



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

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

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

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

- a. Full name: University Professional and Technical Employees
- b. Mailing address: 2510 Channing Way Suite 11 Berkeley, CA 94704
- c. Telephone number: 510-704-8783
- d. Name, title and telephone number of person filing charge: Jelger Kalmijn UPTE-CWA-9119, President (619) 370-3753
- e. Bargaining unit(s) involved: TX and RX Units

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

- a. Full name: Regents of the University of California
- b. Mailing address: 1111 Franklin Street 8th Floor Oakland, CA 94607
- c. Telephone number: 510-987-9800
- d. Name, title and telephone number of agent to contact: Charles Robinson, General Counsel

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

- a. Full name:
- b. Mailing address:

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

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

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

5. GRIEVANCE PROCEDURE

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

Yes No

6. STATEMENT OF CHARGE

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

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: 3571 (B) (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.)*

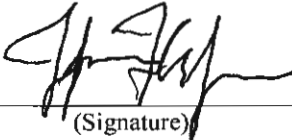
Please see Attachment to Unfair Practice Charge

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 and that this declaration was executed on December 15, 2008 (Date)

at Berkeley, CA (City and State)

Jelger Kalmijn
(Type or Print Name)


(Signature)

Title, if any: UPTE-CWA-9119, President

Mailing address: 2510 Channing Way Suite 11 Berkeley, CA 94704

Telephone Number: (619) 370-3753

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 and not a party to the within entitled cause. The name and address of my residence or business is University Professional and Technical Employees.

On December 15, 2008, I served the Unfair Practice Charge
(Date) (describe document(s))

on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

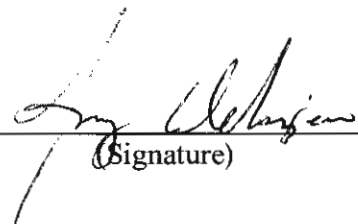
personal delivery;

facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Office of the General Counsel
Regents of the University of California
1111 Franklin Street, 8th Floor
Oakland, CA 94512

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 15, 2008, at Berkeley, CA.

Amy Oleksijew
(Type or print name)


(Signature)

Attachment to Unfair Practice Charge 12-15-08

Introduction:

The University of California ("UC" or "the University") and University Professional and Technical Employees CWA Local 9119 ("UPTE" or "the Union") are negotiating successor contracts for the Technical (TX) and Research Support Professional (RX) bargaining units. For each unit, the most recent contract expired on June 30, 2008.

Throughout these ongoing negotiations, which began on March 5, 2008, the University has engaged in unlawful bad faith bargaining. While the University's acts of bad faith are numerous and of many and various types -- meaning that this charge will need to be supplemented with additional charges covering other topics -- the current charge focuses on 3 categories of bad faith:

- (1) UC repeatedly canceling bargaining sessions and making itself unavailable to bargain, including extraordinarily bad faith last minute cancellations of multiple long-scheduled 3-day bargaining sessions, for which UPTE's bargaining team had made extensive arrangements to attend (including getting off of work and rescheduling other priorities);
- (2) Surface bargaining, lack of preparation and unlawful conditional bargaining, including refusal to make proposals, refusal to make counter proposals, and refusal to make economic proposals; and
- (3) Insisting on obstructive logistical arrangements

Details of Charge:

- (1) UC repeatedly canceling bargaining sessions and making itself unavailable to bargain, including extraordinarily bad faith last minute cancellations of multiple long-scheduled 3-day bargaining sessions, for which UPTE's bargaining team had made extensive arrangements to attend (including getting off of work and rescheduling other priorities)
 - a. On the evening of April 1, 2008, UC chief negotiator Shelley Nielsen placed "on hold" a bargaining session scheduled for April 2-4, 2008. Ultimately, UC showed up to meet for only the last day, out of three scheduled days.
 - b. UC chief negotiator Nielsen called UPTE chief negotiator Kevin Rooney on the evening of May 20, 2008 to cancel the bargaining session scheduled for May 21-23, 2008 in San Diego.¹

¹ While the conduct occurring through May 2008 occurred more than six months ago, UC's conduct constitutes a continuing violation. Moreover, the true nature of UC's bad faith only became clear later, as the conduct continued and manifested itself in further ways. Moreover, even in other contexts, when a continuing violation cannot be established, PERB still considers conduct outside of the six-month statute of limitations to the extent it sheds light on the true character of conduct that occurred within the limitations. See Rio School District (2008) PERB Decision Number 1986, at 10, fn 7 (citing other cases).

- c. UC chief negotiator Nielsen called the evening of June 17, 2008 to cancel the bargaining session scheduled for Irvine on June 18-20, 2008.

The stated reason for all these cancellations were conflicts with AFSCME bargaining. UC chief negotiator Shelley Nielsen also served as UC's chief negotiator with AFSCME for the Patient Care Technical (PCT) units. The University cannot at the last minute cancel long-scheduled sessions (for which the parties have made extensive travel preparations and other preparations -- including getting off of work) merely because some last minute development in its negotiations with another union causes it to what to prioritize negotiations with that union and take away dates that had long since been set aside for bargaining with UPTe. UC's three successive last-minute cancellations, in three successive months, set the tone for a set of negotiations in which the University has simply never engaged in a real way.

(2) Surface bargaining, lack of preparation and unlawful conditional bargaining, including refusal to make proposals, refusal to make counter proposals, and refusal to make economic proposals

In advance of the parties' initial bargaining session, which took place March 5-7, 2008 at UC Berkeley, the parties sunshined their proposals. At the University's insistence, UPTe supplemented its initial sunshine letter by providing detailed proposals, even in advance of bargaining. See Exhibit 1. The University, however, after insisting that UPTe provide such details, sunshined only "concepts." See Exhibit 2.

While UC's conduct during the sunshine, and UC's successive cancellations of bargaining sessions in April, May and June, certainly got the parties off to a terrible start, UPTe protested but moved on, hoping that the University could be encouraged to at last engage.

Unfortunately, however, UPTe's "turn the other cheek" attitude was met with even worse unlawful behavior -- refusal to make proposals. UC's refusal to make proposals has come in three central varieties:

First, the University did not provide substantive proposals or counterproposals until nine months into bargaining -- at the most recent session that was held on December 3-5 2008.

Second, throughout that time, the University was insisting that it would not provide any proposal or counterproposals until UPTe had completely "presented" and fully "explained" each and every initial proposal that it was going to make. This insistence was completely unsupported by law. HEERA does not mandate any set order of bargaining presentations or permit one side or the other to unilaterally insist that the other side go first on everything (this constitutes, among other violations, insistence on not presenting substantive proposals until the other side agrees to a particular ground rule, which is a form of illegal conditional bargaining under clear PERB precedent). The UPTe team protested UC's unilateral and nonnegotiable "ground rule" on many occasions and requested counter proposals. However, UC refused and continued to unilaterally insist on that ground rule (that UPTe would

completely present and completely explain all of its proposals before UC made its proposals or counterproposals), in violation of clear PERB precedent that no party can condition substantive bargaining over proposals on any agreement over ground rules (San Ysidro School District (1980) PERB Decision Number 134).

Third, even now, to this date (more than nine months into bargaining and 10 months since proposals were sunshined), the University has refused to make a single economic proposal. This constitutes a *per se* refusal to bargain over the key issues -- wages, pension, and medical benefits. [While a refusal to provide economic proposals violates the law no matter what reason is given, it also may constitute a violation of PERB precedent prohibiting any party from insisting on bargaining non-economic proposals first, State of California (Department of Personnel Administration) (1998) PERB Decision Number 1249; *Stockton Unified School District* (1980) PERB Decision Number 143, at pages 21-24 (majority opinion) and page 30 (concurring opinion, citing NLRB precedent)].

As a result of these tactics, not surprisingly, bargaining continues to languish with no opportunity for progress, as we approach the one-year anniversary of UPTE's sunshining its proposals and the 10 month anniversary of the first bargaining session.

(3) Insisting on Obstructive Logistical Arrangements

UC agreed to bargain with UPTE at the UC Merced campus July 9-11, 2008. UPTE proposed to meet on campus all days of this session. UC insisted on meeting off campus at the Atwater former Air Force base 16 miles north of campus where UC Merced continues to have some temporary facilities until space is available on campus. The reason UC provided for wanting to meet in Atwater was a lack of adequate meeting space on campus. Even though UPTE informed UC that UPTE UC Merced President Brad Neily had secured suitable meeting facilities for bargaining all three days on campus, UC continued to refuse to meet on campus. After much discussion, UC finally consented to meet one day on campus but held firm that the other two days had to be at the Atwater facility. While meeting the one day on campus, June 10, 2008, UC Merced Human Resources director Freya Foley made the negotiations essentially impossible by forcing the UPTE team to move between five different locations in the course of the day. The time taken in setting up, moving and breaking down during each of the four moves between five locations took nearly the entire day. The UPTE team and UC teams met together only 1 time that day. The UPTE bargaining was forced to leave their caucus room at 5PM because the building was being shut down.

Taken together with the University's outrageous conduct of canceling sessions in April, May and June, and the University's even more outrageous conduct at the sessions that have actually occurred, as described above, the University's obstructive tactics relating to the July session -- despite UPTE's clear offer of appropriate space that UPTE had secured -- constitutes yet another sign of the University's bad faith approach to these negotiations.

Conclusion

When a party's bargaining conduct has "a potential to frustrate negotiations and undermine the exclusivity of the bargaining agent," a per se violation of the duty to bargain may be found without determining whether the party lacked a subjective intent to reach agreement. Rio School District (2008) PERB Decision Number 1986, at 6 (citing Pajaro Valley Unified School District (1978) PERB Decision Number 51). Here, the above conduct is a per se violation, and also easily satisfies the "totality of the circumstances" test for subject of bad faith. Indeed, UC is guilty of "going through the motions of negotiations," (Muroc Unified School District (1978) PERB decision Number 80); recalcitrance in scheduling of meetings and canceling meetings and failing to prepare for meetings (Oakland Unified School District (1983) PERB Decision Number 326); and, as discussed above, conditional insistence on ground rules, refusal to make proposals, and refusal to make economic proposals.

Remedy Requested

UC must be directed to immediately cease and desist from all unlawful conduct and a complete make whole remedy must be ordered as well.



UNIVERSITY
PROFESSIONAL
AND TECHNICAL
EMPLOYEES

CWA Local 9119
AFL-CIO

representing
employees at the
University of
California

P.O. Box 4443
Berkeley, CA
94704

phone (510) 704-8783
fax (510) 704-8065
info@upte-cwa.org

www.upte-cwa.org

February 9, 2008

Shelley Nielsen
Assistant Director
Labor Relations
Office of the President
University of California
300 Lakeside Drive, Suite 1218
Oakland, CA 94612-3550

RE: Sunshine Letter #2 for TX & RX Contract Negotiations

Dear Shelley,

This letter is to provide more detailed information to the University of UPTE-CWA 9119's proposals for negotiations for both Technical (TX) & Research (RX) Units for the upcoming contract negotiations.

ARTICLE 1-ACCESS

A.2.-Delete.

B. 1.-Delete "reasonable".

B. 1. -Access by the union...Remove last part of this paragraph beginning with "the union representative shall give notice upon arrival in accordance with local campus/Laboratory/hospital procedures."

B.4.-Delete B.4. Insert "UPTE-CWA will be sensitive to patient privacy and needs.

C-Increase number of employee representatives from 1 to 4. Propose new language providing for fully paid release time for equivalent of 1.0 FTE for union business.

C.2.-Increase number of hours available for use from 10 to 40. Delete everything after, "...thereafter".

C.2.a. - Increase number of hours available for use from 10 to 40.

C.2.b. - Increase number of hours available for use from 10 to 40.

C.2.c. - In sentence #2, delete everything after "...granted".

C.2.d. - Increase number of hours available for use from 10 to 40. Delete most of current language.

C.2.e. - Make "meet and confer". Delete last sentence.

D.1.-Non-restricted access to meeting rooms and bulletin boards. Remove "reasonable". Propose new language for UC to provide free of charge, an UPTE office on each campus. Increase number of hours from 10 to 40.

D.2. - Replace existing language with "The University will provide UPTE with their own locked bulletin boards at the University's expense."

F-Make mandatory sharing of employee work location (to include building an room number; email address, and work phone number.

G.1. -Change sentence #2 to read, "The University will pay for all printing and distribution costs."

G.2. – Make necessary changes to align with Article 1, G.1., and allow for paid release time of 4 UPTE representatives to meet for 8 days to blue line contract.

I-Provide email addresses for all unit employees. Have email access for all unit employees. Protection language for workers and union activists.

J-Allow for union access and presentation during NEO meeting.

J.2. – Allow employees to attend UPTE meetings on paid work time, delete end of sentence after the comma.

J.3. – Delete section.

J.4. – Change to require "meet and confer" rights.

ARTICLE 2-AGREEMENT

B. - Delete "and all student employees whose employment is contingent upon their status as students,".

C. - Include "LBNL".

D-Increase notice and response times to 90 days for all parties.

D.1. – Require "meet and confer" rights over creation of any new job titles or title codes.

E-Require "meet and confer" process. Unresolved disputes will be grievable and arbitrable. Increase notice and response to 60 days.

F -Increase notice to the union to 60 days. Require "meet and confer" process.

G. - New language proposed recognizing card check.

H. - New language proposed acknowledging employer neutrality.

ARTICLE 3-ARBITRATION PROCEDURE

A-Include campus presidents and campus chief steward's ability to appeal to arbitration. Whole contract is grievable and arbitrable. Delete

A.2. - Change to include language which includes holding UC accountable to meet dates and deadlines. If they don't meet, UC defaults, UPTE automatically wins arbitration.

A.3. - Delete

A.8. - Change "30" to "60". Similar intent as A.2., UC to meet dates or UPTE wins by default. Upon notice, UPTE will have an additional 15 days to resubmit.

C.-increase the number of allowed union representatives to 3. All would be on paid release time.

D.-UPTE chooses arbitrator. All conflicting language to be deleted.

E. - No bifurcation of arbitrations.

F. - Allow for extension of decision period if agreeable to both parties.

G.3. – Language change to read, "...borne entirely by the University."

H. - Allow for arbitrator to increase remedies, benefits and reinstatement. Remedy shall not allow subtraction of interim earned wages, benefits, workers comp, unemployment, or other employment.

H.3. -Delete "not".

I.1. – Propose language to state that, "The University will bear all costs of arbitration."

I.2. – Propose language to state that, "The University will bear all costs of cancellation or postponement."

J.4. - Increase number of employee representatives to 3 without loss of straight time pay.

J.5. -Delete "not".

K. - UPTE may request expedited arbitration. No request shall be denied.

ARTICLE 4-UNIVERSITY BENEFITS

A-Change language to remove the university's ability to make unilateral changes. Must meet and confer with Union on any proposed changes. Propose language to have UC pay for employee child care costs. Propose new language for vision plan to include laser surgery and progressive lens eye glasses.

B.1. - Increase maximum approved leave to 12 months. Delete last sentence. Replace with "**The employee will continue to pay their current monthly premiums, and UC will absorb all other costs.**"

B.3.c. – Delete sentence #2.

C. - Include meet and confer with Union over any proposed changes to employee benefits. Delete last two sentences of this section.

E. - UC to pay for 100% for all tuition costs.

F. – New language proposed to provide for free gym facilities membership for all unit employees.

ARTICLE 5-CAMPUS/LAB CLOSURE

A. - Include "meet and confer" for any proposed campus/lab closures. Delete references to management rights, "when feasible", and last sentence of section.

B. - Propose new language to read, "**The University will pay all employee wages during a total or partial closure or curtailment of operations described in Section A.**"

C. – Delete section.

ARTICLE 6-COMPENSATION

All unit employees eligible for effective pay increases, to include probationary employees. Propose new language stating that AALAS Certifications are not mandatory for any listed job titles.

A-D-Remove eligibility restriction for less than satisfactory performance evaluations.

B.1. – Significant changes to propose for this section.

B.2. – Delete word "dishonesty".

- E. - Increase AALAS Certification pay scales to \$100, \$200, \$300 & \$400. Increase cap to \$400/month. Change shift diff to 25% of hourly rate.
- K. - Propose new compensation rates for "Sea Pay".
- L. - Make unit employees eligible for all Incentive Award Programs (IAP).

ARTICLE 7-CORRECTIVE ACTION/DISCIPLINE & DISMISSAL

Proposed changes to include: Require simultaneous notice to UPTE for Investigatory Leave, Less than satisfactory Performance Evaluations, Written Corrective Action, Written Disciplinary Action, and Written Notice of Intent-To-Separate. Type of discipline that must be "Noticed" will be changed to include all discipline and include counseling memos. Include language prohibiting discipline or discharge without just cause. Corrective Action-Type of discipline, change rank in order of types of discipline to: warning, suspension, decrease, demotion, dismissal. Other substantive language changes to be proposed. Consideration must be given to mitigating circumstances.

C.3. – Change "15" to "3".

E.1.a. – Change "10" to "20".

E.2.c. – Change "10" to "15".

New language to provide for protection of "whistle blowers". Mandatory presence of a union representative for all potential disciplinary meetings.

ARTICLE 8-DEVELOPMENT & TRAINING

A.2.b. change to include that maintenance of a license is 'required' training.

ARTICLE 10: GRIEVANCE PROCEDURE

Propose language to allow for expedited handling of grievances when requested by the union. Also

F.1. – Delete section.

F.2 & 3. – Renumber to allow for deletion of F.1.

K. – Sentence #1, delete "may or may not" and insert, "shall". Delete sentence #2.

L. – Delete "not".

M.1.a.2. – Delete section.

M.1.b. – Delete section.

M.1.c. – Delete "not".

N. – Allow for grievability and arbitrability.

ARTICLE 11-HEALTH & SAFETY

Substantive changes will be presented at a later date.

ARTICLE 12-HOLIDAYS

A. – Add bullet item "Personal floating holidays-4 per year to be scheduled at employee's choice."

- B. – Replace current language with, “All employees are eligible to receive holiday pay. If the employee is less than full-time, they shall be paid a percentage dependent upon current appointment or average of hours worked per week, whichever is greater.”
- C. 2.b. – Replace “1 ½” with “3”.
- C.2.c. – Proposed language changes to be forth coming.
- D. – Delete everything after “holiday”.
- E. 2. – Delete section.
- G. - Proposed language changes to be forth coming.

ARTICLE 13-HOURS OF WORK

- B.2. – Change to read, “A work schedule is the normal hours of work for an employee within a workweek and will include a specific start time as well as a specific end time for each day the employee is to work.”
- B.3. – Delete last sentence.
- C.1.a. – Delete “When practicable”.
- C.1.b - Delete “When practicable”.
- C.1.c – Delete sentence #2.
- C.4.b. - Delete “When practicable”.
- C.4.c. – Include “meet and confer”.
- C.4.d. - Delete section.
- D. – Insert into sentence #3 “...shall be considered time worked and the University will pay the employee a Meal penalty equal to one hour of the employees straight time rate of pay.” Next sentence to read, “The University may reschedule an employee’s meal period during the work day no more than two (2) hours in either direction when operational needs...”
- E.2. – Delete section.
- E.3. – Delete section.
- F. – Delete sentence # 1.
- G. - New language will be proposed.
- H.3. – New item to read, “An employee leaving the worksite after a call-back but within nine (9) hours of beginning their next regularly scheduled shift shall be entitled to compensation according to section I.2.
- I. - New language will be proposed.
- J. - New language will be proposed.
- K. -CONSECUTIVE DAYS OF WORK: New language will be proposed.

ARTICLE 14-INDEMNIFICATION

Delete the last sentence.

ARTICLE 15-LABOR/MANAGEMENT MEETINGS

- A.-Require monthly meetings.
- C. – UC will pay for all related travel expenses.

ARTICLE 16-LAYOFF & REDUCTION IN TIME

A.4. - remove "if feasible" in the first sentence. Submit language to define layoff unit as an entire campus. Increase notice to 60 days. Changes in layoff unit may not occur more than once per year.

A.6.-Submit language that states the terms of this Article shall be standard practice for both the medical center and campus.

A.7. – Submit new language stating that the union and university will meet upon the request of either party.

C.1.a.-delete the word "feasible".

C.1.b.-If less than sixty (60) calendar days notice is granted for temporary layoff, the affected employee(s) delete (may)and replace with "shall" receive straight time to receive straight time.....

C.1.c.1. – delete "attempt" in sentence #3. Delete last sentence.

C.2. – Delete from the first sentence the word "feasible".

C.3. – Propose deletion, to be replaced by section H.

D.2.a.- Last sentence to read, "seniority provisions do apply".

D.3.a.1 - Remove the term "feasible" where it appears in paragraph.

D.4.b. - Add #4 "for four (4) years for more than ten (11) years of University service.

D.4.c. – New language to be inserted into the sentence...Employees recalled from layoff status who are not returned to their same job shall be "provided training to their new job duties to help assure their ability to do this job."

D.5.a.- End of paragraph define term "timely" as 30 days.

Submit new section- H – Titled "Reducing the Adverse Effects of Layoff"

Whenever the university determines it necessary to lay off employees, the university and the Union shall meet in good faith to explore alternatives to laying off employees such as, but not limited to, voluntary reduced work time, retraining, early retirement, and unpaid leaves of absence.

ARTICLE 17-LEAVES FOR UNION BUSINESS

A.3. - Change "36%" to state "the actual cost of benefits to the university. UC and UPTe will meet and confer over the amount and true cost of benefits".

B.1. - Delete "45" and replace with "15". 60 days or less strike 15 days and replace with 7 days.

ARTICLE 18-LEAVES OF ABSENCE

Substantive language changes will be forthcoming.

ARTICLE 19-MANAGEMENT RIGHTS

A. Insert "meet & confer" into section.

B. Delete whole section.

D. Delete section.

Additional language will be forth coming.

ARTICLE 20-MEDICAL SEPARATION

- A.1. – Require adherence to State, Federal, Local laws and regulations
- A.4. - Delete “180 days” and replace with “1 calendar year from beginning” in two places in paragraph.
- C.2. - Delete “10” calendar days and replace with “30” calendar days.
- D. – Delete “15” and change to “30” .

ARTICLE 21-MILITARY LEAVES

No changes proposed at this time.

ARTICLE 22-MOVING EXPENSES

- A. Delete last sentence.
- D. Delete section “D”.

ARTICLE 23-MULTIPLE APPOINTMENTS

No changes proposed at this time.

ARTICLE 24-NO STRIKES

Substantive language changes to be presented.

ARTICLE 25-NONDISCRIMINATION IN EMPLOYMENT

- C.1. – Grievances will be allowed to go to all levels of the grievance procedure to include arbitration.
- C.2. – Delete.
- C.3. – Delete.

ARTICLE 26-OUT OF CLASS PAY/TEMPORARY ASSIGNMENT

- A.-Delete “20 consecutive working days or more” and insert “2 hours a day or more”.
- B.-Line 2, “the University shall pay all ~~or part~~ of the...”

ARTICLE 27-PARKING

- A.2. – Rebates in parking fees to be given to employees affected by any such decisions.
- C. – New language to propose reduction in parking rates and fees. Exact language will be forthcoming.
- C.1. – Notice changed to 90 days.
- C.2. – Change response to 45 days.
- D. – Shall be grievable and arbitrable.

ARTICLE 28-PAYROLL DEDUCTION

- E. – New language proposing space available on form for charities of UPTÉ’s choosing (Elizabeth Glazer Pediatric AIDS Foundation).

ARTICLE 29-PERFORMANCE EVALUATION

A. – Change last sentence to read “Performance evaluation is not ~~in and of itself~~ **to be used as** a disciplinary procedure. Add “Employer financial considerations shall not be used in whole or in part in the evaluation of an Employee’s performance. Include language stating that employee must receive a copy of performance evaluation to be valid.

C.1. - Grievances shall be allowed to step 3 and arbitration.

C.2 – Change to read “Disputes arising regarding the performance evaluation of employees, shall be subject to Article 10, Grievance Procedure of this Agreement, ~~except as set forth in Section C.1 above.~~

ARTICLE 30: PERSONNEL FILES

A. - Reduce removal of past discipline to 6 months.

B. - New language requiring production of copy of personnel file within 3 working days from written or email request.

E. - Free copy of personnel file each year.

ARTICLE 31-POSITIONS /APPOINTMENTS

A.-Change “one year” to “six months”.

G. - PER DIEM APPOINTMENTS: New language to be proposed.

ARTICLE 32-PROBATIONARY PERIOD

A. Delete “six” and insert “three”

C. - Strike “7” and replace with “15” calendar days. Add one sentence saying only one extension is permitted.

E.1. - Strike “not” and replace with “...article shall be..”.

ARTICLE 33- REASONABLE ACCOMMODATION

Substantive language changes to be presented.

ARTICLE 34-RELEASE TIME FOR BARGAINING

Some language changes to be forth coming.

ARTICLE 35-RESIGNATION/JOB ABANDONEMENT

B.2. - Strike “14” and insert “30” calendar days.

B.3. - Strike “14” and replace with “30”, and strike “not” to read “is subject to”.

ARTICLE 36-RESPECTFUL AND FAIR TREATMENT

C. – Allow full grievability and arbitrability.

ARTICLE 38-SHIFT DIFFERENTIAL

B. – Change to mean that any and all hours worked during a shift will be paid the shift differential.

C. - Change to mean that any and all hours worked during a shift will be paid the shift differential.

F. – Propose language requiring notice from the University for establishment of shifts other than day shifts.

ARTICLE 39-SICK LEAVE

D. - Insert language to include “state and federal laws regarding confidentiality and permissible and impermissible regarding a worker’s medical information shall apply.”

ARTICLE 40: SUBCONTRACTING

Substantive language changes to be presented.

ARTICLE 41-TRANSFER/PROMOTION/RECLASS

D.6. – Delete “not”.

E.1.a. – Sentence #2 will read, “...as approved by the employee and the employee's supervisor.”

E.1.d. - Include at end of paragraph “if after review by HR, the employee may then proceed to grievance/arbitration as specified in this contract”.

E.1.e. – New language to describe the ability to take any disagreements to grievance up to and including arbitration.

E.2.a. – Make raise retroactive to date of reclass request submission.

Other language changes to be presented.

ARTICLE 42-TRAVEL REIMBURSEMENT

Substantive language changes to be presented.

ARTICLE 43: VACATION

C.3. – The University will only be allowed to deny two requests for vacation.

E. – Eliminate vacation maximums.

ARTICLE 45: WORK-INCURRED INJURY OR ILLNESS

Substantive language changes to be presented.

ARTICLE 46-WORK RULES

B. – Change notice to 90 days, and change to “meet and confer”.

C. - Some language changes to be forth coming.

ARTICLE 47-UNIFORMS

A.2.b. – Change current language to read, “The University will be responsible for the purchase of all required uniform components.”

A.2.c. – Delete “non-grievable, non-arbitrable”.

A.3. - Strike all of A3 and replace with “All laundering will be provided by the university.”

APPENDIX “C”

Propose changes to form to allow for form to be used for all UPTe units. Place contact information on form for UPTe.

APPENDIX “E”

Some language changes to be forth coming.

APPENDIX “F”

Some language changes to be forth coming.

SIDELETTER: CAMPUS GRIEVANCE RESOLUTION COMMITTEE

1. Require committees be implemented at all campuses.

Precautionary Principle Policy

Propose new contract language.

Gain Sharing Language

Propose new contract language linking additional pay for cost savings to the university.

IF/THEN LANGUAGE

Propose new contract language to distribute additional funding beyond expected funding levels.

Limits On Drug Testing

Propose new contract language.

Natural Disaster Pay

Propose new contract language.

Please let me know if you have any questions. I can be reached at 415-412-8547.

Sincerely,

A handwritten signature in black ink that reads "Kevin Rooney". The signature is written in a cursive style with a large, looping flourish at the end of the name.

Kevin Rooney
TX/RX Chief Negotiator
UPTE-CWA 9119

**PROOF OF SERVICE FORM
Delivery by U.S. Mail**

I declare that I am over the age of eighteen years and not a party to the within entitled cause. My address is:

**1498 Ninth Avenue
San Francisco, CA 94122-3607**

On **February 11, 2008**, I served the attached letter, **Re: Sunshine Letter #2 for TX & RX Contract Negotiations**, by placing a true copy with postage thereon fully prepaid in a sealed envelope in the United States mail, addressed as follows:

**Shelley Nielsen
Assistant Director
Labor Relations
Office of the President
300 Lakeside Dr, Ste 1218
Oakland, CA 94612-3550**

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on **February 11, 2008**, at **San Francisco, CA**.

Russell Thompson
(Type or print name)


(Signature)

UNIVERSITY OF CALIFORNIA

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

OFFICE OF THE ASSOCIATE VICE PRESIDENT
HUMAN RESOURCES AND BENEFITSOFFICE OF THE PRESIDENT
300 Lakeside Drive
Oakland, California 94612-3550*Via Electronic Mail and U.S. Mail*

February 11, 2008

Mr. Kevin Rooney, Chief Negotiator
UPTE – CWA, Local 9119
2510 Channing Way, Suite 11
Berkeley, CA 94704RE: UC's Intentions in the Upcoming RX and TX Successor Negotiations

Dear Kevin:

Pursuant to Article 9 – Duration of Agreement, of the current RX and TX agreements between the parties, this letter shall serve as the University's conceptual initial proposals for the upcoming round of successor negotiations for both the RX and TX units. We are in receipt of UPTE's list of initial proposals dated February 9, 2008. The following list identifies the conceptual changes that the University intends to propose for both the RX and TX bargaining units.

Article 1 – Access

- Discontinue printing of contract and provide it electronically.

Article 2 – Agreement

- Update effective date.
- Abolish titles not in use at particular locations.
- Establish titles for use at particular locations.

Article 4 – University Benefits

- Create two unique articles, one for Health and Welfare benefits and the other for retirement benefits.
- Update the enumeration of benefits.

Article 5 - Campus Closure

- Add formula for determination of closures during traditional December shutdowns.

Article 6 – Compensation

- Provide salary increases in accord with the State Budget funding for salaries.
- Reduce number of steps for selected titles.

Article 9 – Duration

- Multi-year agreement.
- Update language regarding automatic extension of current contract if no proposed changes by the prescribed deadline.

Article 10 – Grievance Procedure

- Codify current practice of sending Step 3 responses to individual who filed the grievance as well UPTE's systemwide President.

Article 16 – Layoff and Reduction in Time

- Remove provisions that refer to reduced severance with preference and recall rights.
- Extend provisions of severance plan.

Article 17 – Leaves for Union Business

- Modify language regarding denials of requested leave, requests for reductions in time and applicability of general provisions.

Article 18 – Leaves of Absence

- Clarify language regarding requirement to exhaust all vacation accruals prior to commencement of disability payments.
- Clarify language regarding use of CFRA/FMLA following pregnancy disability leave.
- Update language regarding definition of health care provider in accordance with FMLA.
- Update language regarding changes to FMLA for caregiver of an injured member of the armed services.

Article 28 – Payroll Deductions

- Increase administrative fees for processing and payment of dues and fees deductions.

Article 30 – Personnel Files

- Remove limitation for period of disciplinary actions to remain in personnel files for particular types of offenses.

Article 33 – Reasonable Accommodation

- Update language to accurately reflect the University's legal obligations in cases of reasonable accommodation.

Article 34 – Release Time for Bargaining

- Add language requiring UPTE reimbursement of paid release time for its bargaining team members once the contract has expired.

Article 41 – Transfer/Promotion/Reclassification

- RX contract only - clarify process for review of SRA Is.

Article 45 – Work-Incurred Injury or Illness

- Clarify Extended Sick Leave (ESL) provisions to limit take home pay to no more than 100% of original pay plus shift differentials.

Appendices and Side Letters

- Incorporate LBNL side letters and appendices into the related article(s).
- Incorporate provisions for UCSC Principal Telescope Technicians into the related article(s).
- Correct errors in On-Call Rates shown in printed Appendices (i.e. UCSF 9602 should be 25% and shows as 0.25.)
- Remove/update other appendices/side letters as appropriate.

The University does not have any initial proposed changes in the following articles and therefore proposes that these articles remain as current contract language:

Article 3 – Arbitration Procedure

Article 7 – Corrective Action, Discipline and Dismissal

Article 8 – Development and Training

Article 11 – Health and Safety

Article 12 – Holidays

Article 13 – Hours of Work

Mr. Rooney, UPTE
February 11, 2008
Page 3 of 3

Article 14 – Indemnification
Article 15 – Labor Management Meetings
Article 19 – Management Rights
Article 20 – Medical Separation
Article 21 – Military Leaves
Article 22 – Moving Expenses
Article 23 – Multiple Appointments
Article 24 – No Strikes
Article 25 – Nondiscrimination in Employment
Article 26 – Out-of-Classification Assignments
Article 27 – Parking
Article 29 – Performance Evaluation
Article 31 – Positions
Article 32 – Probationary Period
Article 35 – Resignation/Job Abandonment
Article 36 – Respectful and Fair Treatment
Article 37 – Severability
Article 38 – Shift Differential
Article 39 – Sick Leave
Article 40 – Subcontracting
Article 42 - Travel Reimbursement
Article 43- Vacation
Article 44 – Waiver
Article 46 – Work Rules
Article 47 – Uniforms (TX Unit Only)

In addition to the changes outlined above, the University reserves its right to make additional proposals during the normal course of bargaining in response to proposals made by UPTE or in response to changed circumstances.

Should you wish to further discuss the above or other matters please do not hesitate to give me a call.

Sincerely,

A handwritten signature in black ink that reads "S. Nielsen". The signature is written in a cursive, flowing style.

Shelley L. Nielsen
Assistant Director - Labor Relations

cc: UPTE President Kalmijn
University Labor Relations Consultant Buenconsejo
UC Bargaining Team