

UNIVERSITY OF CALIFORNIA, BERKELEY

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• SANTA CRUZ

December 16, 2011

Frank Narvaez
Career TRADES Supervisor 2

Dear Frank,

Pursuant to Section 64 of the Personnel Policies for Staff and Members (PPSM Policy), Termination of Career Employees- Professional and Support Staff, this is a notice of intent to terminate your employment on January 12, 2012, based on your violation of the Campus's Sexual Harassment Policy, (Attachment #1), Respect and Civility Statement (attachment #2) and UC's Principles of Community (attachment #3).

On November 9, 2011, you violated these policies when you engaged in an inappropriate conversation of a sexual nature during working hours. Specifically, you made offensive and disparaging comments about your colleague's genitalia. Your comments were recorded on voicemail when you called an employee directly reporting to you.

BACKGROUND

[REDACTED]
[REDACTED] of the University of
California, Berkeley (UCB or University). You are a career (fulltime) Supervisor within the
[REDACTED] since April 28, 2005.

You were initially hired as a lead painter. You then were promoted to a Supervisor in the [REDACTED] department on May 1, 2008. In your role of Supervisor, your responsibilities include managing the [REDACTED]
[REDACTED]

More specifically, your duties as a supervisor include the following:

- Building Maintenance Work Management which includes tracking work order statistics, ensuring timely completion of work, and ensuring work quality.
- Performing regular “in the field” reviews of building maintenance work performed at various stages of completion.
- Setting work quality standards for all groups supervised.
- Resolving, evaluating and determining best tools, equipment, vehicle, and facility needs for the groups supervised.

In addition to the operational duties above, your supervisory duties include managing approximately 13 employees in the following administrative functions such as:

- Supervising staff to assure accountability and stewardship of campus resources (operational, financial, and human) in compliance with departmental goals and objectives.
- Ensuring staff follows defined internal controls for the unit and campus.
- Acting as an agent of the university to model and ensure compliance with all UC policies, work rules and collective bargaining agreements.

EVENTS LEADING TO INVESTIGATION

On Thursday November 10, 2011, I received a call from [REDACTED] about a call you made to his work cell phone. The allegation was that you dialed [REDACTED] on his work phone and that you were heard having a sexually charged, lewd and profane conversation about [REDACTED]. The complaint from [REDACTED] was centered on his concern that your comments were inappropriate and sexually charged. In the recording forwarded to us, it appeared that you were engaged in an inappropriate conversation about [REDACTED] female [REDACTED] genitalia. (Attachment # 4 transcript).

After listening to the recording, I asked [REDACTED] to assist me with the matter. He informed me that the nature of the allegations required us to contact the Campus Title IX-Sexual Harassment Compliance office so that they could conduct an investigation. Subsequently, Ms. Denise Oldham, Title IX Compliance Officer conducted an investigation.

INVESTIGATION

On November 15, 2011, I met with you for the purpose of providing you an opportunity to respond to the allegations brought against you. [REDACTED] and Compliance Officer Oldham also attended the meeting. You were previously offered to have a representative present and you chose not have one present. We explained to you the specifics of the allegation and [REDACTED] played the recording for you to hear (attachment # 4 transcript). When asked if you were the person making remarks about "bedbugs being in [REDACTED] pussy," you admitted that it was you on the recording.

When asked why you would be engaged in such an inappropriate conversation while in the work place you said that you had been “completely [REDACTED]” and that you were remorseful about what you had said.

When asked who you were talking with during this conversation you identified your colleague, Superintendent Chuck McCartney.

RELEVANT RULES OF CONDUCT

[REDACTED] employees, as part of their job duties are required to comply with the policies of the UC Policy on Sexual Harassment (attachment #1), [REDACTED] Policy on Respect and Civility (attachment #2), and UC’s Principles of Community (attachment #3).

The UC Policy on Sexual Harassment

The UC policy on sexual harassment states in relevant parts:

Every member of the University community should be aware that the University is strongly opposed to sexual harassment, and that such behavior is prohibited both by law and by University policy. The University will respond promptly and effectively to reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy. (attachment # 1)

[REDACTED] Policy on Respect and Civility

[REDACTED] policy on respect and civility provides in relevant part: *[W]e value and expect respectful communication and that we treat each other with a sense of worth and excellence (attachment # 2)*

UC's Principles of Community

The UC principles of community state in relevant part:

We affirm the dignity of all individuals and strive to uphold a just community in which discrimination and hate are not tolerate (attachment #3)

FINDINGS OF INVESTIGATION

In our investigatory meeting, you were provided an opportunity to listen to the recording of your conversation with your co-worker and I am providing a copy of Ms. Oldham's report for your review (attachment # 5). You acknowledged that you were engaged in an inappropriate conversation of a profane and sexually charged nature during working hours with your colleague. You admitted to making inappropriate comments about [REDACTED] and her genitalia.

When asked why you made those comments you said that you had been "completely [REDACTED];" however, your response does not excuse your misconduct. Your conduct in this case constitutes serious misconduct and violates the Campus Sexual Harassment Policy.

The Campus Title IX Compliance Office found in its investigation that your actions on November 14, 2011, violated the Sexual Harassment Policy.

Your violation of the Sexual Harassment Policy seriously compromises your ability to perform your duties as a supervisor in [REDACTED] because employees whom you supervise know of your misconduct.

CONCLUSION

We have evaluated the allegations as a whole and gave consideration to your account of the situation. Based on this information we conclude that your conversation was a serious violation of the campus Sexual Harassment Policy. By doing so you have violated UC's Sexual Harassment Policy, [REDACTED] Guidelines on Respect and Civility, and UC Berkeley's Principles of Community Standards. As a supervisor, you had an obligation to model and enforce UC's policy on a work environment free of Sexual Harassment.

A review of your personnel file indicates that you have received copies of UC policies and training as follows: been provided notice on UC's policies and training has been provided to you as follows:

1. On September 30, 2011, you completed the online training and education entitled AB 1825 regarding the prevention of Sexual Harassment in the Workplace. This training informs all supervisors of their obligation to ensure a workplace free of Sexual Harassment (attachment # 6)
2. On November 3, 2011, you attended the UC's Ombud's Office training on Workplace Civility in Action. In this class, the Ombud's Office educated managers on what constitutes appropriate, professional, civil and respectful behavior in the workplace.

Furthermore, the above notice and training follow informal discussions I had with you about concerns brought to management by your direct reports regarding your unprofessional communications with them during the 2011 calendar year.

Your violation of the Sexual Harassment Policy is contrary to UC's mission to create a community where all persons can learn and work together in an environment free of harassment.

Your misconduct had a negative impact on our customers, employees, and the University Community as a whole; therefore, your dismissal from University employment is justified.

EMPLOYMENT ACTION

Therefore in accordance with Section 64, Termination of Career Employees- Professional and Support Staff of the UC PPSM Policy, you are being dismissed from employment effective January 12, 2012.

If you believe this action should not take place or have any other statements regarding this matter, you have the right to respond to this notice either orally or in writing, within 8 calendar days from the date of issuance. Please direct your response to [REDACTED], [REDACTED] at 2000 Carleton St. #215, Berkeley, Ca. 94720 or at [REDACTED]

You will remain on paid leave. During this time you are not to act as an agent or employee of the University and no work duties are required of you. You are not to contact any UC employees other than myself or [REDACTED] regarding this matter while you remain on leave.

Sincerely,

[REDACTED]

Attachments: Attachment #1—UC Policy on Sexual Harassment
Attachment #2—[REDACTED] Respect and Civility Statement
Attachment #3—UC Principles of Community Statement
Attachment #4— Transcript of Recording
Attachment #5—Investigatory Report
Attachment #6- Copy of UC Training Record

Proof of Service

Cc: Employee Personnel File

[REDACTED]

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June 24, 2012

Frank Narvaez
[REDACTED]

Dear Mr. Narvaez:

As the Step II Reviewer in Grievance No. P12012, filed on March 30, 2012, I have reviewed all of the materials provided to me, including:

- Audio recording;
- Notice of Intent to Terminate, December 16, 2012 (with 6 attachments);
- Skelly Review Letter, [REDACTED] February 29, 2012 (with 25 exhibits);
- Initial Amended Grievance, April 13, 2012;
- Decision of Step I Reviewer, [REDACTED], May 11, 2012;
- Amended Appeal to Step II, May 21, 2012; and
- PPSM 64, Disciplinary and Separation Actions.

I have organized my letter using your Amended Appeal to Step II, May 21, 2012.

First, you argue that, "The University ('UCB') terminated my employment without good, just or proper cause."

My review concludes that your actions made it impossible for you to perform your duties as a supervisor effectively; the University terminated your employment because of your misconduct.

Second, you argue that, "The Notice of Intent was deficient because it failed to attach a copy of the tape recording on which UCB relied to terminate my employment in violation of PPSM section 64C."

The recording was played for you on November 15th when you met with [REDACTED] and others; a copy was provided to your attorney on January 18th, prior to your Skelly hearing on January 30th. Further, widespread knowledge of the contents of the recording was included in [REDACTED] Notice of Intent; he said, "Your violation of the Sexual Harassment Policy seriously compromises your ability to perform your duties as a supervisor in [REDACTED] because employees whom you supervise know of your misconduct." Even if all copies of the recording had been erased, the knowledge and reaction of people you supervise and others in [REDACTED] were sufficient to undermine your status as a supervisor.

Third, you argue that, "UCB terminated my employment in violation of PPSM section 64A, since I did not engage in the alleged misconduct or in any actual misconduct, nor did I fail to maintain appropriate work performance standards, or if so, not to the extent sufficient to justify a termination."

You admitted to [REDACTED] that you engaged in misconduct that violated UC's Sexual Harassment Policy, UCB's Principles of Community, and [REDACTED] Respect and Civility Statement. As a supervisor,



you are expected to behave consistently with these policies and apply that expectation to those you supervise. Having violated those policies in a way that was widely known has rendered you incapable of holding your subordinates to these performance expectations.

Fourth, you argue that, "UCB violated PPSM section 64A, since the alleged misconduct did not warrant immediate dismissal without prior corrective action or notice."

PPSM 64A says, "Normally, termination is preceded by corrective action (see Staff Policy 62, Corrective Action) unless unsatisfactory performance or misconduct warrants immediate dismissal." This was misconduct and warranted immediate dismissal.

Fifth, you argue that, "UCB violated PPSM section 64B, since it failed to provide me with a written warning."

PPSM 64B says, "Termination for misconduct does not require a written warning."

I also considered the argument included in the Attachment. The first paragraph of the Attachment discusses the language on the recording, acknowledging that you referred to [REDACTED] as "that ol' fat pussy." Whether you were speaking about her genitals or simply calling her, as a person, a "pussy" is not important; "pussy" is a gendered term, applying to women. The Sexual Harassment policy is very clear that, "Harassment that is not sexual in nature but is based on gender, sex-stereotyping, or sexual orientation also is prohibited by the University's nondiscrimination policies if it is sufficiently severe to deny or limit a person's ability to participate in or benefit from University educational programs, employment, or services." You certainly undercut [REDACTED] ability to participate as an employee in [REDACTED]. Your claim that you were referring to her as a "wimp" due to the bedbug situation in the [REDACTED] and that this use of the word "pussy" is common in the trades doesn't change the fact that using a gendered term like "pussy" is wrong in the workplace. The stereotype that women don't solve problems or pull their weight is exactly what creates a hostile work environment for women and calling a man a "pussy" is reinforcing this stereotype about women. Further, calling anyone an "ol' fat pussy" and making derogatory comments about the person's weight and the fact that the bedbugs would have is inconsistent with the [REDACTED] Respect and Civility Statement, "Our staff treats each other with a sense of worth and excellence of a person."

The second section of the Attachment raises the issue that another supervisor made similar comments but received lesser discipline. Mr. McCartney's participation was largely passive, laughing at your comments. You and he both used profanities throughout the conversation, but I could not discern Mr. McCartney directing "motherfucker" to [REDACTED] in the way that you have characterized. Thus, while Mr. McCartney's behavior was not proper, it was not similar to yours in its severity, and there was sufficient basis to treat you in a dissimilar fashion.

The third section of the Attachment speaks to the failure of the reviewer to assess the Department's and Campus's record for taking disciplinary action for other employees with comparable behavior. My instructions were to review the existing record, summarized in the first paragraph of this letter,

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and to judge the reasonableness of your termination in the face of the totality of this evidence. Without examples of people in supervisory positions who engaged in comparable behavior, it is not possible for me to evaluate this claim. However, I have thirty years' experience as a supervisor at the University of California and I have never heard of such behavior occurring, no less going undisciplined.

In conclusion, lacking any evidence that other supervisors were knowingly engaging in behavior similar to yours and given lesser discipline, given the consistent evidence that you engaged in behavior that undermined your ability to act as a supervisor, I concur with the decision to terminate your employment.

Sincerely yours,

[Redacted signature]

[Redacted address]

CC:

[Redacted distribution list]

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[REDACTED]

December 17, 2013

Frank Narvaez
Skilled Crafts and Trades Supervisor, Design and Project Services

[REDACTED]

RE: 30 – day Suspension

Dear Frank,

This notice of 30 – day suspension is in accordance with the July 25, 2013 Arbitrator's opinion and award regarding your March 2, 2012 termination. Your termination has been rescinded and amended to reflect a thirty (30) day suspension.

On November 9, 2011 you were heard engaging in an inappropriate conversation of a sexual nature during work hours with Senior Superintendent for Trade, Central Maintenance, Charles McCartney. During this conversation, you were heard making rude and disparaging remarks about [REDACTED]. A Skelly hearing was held on January 30, 2012, and the decision was made to terminate your employment effective March 2, 2012.

You filed a grievance on April 13, 2012 citing various violations of the Personnel Policies for Staff Members (PPSM) and, "reinstatement of my employment, back pay, lost benefits, no loss of seniority, attorneys' fees and costs."

Your grievance was heard by Alexander Cohn on April 15 and 16, 2013. Alexander Cohn's decision was that you be reinstated in your former position and that your termination is converted to a thirty (30) calendar day disciplinary suspension.

As a reminder, you are expected to adhere to the [REDACTED] Respect and Civility policy and treat all staff and customers with professionalism and respect. Failure to adhere to this policy will result in further disciplinary action up to and including dismissal.

Sincerely,

CC: Employee Personnel File