



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](http://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  PUBLIC<sup>1</sup>

a. Full name: Santa Cruz Faculty Association  
b. Mailing address: 1330 Broadway, Suite 1450 / Oakland, California  
c. Telephone number: (510) 272-0169  
d. Name, title and telephone number of person filing charge: Arthur Krantz, Esq. (510) 272-0169  
e. Bargaining unit(s) involved: Santa Cruz Senate Faculty

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) 987-9726  
d. Name, title and telephone number of agent to contact

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:

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

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

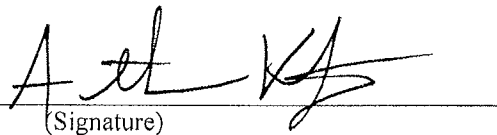
- a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)
- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
  - Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
  - Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
  - Meyers-Milius-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 (a) (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 November 2, 2009 (Date)

at Oakland, California (City and State)

Arthur Krantz (Type or Print Name)

 (Signature)

Title, if any: Attorney at Law

Mailing address: 1330 Broadway, Suite 1450 / Oakland, CA. 94612

Telephone Number: (510) 272- 0169

## ATTACHMENT TO UNFAIR PRACTICE CHARGE

### I. Introduction

Charging Party Santa Cruz Faculty Association (“SCFA” or “the Association”), the exclusive representative of Senate faculty members at the University of California, Santa Cruz (“UC Santa Cruz”), brings this charge against the University for failing to meet and confer in good faith in violation of Government Code § 3571(c).

Specifically, UC Santa Cruz has failed and refused to bargain concerning a number of interrelated campus-specific aspects of the Regents’ Furlough/Salary Reduction Plan – mainly, (i) the determination of which work days are eligible for use as furlough days and (ii) what workload mitigation may be implemented to avoid making the furlough a mere pay cut. UC Santa Cruz claims that it need not bargain about these issues, and indeed that UC Santa Cruz was warranted in unilaterally implementing terms and conditions of employment regarding such issues without meeting and conferring, on the supposed ground that the terms and conditions of employment were set by the Regents on a system-wide basis, and are therefore outside of the scope of bargaining for the Association and UC Santa Cruz. *See* Government Code §3579(e) (“...the only appropriate representation units including members of the academic senate of UC Santa Cruz of California shall be either a single statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate. In addition to the limitations of subdivision (q) of Section 3562, the scope of representation of any divisional unit shall be limited to those matters which have customarily been determined on a division basis, but the employer shall consult with the exclusive representative of a division on matters which would be within the scope of representation or consultation of a statewide representative.”) (Emphasis supplied).

The Association acknowledges the above-referenced HEERA language, and for that reason never claimed the full right to bargain over every single aspect of the furlough plan (a right that other unions at UC enjoy) – the Association has not asked to bargain, for instance, over whether to have furloughs in the first place, and if so how many. Rather, the Association only sought to meet and confer about those issues over which UC Santa Cruz has discretion.

UC Santa Cruz is simply not correct in asserting that it has no such discretion over the issues of (i) workload mitigation and (ii) when furlough days are taken. As discussed further below, UC Santa Cruz "customarily" has discretion over those issues within the meaning of HEERA, Section 3579(e), and, moreover, the Regents’ Furlough/Salary Reduction Plan specifically granted campuses or “divisions” such as UC Santa Cruz flexibility to determine such issues. UC Santa Cruz has nevertheless refused to bargain over these matters, in blatant disregard of HEERA.

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## II. Detailed Statement of Charge

### A. The Regents' Furlough/Salary Reduction Plan Grants Significant Discretion to Campuses Regarding the Scheduling of Furlough Days

On July 16, 2009, the Regents of the University of California adopted a Furlough/Salary Reduction Plan, a true and correct copy of which is attached hereto as Exhibit 1. Repeatedly, throughout the plan, the Regents grant to each "division" or campus substantial flexibility, including flexibility regarding the matter of selecting on which specific days employees will take their furloughs as well as related questions concerning campus closures on particular days. These are the type of matters that have always been determined at the campus level. The following excerpts from the Plan easily demonstrate this campus-by-campus flexibility:

- "Flexibility on the use of furloughs is incorporated into the Plan to minimize disruption of essential services and work on campuses, the medical centers and the Office of the President." (Exhibit 1, First page, Section II, final bullet point).<sup>1</sup>
- ***"Included Employees will have their work time reduced by a specified number of furlough days to be taken throughout the Plan term as discretionary days off and/or during closure days, if any, as determined by the campus or location."*** (Exhibit 1, third page, Section VI, first paragraph) (emphasis supplied).
- "Some of the furlough days may be taken under a formal closure of a campus or Office of the President. Other days may be taken as floating days, subject to the individual's work schedule and supervisor's approval." (Exhibit 1, 6<sup>th</sup> page, 2<sup>nd</sup> paragraph).
- "By way of example, an Included Employee (and staff) is given 18 furlough days. . . . Some of these 18 days may be used during formally scheduled furlough days that will be directed by a campus or the Office of the President throughout the year. (Exhibit 1, 6<sup>th</sup> page, 3rd paragraph).

Indeed, in highlighting the flexibility given to campuses, the Plan also notes that such matters may be the subject of collective bargaining, which could require delay in implementation of the Plan, and perhaps a corresponding change to the end date of the Plan as well. *See* Exhibit 1, 2<sup>nd</sup> page, lines 1-4 ("By way of example, if, for reasons of collective bargaining or otherwise, an employee does not commence participation until November of 2009, the Plan would remain in effect for that employee for 12 consecutive months, through October 2010.").

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<sup>1</sup> Notably, the reference to the Office of the President is clearly intended to denote the fact that the Office of the President has its own employees for which it is responsible, *not* that the Office of the President may override campus flexibility on these local issues.

B. Despite the Regents' Specific Grant of Discretion to the Campuses, UC Santa Cruz Has Refused to Meet and Confer with the Association regarding Multiple Aspects of Furlough Scheduling and Workload Mitigation, Claiming That The Campuses Are Without Discretion on Those Issues

By letter dated July 31, 2009, two weeks following the Regents' adoption of the Furlough/Salary Reduction Plan, the Association demanded to receive notice and the opportunity to meet and confer over all bargainable aspects of implementation of the Plan. (See Exhibit 2). In its letter, the Association specifically noted that the Regents' action permits significant discretion at the campus level.

UC Santa Cruz responded by letter dated August 6, 2009 (Exhibit 3), and in that letter campus administration agreed with the Association regarding the flexibility that campuses enjoy. UC Santa Cruz also submitted, with its letter, its initial proposal. Nowhere in the letter did UC Santa Cruz ever claim that scheduling of furlough days or other workload mitigation measures were outside of the scope of bargaining -- UC Santa Cruz obviously could not make such an argument given the above-quoted clear and explicit language in the Regents' Plan as well as the customary discretion that campuses enjoy in such matters.

The Association responded by letter dated August 10, 2009 (Exhibit 4), and in that letter the Association presented its initial proposal.

Up until this point, bargaining had followed a fairly traditional course. That changed very suddenly on August 28, 2009. In a letter of that date (Exhibit 5), and in discussions between UC Santa Cruz and the Association which followed, UC Santa Cruz presented a new and egregiously illegal position. Specifically, UC Santa Cruz suddenly asserted that: (i) the issue of when furlough days may or should be taken, as well as the issue of workload mitigation necessary to make the furloughs anything other than a pure pay cut, were now outside the scope of bargaining, as a result of a memo from Provost Pitts declaring that faculty furlough days should not occur on instructional days (Exhibit 6); (ii) UC Santa Cruz had therefore changed its position and was now asserting that furloughs could be taken on days of the faculty's choosing, other than on instructional days; (iii) UC Santa Cruz was unilaterally implementing this proposal, even in the absence of agreement with the Association or anything even remotely resembling an impasse (the parties were just preparing for their initial substantive meeting at that point); and (iv) UC Santa Cruz requested to postpone any further bargaining for six or eight weeks.

Thus, in one fell swoop, UC Santa Cruz took unilateral action and destroyed a nascent meet and confer process on a clearly bargainable set of issues which the Regents had specifically set aside for each campus to decide and which are customarily left to the campuses. Although the parties have continued to meet, and further exchanged letters outlining their disagreement over the scope of bargaining (Exhibits 7-8), UC Santa Cruz's sudden unilateral implementation of its own proposal on scheduling of furlough days and

workload mitigation, and UC Santa Cruz's refusal to meet and confer about these subjects, has rendered bargaining a sham.

The problems with UC Santa Cruz's position are significant:

First, UC Santa Cruz's argument about the scope of bargaining, as set forth in Exhibit 8, drastically overreads the memo from Provost Pitts. Nothing in that memo purports to change the Regents' clear and unequivocal grant of discretion to the campuses, nor would Provost Pitts have had authority to change a Regents Policy. Indeed, even had there been an attempt to change the Regents' Policy (which there never was), and even had that attempt been made by the President himself, the University's General Counsel has fully acknowledged that the President would of course have to provide notice of any policy or procedure being suspended. (See Exhibit 9, second page). Here, there was no such notice, and, indeed, no one even purported to change the Regents' clear grant of discretion to the campuses.

Second, even if Provost Pitts' memo somehow could be read as intending to alter the Regents' grant of discretion to the campuses, and even assuming for the sake of argument that he could possibly have such powers, nothing in this memo even remotely purports to override HEERA, nor, of course, could Provost Pitts override HEERA. Thus, where bargaining had already begun based upon a clear grant of authority to UC Santa Cruz by the Regents, Provost Pitts and UC Santa Cruz cannot presume to unilaterally end such bargaining by suddenly taking a matter that all parties have acknowledged is a local matter and turning it into a systemwide matter. Indeed, under this reading of HEERA, anytime UC Santa Cruz wishes to abandon bargaining with the Association over any issue, it could simply conspire with a systemwide authority figure to obtain a new systemwide limitation on discretion pertaining to the particular issue and then claim that such a limitation overrides local bargaining.

HEERA is not nearly so brittle. Indeed, Section 3579(e) does not grant to the UC administration the power to decide, on each issue, whether a matter is bargainable by assigning it to either systemwide discretion or local discretion. Rather, Section 3579(e) indicates that a term and condition of employment is within the scope of bargaining if it has "customarily been determined on a division basis." Here, there is simply no question that issues of campus closures, faculty workload, faculty schedules, faculty use of days off, and all such related subjects have customarily been determined by the Santa Cruz administration. Thus, to the extent that UC Santa Cruz attempts to use Provost Pitts' memo as a means of retracting furlough day scheduling from bargaining, that violates HEERA, as HEERA looks at what has been customarily within the powers of the campus administration rather than looking at whether there is a particular memo purporting to remove a particular matter in one instance.

Third, even assuming solely for the sake of argument that this one isolated issue (use of furlough days on instructional days) was outside of the scope of bargaining, that still would not privilege UC Santa Cruz to do what it did here -- unilaterally implement its proposal regarding scheduling of furlough days and thereby unilaterally change

employees' pay, hours, days of work and other related terms and conditions of employment, all without reaching agreement or impasse. In other words, use of furloughs on instructional days was only one of the matters at issue in the meet and confer process, and even assuming for the sake of argument that it could suddenly be removed from bargaining in the midst of bargaining, this would not permit unilateral action on the entire proposal.

Each of the above points is well illustrated by the facts that have played themselves out on the Berkeley campus, where Senate faculty are not exclusively represented by a union. There, in the wake of the Regents' Furlough/Salary Reduction Plan and just prior to the beginning of the semester, UC Berkeley trimmed three class meetings days off of the Senate faculty's workload by designating certain instructional days as a reading period. Not coincidentally, this change is very similar to the one that the Association has proposed in bargaining at Santa Cruz. UC Santa Cruz claims that the Association's proposal is permissible because of the Pitts memo (and therefore is not bargainable), yet Berkeley was permitted to make a similar change, notwithstanding the Pitts memo. At Berkeley, the change was not designated specifically as being related to furloughs, thereby demonstrating how, even assuming that the University could unilaterally declare, without bargaining, that furloughs on instructional days is a systemwide rather than campus decision (despite the Regents' Plan and despite the history of leaving such matters to campuses), there remain significant bargainable subjects. Most importantly, there remains the crucial issue of mitigating Senate faculty members' workload, via designating certain instructional days as a reading period or by other means.

Thus, even if PERB were ultimately to accept the administration's view that the Pitts memo removed from bargaining the issue of furloughs on instructional days (even though such an issue is customarily, and under the Regents' explicit Plan, left to the campuses), there are still other bargainable issues (such as other types of locally permitted workload mitigation) that required the administration to continue bargaining with the Association and to refrain from unilateral implementation absent agreement or impasse. There can be no serious dispute that the administration failed to comply with that duty here.

### **III. Remedy**

The Association requests the following remedies:

- (1) That UC Santa Cruz be directed to rescind its unilateral implementation of bargainable decisions regarding furloughs;
- (2) That UC Santa Cruz be directed to meet and confer in good faith;
- (3) Make whole all affected Senate Faculty members, and refrain from any discipline, retaliation or negative unilateral change with respect to such faculty;
- (4) That UC Santa Cruz be directed to post an appropriate notice; and
- (5) Such other relief as may be appropriate.

**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 Leonard Carder, LLC  
1330 Broadway, Suite 1450, Oakland, California 94612.

On November 2, 2009, I served the Foregoing  
(Date) (describe document(s))

Unfair Practice Charge

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;

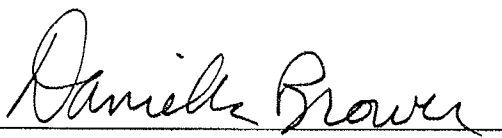
personal delivery;

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

Jeff Blair  
Regents of the University of California  
1111 Franklin Street  
8th Floor  
Oakland, CA. 94607

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 2, 2009, at Oakland, California.

Daniella Brower  
(Type or print name)

  
(Signature)



# Exhibit 1

## ATTACHMENT 3

### Furlough/Salary Reduction Plan July 16, 2009

#### I. Introduction

This Furlough/Salary Reduction Plan (Plan) is submitted to the Regents pursuant to Standing Order 100.4(qq), to be added by amendment at the July 2009, Regents meeting. The Plan has been prepared under the procedures set forth in the Furlough/Salary Reduction Guidelines, a Presidential Policy to be implemented by the President following adoption of the Standing Order amendment. While the current Plan was prepared before the Guidelines had been formally adopted as policy, the University followed the draft Guidelines -- which are in substance the same as the Guidelines that have now been adopted -- as closely as possible under the circumstances in formulating the Plan.

#### II. Plan Goals and Principles

- The overall goal is to achieve payroll savings from General Funds of approximately \$184.1 million over the Plan period. (Total savings from all fund sources is projected to be \$515.5 million.)
- The Plan incorporates graduated furlough/salary reduction levels ranging from 4 percent to 10 percent so that higher compensated employees bear a relatively larger percentage of a reduction.
- The Plan protects employee retirement benefits (i.e., UCRP service credit and covered compensation) similar to the voluntary Staff and Academic Reduction in Time (START) Program (a voluntary reduction in time program).
- The Plan applies to as many UC employees as is legally permissible and operationally feasible.
- Flexibility on the use of furloughs is incorporated into the Plan to minimize disruption of essential services and work on campuses, the medical centers and the Office of the President.

#### III. Applicable Term

The Plan term is one year (12 consecutive months) for each Included Employees (defined below). In order to reprogram University payroll systems, the general Plan term will commence on September 1, 2009, and will run for 12 consecutive months thereafter. However, for equity and fairness as it is expected that every Included Employee will participate in the Plan for 12 consecutive months commencing from the first month the Plan is implemented as to that employee, some Included Employees will continue to participate whether or not the Emergency

Declaration period has been extended. By way of example, if, for reasons of collective bargaining or otherwise, an employee does not commence participation until November of 2009, the Plan would remain in effect for that employee for 12 consecutive months, through October of 2010, whether or not the Regents has renewed the Declaration of Extreme Financial Emergency.

#### **IV. Included/Excluded Employees**

The following employees are exempted from the Plan:

- Employees at the Lawrence Berkeley National Laboratory (LBNL) to the extent their compensation is funded pursuant to a contract with the U.S. Department of Energy, including Work for Others authorized by the Department of Energy, as the Department of Energy declined to approve an amendment to the Contract;
- Academic and staff employees whose Included Compensation as defined in the Plan is 100 percent funded from federal, state, other government or private contracts, grants or cooperative agreements, because salary savings from these employees must remain within the contract, grant or cooperative agreement, and thus cannot contribute to increasing campus general fund resources. (Academic and staff employees whose salaries are partially funded from federal, state, other government or private contracts, grants or cooperative agreements are included. However, the campuses, working with the Office of the President, will determine by October 15, 2009, whether the University's payroll systems and processes required to support the Plan can be modified such that, as to those employees, contract/grant funded salary can be prospectively excluded.)
- Student Employees, including postdoctoral, graduate and undergraduate employees, health sciences trainees and postdoctoral fellows, except where covered by collective bargaining agreement in recognition that their salaries help support their education and training;
- Foreign national employees working pursuant to H-type Visas in recognition that operational and administrative issues outweigh the small salary reduction savings for this group;
- Employees currently enrolled in the Staff and Academic Reduction in Time (START) Program (a voluntary reduction in time program) to the extent their voluntary reduction is maintained at a level equaling or exceeding the percent reduction for their respective pay band as set forth in Table 1;
- Employees whose participation is precluded by law. (Employees with contracts that cannot be changed unilaterally by the University will be asked for a voluntary salary reduction appropriate for their pay band.)

The Plan includes all other full and part-time University of California employees, including, but not limited to:

1. Non-Represented Staff;
2. Represented Staff (subject to obligations under the Higher Education Employer-Employee Relations Act);
3. Academic Senate Faculty;
4. Non-Senate Faculty;
5. Non-Senate Academics;
6. Members of the Health Sciences Compensation Plan Faculty;

With respect to represented staff, existing rights under law or contract will be used to implement the Plan. Where bargaining is required, the University will bargain in good faith so as to avoid implementing layoffs of employees to the greatest extent possible.

#### **V. Included Compensation Under the Plan**

Included Compensation subject to the Plan includes base pay, similar forms of regular pay and stipends, except as otherwise exempted, whether that income is derived from state funds, student fees, contracts, grants, cooperative agreements, auxiliary enterprises or other fund sources.

For Health Science Compensation Plan Faculty, their UCRP covered compensation -- X and X prime, but not the negotiated Y and Z -- will be reduced by the amount specified in Table 2(B), below.

#### **VI. Plan Features**

Included Employees will have their work time reduced by a specified number of furlough days to be taken throughout the Plan term as discretionary days off and/or during closure days, if any, as determined by their campus or location. The reductions will be calculated at the commencement of the Plan term and taken as a percent of salary such that Included Employees' pay will be reduced by the same percentage for each pay period during the Plan term.

In order to reprogram University payroll systems, the general Plan term will commence on September 1, 2009, and will run for 12 consecutive months thereafter. At the conclusion of the Plan term, all Included Employees' compensation will revert to its prior level.

The Plan is graduated such that the higher the Included Compensation of the employee, the greater the percentage of participation. Table 1 shows the participation level and effective salary reduction for all Included Employees except faculty. Tables 2(A) and 2(B) show the participation level and effective salary reduction for faculty.

**TABLE 1\***  
**Staff**

Salary Band	Compensation	Furlough -- Days Off	Total Equivalent Salary Reduction (Approximate)
1	<= \$40,000	11	4%
2	\$40,001-\$46,000	13	5%
3	\$46,001-\$60,000	16	6%
4	\$60,001-\$90,000	18	7%
5	\$90,001-\$180,000	21	8%
6	\$180,001-\$240,00	24	9%
7	>\$240,000	26	10%

\*All Senior Management Group (SMG) members will be provided only ten 10 furlough days regardless of their respective salary reduction level.

**TABLE 2(A)**  
**Academic Year Faculty**

Salary Band	Compensation	Furlough -- Days Off	Total Equivalent Salary Reduction (Approximate)
1	< = \$40,000	7	4%
2	\$40,001-\$46,000	9	5%
3	\$46,001-	10	6%

	\$60,000		
4	\$60,001- \$90,000	12	7%
5	\$90,001- \$180,000	14	8%
6	\$180,001- \$240,00	15	9%
7	>\$240,000	17	10%

**TABLE 2(B)**  
**Fiscal Year Faculty**

Salary Band	Compensation	Furlough -- Days Off	Total Equivalent Salary Reduction (Approximate)
1	<= \$40,000	10	4%
2	\$40,001- \$46,000	12	5%
3	\$46,001- \$60,000	14	6%
4	\$60,001- \$90,000	16	7%
5	\$90,001- \$180,000	19	8%
6	\$180,001- \$240,00	22	9%
7	>\$240,000	24	10%

**VII. Plan Implementation**

The Plan is created to achieve the greatest possible payroll savings while allowing necessary flexibility for the work force to minimize disruption of essential services and work throughout the Plan term. This is achieved through calculating the reduction at the commencement of the

Plan term, effectively as a percent pay reduction thus allowing Included Employees to be paid evenly through their pay periods throughout the Plan term. Included Employee pay will be reduced for the covered 12 month period per column 4 of Tables 1, 2(A) and 2(B).

The corresponding reduction in time (furlough days) will be reflected as time off days (column 3 of Tables 1, 2(A) and 2(B)). Some of the furlough days may be taken under a formal closure of a campus or Office of the President. Other days may be taken as floating days, subject to the individual's work schedule and supervisor's approval.

By way of example, an Included Employee (staff) is given 18 furlough days reflecting a seven percent salary reduction for the Plan term. Some of these 18 days may be used during formally scheduled furlough days that will be directed by a campus or the Office of the President throughout the year. The remaining days can be used at the employee's discretion as floating days off of work, subject to supervisor approval.

In order to ensure that essential services are not disrupted at the medical centers, the President may consider alternate plans from some or all of the medical centers for achieving the same level of savings. Senior Vice President Stobo will work closely with Medical Center Chief Executive Officers to ensure that the medical centers fully participate either through the Plan terms or through an alternate savings structure that may be determined to be less disruptive to clinical care.

#### **VIII. Employees Participating in the START Program**

In May of 2008, to achieve salary savings, the Regents approved a voluntary staff reduction program, known as Staff and Academic Reduction in Time (START) Program, a temporary voluntary time reduction personnel program effective from July 1, 2008, through June 30, 2010. Subject to individual departmental approval to participate, all full-and part-time non-probationary career ("regular status") staff employees and academic appointees, except those in faculty and student academic titles and Postdoctoral Scholars, are eligible to volunteer to reduce their time. Participation in the START Program for represented employees is dependent upon agreement by the applicable union.

Employees who have elected voluntary reductions in time under the START program will only be affected if their percentage of time under START is less than the reduction required for their respective salary bands set forth in Tables 1 and 2(A) and (B). For example, if an employee in START currently has a five percent reduction in time, but is required to take a seven percent reduction under this Plan, the employee will receive an additional two percent reduction under the Plan.

Employees who voluntarily terminate START before the expiration of the Plan term will have their salary reduced under their respective salary band for the remainder of the Plan term following such termination. If START is not extended beyond its current termination date of June 30 2010, START participants will continue to have salaries and time reduced per their relevant pay band from July 1, 2010 through the Plan term.

## **IX. Protection of Employee UCRP Retirement Benefits**

For UCRP members impacted by a reduction in their rate of pay, the covered compensation used to calculate UCRP benefits, HAPC and Final Salary, may be negatively impacted. It is proposed to maintain members' pre-furlough/salary reduction rate of covered compensation so that their UCRP benefits are not negatively impacted by the furlough/salary reduction plan.

To protect a UCRP member's benefits from being negatively impacted from a loss of service credit, it is proposed to preserve the members' service credit accrual rate at the pre-furlough/salary reduction level. The proposed amendment to maintain the UCRP service credit accrual rate is similar to the UCRP amendment approved by the Regents for the voluntary START program. Similarly, for CalPERS members impacted by the State of California furlough program, a member's CalPERS benefit is not reduced by the reduction in time worked and the resulting reduction in pay.

While restoring members' UCRP benefits due to the impact of the Plan does not result in increasing benefits above what would otherwise have been expected, there are actuarial savings that would be foregone. The Regents' Consulting Actuary, The Segal Company (Segal), has evaluated the impact of the Plan on UCRP by estimating the actuarial impact that would occur if member's benefits are not restored. This "actuarial experience gain" is expressed as amount of Present Value of Benefits (PVB), which represents the discounted value as of a given date of the projected benefits expected to be paid over all future years. Segal has determined that if member's UCRP benefits are not restored, then the estimated effect on UCRP of the Plan occurring from September 1, 2009, through August 31, 2010, would be an actuarial experience gain that would reduce UCRP's PVB by an estimated \$100 million (0.2% of UCRP PVB).

Segal also determined that an estimated \$10 million less in UCRP employer and member contributions would be made from April 15, 2010 through August 31, 2010 as a result of the Plan. Those University employees who took a reduction in pay effective July 1, 2009 would be included in the proposal to maintain their rate of covered compensation so that their UCRP benefits are not negatively impacted.

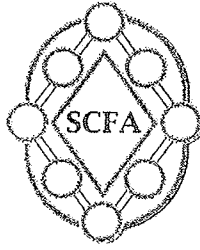
## **X. Delegated Authority to Modify the Plan as Appropriate**

Given the breadth and scope of this Plan and the very short time for its planning and implementation, it is recognized that issues may arise -- legal, operational, or otherwise -- that may require alterations or changes to the Plan during the Plan term. The President proposes that the Regents expressly delegate authority to the President to make Plan alterations and changes, consistent with the Plan principles (Attachment 3(II)), as may be required for its implementation, during the Plan period.



# Exhibit 2

Santa Cruz Faculty Association /  
American Association of  
University Professors  
SCFA/AAUP 343 Soquel  
Ave #333 Santa Cruz, CA  
95062



AAUP/SCFA 15 Shattuck Avenue Berkeley, CA 94704  
[scfa@aaup.org](mailto:scfa@aaup.org)

July 31, 2009  
EVC and Campus Provost David Kliger  
University of California, Santa Cruz  
1156 High Street  
Santa Cruz, CA 95064

Dear Dave,

Thank you for offering faculty the opportunity to discuss campus implementation of the “extreme financial emergency” declared by the Regents on July 16. We welcome the informational session to be held on July 31, and urge you to make full use of the process of shared governance to consult with the Senate. Under HEERA, SCFA also has “the right to consult and be consulted” on such matters, whether bargainable or not, and you have the right to consult with SCFA. 356s(q)(4). We are always ready and willing to be consulted, now more than ever.

SCFA also writes to remind you that, at UCSC, such consultation is not the last step before implementing a proposed change in the terms and conditions of employment for Senate faculty. Any such proposal must, next, be submitted for bargaining with SCFA--the UCSC faculty's exclusive representative, and cannot be implemented until the HEERA-mandated bargaining process is done.

SCFA does not yet know which particular acts you take under the “extreme financial emergency” will be subject to bargaining. The Regents’ action on July 16 gives President Yudof wide discretion to allow variance among and within campuses. Depending on what he does, you may thus end up with a choice about which campus implementation model to follow, and about whether to act uniformly or flexibly within this campus. You will almost certainly have authority to grant exceptions. All of these local choices must be proposed in advance to SCFA, and would be bargainable insofar as they affect the terms and conditions of employment for UCSC Academic Senate Faculty. The Regents’ action of July 16

explicitly recognizes that all legal rights under HEERA will remain in effect during the “emergency.”

By means of this letter, SCFA asserts its right to be notified of each and every policy choice UCSC has been given, or will be given, with respect to implementing the Regents declaration of “extreme financial emergency”—and also to be notified of each and every exception and variance to be granted under such policies.

We respectfully request that you affirm in writing SCFA’s right to bargain over any such matters that fall within the scope of representation, and to be notified more broadly of all policies and waivers pertaining to the “extreme financial emergency,” whether or not you deem these to be bargainable. Please respond to me, Shelly Errington, at SCFA/AAUP, and to the President of the Council of the University of California Faculty Associations, Robert Meister (CUCFA/AAUP). Please use the AAUP address on our letterhead for this correspondence: AAUP/SCFA or AAUP/CUCFA 15 Shattuck Avenue Berkeley, CA 94704.

Cordially,

Shelly Errington  
Chair of the Executive Board  
Santa Cruz Faculty Association/AAUP

Cc: UCSC Labor Relations  
Cc: UCSC Academic Senate Chair

# Exhibit 3



EMPLOYEE AND LABOR RELATIONS

SANTA CRUZ, CALIFORNIA 95064

August 6, 2009

Shelly Errington, Chair  
Santa Cruz Faculty Association/AAUP  
15 Shattuck Square, Suite 200  
Berkeley, CA 94704

Re: Consultation

Dear Professor Errington,

Your July 31, 2009 letter to Campus Provost/EVC David Kliger was forwarded to the Labor Relations Office for response. The University acknowledges the consultation rights and obligations provided for in the HEERA. On June 18, 2009, the UC Office of the President sent notice of President Mark Yudof's Furlough/Salary Reduction Plan to you (Santa Cruz Faculty Association), Robert Meister (Council of UC Faculty Associations), and to Craig Flanery (American Association of University Professors). The final proposal was sent via email on July 10, 2009, with a link to Regents items J-1, Amendment of Standing Order 100.4 – Duties of the President, and J-2, Recommendation for Declaration of Financial Emergency and Approval of Budget Reduction Actions. As you know, the Regents approved these items on July 16.

Faculty and staff covered by the Furlough/Salary Reduction Plan will have their salaries reduced by the proposed graduated percentages for their respective pay bands and will be provided a specified number of furlough days over the term of the Plan. Campuses and University locations have been provided flexibility to determine whether all or some of the furlough days will be designated closure days. At this time, campus administration is engaged in discussion regarding implementation of furlough days at Santa Cruz. Enclosed is a proposed plan that will go out to the campus for comment. Please let me know no later than September 21, 2009 if the Association wishes to consult or confer over this plan. Also, please clarify your request to receive notification of "...each and every exception and variance to be granted..."

As always, please feel free to contact me at (831) 459-2980.

Sincerely,

Suzanne Purcell  
Labor Relations Manager

cc: Campus Provost/EVC David Kliger  
Assistant Vice Chancellor Pamela Peterson  
Robert Meister, CUCFA/AAUP

DATE

FROM: Assistant Vice Chancellor Willeen McQuitta, Staff Human Resources  
Assistant Vice Chancellor Pamela Peterson, Academic Personnel

TO: UC Santa Cruz Senate Faculty and Non-Represented Academic and Staff Employees

RE: Proposed Campus Furlough Dates

As you are aware, the University of California Board of Regents approved a one-year furlough/salary reduction plan that will be effective September 1, 2009. Under this plan, affected employees will see a salary reduction of between four and ten percent, coupled with the accrual of a specific number of paid furlough days. Detailed information on the plan is available at <http://www.universityofcalifornia.edu/budget/?p=658>. For employees who are exclusively represented, the University furlough/salary reduction plan is subject to collective bargaining.

For some years the campus has closed for several days between Christmas and New Years in order to save utility costs. For the 2009-10 academic year, campus leadership is proposing to increase the number of closure days in order to minimize the impact of furlough days on campus operations and employee workload and to maximize other cost savings where possible. It is our goal to designate a maximum of ten working days as campus closure days in winter and spring.

While none of the closure days proposed include currently scheduled days of instruction, the campus is considering the elimination of some days of instruction that faculty may use as furlough days. We are awaiting approval from the Office of the President regarding whether faculty can take furloughs on days of instruction.

The dates proposed for campus closure are:

**Winter Campus Closure - December 19, 2009 through January 3, 2010**

- Creates a full two-week winter closure.
- December 24, 25, 31, and January 1 are paid university holidays for eligible employees.
- Six days, (December 21, 22, 23, 28, 29 and 30) are not paid holidays.

**Spring Campus Closure - March 22 through March 26, 2010**

- Creates a full one-week spring closure.
- March 26, 2010 is a paid university holiday for eligible employees.
- Four days (March 22, 23, 24, and 25) are not paid holidays.

In all, the campus would be closed for 15 weekdays of which five days are scheduled holidays and ten days are campus closure days.

On the ten campus closure dates, employees who are included in the furlough/salary reduction plan are required to use their furlough days during the campus closure. Employees who are not included in the furlough/salary reduction plan will be required to use vacation days, accrued compensatory time off, or leave without pay. Employees without sufficient accumulated furlough or vacation days will be allowed to use a certain number of days in advance of their actual accrual as specified in University personnel policies. Employees normally required to wait six months before using accrued vacation will be allowed to use vacation even if the required waiting period hasn't been completed.

Units needing to maintain normal operations during the campus closure would be allowed under established "Exceptions to Campus Closure" procedures. Due to the diverse responsibilities of academic appointees and the flexibility in performing their obligations, it is anticipated that some academic appointees will need to continue working during campus closure. Fiscal-year appointees will be expected to use vacation or furlough days, if the closure precludes their working.

For employees who will accrue greater than ten furlough days, use of the remaining furlough days would be granted by their supervisors in accordance with each unit's operational needs.

If you wish to comment on this proposal, please do so by sending an email message by Friday, August 14, 2009 to:

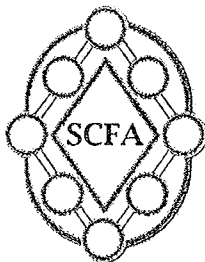
Academic employees: [tbench@ucsc.edu](mailto:tbench@ucsc.edu)

Staff employees: [SHRadmin@ucsc.edu](mailto:SHRadmin@ucsc.edu)

Note: Senate Faculty may also submit comments to the Santa Cruz Faculty Association.

# Exhibit 4





Santa Cruz Faculty Association / American Association of University Professors  
*SCFA/AAUP*      *343 Soquel Ave #333*      *Santa Cruz, CA 95062*  
*<http://www.sc-fa.org>*

Suzanne Purcell  
Labor Relations  
University of California, Santa Cruz  
1156 High Sreet  
Santa Cruz, CA 95064

August 10, 2009

Dear Ms. Purcell,

Thank you for your prompt response on August 6, 2009 to our letter of July 31, 2009, addressed to EVC/Campus Provost David Kliger.

From SCFA's perspective, your central point is that our campus "has been provided flexibility" as to how many "furlough days" will occur on what are also "designated closure days" for the campus. If there is flexibility on this point, then it is a local campus decision—and, hence within our scope of representation. SCFA therefore wishes to meet and confer on the specific issues "whether all or some" Senate faculty "furlough days" shall be taken on non-closure days and how many of these may be instructional days. Our initial counterproposal is, quite simply, the position taken by the Academic Senate Executive Committee [attached] specifying the instructional days to be considered "furlough days."

We give you this notice well in advance of your September 21, 2009 deadline so that we will have the maximum possible opportunity to consult, bargain and reach agreement before Fall classes begin. The campus proposal attached to your letter is, however, incomplete: "We are awaiting approval from the Office of the President regarding whether faculty can take furloughs on days of instruction." SCFA assumes that such a decision must be made before September 1 (when pay reductions take effect) and will then be unilaterally imposed on unrepresented faculty system-wide. UCSC's Senate faculty are, however, represented by SCFA. So for us, UCOP's (as yet unmade) decision about whether to exclude instructional days from is merely an (as yet unspecified) part of your proposal to SCFA for translating system-wide pay reductions into campus-level workload reductions.

The Regents action of July 16, 2009 clearly states that HEERA bargaining rights trump the unilateral imposition of UCOP policies on represented groups. This means that SCFA is entitled to invoke the full-range of HEERA-based protections while it bargains to implement the UCSC Academic Senate's position on when faculty furloughs should be taken.

Cordially,

Shelly Errington  
Chair of the Executive Board, SCFA/AAUP  
(Santa Cruz Faculty Association/American Association of University Professors)

Robert Meister  
President, CUCFA  
(Council of University of California Faculty Associations)

PS In response to your question, we ask to be routinely informed if/when any members of our bargaining unit are exempted from or reimbursed for pay cuts under the "Extreme Financial Emergency" in much the way that you now routinely inform us of "waivers of search" and other exceptions to campus policy.

# Exhibit 5

## Lorelei Badar

---

**From:** Ari Krantz  
**Sent:** Friday, October 30, 2009 11:44 AM  
**To:** Lorelei Badar  
**Subject:** FW: [Fwd: FW: Campus Curtailment Days]  
**Attachments:** UCOP 8 21 09.pdf

**From:** Shelly Errington [mailto:sherring@ucsc.edu]  
**Sent:** Fri 10/30/2009 10:46 AM  
**To:** Ari Krantz  
**Cc:** Bob Meister  
**Subject:** [Fwd: FW: Campus Curtailment Days]

----- Original Message -----

**Subject:**FW: Campus Curtailment Days  
**Date:**Fri, 28 Aug 2009 16:25:03 -0700  
**From:**Suzanne Purcell <[lrsp@ucsc.edu](mailto:lrsp@ucsc.edu)>  
**Reply-To:**<[lrsp@ucsc.edu](mailto:lrsp@ucsc.edu)>  
**Organization:**UCSC  
**To:**<[sherring@ucsc.edu](mailto:sherring@ucsc.edu)>, <[cflanery@aaup.org](mailto:cflanery@aaup.org)>  
**CC:**<[chandley@ucsc.edu](mailto:chandley@ucsc.edu)>, "'Corrinne A Lopez Allen'" <[calopeza@ucsc.edu](mailto:calopeza@ucsc.edu)>, <[lrsp@ucsc.edu](mailto:lrsp@ucsc.edu)>

August 28, 2009

Dear Shelly and Craig,

I am writing to provide you with an update on decisions regarding campus curtailments and furlough days.

Below is a campus announcement issued August 27 regarding the decision to effect two curtailment periods, one during winter, one during spring. Please note the change in the campus' position on mandatory use of furlough days – that is, no one is required to use their furlough days during any specified period of time, other than as required by the UCOP furlough plan (within a 12-month period).

Attached is an August 21 memo from UCOP regarding the use of furlough days on days of instruction. Pursuant to this memo, the campus does not have the flexibility to allow furlough days to be taken on days of instruction.

Finally, I wanted you to know that I will be on a leave of absence for 6-8 weeks beginning September 1. I would like to postpone bargaining until I return. If you cannot agree to a postponement, please contact Paul Chandley, Principal Labor Relations Consultant, who will serve as chief negotiator in my absence. His email address is [chandley@ucsc.edu](mailto:chandley@ucsc.edu).

Sincerely,

Suzanne Purcell  
UCSC Labor Relations Manager

**From:** Announcement [<mailto:staff@campus>] **On Behalf Of** Public Affairs  
**Sent:** Thursday, August 27, 2009 1:21 PM  
**To:** UCSC Community  
**Subject:** Campus Curtailment Days

Unit Managers: Please post a paper copy of this message in your area for people who do not have regular computer access.

August 27, 2009

To: UCSC Academic and Staff Employees  
Fr: Peggy Delaney, Interim Vice Chancellor, Planning and Budget; Tom Vani, Vice Chancellor, Business and Administrative Services  
Re: Campus Curtailment Days

Campus Provost Kliger has asked our two offices to share information about additional UCSC "curtailment days" that will be in effect this coming year as part of campuswide efforts to implement the systemwide furlough program. These curtailment days were selected after review of input submitted by members of the campus community and just-released UCOP guidelines.

In previous years, the campus has curtailed services for several days between December 24 and New Year's Day in order to save utility costs. To minimize the impact of furloughs on campus operations and employee workload and to accrue savings from other sources such as reduced utility costs, campus leadership has approved the following curtailment periods for the 2009-10 academic year:

**Winter Curtailment: December 19 - January 3**

December 24, 25, 31 and January 1 are paid university holidays  
December 21, 22, 23, 28, 29 and 30 are not paid holidays

**Spring Curtailment: March 25 - 26**

March 26 is a paid university holiday  
March 25 is not a paid holiday

During the campus curtailment periods, employees participating in the furlough plan are encouraged to use furlough days but may also use vacation, accrued compensatory time off, or leave without pay. Furlough days may be taken in advance of accrual.

Employees not included in the plan may use vacation, accrued compensatory time off, or leave without pay. Employees without sufficient accumulated vacation will be allowed to use a specified number of days prior to actual accrual as specified by University personnel policies.

Employees who would normally be required to wait six months before using accrued vacation will be allowed to use vacation even if the required waiting period has not yet been completed.

Units planning to maintain operations as usual during the curtailment periods should refer to the "Exceptions to Campus Curtailment" memo that will be forthcoming.

Remaining furlough days will need to be scheduled in accordance with each department or unit's operational needs, in the same way that vacation days are determined through discussions with supervisors. Furlough days must be planned in advance.

With regard to instruction, UCOP has issued the following statement: "Faculty furlough days will not occur on instructional days (days for which a faculty member is scheduled to give lectures, lead classes or workshops, have scheduled office hours, or have other scheduled face-to-face responsibilities for students)."

CP/EVC Kliger will continue his messages to the community upon his return next week. But he asked that this new information about campus curtailment days be shared immediately.

Please remember to regularly check the campus's Budget Update web site for the latest information:  
[http://www.ucsc.edu/budget\\_update/](http://www.ucsc.edu/budget_update/)

On behalf of CP/EVC Kliger, we thank those of you who provided feedback about the proposed Campus Curtailment/Furlough dates.

--  
Shelly Errington  
Professor of Anthropology  
University of California, Santa Cruz

cell phone: 831-212-4951  
skype name: shellyerrington

# Exhibit 6



OFFICE OF THE PROVOST AND EXECUTIVE VICE PRESIDENT --  
ACADEMIC AFFAIRS

OFFICE OF THE PRESIDENT  
1111 Franklin Street, 12<sup>th</sup> Floor  
Oakland, California 94607-5200

August 21, 2009

CHANCELLORS  
ACADEMIC COUNCIL CHAIR CROUGHAN

Colleagues:

After speaking at length with all of you and a number of other people with an interest in the issue, we have decided that faculty furlough days will not occur on instructional days (days for which a faculty member is scheduled to give lectures, lead classes or workshops, have scheduled office hours, or have other scheduled face-to-face responsibilities for students).

The furloughs that have been necessitated by the severe University underfunding by the State are causing significant problems for faculty who have restrictions on research and service as well as increased teaching workloads; employees who have fewer days to do their work and sometimes fewer colleagues to help them; administrators who have reduced staff and budgets to accomplish their complex tasks; on top of lower salaries for everyone. Students too will suffer the effects of the underfunding--larger and fewer classes, and increased fees, as were imposed for this fall instruction period, among other burdens. In such difficult times, I believe that we must do everything we can to ensure that the students continue to receive all of their instruction. Asking the faculty to carry a full teaching load during furloughs is a large request, but in my mind is justified by the University's paramount teaching mission. Research is permitted on furlough days, but for many faculty this extra research will not be remunerated unless they have grants in which there are funds that can be reallocated to pay for increased effort. And since furlough days are not "service days", they can be used for outside professional activities that may be remunerated.

We understand that the furlough plan will cause hardships for the entire University family. As such, the President and the Regents are committed to do everything possible to ensure that the plan ends after 12 months.

We will continue to work closely with faculty, students, staff and administrators to find the most efficient and thoughtful way to address the problems that will arise this year. You have my pledge that we will make the University as effective and productive as we can under the current budget problems, after which we will help you all plan for better times ahead.

Best wishes,

A handwritten signature in cursive script, appearing to read "Larry", written in black ink.

Lawrence H. Pitts  
Interim Provost and Executive Vice President  
Academic Affairs

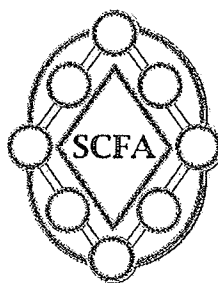


CHANCELLORS  
ACADEMIC COUNCIL CHAIR CROUGHAN  
Page 2

August 21, 2009

cc: President Yudof  
Executive Vice President Lapp  
Senior Vice President Dooley  
Vice President Lenz  
Vice Provost Greenstein  
Interim Executive Director Price

# Exhibit 7



Santa Cruz Faculty Association / American Association of University Professors  
*SCFA/AAUP*      *343 Soquel Ave #333*      *Santa Cruz, CA 95062*  
*<http://www.sc-fa.org>*

Suzanne Purcell  
UCSC Labor Relations Manager  
Paul Chandley  
Labor Relations Consultant UCSC  
1201 Schaffer Road  
Santa Cruz, CA 95060

Sept. 9, 2009

Dear Ms. Purcell and Mr. Chandley,

Thank you for your letter of 8/20 giving public notice that bargaining has commenced and for your letter of 8/28 updating the campus administration's bargaining position. On the latter, we assume that the reported "decisions" (e.g. that "no one is required to use their furlough days during any specified period of time") refer to changes in the administration's proposal and are not "decisions" to unilaterally impose these proposals on represented groups with a right to bargain. SCFA does not agree either to the specific faculty furlough dates originally proposed by the campus or to your modified proposal—if that is what you have sent us—to leave those dates unspecified provided that they occur within a 12-month period. We have proposed specific dates that would give all members of our bargaining unit workload mitigation to offset reduced pay. The specific furlough dates that we have asked the campus to grant are identical with those that our colleagues in the Academic Senate have called upon faculty to take. Our bargaining position is thus firmly grounded in their view of what is fair and appropriate, based on the campus academic calendar.

The core issue over which SCFA's asserts its bargaining rights is workload mitigation. We note that the "campus curtailment" policy announced on August 27 frankly aims to "minimize the impact of furloughs on .. employee workload." (August 27) This is a clear opening position for management to take. We have countered with a proposal that would reduce faculty workload to a degree commensurate with pay reductions, on common dates chosen by Senate bodies that have responsibility for maintaining academic quality. If the campus feels constrained by UCOP's directive that instructional days not be used for furloughs, it must say so. To bargain in good faith, it must then offer a counter-proposal that goes some way toward mitigating faculty workloads. One example of such a proposal would be the removal of certain instructional dates from the academic calendar (subject to Senate approval). With nearly zero-notice for a semester that had already begun, UCB instituted a three-day reduction in the semester's teaching days (a figure, we note, that corresponds

exactly to the Academic Council's recommendation for the number of instructional days that should be included within the furloughs). UCOP has not, apparently, complained that this violates either the letter or the spirit of its directive. So, individual campuses do seem to have flexibility to mitigate faculty workload by changing the definition of instructional dates. This is merely one of many approaches the campus could take in response to SCFA's bargaining position.

While the issue of workload mitigation remains subject to bargaining, faculty represented by SCFA cannot be counted among employees "participating in the furlough plan." (Delaney/Vani, Aug. 27) Our position is thus identical with that of other represented groups on whom pay reductions cannot be imposed until bargaining has been concluded with regard to workload mitigations. We here state our objection to the unilateral imposition of salary reductions on our bargaining unit while the issues raised above are unresolved. As long as salary reductions are deferred, we accept your proposal to delay bargaining for 6-8 weeks.

If, despite our objection, salary reductions are unilaterally imposed on members of our bargaining unit as of October 1, then we would like bargaining to be concluded before the first of our (and the Senate Executive Committee's) proposed furlough dates (November 23). That initial proposal remains on the table and is subject to bargaining until the campus formally counters it.

We look forward to presenting it, along with our core bargaining team, at the public meeting you have called for September 10.

Cordially,

Shelly Errington  
Chair of the Executive Board  
Santa Cruz Faculty Association /AAUP Chapter

Cc: Santa Cruz Executive Board  
Cc: SCFA Core Bargaining Team  
Cc: Robert Meister, President of the Council of University of California Faculty Associations  
Cc: Craig Flannery, Associate Secretary West Coast American Association of University Professors

# Exhibit 8



EMPLOYEE AND LABOR RELATIONS  
CONFIDENTIAL

SANTA CRUZ, CALIFORNIA 95064

September 24, 2009

Shelly Errington, Chair  
Santa Cruz Faculty Associate/AAUP  
15 Shattuck Square, Suite 200  
Berkeley, CA 94704

Dear Professor Errington:

Thank you for your letters of September 9 and 22, 2009, and the opportunity to meet with you Tuesday. At this time, I would like to clarify and respond to several of the issues raised in your letters and at our last meeting.

First, I disagree with your position in the letter of September 9, 2009 that, "While the issue of workload mitigation remains subject to bargaining, faculty represented by the SCFA cannot be counted among employees 'participating in the furlough plan'... [o]ur position is thus identical with that of other represented groups on whom pay reductions cannot be imposed until bargaining has been concluded with regard to workload mitigations." It is important to understand that the Salary Reduction/Furlough Plan (Plan) is a systemwide plan that is comprised of two distinguishable components: 1) prescribed salary reductions; and 2) prescribed accrual of furlough days. The allocation of furlough days constitutes the provision for workload mitigation associated with the Salary Reduction Plan. Accrued furlough days may be used by individuals on a floating basis subject to the systemwide constraints imposed by UCOP unless the campus expressly mandates their use on specific dates. The prescribed salary reductions are imposed regardless of when (or whether) furlough days are used. Additionally, the UC-wide implementation guidelines require the forfeiture of furlough days that are not used by the end of the Plan period. Further, the prescribed percentage of salary reduction is determined for each employee based on her/his Medical Contribution Band and is not predicated in any way upon the accrual and/or use of the corresponding furlough days.

The imposition of the Salary Reduction/Furlough Plan in both its parts (i.e., specific salary cuts and accrual of furlough days) is a systemwide determination and therefore, it is the Administration's position that it clearly falls outside the scope of bargaining under the provisions of HEERA, Article 6. This Article affirms that the scope of representation of any divisional unit shall be limited to those matters which have customarily been determined on a division basis (Government Code Section 3579(e)).

Consequently, all faculty represented by the SCFA, like other employee populations subject to the Plan, will have their pay reduced effective September 1, 2009 (the October 1 paycheck will reflect this reduction), and through August 31, 2010. In addition, these faculty began accruing furlough days as of September 1, 2009.

Second, I am also confirming that the Administration does indeed "feel constrained" by Interim Provost and Executive Vice President Pitts' letter of August 21, 2009. That communication unambiguously informed Chancellors and Academic Council Chair Crogan that, "[f]aculty furlough days will not occur on instructional days (days for which a faculty member is scheduled to give lectures, lead classes or workshops, have scheduled office hours, or have other scheduled face-to-face responsibilities for students)." As this is a systemwide decision, it is the Administration's position that it too falls outside the scope of bargaining under the provisions of HEERA, Article 6.

Third, in your letter of September 9, 2009, you offer as an example of a potential workload mitigation "removal of certain instructional dates from the academic calendar" with reference to a recent action at UCB regarding the configuration of their days of instruction. As implied by your acknowledgement of the need for Academic Senate action on such matters, an action comparable to the one recently taken at UCB is not subject to bargaining. The following comments will I hope clarify that the recent action at UCB is related to formal constraints on the number of days of instruction.

The academic calendar goes to the core of the University's educational mission and is not therefore, a term and condition of employment (Government Code Section 3562(q)). Pursuant to Regental Standing Order 100.4(g), the authority to fix the calendar has been delegated by The Regents to the President (and in turn his designee) with the advice of the Academic Senate. Currently the academic calendar approved on each UC campus must include a required 146 days of instruction. Consequently the number of official days of instruction in the academic calendar is not subject to bargaining.

The recent action at UCB mentioned in your letter did not involve a change in the number of days of instruction in the sense used above. It did, as you note, affect the number of "teaching days", by increasing the "Reading/Review/Recitation" between scheduled lectures and final exams. The proposal grew out of the work of a joint Academic Senate – Administration Taskforce charged in September 2008 to review a range of issues regarding the scheduling and administration of final examinations. In support of these remarks I refer to pages 10-11 of the report available at: <http://vpapf.chance.berkeley.edu/ExamFinalReport.pdf>.

I note that this Reading/Review/Recitation Period is included in UCB's fall semester instructional period; the last day of instruction remains December 11. Indeed, UCB faculty are expected to be on campus and available to students during the Reading/ Review/Recitation Period as students prepare for finals. For your convenience, the UC Berkeley Academic Calendar is attached. In addition, it has been

confirmed that UCB faculty will *not* be permitted to use furlough days during the Reading/Review/Recitation Period, consistent with EVP Pitts' directive that faculty furlough days will not occur on instructional days.

Fourth, the campus curtailment communication of August 27, 2009 from Interim Vice Chancellor Delaney, Planning and Budget, and Vice Chancellor Vani, Business and Administrative Services, does not stand as the Administration's "opening position" as you have characterized. Rather, consistent with the campus' past practice, this communication represents the customary annual announcement which informs the campus about the periods of campus closure. As in prior years, this communication also informs employees about the range of options for covering those days of campus closure, which as you know, are unpaid. This year, one of those options – along with vacation leave, etc. – is for employees to use furlough days if they so choose. The extension of campus curtailment period is intended to assist campus administrative offices in accommodating their employees' use of their accrued furlough days, but does not constitute a stipulation that a furlough day must be used on those days.

Based on the Administration's position that the Salary Reduction/Furlough Plan, the recently announced Furlough Exchange Program, and the determination that faculty cannot use furlough days on days of instruction (as that term is defined in the Pitts memo) are systemwide determinations and thus fall outside the scope of bargaining under the provisions of HEERA, Article 6, the only subjects raised in our current discussion over which the campus has discretion and are thus subject to bargaining are: 1) further stipulations on the use of furlough days for SCFA-represented faculty beyond those that follow from the constraints imposed by the Pitts memo; and 2) the method of tracking the use of furlough days by faculty in support of compliance with systemwide reporting requirements.

The Administration's position on the core issue over which the SCFA has asserted its bargaining rights is that UCSC should impose no additional constraints on the faculty's scheduling of furlough days beyond those that follow from EVP Pitts' letter of August 21, 2009. That is, a given faculty member's use of a furlough day as workload mitigation cannot occur on a day for which a faculty member is scheduled to give lectures, lead classes or workshops or have scheduled office hours or other scheduled face-to-face responsibilities for students.

Consequently, the Administration proposes that for Senate faculty (as for all other UCSC employee populations subject to the Plan), the scheduled use of all furlough days be at the employee's discretion subject to: 1) prior approval by the department chair (or dean in the case of a divisional appointee); and 2) adherence to EVP Pitts' prohibition regarding the use of furlough days on scheduled days of face-to-face instruction, i.e., where a faculty member is scheduled to give lectures, lead classes or workshops, have scheduled office hours or other scheduled face-to-face responsibilities for students. The Administration makes this proposal in recognition that Senate faculty have a great amount of discretion and flexibility in the creation, prioritization, implementation, and delivery of the triad of teaching, research, and



service. By allowing as much flexibility as possible, faculty can exercise their ability to take advantage of the use of furlough days by making decisions to adjust their own workload.

In terms of a method to track the use of furlough days by Senate faculty, the Administration proposes that Senate faculty follow current departmental procedures for approval of absences from campus. This proposal does not require the establishment of new leave reporting requirements and processes, which would cost both staff and faculty additional time and effort.

The Administration is not in a position to offer any other "offsets (in the form of workload mitigation or, perhaps future pay augmentation)" as proposed in your letter of September 22, 2009.

I trust that the above discussion has helped to clarify several of the issues raised in your letters and at our meeting of September 22, 2009. The Administration looks forward to your response to our two proposals, and to bargaining all negotiable subjects in good faith.

Very truly yours,



Paul Chandley  
Pr. Labor Relations Consultant

Attachment

cc: William A. Ladusaw, Vice Provost and Dean of Undergraduate Education  
Pamela G. Peterson, Assistant Vice Chancellor of Academic Personnel

## Planning & Analysis

### UC Berkeley Academic Calendar

[Download as vCalendar \(.vcs\) File](#)   
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Fall Semester 2009	
TeleBEARS Begins	Monday, April 13, 2009
Fee Payment Due	Saturday, August 15, 2009
FALL SEMESTER BEGINS	Thursday, August 20, 2009
Welcome Activities	Monday, August 24, 2009 -- Friday, August 28, 2009
Instruction Begins	Wednesday, August 26, 2009
Academic and Administrative Holiday	Monday, September 07, 2009
Homecoming	Friday, October 02, 2009 -- Sunday, October 04, 2009
Academic and Administrative Holiday	Wednesday, November 11, 2009
Academic and Administrative Holiday	Thursday, November 26, 2009 -- Friday, November 27, 2009
Formal Classes End	Friday, December 04, 2009
Reading/Review/Recreation Period	Monday, December 07, 2009 -- Friday, December 11, 2009
Last Day of Instruction	Friday, December 11, 2009
Final Examinations	Saturday, December 12, 2009 -- Saturday, December 19, 2009
FALL SEMESTER ENDS	Saturday, December 19, 2009
Academic and Administrative Holiday	Thursday, December 24, 2009 -- Friday, December 25, 2009
Academic and Administrative Holiday	Thursday, December 31, 2009 -- Friday, January 01, 2010
Spring Semester 2010	
Charter Gala	To be determined
TeleBEARS Begins	Monday, October 19, 2009
SPRING SEMESTER BEGINS	Tuesday, January 12, 2010
Fee Payment Due	Friday, January 15, 2010
Academic and Administrative Holiday	Monday, January 18, 2010
Instruction Begins	Tuesday, January 19, 2010
Academic and Administrative Holiday	Monday, February 15, 2010
Spring Recess	Monday, March 22, 2010 -- Friday, March 26, 2010
Academic and Administrative Holiday	Friday, March 26, 2010
Cal Day	Saturday, April 17, 2010
Last Day of Instruction	Monday, May 10, 2010
Final Examinations	Thursday, May 13, 2010 -- Thursday, May 20, 2010
SPRING SEMESTER ENDS	Thursday, May 20, 2010
Academic and Administrative Holiday	Monday, May 31, 2010

Please direct comments or questions about the Academic Calendar to [Sandy Ellison](#)

# Exhibit 9

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
OFFICE OF THE GENERAL COUNSEL



1111 Franklin Street, 8th Floor • Oakland, California 94607-5200 • (510) 987-9800 • FAX (510) 987-9757

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VICE PRESIDENT AND GENERAL COUNSEL

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E-mail: charles.robinson@ucop.edu

August 3, 2009

Ms. Linda Lye, Esq.  
Attorneys for Council of the University  
of California Faculty Association  
Altschuler Berzon LLP  
177 Post Street, Ste. 300  
San Francisco, CA 94109

RE: Agenda Items J1 and J2, July 15, 2009: Request by President Yudof for Amendment to Standing Order 100.4 and for Regental Declaration of Extreme Financial Emergency

Dear Ms. Lye:

This is in response to your letter dated July 28, 2009.

You have requested "the names and number of Regents in attendance at the meeting adopting the furlough plan, and also the number of Regents voting in favor of each item listed in the report." The official record of this meeting will not be finalized until the minutes of the meeting are approved, at the earliest, at the September 2009 meeting of The Regents. With that caveat, we offer here an unofficial record. The voting members present were Regents Bernal, De La Pena, Garamendi, Gould, Island, Johnson, Kieffer, Kozberg, Lansing, Lozano, Makarechian, Marcus, Nunn Gorman, Reiss, Ruiz, Schilling, Stovitz, Varner, Wachter, Yudof, and Zettel. The J1 Report (which included items J1 and J2) was approved by voice vote, with Regent Garamendi voting "no."

You have also made several observations about Standing Order 100.4(qq) and asked that we "ensure" your client's understanding of it. The first question concerns the President's authority "to suspend the operation of any existing Regental or University policies otherwise applicable to furloughs and/or salary reductions that are contrary to or inconsistent with the terms the

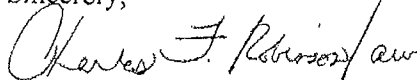
August 3, 2009  
Page 2

President deems necessary to the proposed implementation.” Your letter does not cite the complete reference to the Standing Order and perhaps for that reason suggests a hypothetical circumstance that is not contemplated – eliminating the principle of shared governance. You are correct, however, that the President intends to provide notice of policies or procedures to be suspended during the Plan term.

Your final point -- whether the President will follow the terms of the Standing Order, including the language “consistent with legal requirements” -- is answered in several places in the materials accompanying J1 and J2 provided to the Regents and to the public.

I hope and trust this responds to your questions. Please let me know if you have any further questions or concerns in this regard.

Sincerely,



Charles F. Robinson  
Vice President and General Counsel

Cc: Chairman Regent Russell Gould  
President Mark Yudof  
Secretary and Chief of Staff Diane Griffiths

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