

August 30, 2024

**VIA EMAIL ATTACHMENT ONLY
HIGH PRIORITY**

Mr. Marc D. Mootchnik
California State University
Office of the Chancellor
Interim Assist. Vice Chancellor of Labor &
Employee Relations
401 Golden Shore
Long Beach CA 90802
Email: mmootchnik@calstate.edu

**Re: Cease and Desist Demand: Unilateral Implementation of Interim Systemwide Time,
Place and Manner Policy**

Dear Mr. Mootchnik:

This office represents California State University Employees Union (“CSUEU”). We write this letter on behalf of our client.

We demand that the California State University (“CSU”) cease and desist from unilaterally implementing the Interim Systemwide Time, Place and Manner Policy (hereafter “Interim TPM Policy”) dated August 15, 2024. By its express terms, the Interim TPM Policy applies to CSU employees, including employees who are represented by CSUEU. The Interim TPM Policy also states that violations of the policy by employees may result in adverse consequences including discipline.

There is no question that CSU has a duty to bargain over both the decision to promulgate the Interim TPM Policy, and the effects thereof. CSU is unable to assert a viable defense to justify its unilateral action. CSU was not legislatively mandated to adopt the particular verbiage of the Interim TPM Policy. Indeed, the California Budget Act of 2024 (“Budget Act”) requires California State University campuses to develop a “campus climate action” plan by the beginning of the Fall 2024 term and prominently post and distribute the plan to students upon arrival on campus each academic year. These plans must include information such as the institution’s time, place, and manner restrictions for protests or activities, policies regarding campus safety, and how campuses will foster healthy discourse in a manner that promotes the educational mission of the University. The Chancellor’s Office of the California State University must submit a report to the Legislature by October 1, 2024, describing the campus climate action plans. However, the Budget Act does not dictate what the “campus climate action” plan must say. CSU exercised its discretion to adopt the particular verbiage of the Interim TPM Policy. CSU had a legal obligation to bargain with CSUEU over that exercise of discretion. (See *County of Santa Clara* (2024) PERB Decision No. 2876-M, judicial appeal pending, p. 25 citing *County of Sacramento* (2020)

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Admitted in California, unless
otherwise noted
Admitted in Hawaii
Also admitted in Nevada
Also admitted in New York and
Alaska
Admitted in Nevada and
Washington
Also admitted in Idaho
Also admitted in New York

PERB Decision No. 2745-M, pp. 17-18.) CSU will also be unable to prove that an emergency or other business necessity justified CSU's swift unilateral action. CSU has known about the existence of the Budget Act for many months. CSU made no effort to meet and confer with CSUEU over a systemwide time, place and manner policy before adopting one.

The August 16, 2024 letter from CSU to President Hutchinson, Erin Eckelman-Ray, Senior Director of Systemwide Labor & Employee Relations, stated that the existing time, place and manner policy applies to represented employees until the meet and confer process is completed. It is obvious the Office of the Chancellor failed to communicate this to campuses. See two examples of campuses informing CSUEU-represented employees that the Interim TPM Policy applies to all employees, including represented employees. (See enclosures.)

Our primary concern is that CSU unilaterally created a new basis for disciplining CSUEU bargaining unit employees. Our secondary concern pertains to the vagueness of the HEERA and collective bargaining agreement carve out. The Interim TPM Policy states:

This Policy is not intended to interfere with the statutory rights provided by the Higher Education Employer-Employee Relations Act (HEERA) or the terms of an applicable Collective Bargaining Agreement and does not prohibit CSU unions from communicating with their members regarding union-related activities or engaging in protected or concerted activities otherwise allowed under HEERA or an applicable Collective Bargaining Agreement.

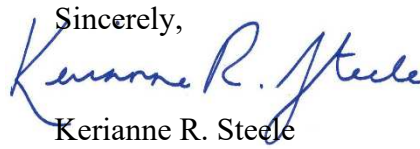
However, this provision is vague and provides no guidance to CSUEU or a CSUEU-represented employee regarding what CSU views is "allowed under HEERA or an applicable Collective Bargaining Agreement." The Interim TPM Policy will have a chilling effect on the exercise of protected activity by CSUEU and its represented employees.

A third concern we have is that the Interim TPM Policy may be unconstitutional.

We hereby respond to your August 16, 2024 invitation to meet and confer over the "effects" of the Interim TPM Policy. CSU is unlawfully relegating CSUEU to effects bargaining only, although the collective bargaining law and PERB precedent entitles CSUEU to decision bargaining too.

To rectify this situation, CSU must do three things. First, CSU must rescind the Interim TPM Policy as we are requesting, or must at least immediately issue a systemwide memorandum to all campuses and CSUEU-represented employees advising them that no part of the Interim TPM Policy applies to CSUEU-represented employees. Second, CSU must provide CSUEU copies of all communications (such as the enclosed) the campuses sent to CSUEU members regarding the Interim TPM Policy. And finally, CSU must send President Hutchinson an invitation to meet and confer over both the decision and the effects of the decision to adopt the Interim TPM Policy.

Thank you in advance for your timely consideration of this urgent matter.

Sincerely,

Kerianne R. Steele

KRS:sm
opeiu 29 afl-cio(1)
Enclosures

cc: Ms. Catherine Hutchinson
Mr. Jim Philliou
Ms. Brenda Brown

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Subject: FW: Chancellor's Directive on Prohibited Activities

From: Office of President Steve Perez <presidentoffice@csuchico.edu>

Sent: Wednesday, August 28, 2024 11:15 AM

To: All Announce (restricted) <announce.dis@csuchico.edu>

Subject: Chancellor's Directive on Prohibited Activities



Dear Employees,

As the fall 2024 term is underway, we want to remind you that the California State University (CSU) is committed to free expression, free speech, and free assembly as an essential component of its educational mission, while maintaining a safe and peaceful campus climate. To support and achieve this mission, the CSU must maintain an environment where its work can be conducted without disruption, in accordance with the highest standards of institutional integrity, safety, and with recognition of the rights, privileges, and responsibilities of all university community members and members of the public. We must constantly strive to foster healthy discourse and bring campus community members together, where all are welcomed and included, even when viewpoints are ideologically different, to best promote the educational mission of the CSU in a safe and peaceful manner.

To that end, the Chancellor has issued a directive that the following activities are strictly prohibited on University property:

- **Encampments and camping.** No person shall camp, occupy camping facilities, use camping paraphernalia, or store personal property for camping, whether indoors or outdoors. No one may erect a tent or other temporary housing or occupy any tent or temporary housing structure. No person shall set up a campsite, or bring, leave, or maintain furniture or other large household or camping items.

- **Unauthorized structures and barriers.** No person shall build, construct, erect, place, set up, move, deliver, or maintain any temporary or permanent tent, platform, bench, building, building materials, wall, barrier, barricade, fencing, structure, sculpture, bicycle rack, or furniture.
- **Restricting free movement.** No person shall restrict the movement of another person or persons by any means, including blocking or obstructing their ingress or egress, or otherwise deny a person access to normally unrestricted areas.
- **Masking to conceal identity with intent to violate laws or policies.** No person shall wear a mask or personal disguise for the purpose of concealing their identity with the intent of intimidating any person or group, or for the purpose of evading or escaping discovery, recognition, or identification in the commission of violations of the law or policy.
- **Occupation of buildings and facilities.** No person shall occupy buildings and facilities or engage in trespass or any other violation of applicable law.
- **Vandalism and other damage.** No person shall vandalize, damage, or destroy university property.

This directive is in effect immediately for all students and employees, and all other members of the community, *including represented employees*. Violation of these directives (or any other illegal activity) is a violation of the law and will be enforced accordingly. As the largest university system in the state of California and the country, it is incumbent on us to lead the way, protect free speech, and make sure that all members of our campus community feel safe and are safe. If you have any questions, please contact Chief Diversity Officer Joseph Morales at jmorales25@csuchico.edu.

Thank you,

President Steve Perez

Subject:

FW: (SACRAMENTO State) CSU Chancellor's Directive on Prohibited Activities

From: [SACSEND] Human Resources <sacsend@csus.edu>

Sent: Wednesday, August 28, 2024 4:14 PM

To: Trujillo, Melissa A <mtrujillo@csus.edu>

Subject: CSU Chancellor's Directive on Prohibited Activities



**FROM THE DIVISION OF ADMINISTRATION AND
BUSINESS AFFAIRS**

Human Resources

CSU Chancellor's Directive on Prohibited Activities

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[View Online](#)



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