

November 30, 2011

Board of Trustees
Pomona College
550 N. College Avenue
Claremont, CA 91711

Dear Pomona College Board of Trustees:

As a Pomona College alumnus, as well as a recent two-year Visiting Assistant Professor in the Politics Department, I feel compelled to respond to your recent letter to the Pomona College Community regarding efforts to verify the legal status of faculty, students, and staff of the College.

At the outset, let me state that I think everyone within the Community should take some comfort in the fact that the Board of Trustees is treating this matter with the respect and concern it deserves. Nevertheless, your letter provides inadequate justification for the actions the College has taken at the Board's urging, relies on unsupported and incomplete assertions about the potential consequences to the College, and displays an all-too-eager willingness to adopt inclusive resolutions without equal enthusiasm for giving true meaning to the expressed principles.

1. The College's Actions Lack Adequate Justification

Your letter states that the "situation arose following a complaint the Board received earlier this year alleging that it was the policy of the President's administration not to obtain proper work authorization documentation of College employees, and that no such verification of employees' legal authorization to work was ever undertaken by the College as required by law." You then state that based on the "alleged serious violations of federal law," the Board had a "responsibility to investigate the complaint."

Without more information, it is impossible to assess the accuracy of these statements. After all, your letter does not specify whether the complaint was anonymous or whether it came from someone with actual knowledge of the College's hiring and verification practices. You undoubtedly can appreciate the difference between responding to rumors, innuendo, or unsubstantiated claims and investigating supported allegations. At the very least, I hope that the College's legal counsel advised you of the material difference between the two.¹

¹ 8 C.F.R. 274a.9 ("When the Service receives a complaint from a third party, it shall investigate only those complaints that have a *reasonable probability* of validity" (emphasis added). The Service has interpreted the regulation's reasonableness standard to require, at a minimum, the name and address of the complainant, a detailed factual allegation, including the date, time, and place of the potential violation, and the specific conduct alleged to be a violation of employer sanctions.)

More importantly, as you note, the complaint focused on the College's "policy...not to obtain proper work authorization" and "that no such verification of employees' legal authorization to work was ever undertaken by the College as required by law." Thus, even if a duty to investigate arose, the focus of that inquiry should have been limited to the College's policy and practices, not on the status of individual employees. There was therefore no need to review the I-9 forms of each employee of the College. The decision to conduct an audit of the I-9s demonstrates, at best, overzealousness and, at worst, a fundamental disregard for the dignity and privacy of every employee.

Tellingly, the investigation revealed that the College's hiring procedures comply with the law. In other words, the "serious" and specific allegations lacked merit. Thus, had the Board acted in a more restrained and thoughtful manner, this entire episode could have been avoided.

In short, the Board needlessly created the current problem. To seek to justify the College's actions by referring to a discredited allegation and to federal law is disingenuous.

2. The Board Relied on Unsupported and Incomplete Risk Assessments

You stated in your letter that, "Not being in compliance with the law could jeopardize the College's ability to continue to effectively carry out its educational mission. An employer can be subject to civil fines, criminal penalties and debarment from participation in federal and state contracts and grants... These risks to the institution were especially noteworthy, given that the government is aggressively enforcing the I-9 laws against employers."

First, as you noted in your letter, the College's policies and practices conform to existing federal law. This fact alone substantially reduces the jeopardy of fines, criminal sanctions, and loss of federal and state contracts and grants. Moreover, while it is true that the Obama Administration is pursuing a more aggressive approach to enforcing I-9 laws, *not a single* institution of higher education has been the target of the Immigration and Customs Enforcement Office (ICE). Even a cursory review of the ICE's policy statements reveals that the agency focuses its efforts on employers dealing with "critical infrastructure facilities—airports, seaports, nuclear plants, chemical plants and defense facilities."² As much as we Sagehens may value the College Gates or the new Sontag residence hall, these are not "critical infrastructure facilities." The ICE's other enforcement focus is on those employers who engage in abusive or exploitative employment practices.³ Here again, Pomona would not track on the ICE's radar—no matter what the Workers for Justice might say. In other words, the specter you raise of severe consequences for Pomona College's Community if the Board did not take these actions turns out to be more imagined than real.

² See Immigration and Customs Enforcement, "Worksite Enforcement," available at <http://www.ice.gov/worksite>.

³ *Id.*

Additionally, your letter ignores the very real legal risks associated with overzealous employer efforts to verify the status of employees. Subjecting employees to intrusive and arbitrary verifications may violate federal law just as much as failing to verify an employee's authorization to work. In fact, while not even one college or university has faced an ICE enforcement action, the Department of Justice brought an action against a community college district for going too far in its efforts to verify new employees' work status. The Maricopa County Community College District was forced to pay over \$45,000 in civil fines (and \$22,123 in back pay).⁴

The College's actions may also have violated the National Labor Relations Act (NLRA). As you are well aware, many of Pomona College's employees are currently engaged in an effort to unionize. The facts suggest that many of these very workers were the focus of the College's I-9 verification efforts. As the National Labor Relations Board has made clear, undocumented workers are still employees under the NLRA and are therefore protected from unfair labor practices.⁵ Efforts to intimidate or coerce employees during the unionization process undoubtedly qualify as unfair labor practices. The Department of Labor and the NLRB are taking a much more active role in enforcing the rights of workers than in the past. Therefore, were an employee to lodge a complaint over the College's recent actions, the NLRB would take the allegation seriously and scrutinize the College's decision and motives.

Together, this suggests that the Board either inaccurately weighed the risks of its actions or misrepresented those risks to the Community.

3. The Board Must Do More to Affirm the College's Commitment to an Inclusive Environment

Your letter highlights the steps taken by College to treat each affected employee with respect. I do think it is appropriate to acknowledge that the College's efforts to assist its employees are noteworthy and commendable. But the praiseworthiness of the actions is dampened by the fact that these employees are in peril because of the Board's unfortunate decision to pursue a misguided, unnecessary, and risky effort. Extending a hand to someone you just knocked down is really the least a person can do.

Reaffirming the College's commitment to an inclusive environment is an admirable first step. Unfortunately, the action rings hollow without actions to back it up. After all, "commit" requires more than words. It demands deeds. Thus, more laudable than a statement by the Board is a true commitment not to engage in these types of practices in the future and to work to undue the harm done to those members of our community so deeply affected.

⁴ U.S. Dept. of Justice, "Justice Department Settles Allegations of Immigration-Related Employment Discrimination Against Maricopa Community College District," May 16, 2011, available at <http://www.justice.gov/opa/pr/2011/May/11-crt-627.html>.

⁵ National Labor Relations Board, Office of General Counsel, Memorandum GC 02-06, July 19, 2002.

Finally, as you remind us in your letter, the Board's role is to be "stewards of the College's resources and reputation." But I would hasten to add that your responsibility is to be not just "stewards," but good stewards. This means relying not just on the legal advice of outside counsel with no affection for, or affiliation with, Pomona College, but also on considerations of community, fairness, and justice. After all, though those College Gates may not be "critical infrastructure facilities," they do remind us that our task is to bear our "added riches in trust for mankind." Even more than the College's departing graduates, the Board must fulfill this duty. Regrettably, it is the considered judgment of many within the Pomona College Community that in this matter the Board has not lived up to its responsibility. I urge you to take immediate remedial action.

Sincerely,

A handwritten signature in cursive script, appearing to read "Michael Teter".

Michael Teter '99
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cc: President David Oxtoby
Pomona College Faculty
Pomona College Students
Pomona College Staff