optometrists perform patient care work as defined by PERB in creating the HX Unit. For example, one job description for an Optometrist position describes Optometrists' duties as encompassing the following: "Performs within the scope of their optometric license to provide professional services of comprehensive eye exams (including pupil dilations) and contact lens [] fittings . . . Thoroughly records history and clinical findings . . . Diagnoses and prescribes treatments as necessary to restore and maintain ocular integrity." (Exh. B.)

Another job description describes Optometrists' duties as encompassing similar duties. (*See* Exh. C.) According to this job description, the duties performed by Optometrists are as follows:

1. Provide routine optometric examinations and refractions, making appropriate referrals to specialists as required. Provide baseline triage examinations for triage clinic, again making appropriate referrals to specialists as required. Provide routine diabetic examinations and refer to retina service, as appropriate. Fit routine cosmetic contact lenses as well as fitting difficult contact lens cases such as pediatric patients, keratoconus, corneal transplants, aphakia, keratopathy requiring therapeutic lenses, cosmetic lenses for disfigured corneas.
2. Provide optometric support for subspecialty services, as required.
3. Perform specialized clinical procedures such as tonometry and keratometry.
4. Contact Lens Service: knowledge of and ability to perform contact lens purchasing, inventory, management and maintenance, initiate charges to patients, administer contact lens insurance program.
5. Instruct patients in contact lens handling and care regimen.
6. Administer Low Vision Service and appropriate referral for related services.
7. Provide optometric vision care services to primary patients in the UCD PCN offices in the outlying areas.

8. Appropriately refers patients from the PCN sites to specialists in UCD's Department of Ophthalmology.

(*Ibid.*)

Other Optometrist job descriptions also generally describe the employee's duties as, *inter alia*, encompassing performing optometric examinations and contact fittings, rendering diagnoses, and issuing prescriptions for contact lenses and glasses. (Exhs. D, E.)

Moreover, Optometrists possess "advanced training and experience and/or education." (Exh. A, p. 11.) The educational and licensing requirements for the Optometrists titles are similar to the educational and licensing requirements for other HX Unit members. The Optometrist job descriptions uniformly reflect the requirement that Optometrists be licensed by the California State Board of Optometry. (Exhs. B-D.) Licensure also requires graduation from an accredited program of study. Specifically, Optometrists must possess a Doctorate of Optometry degree, which is obtained after four years of didactic and clinical education from an accredited school of optometry. These requirements align with the requirements for other HX Unit members, such as Physician Assistants, Psychologists, and Pharmacists, as these workers are also required to have completed an accredited course of study and to have obtained licenses from the state to practice. (*See infra*, sections 11.B.1-3.)

Lastly, Optometrists themselves strongly support their own inclusion in the HX Unit. (*See* Exh. Q.) No fewer than 83% of Optometrists have signed authorization cards confirming their wish to be added to the Union. (*See id.*) This confirms Optometrists' own view that their work belongs within the HX Unit.

In summary, the University's job descriptions reflect that Optometrists perform specialized patient care requiring advanced training and experience and/or education. The Optometrist series is therefore appropriately encompassed by the HX Unit under PERB's definition of that unit's patient care work. (*See* Exh. A.)

B. The History of the HX Unit Having Included Physician Assistants, Psychologists, Pharmacists, and Orthoptists, Who Share a Strong Community of Interest with Optometrists, Supports Their Inclusion in the Same Unit

In 1982, PERB determined that UC's non-physician professional patient care employees should be split into two distinct bargaining units: one for those positions requiring a nursing license, and a residual unit for all other non-physician, non-nurse professional employees, including Staff Pharmacists I, Staff Pharmacists II, Senior Pharmacists, Psychologists, and others. (*See* Exh. A, Appx. B, pp. 1-2.) UPTE now represents that residual bargaining unit of non-physician, non-nurse patient care employees in the HX unit.

In its original unit determination, PERB expressly included Pharmacist and Psychologist

titles, including the Staff Pharmacists I, Staff Pharmacists II, Senior Pharmacists, and Psychologist I and II titles. (See *ibid.*) In its order, PERB described the HX Unit as encompassing the University's non-physician, non-nurse patient care employees "[who] share a common goal [of providing patient care] and perform functionally related patient care services. All possess advanced training and experience and/or education which enables them to provide specialized patient care." (*Id.* at p. 11.) PERB's definition of patient care employees encompassed these Pharmacist and Psychologist titles. (*Id.* at p. 11, Appx. B p. 1.)

The University continues to use the Pharmacist and Psychologist titles, and those titles continue to reside in the HX unit. Additionally, in the decades since the initial unit determination, the Physician Assistant titles and Orthoptist titles have also been included in the HX Unit.

As reflected below, Optometrists share a strong community of interest with these Pharmacists, Physician Assistants, Psychologists, Orthoptists, and other HX unit professionals currently represented by UPTE.

1. The Presence of Physician Assistant Titles Within the HX Unit Confirms That the Five Optometrist Titles Belong in the HX Unit

The presence of Physician Assistant titles within the HX Unit demonstrates that HX Unit members perform a range of patient care work that is similar to Optometrist work. The UC system-wide Series Concept states that:

Physician Assistants in accordance with standardized procedures perform certain clinical duties customarily carried out by physicians, and perform other related duties as assigned.

Incumbents perform clinical assessments and care management services which include construction and interpretation of histories and physical exams; perform initial and periodic physical examinations, mental status examinations, and medical history on both in-patients and out-patients; order appropriate laboratory tests, x-rays, EKG, and comparable procedures, according to criteria previously established by the responsible physician(s); draw blood specimens for testing and perform other comparable procedures as directed by the supervising physician when personnel who customarily perform such procedures are not available; write orders to increase, decrease or change medication (subject to checking and counter-signing by physician); initiate consultations and monitor scheduling of patients for special tests; identify problems and develop and implement treatment plans; make daily rounds to observe and record pertinent progress of patients, updating and summarizing charts, changing orders when appropriate, and notifying the responsible physician(s) of changes in the patient's condition; counsel patients and families as to preventive care, medical problems, psychological problems and use of prescribed treatment and drugs; assist in operative and other procedures; and participate in clinical investigations.

(Exh. F.) The two Physician Assistant levels are defined as follows:

Senior Physician Assistant

Under direction and in addition to performing operational-level assignments, incumbents are consistently assigned the more complex cases which require the use of advanced operational skills or are assigned continuing responsibility for a group of Physician Assistants. This class is distinguished from the Physician Assistant class by the greater degree of independence exercised in the performance of primary care and chronic ambulatory medical care services. Workleader duties typically include the direction and training of Physician Assistants, nursing and paramedical personnel; the assignment of duties to a small group of Physician Assistants; and the arrangement of work schedules.

Physician Assistant

Under general supervision incumbents perform operational level duties as listed in the Series Concept.

(Id.)

The University's job descriptions also demonstrate that the Physician Assistant titles perform patient care work similar to that performed by the Optometrist titles. For example, one Physician Assistant job description describes the position's duties as including evaluating patients, performing histories and physicals, issuing prescriptions, evaluating test results, and providing referrals, consultations, physical therapy, order radiographic or diagnostic requests, and specialized treatments. (Exh. G.) Generally, Physician Assistants' scope of practice involves "the management of chronic stable medical conditions, routine care, acute or critical care, and medical and surgical procedures per their approved standardized procedure." *(Id.)* Similarly to Optometrists, then, Physician Assistants evaluate and treat patients, formulate treatment plans, render diagnoses, and issue prescriptions.

Furthermore, Physician Assistants must meet advanced educational and licensing requirements in order to qualify for the position, including graduation from a training program approved by the Board of Medical Examiners of the State of California, and certification by the State Board of Medical Examiners or the National Board of Medical Examiners. *(Id.)* This is similar to the Optometrist positions, which require Optometrists to have completed an accredited course of study and to have obtained licenses from the state. (*See Exhs. B-D.*)

The structure of Physician Assistants' and Optometrists' work is another factor showing commonality. Optometrists perform their work according to established departmental guidelines, University policies, and community standards of optometry. (Exh. B.) Other HX titles, including Physician Assistants, similarly perform their work under established departmental guidelines, University policies, and industry standards. (*See Exh. F-G* [Physician Assistants follow established protocols; *see also* Exh. J [Psychologists perform work according to department policies and procedures].)

Moreover, many Optometrists and Physician Assistants work in UC Student Health Centers, which treat patients who are UC undergraduate and graduate students. Numerous other HX unit members work in UC Student Health Center locations, including but not limited to Clinical Social Workers, Physical Therapists, Counseling Psychologists, Psychologists, and Dietitians. (Exh. H.) This common location is another factor favoring addition of the Optometrist title codes to be added with the HX unit.

Optometrists also share similar benefits to Physician Assistants and other HX titles. For example, Optometrists participate in the University of California Retirement Program (“UCRP”) like HX members and are on the same healthcare plans as HX members.

Lastly, Optometrists are paid under common payroll systems as Physician Assistants and other HX titles. Specifically, Optometrists and HX titles are paid via UC Path, the University’s system-wide payroll, benefits, human resources, and academic personnel system. Optometrists are also subject to the same personnel policies as Physician Assistants and other HX titles.

As reflected above, employees in the Physician Assistant titles perform patient care duties similar to the functions of Optometrists. The University’s Series Concept and job descriptions for Physician Assistants therefore demonstrate that inclusion of all five Optometrist titles in the HX Unit is appropriate.

2. The Presence of Psychologist Titles Within the HX Unit Further Confirms That the Five Optometrist Titles Belong in the HX Unit

The presence of Psychologist titles within the HX Unit also demonstrates that HX Unit members perform a range of patient care work that is similar to Optometrist work. The UC system-wide Series Concept for these titles states that:

Psychologists apply psychological principles, theories, methods, and techniques in the evaluation and treatment of patients with emotional or mental disorders; and perform other related duties as required.

Incumbents typically make psychodiagnostic appraisals; formulate treatment plans; utilize one or more therapeutic techniques to treat in-patients/out-patients; organize, structure, and conduct group therapy sessions; serve as resource persons for all members of a patient-care team; train and provide consultation to related staff professionals and paraprofessionals in clinical psychology; administer and interpret psychological tests which are used for diagnosing mental and personality disorders and for differentiating between organic and functional causes of behavior disorders; and prepare clinical reports.

(Exhibit I.)

The University’s job descriptions for these positions also demonstrate that the Psychologist titles perform patient care work similar to that performed by the Optometrist titles.

For example, one job description for the Psychologist position describes the employee's primary duties as follows: Providing screening, assessment, and treatment planning for students and house staff with mental health clinical problems; providing counseling to patients; performing case management. (Exh. J.) Another job description likewise describes Psychologists' duties as encompassing the following: Performing and completing patient/family psychological assessments; formulating and administering treatment plans; providing counseling; and performing patient education. (Exh. K.) Therefore, Psychologists, like Optometrists, evaluate and treat patients, render diagnoses, and formulate treatment plans.

Moreover, Psychologists must meet advanced educational and licensing requirements in order to qualify for the position, including obtaining a doctorate in counseling or clinical psychology from an accredited program, and certification by the California Board of Psychology. (Exhs. I-K.) This is similar to the Optometrist positions, which require Optometrists to have completed an accredited course of study and to have obtained licenses from the state to practice. (See Exhs. B-D.)

As reflected above, employees in the Psychologist titles perform patient care functions that are similar to the functions of Optometrists. The University's Series Concept and job descriptions for Psychologist therefore demonstrate that inclusion of all five Optometrist titles in the HX Unit is appropriate.

3. The Presence of Pharmacist Titles Within the HX Unit Further Confirms That the Five Optometrist Titles Belong in the HX Unit

The presence of Pharmacist titles within the HX Unit also demonstrates that HX Unit members perform a range of patient care work that is similar to Optometrist work. The UC system-wide Series Concept states that:

Pharmacists provide the full range of distributive, clinical, consultative, research, and/or administrative pharmaceutical services in a University/Medical Center setting.

Incumbents typically select, compound, purchase, dispense, and/or preserve drugs, medicines, and other therapeutic agents; serve as members and consultants on treatments or diagnostic teams; disseminate drug information to staff members and interested community groups, as appropriate; participate in educational programs; may participate in hospital research projects or perform pharmaceutical research; and may supervise or administer pharmacy activities.

(Exhibit L.)

The University's job descriptions also demonstrate that the Pharmacist titles perform patient care work similar to that performed by the Optometrist titles. For example, one job description for the Pharmacist position describes the employee's primary duties as follows: "[I]ncumbents actively provide pharmaceutical care within the context of a health care team and

medical care plan. . . . [I]ncumbents have on-going responsibility for monitoring and evaluating patients for appropriate therapeutic outcomes; reviewing individual patients' records to ensure that drug therapy is appropriate; developing pharmaceutical care plans; disseminating drug information to health care professionals; participating in patient care conferences; and participating in the design and completion of patient drug use reviews, audits and other drug related studies and projects." (Exh. M.) Therefore, Pharmacists, like Optometrists, evaluate and treat patients, formulate treatment plans, render diagnoses, and issue prescriptions.

Moreover, Pharmacists must meet advanced educational and licensing requirements in order to qualify for the position, including graduation from an approved program, and certification by the California State Board of Pharmacy. (Exhs. L-M.) As with the Optometrist position, licensure as a pharmacist requires graduation from an approved doctoral program. This is similar to the Optometrist positions, which require Optometrists to have completed an accredited course of study and to have obtained licenses from the state. (Exhs. B-D.)

As reflected above, employees in the Pharmacist titles perform patient care functions that are similar to the functions of Optometrists. The University's Series Concept and job descriptions for Pharmacists therefore demonstrate that inclusion of all five Optometrist titles in the HX Unit is appropriate.

4. The Presence of Orthoptist Titles Within the HX Unit Further Confirms That the Five Optometrist Titles Belong in the HX Unit

The presence of Orthoptist titles within the HX Unit also demonstrates that HX Unit members perform a range of patient care work that is similar to or overlapping with Optometrist work. The UC system-wide Series Concept states that:

Orthoptists perform orthoptic and pleoptic evaluations and treatments on patients referred by ophthalmologists; and perform other related duties as required.

(Exh. N.)

The two Orthoptist levels are defined as follows:

Senior Orthoptist

Under direction, incumbents plan and coordinate the activities of an orthoptic clinic. In addition to performing duties of an Orthoptist, incumbents plan and carry out the practical and theoretical training of students in the Curriculum in Orthoptic Technology, supplemented by staff seminars and lectures; set up and review reading assignments; supervise clinical practice; and develop and administer tests.

[...]

Orthoptist

Under general supervision, incumbents perform evaluations and treatments for neuro-muscular abnormalities of the eyes; exercise judgment in seeking consultation from the Senior Orthoptist on unusual or difficult cases; and work closely with children and parents during the entire course of treatment.

Specifically, Orthoptists use specially designed instruments for diagnosis of neuro-muscular abnormalities and for training to restore both monocular and binocular function whenever possible; determine the types of tests to be given, and the frequency and duration of the training; evaluate test results; outline courses of home training to be given by parents; evaluate the effectiveness of home training; report the results of tests and training to referring ophthalmologists, and consult with them regarding the course of treatment; assist with instruction of student orthoptic technicians; and perform clerical work as needed in making appointments, keeping case records, and maintaining fee arrangements.

(Ibid.)

The University's job descriptions also demonstrate that the Orthoptist titles perform patient care work similar to that performed by the Optometrist titles. One job description describes the employee's primary duties as follows: "The Orthoptist performs evaluations and treatments for neuro-muscular abnormalities of the eyes and works closely with children and parents during the entire course of treatment." (Exh. O.) The job description describes the requirements of the job as encompassing advanced knowledge of eye movements, abnormality in eye movements, assessment of visual ability, medical conditions such as strabismus, and methods of correction of eye disorders. *(Ibid.)* Similarly, another Orthoptist job description describes Orthoptists' duties as including "provid[ing] patient care and technical support for pediatric ophthalmology patients and adults with binocular vision problems, eye movement disorders and strabismus." (Exh. P.) Therefore, Optometrists, like Orthoptists, evaluate patients' eye conditions, perform eye-related assessments and tests, and monitor treatment for patients.

C. Each of the Five Optometrist Titles Belongs in the HX Unit Under PERB Law

This unit modification petition seeks to integrate the five Optometrist titles into the HX Unit. UPTE's requested modification of the HX Unit is appropriate for multiple reasons under PERB law, including but not limited to the following.

1. Job Duties and Qualifications

The job descriptions and qualifications of the Optometrist series set out duties that fit within PERB's settled definition of patient care work, first established in the 1982 Unit Determination. (Exh. A, p. 11.) Optometrists perform duties that are similar to those performed in other HX Unit series, including the Physician Assistant, Psychologist,

Pharmacist, and Orthoptist series. Like Optometrists, all of these series provide care and support for patients in a health care setting. These classifications perform essentially the same patient care work: evaluating and monitoring patients, diagnosing and treating conditions, and/or prescribing and managing medications. (See Cal. Gov. Code § 3579(a); see, e.g., *Fontana Unified School District* (2004) PERB Dec. No. 1623; *Kings County Office of Education* (1990) PERB Dec. No. 801; *Fairfield-Suisun Unified School District* (1983) PERB Dec. No. 370.)

2. Impact on Meet-and-Confer Relationships

The requested modification of the HX Unit will have a positive effect on meet-and-confer relationships, avoid fragmentation, avoid proliferation of units, and increase efficiency. (See Cal. Gov. Code § 3579(a); see, e.g., *Fontana Unified School District* (2004) PERB Dec. No. 1623; *Kings County Office of Education* (1990) PERB Dec. No. 801; *Fairfield-Suisun Unified School District* (1983) PERB Dec. No. 370.)

3. No Other Appropriate Unit

There is no other unit in which the Optometrists would more appropriately belong. Thus, failure to place them in the HX Unit would effectively deprive them of the opportunity for union representation as guaranteed under HEERA. Integrating Optometrists into the HX Unit would end the current circumstance in which a group of employees are excluded from any appropriate unit without any justification. (See Cal. Gov. Code § 3579(a); see, e.g., *Fontana Unified School District* (2004) PERB Dec. No. 1623; *Kings County Office of Education* (1990) PERB Dec. No. 801; *Fairfield-Suisun Unified School District* (1983) PERB Dec. No. 370.)

4. Other Community-of-Interest Factors

Based upon all other factors (including but not limited to similar terms and conditions of employment), all five levels of Optometrists share a strong community of interest with the Physician Assistant, Psychologist, Pharmacist, and Orthoptist titles, as well as with the other members of the HX Unit. Indeed, there are no significant differences between Optometrists and other analogous HX Unit employees. Any differences that do exist are similar in nature to differences that already exist within the HX Unit. No differences are significant enough to warrant exclusion from the HX Unit. (See Cal. Gov. Code § 3579(a); see also, e.g., *Fontana Unified School District* (2004) PERB Dec. No. 1623; *Kings County Office of Education* (1990) PERB Dec. No. 801; *Fairfield-Suisun Unified School District* (1983) PERB Dec. No. 370.)

D. Modification Requested

Because Optometrists perform work within the scope of the HX Unit and share a strong community of interest with other HX Unit members, UPTE requests that PERB

modify the HX Unit to include the Optometrist titles.

PERB Received
02/02/22 16:68 PM

PERB Filed
04/01/22

EXHIBIT Q

UPTE STRONGER Affirm your commitment to outstanding UC jobs.

PERB Received
02/01/22 16:08 PM

PERB Filed
04/01/22



UPTE-CWA members have won excellent raises and preserved superb benefits and pensions. But now UC executives and anti-union politicians are seeking to erode our pay and benefits. All current and not-yet-members of UPTE need to sign this membership affirmation to preserve our achievements.

Your position at UC is covered by an UPTE-CWA union contract. The contract determines your pay, benefits, and working conditions. Dues are the same for everyone and set uniformly by UPTE.

CAMPUS

- Berkeley Santa Cruz San Francisco Davis Santa Barbara Merced
 LBNL UCOP Riverside Irvine Los Angeles San Diego

Nicole Mercho
 NAME

 HOME ADDRESS

 CITY/STATE/ZIP

 NAME OF PERSON WHO ASKED ME TO JOIN (if applicable)

027948496 optometrist 3
 EMPLOYEE NUMBER JOB TITLE

 WORK PHONE HOME PHONE
 Mission Bay
 WORK LOCATION (BUILDING/ROOM/CAMPUS)

 EMAIL CELL PHONE/TEXT Please do not text me.

MEMBERSHIP APPLICATION

Authorization: I apply to become a member of UPTE. I enter into this agreement in return for the privileges of UPTE membership and the long-term benefit of union representation. I direct UC to deduct membership dues from my monthly pay, and to transfer that money to UPTE. I can end my membership by following instructions in my union contract (found at www.upte-cwa.org), or as otherwise allowed by law. I understand that both union members and nonmembers benefit from representation and should contribute. If I resign or have resigned my union membership and the law no longer requires nonmembers to pay a fair share fee, I nevertheless agree voluntarily to contribute my fair share by paying a service fee in an amount equal to dues. I direct UC to deduct this service fee from my monthly pay and to transfer that money to UPTE. I understand that this voluntary service fee authorization shall renew each year on the anniversary of the date I sign below, unless I mail a signed revocation letter to UPTE's central office, postmarked between 75 days and 45 days before such annual renewal date.

Nicole Mercho
 Nicole Mercho (Feb 25, 2022 08:39 PST)
 SIGNATURE

Feb 25, 2022
 DATE

POLITICAL ACTION FUND (PAF) AUTHORIZATION

Authorization: As public employees, we require a strong voice and resources to impact the government that funds us and passes laws that affect us. We do not use union dues or fees for elections. Instead, we need contributions from members like you to protect and improve our jobs and working conditions. Any contribution you make is voluntary and will go to the Communications Workers of America-COPE Political Contributions Committee for the purpose of making contribution in federal elections to protect and advance the interests of working people, including UPTE members and their families. Your contribution is separate from your union dues and is not a condition of membership. No favor or disadvantage will result from contributing or refusing to do so, and you are free to contribute more or less than the suggested amounts. Additionally, to comply with federal law, we must use our best efforts to collect and report the name, mailing address, occupation and name of employer for individuals whose contributions exceed \$200 per election cycle. Contributions or gifts to the CWA-COPE PCC are not tax deductible as charitable contributions.

Yes, I want to contribute the following amount to CWA's PAF: \$10 per month \$20 per month \$40 per month \$___ per month
 I don't want to contribute to PAF at this time.

Nicole Mercho
 Nicole Mercho (Feb 25, 2022 08:39 PST)
 SIGNATURE

Feb 25, 2022
 DATE

For university use only

TRAN CODE	EMPLOYEE ID NO.	DATE	ELEMENT NO.	BAL CD	AMOUNT
X1		MO DY YR	6	G
X1		. .	6	G
X1		. .	6	G

PERB Received
02/02/24 16:58 PM

EXHIBIT 2

January 24, 2024

Sent via email

Cheryl Lloyd
Vice President, Systemwide Human Resources and Chief Human Resources Officer
Office of the President
University of California
1111 Franklin Street, 5th Floor
Oakland, CA 94607

Re: UPTE OPTOMETRISTS UNFAIR PRACTICE STRIKE NOTICE

Dear Ms. Lloyd:

University Professional and Technical Employees – CWA Local 9119 (UPTE) hereby serves notice of its intention to engage in an unfair practice strike by UPTE-represented Optometrists at all University of California locations where Optometrists work. Although the parties have been engaged in accretion bargaining for a year, UC has engaged in bad-faith bargaining tactics including failing to provide requested information, refusing to bargain over step placement, making predictably unacceptable proposals, and making unilateral changes. Given UC's conduct, UPTE has concluded that we have no choice but to call a two-day strike to protest the University's unfair practices.

Strike Duration:

The strike and picketing shall commence at 4:00am on Tuesday, February 6, 2024, for a period of 48 hours. Employees whose shifts begin at 4:00am or later on February 6 will not report to work at that time.

The strike will conclude at 4:00am on Thursday, February 8, 2024. Striking employees who are scheduled to work shifts that begin at 4:00am or later on February 8 will report to work for their shifts.

The strike is limited to UPTE-represented Optometrist titles in the HX bargaining unit, and UPTE is not calling on any other UPTE-represented titles or bargaining units to strike.



NOTICE OF UNCONDITIONAL RETURN TO WORK

UPTE, on behalf of all employees who engage in strike activity as provided in this notice, hereby provides notice that striking employees will return to their positions and work at their regularly scheduled hours beginning with all shifts that commence on or after 4:00am on Thursday, February 8, 2024.

Given the nature of Optometrists' work, UPTE does not believe a strike by them would pose a risk to public health and safety, particularly because they typically work Monday through Friday during normal business hours. However, if UC for some reason believes that a two-day strike by Optometrists would pose an imminent and substantial threat to public health and safety, or believes there is a need to have Optometrists on call to address patient emergencies, UPTE is willing to discuss UC's concerns. Please contact me if UC wishes to discuss these matters further.

Very truly yours,

Dan Russell
UPTE President

Cc: Michael Drake, UC President
Matt Teaford, Director of Labor Relations
E. Kevin Young, Associate Director Labor Relations
Carol Christ, UCB Chancellor
David Lubarsky, UCD Health
Gary May, UCD Chancellor
Chad Lefteris, CEO UCI Health
Howard Gillman, UCI Chancellor
John Mazziotta, CEO UCLA Health
Gene Block, UCLA Chancellor
Patty Maysent, CEO UCSD Health
Pradeep Khosla, UCSD Chancellor
Suresh Gunasekaran, CEO UCSF Health
Sam Hawgood, UCSF Chancellor
UC Campus and Medical Center Labor Relations Staff

PERB Received
02/02/24 16:58 PM

EXHIBIT 3

**ARTICLE 21
NO STRIKES**

- A.** During the term of this Agreement or any written extension thereof, the University agrees that there shall be no lockouts by the University. UPTE, on behalf of its officers, agents, and members agrees that there shall be no strikes, stoppages or interruptions of work, or other concerted activities, including sympathy strikes, which interfere directly or indirectly with University operations during the life of this Agreement or any written extension thereof. UPTE, on behalf of its officers, agents, and members, agrees that it shall not in any way authorize, assist, encourage, participate in, sanction, ratify, condone, or lend support to any activities in violation of this Article.
- B.** Any employee who violates this Article shall be subject to discipline up to and including termination of employment, in accordance with Article 6 – Corrective Action, Discipline and Discharge.
- C.** UPTE shall immediately take whatever affirmative action is necessary to prevent and bring about an end to any concerted activity in violation of this Article. Such affirmative action shall include but not be limited to: sending written notice to the home address of all employees engaged in prohibited activity informing them that the concerted activity is in violation of this Article, that engaging in such activity may lead to disciplinary action, and stating that employees engaged in prohibited activity must cease such activity and immediately return to work.
- D.** Nothing herein constitutes a waiver of the University's right to seek appropriate legal relief in the event of a violation of this Article.

PERB Received
02/02/24 16:58 PM

EXHIBIT 4

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Employer,

and

UNIVERSITY PROFESSIONAL AND
TECHNICAL EMPLOYEES - CWA LOCAL
9119,

Exclusive

Representative.

Case No. SF-UM-873-H

UNIT MODIFICATION ORDER

TITLE OF UNIT: Healthcare Professionals (HX) Unit

Pursuant to authority vested in the undersigned by the Public Employment Relations Board, the following modification of the above-referenced unit is approved:

Non-supervisory and non-managerial employees in the following classifications will be added to the HX Unit:

- Optometrist 3 (title code 9303)
- Optometrist 4 (title code 5805)
- Optometrist EX (title code 7930)
- Optometrist SR (title code 9192)
- Optometrist (title code 9193)

This Unit Modification Order shall not be considered to be a certification for the purpose of computing time limits pursuant to PERB Regulation 32754.

Issuance of this Order shall not be interpreted to mean that the Board would find this unit, as modified, to be an appropriate unit in a disputed case.

Signed at Oakland, California on July 5, 2022.

On behalf of the
PUBLIC EMPLOYMENT RELATIONS BOARD

A handwritten signature in black ink, appearing to read "Dan Crossen".

Daniel Crossen
Regional Attorney

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Los Angeles Regional Office, 425 W. Broadway, Suite 400, Glendale, CA 91204-1269.

On July 5, 2022, I served the Unit Modification Order regarding Case No. SF-UM-873-H on the parties listed below by

I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

Personal delivery.

Electronic service (e-mail).

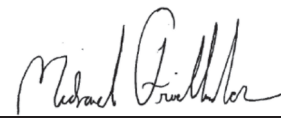
Tess Elconin, Principal Counsel
University of California
1111 Franklin Street, 8th Floor
Oakland, CA 94607
Email: teresa.elconin@ucop.edu, ucperb@ucop.edu

Danica Li, Attorney
Leonard Carder LLP
1999 Harrison Street, Suite 2700
Oakland, CA 94612
Email: dli@leonardcarder.com

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 5, 2022, at Glendale, California.

Michael Friedlander

(Type or print name)



(Signature)