STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

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

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

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

1. CHARGING PARTY: **EMPLOYEE** **EMPLOYEE ORGANIZATION** **EMPLOYER** **PUBLIC**[1]

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of person filing charge:

Telephone number:

E-mail Address:

Fax No.:

e. Bargaining unit(s) involved:

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

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name and title of agent to contact:

Telephone number:

E-mail Address:

Fax No.:

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 Gov. Code, § 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, § 3540 et seq.)

Ralph C. Dills Act (Gov. Code, § 3512 et seq.)

Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)

Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)

A Covered Public Utilities Code Transit Employer (BART (Pub. Util. Code, § 28848 et seq.), Orange County Transportation Authority (Pub. Util. Code, § 40000 et seq.), and supervisory employees of the Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code, § 99560 et seq.)).

Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)

Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

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

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*.)

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 ______________________
(Date)

at ____.
(City and State)

____
(Type or Print Name) (Signature)

Title, if any: ____

Mailing address: ____

____

Telephone Number: ________________________ E-Mail Address: ________________________________

ATTACHMENT 6(d)

TO

UNFAIR PRACTICE CHARGE

Introduction

The Charging Party, Teamsters Local 2010, brings this charge against the Respondent, the Trustees of the California State University ("CSU"), on the grounds that the Respondent has refused to bargain with the Charging Party and engaged in bad faith bargaining regarding wages. CSU has unlawfully refused to bargain regarding wages for any year except for the current year. Specifically, CSU has proposed a three-year contract, with only wage reopeners in years two and three of the contract. CSU has refused to bargain for or discuss wages for year two and three of the contract, insisting only on wage reopeners in any year other than the current year. Insisting upon this proposal constitutes an unlawful refusal to bargain wages, an unlawful demand to defer bargaining over wages, and an unlawful demand to engage in piecemeal negotiations.

Parties

1. At all times relevant herein, Teamsters Local 2010 (the "Union") is and has been an employee organization within the meaning of the Higher Education Employer-Employee Relations Act ("HEERA," Gov. Code § 3560 et. seq.). (Cal. Gov. Code § 3562(f).)

2. At all times relevant herein, the Trustees of the California State University (the "University" or "CSU") is and has been an employer within the meaning of HEERA. (Cal. Gov. Code § 3562(h).)

Statement of Facts

1. The Union is the exclusive representative of a bargaining unit of skilled trades workers throughout the CSU system ("Unit 6").

2. The Union and the University are parties to a Collective Bargaining Agreement ("CBA"), governing terms and conditions of employment for employees in Unit 6, that is set to expire on June 30, 2023. The parties are currently engaged in successor negotiations.

3. The Union's chief negotiator is Union Secretary-Treasurer Jason Rabinowitz. The University is represented at the bargaining table by eight or more negotiators, including labor negotiators Joseph Jelincic and Steve James, and attorney Stefanie Gusha.

4. On January 17, 2023, on the first day of negotiations between the Teamsters and the CSU for a successor agreement, the Union submitted a detailed written proposal to the University that included a proposal for a 15-year salary scale for Unit 6 employees. At this time, the Union did not submit a proposal for an across-the-board, General Salary Increase ("GSI"), instead planning to make such a proposal at a later meeting.

5. At a bargaining session held on February 23, 2023, the University issued its initial response to the Union via a PowerPoint presentation. A total of one slide referenced a proposed step progression. The University, too, did not make a proposal for a GSI at this time.

6. At the next bargaining session, on March 14, 2023, the University made a proposal for no GSI in year one of the contract, and a GSI wage reopener in year two of the contract. A true and correct copy CSU's March 14, 2023, salary proposal is attached hereto as **Exhibit A.**

7. At the next bargaining session, on April 7, 2023, the Union presented its first proposal for a GSI, proposing a 7% increase in year one of the contract, and a 6% increase in years two, three, four, and five. A true and correct copy of the Union's April 7, 2023, salary proposal is attached hereto as **Exhibit B.**

8. At the next bargaining session, on April 18, 2023, the University made a counterproposal on salary that continued to include a proposal for no GSI in year one of the contract and a GSI wage reopener in year two of the contract, and added a proposal for another wage reopener in year three of the contract. A true and correct copy of CSU's April 18, 2023, salary proposal is attached hereto as **Exhibit C**.

9. At the March 14 and April 18, 2023, bargaining sessions, the Union pressed the University for an explanation as to why they refused to make a proposal for a General Salary Increase in the ensuing years of the contract, and at both sessions the University responded by claiming that wage re-openers in contract years after the first was the "tradition" for Unit 6 and that the University could not make a proposal on wages for the years after the first until the University knew what its budget was going to be in those years. In fact, the University's negotiators said they will only bargain reopeners for subsequent years.

10. Contrary to the University's claim, the Unit 6 contract has in the past contained specified GSI increases in years after the first. For example, the 2016-2019 Unit 6 contract, dated January 26, 2016, contains a 2% GSI effective July 1, 2015, a 3% GSI effective July 1, 2016, and a 2% GSI effective June 30, 2017. A true and correct copy of the 2016-2019 Unit 6 contract is attached hereto as **Exhibit D**. Another example is the extension of the 2016-2019 contract negotiated pursuant to a reopener in the 2016-2019. That extension agreement, dated February 27, 2018, contains a 3.11% GSI effective July 1, 2017, a 3% GSI effective July 1, 2018, and a 3.75% GSI effective July 1, 2019. A true and correct copy of the February 27, 2018, extension agreement is attached hereto as **Exhibit E**. Further, the 1989-1993 Unit 6 contract included in Section 24, "Salary," a second-year GSI determined by the increase in the Consumer Price Index. A true and correct copy of Section 24 of the 1989-1993 Unit 6 contract is attached hereto as **Exhibit F**.

Argument

11. HEERA requires that "[h]igher education employers, or such representatives as they may designate, shall engage in meeting and conferring with the employee organization selected as exclusive representative of an appropriate unit on all matters within the scope of representation." (Cal. Gov. Code § 3570.)

12. HEERA also makes it unlawful for a higher education employer to "[r]efuse or fail to engage in meeting and conferring with an exclusive representative." (Cal. Gov. Code § 3571(c).)

13. HEERA defines "meet and confer" as "the performance of the mutual obligation of the higher education employer and the exclusive representative of its employees to meet at reasonable times and to confer in good faith with respect to matters within the scope of representation and to endeavor to reach agreement on matters within the scope of representation." (Cal. Gov. Code § 3562(m).)

14. The obligation to bargain in good faith means a subjective attitude which requires a genuine desire to reach agreement. Examples of indicia of bad faith include: (1) a party's failure to act on the other side's proposals or to offer counterproposals; (2) efforts to renege on previously agreed-upon ground rules; (3) insistence on extraneous conditions, such as unions' withdrawal of grievances and unfair practice charges prior to beginning salary negotiations; (4) dilatory conduct in scheduling and attending negotiation sessions; (5) attempts to modify previously settled issues; (6) premature declaration of impasse; (7) "piecemeal" or "fragmented" bargaining that arbitrarily limits the range of possible compromises by declaring certain mandatory subjects of bargaining off limits until complete agreement is reached on all other subjects; and (8) separate, contemporaneous unfair labor practices at or away from the bargaining table. PERB has rejected a categorical rule that one indicium of bad faith is insufficient to establish bad faith as inconsistent with the "totality of the circumstances" test. (*City of San Jose* (2013) PERB Dec. No. 2341-M.)

15. An outright refusal to bargain on a matter within the scope of representation is a *per se* violation of the duty to bargain in good faith. (*Region 2 Court Interpreter Employment Relations Committee, et al.* (2020) PERB Dec. No. 2701-I, p. 37, citing *County of San Luis Obispo* (2015) PERB Dec. No. 2427-M.) Wages are a mandatory subject of bargaining.

16. By insisting that salary increases in contract years after the first be left to future negotiations, the University is effectively refusing to bargain wages for a successor contract. No party to collective bargaining negotiations should be able to insist that a multi-year contract contain only annual reopeners on such a fundamentally important mandatory bargaining subject such as wages.

17. In any event, by insisting that salary increases in contract years after the first be left to future negotiations, the University is effectively deferring the bargaining on wages, and thus unlawfully refusing to bargain wages in the very same piecemeal manner condemned by PERB in *City of San Jose*, PERB Dec. No. 2341-M (2013).

18. Finally, even assuming *arguendo* that the University could lawfully insist on wage reopeners in all contract years after the first, the law is already established that such proposals – which are effectively for contracts of a short duration – are lawful only when the employer has a reasonable justification for the proposals. Specifically, the National Labor Relations Board has held that an employer's insistence on a collective-bargaining agreement which contains a short or otherwise unreasonable duration is an indicia of bad faith where the proposal is made "without good reason." *Cleveland Sales Co*., 292 NLRB 1151, 1155-1156 (1989); *Deister Concentrator Co*., 253 NLRB 358, 359 (1980); *Bagel Bakers Council of Greater New York*, 174 NLRB 622, 630 (1969); *Borg Warner Corp.*, 128 NLRB 1035, 1051 (1960).

19. Here, the University has presented no good reason for its insistence that after a first year salary freeze, salary adjustments for all subsequent years be left to reopeners. CSU has offered two reasons for its proposal, neither of which is valid. The explanation that wage reopeners constitute a Unit 6 past practice is a "tradition," besides being irrelevant, is factually inaccurate. See Paragraph 12 above. And the argument that the University cannot make a salary proposal for future years until its budget for those years is known is contrary to what CSU has done in the past (see Paragraph 12), and is contrary to the general practice in labor relations. Few if any employers, in either the public or the private sector, know what their budgets will look like in the second or third year of a collective bargaining agreement, yet contracts of three years or longer is standard throughout the public and private sector.

20. The University has sent its negotiators to the bargaining table without an intent to bargain to bargain in good faith. This is manifested by the University's proposal, without good reason, for a GSI freeze the first year of a contract, with wage reopeners in subsequent years of the contract. This is bad faith bargaining *per se*. It is, in any event, especially when combined with the allegations made in PERB Case No. LA-CE-1391-H, indicia of bad-faith bargaining, and proof that the University is engaged in surface bargaining without any genuine intent to reach an agreement. This is an unfair labor practice.

Remedy

Wherefore, the Charging Party requests that the University be ordered to:

1. Cease and desist violating its duty to bargain in good faith;

2. Engage in good-faith bargaining with the Union regarding wages and benefits;

3. Post a notice informing all members of Unit 6 of the University's unlawful conduct, describing its actions to remedy the unlawful conduct, and assuring them that the University will comply with its HEERA obligations in the future;

4. Make the Union whole, including compensating the Union for any costs for the cost of bringing the instant charge; and

5. Comply with any other remedy that PERB deems just and proper.