

UNIVERSITY OF CALIFORNIA, BERKELEY

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SANTA CRUZ

[REDACTED]
[REDACTED]
[REDACTED]

December 21, 2011

Chuck McCartney
Career TRADES Supervisor 2

[REDACTED]

RE: Notice of Intent to Suspend Without Pay for 5 Days

Dear Chuck,

Pursuant to Section 62 of the Personnel Policies for Staff Members (PPSM Policy), Corrective Action- Professional and Support Staff, this is a notice of intent to suspend you for five (5) working days without pay between January 16, 2012 and January 20, 20102, based on your inappropriate use of language (profanity: Mother Fucker, Fucking List), and your response (laughter) in reaction to your colleague's (Frank Narvaez) profane and sexually charged statements about [REDACTED] By doing so you have violated [REDACTED] Respect and Civility Statement (attachment #1) and UC's Principles of Community (attachment #2).

On November 9, 2011, you violated these policies during a conversation with Supervisor Frank Narvaez when you laughed at Narvaez's profane and inappropriate comments concerning a [REDACTED] genatalia. You also were heard using profanity yourself. The conversation between you and Narvaez, while driving in a university vehicle on university time were recorded on the voicemail of [REDACTED] who ultimately notified management of the conversation.

BACKGROUND

[REDACTED]
[REDACTED] of the University of California, Berkeley (UCB or University). You are a career (fulltime) Supervisor within the [REDACTED] and have been employed in [REDACTED] since May 19, 2008.

In your role of Superintendent, your responsibilities include managing the [REDACTED]
[REDACTED].

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

- Skilled Craft Trades 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 groups supervised.
- Resolving, evaluating and determining best tools, equipment, vehicle, and facility needs for the groups supervised.
- Coordinating aspects of facilities construction projects.
- Recommending project bid acceptance, service and blanket construction contracts

In addition to the operational duties above, your supervisory duties include managing approximately 16 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, management was notified by [REDACTED] of a phone call made to him. The allegation was that Mr. Narvaez dialed [REDACTED] on his work phone and left a voicemail message in which you were heard laughing at the sexually charged, lewd and profane comments made about [REDACTED]. The complaint from [REDACTED] was centered on his concern that the conversation was inappropriate and sexually charged. In the voicemail recording forwarded to us, it appeared that you were using profanity and laughing at the comments made about [REDACTED] female [REDACTED] genitalia. (Attachment # 3 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, a meeting was held for the purpose of providing you an opportunity to respond to the allegations brought against you [REDACTED] and Compliance Officer Oldham were present at the meeting. They explained to you the specifics of the allegation and [REDACTED] played the recording for you to hear (attachment # 3). When asked who you were speaking with during the conversation you identified your colleague, Supervisor Frank Narvaez.

When asked if you were the person laughing at the comments made by Supervisor Narvaez remarks about "bedbugs being in [REDACTED] pussy," you admitted that it was you laughing on the recording.

When asked why you would be engaged in such an inappropriate conversation while in the work place, you offered no excuse and stated you were remorseful about what you had done.

RELEVANT RULES OF CONDUCT

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

[REDACTED] Policy on Respect and Civility The [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 #2)

FINDINGS OF INVESTIGATION

In our investigatory meeting, you were provided an opportunity to listen to the recording of your conversation with Narvaez and I am providing a copy of Ms. Oldham's report for your review (attachment # 4).

You acknowledged that you were engaged in an inappropriate conversation of a profane and sexually charged nature during working hours with your colleague, but denied saying any inappropriate remarks. You admitted to laughing at comments about [REDACTED] and her genitalia.

The Campus Title IX Compliance Office found in its investigation that the actions as a whole on November 9, 2011 violated the Sexual Harassment Policy. The report does not identify you as making the inappropriate comment, however your use of profanity and engagement (laughter) at the comments were not appropriate.

CONCLUSION

We have evaluated the evidence as a whole and gave consideration to your account of the situation. Based on this information, we conclude that your use of profanity and laughter at Supervisor's Narvaez's inappropriate comments constitutes unprofessional and inappropriate behavior on your part. By doing so you have violated [REDACTED] Guidelines on Respect and Civility, and UC Berkeley's Principles of Community Standards. Moreover, as a supervisor in

████ and at the University, you should have known that discussions of this nature are inappropriate, unacceptable, and hurtful to the Berkeley community. You have an obligation to model UC's policy on a work environment free of disrespectful conversations.

A review of your personnel file indicates that you have received copies of UC policies and training as follows:

1. On November 3, 2011, you attended the UCB'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.

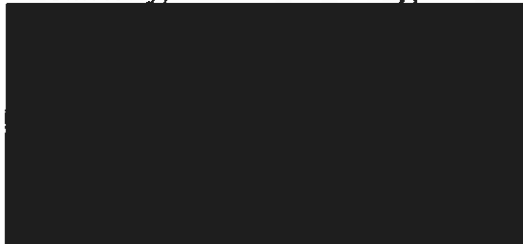
Your violation of Policy is contrary to UC's mission to create a community where all persons can learn and work together in an environment free of harassment. Your behavior had a negative impact on our customers, employees, and the University Community as a whole; therefore, your 5 day suspension is justified.

EMPLOYMENT ACTION

Therefore in accordance to Section 62, Corrective Action- Professional and Support Staff of the UC PPSM Policy, you are being suspended without pay effective January 16, 2012 to January 20, 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 ██████████ Office of the Registrar, via email at ██████████

Sincerely,



Attachments:

Attachment #1—  **Respect and Civility Statement**

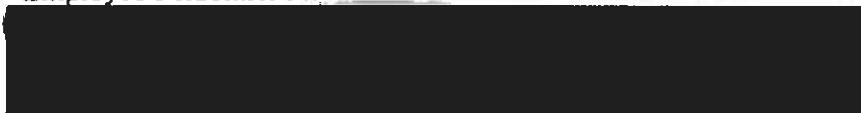
Attachment #2— UC Principles of Community Statement

Attachment #3— Transcript of Recording

Attachment #4— Investigatory Report

Proof of Service

Cc: Employee Personnel File





CONFIDENTIAL

January 31, 2012

TO:

[REDACTED]
[REDACTED]

RE: Reviewer Response to Notice of Intent to Suspend Without Pay for 5 Days dated December 21, 2011

Dear [REDACTED]:

As Reviewer, I am providing my response to the Notice of Intent to Suspend Without Pay for 5 Days dated December 21, 2011 for Chuck McCartney.

I met with Chuck McCartney on January 30, 2012. [REDACTED]
and [REDACTED] were also in attendance.

I have reviewed the following documents:

Notice of Intent to Suspend Without Pay for 5 Days dated December 21, 2011, which includes the following attachments:

- Attachment #1 - [REDACTED] Respect and Civility Statement
- Attachment #2 - UC Principles of Community Statement
- Attachment #3 - Transcript of Recording
- Attachment #4 - Investigatory Report
- Proof of Service

Chuck McCartney's position is:

He wants the investigation to stick to the recorded conversation only. Chuck acknowledges the use of inappropriate language. However he believes there are discrepancies between statements that are quoted in the Investigatory Report as compared to the actual Transcript of the Recording. Specifically, he pointed out on page 4 of the report where the phrase "bedbugs in her pussy" is mentioned. He says this statement did not happen and is not on the recording. The report also states that Chuck was laughing in the background. Chuck said he did acknowledge that his voice was one of those on the recording, but he does not agree that he was laughing at the statement above. Chuck also pointed out page 4 and page 10 of the report which says that both men were making negative and crude comments about the appearance of an unidentified woman. Chuck stated that he reviewed the recording and the transcript and there was no mention of an unidentified woman.

Chuck apologized for the incident and expressed regret at how this has affected [REDACTED] and [REDACTED] at [REDACTED]. He talked about the strides that [REDACTED] has made in addressing respect in the workplace and how this incident has set them back.

Chuck was upset that so many people heard the tape. He believes that retaliation by [REDACTED] and [REDACTED] was the reason that the recording was so widely shared. According to Chuck, [REDACTED] and [REDACTED] now reports to a different supervisor. Chuck points to [REDACTED] conversation with [REDACTED] on page 7 of the report as example of retaliation by [REDACTED] to let others know about the recording. Chuck wishes that other people who report to him would have been interviewed in the Investigatory Report, in order to give another perspective.

Reviewer Analysis:

In my review of the recording and transcript, I did not hear the specific phrase "bedbugs in her pussy". What I did hear was the statement "[REDACTED]...she's sitting like this and it's like...looking at that big old fat pussy, I'm thinking holy shit..." (said by Narvaez according to the transcript). And several statements later, the phrases "...go on and let the bedbugs at it...and let them have a feast..." (said by Narvaez according to the transcript). It's not clear from the transcript that what was said about the bedbugs was related to what was said about [REDACTED]. Based on the recording and transcript, I also did not hear the comments about the appearance of an unidentified woman. Therefore I agree with Chuck's statement that the specific phrase "bedbugs in the pussy" was not part of the transcript. Regarding the laughter, I could hear laughing immediately following Narvaez's statement "let them have a feast". The laughter overlaps for a second or two with when Narvaez starts talking again. Since no other voices are identified on the tape, I assume Chuck is the one laughing.

Looking only at the transcript of the recording, the conversation is still highly inappropriate in use of language (i.e. "that motherfucker" "fucking problem" "fucking list" – said by McCartney) and referenced a female colleague's genitalia (i.e. "that big old fat pussy"- said by Narvaez).

It is unfortunate how widely the recording was disseminated, and Chuck McCartney has expressed regret about the conversation, which was never meant to be shared with others. However it is also clear to a reasonable person that the conversation played a key role in disrupting the workplace and creating an offensive and intimidating environment for [REDACTED].

Reviewer Decision:

I recommend that Chuck McCartney receive the Notice of Intent to Suspend Without Pay for 5 Days. I make this recommendation based on the fact that Chuck was a participant in the recorded conversation. Although the employee has no previous disciplinary action on file, he attended training on Workplace Civility in Action six days before the recorded conversation took place. As a supervisor of approximately 16 employees, Chuck McCartney does have an obligation to ensure a work environment that models [REDACTED] principles of respect and civility.

Therefore, you may proceed with a Notice of Intent to Suspend Without Pay for 5 Days.

Sincerely,



Attachments: Notice of Intent to Suspend Without Pay for 5 Days dated December 21, 2011

CC:

