



PERB
California Public Employment
Relations Board

Sacramento Regional Office
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June 25, 2020

Jacob Rukeyser, Attorney
California Teachers Association
1705 Murchison Drive
Burlingame, CA 94011-0921

Tina C. Mirzazadeh, Attorney
Dulcinea Grantham, Attorney
Lozano Smith
2001 North Main, Suite 500
Walnut Creek, CA 94596

Re: *Sacramento City Teachers Association v. Sacramento City Unified School
District*
Unfair Practice Charge No. SA-CE-3002-E
COMPLAINT

Dear Parties:

The Office of the General Counsel has issued the enclosed COMPLAINT in the above-entitled matter. The Respondent is required to file an **ANSWER** within 20 calendar days from the date of service of the COMPLAINT, pursuant to PERB Regulation 32644.¹ The required contents of the **ANSWER** are described in PERB Regulation 32644(b). If you have not filed a Notice of Appearance form, one should be completed and returned with your **ANSWER**.

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at www.perb.ca.gov.

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Also enclosed is a Notice of Informal Conference informing you that an informal settlement conference has been scheduled. If you are unable to meet on the date specified, please follow the instructions in the second paragraph of the notice. All inquiries, filings, and correspondence in this matter should be directed to me.

Sincerely,

A handwritten signature in black ink, appearing to read "Camille Binon". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Camille Binon
Regional Attorney

CKB

Enclosure

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Sacramento Regional Office, 1031 18th Street, Sacramento, CA, 95811-4124.

On June 25, 2020, I served the Complaint Cover With Notice regarding Case No. SA-CE-3002-E on the parties listed below by

Placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

Personal delivery.

Facsimile transmission in accordance with the requirements of PERB regulations 32090 and 32135(d).

Electronic service (e-mail).

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 25, 2020, at Sacramento, California.

S. Taylor

(Type or print name)



(Signature)

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD



SACRAMENTO CITY TEACHERS
ASSOCIATION,

Charging Party,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT

Respondent.

Case No. SA-CE-3002-E

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of Government Code section 3543.5, the General Counsel of the Public Employment Relations Board (PERB), pursuant to Government Code sections 3541.3(i) and 3541.5 and California Code of Regulations, title 8, section 32640, issues this COMPLAINT on behalf of PERB and ALLEGES:

1. Charging Party is an exclusive representative within the meaning of Government Code section 3540.1(e) of an appropriate unit of certificated employees (teachers).
2. Respondent is a public school employer within the meaning of Government Code section 3540.1(k).
3. In late March 2020, Charging Party and Respondent negotiated and agreed to two memoranda of understanding addressing preliminary issues relating to school closures and distance learning, including teachers' outreach to students and parents. These preliminary agreements did not address the actual distance learning plan and its many reasonably foreseeable negotiable effects. Charging Party's execution of these memoranda were without prejudice to further bargaining over the actual distance learning procedures and their negotiable effects, and these memoranda in fact explicitly provided for such further bargaining.

4. During the period from late March 2020 through April 2020, Respondent and Charging Party were meeting and negotiating pursuant to Government Code section 3543.3, regarding distance learning procedures and their many negotiable effects.

5. During this period of time Respondent engaged in the following conduct:

a. The [Respondent's] bargaining team members lacked authority to bargain, as they were repeatedly countermanded by [Respondent's] Superintendent Jorge A. Aguilar, who had declined to participate in the actual negotiations, resulting in the [Respondent] contradicting and backtracking from proposals, including but not limited to those addressing student learning standards, in-person meeting requirements, and technology issues. . . .,

b. The [Respondent] provided [Charging Party] with incorrect information and misrepresented the bases for its bargaining positions, as when the [Respondent] rejected [Charging Party's] proposal to protect day-to-day substitute pay on the grounds that it needed to use these monies to purchase laptops for students, even though this was not true; and

c. The [Respondent] engaged in regressive bargaining, when its negotiators stated that [Charging Party's] proposal contained only three objectionable provisions, but then, after [Charging Party] eliminated all three of those provisions, they changed position and claimed that there were other, additional provisions to which the [Respondent] could not agree.

6. By the acts and conduct included in, but not limited to, those described in paragraph 5, Respondent failed and refused to meet and negotiate in good faith with Charging Party in violation of Government Code section 3543.5(c).

7. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3543.5(a).

8. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3543.5(b).

9. On or about April 8, 2020, Charging Party made a request for information that is relevant and necessary to Charging Party's discharge of its duty to represent employees. The

request, included the following items: (a) the results of earlier outreach conducted by teachers regarding student readiness to participate in distance learning; (b) the number of students who indicated they would need a Respondent-provided computer in order to participate in distance learning; (c) the delivery date(s) and student distribution dates for the computers Respondent ordered for distance learning; (d) processes for distributing hardcopy packets to students unable or preferring not to participate in digital distance learning; (e) an explanation for how Respondent intended to accommodate its demand that teachers engage in in-person meetings with the State and County stay-at-home orders necessitated by the COVID-19 public health emergency; and (f) Respondent's plans to address security, confidentiality and other concerns raised by Charging Party regarding digital distance learning platforms.

10. As of late April 2020, Respondent did not furnish, and has not furnished, the above requested items, excepting only the student outreach results, where it provided partial and incomplete results.

11. By the conduct described in paragraph 10, Respondent failed and refused to meet and negotiate in good faith with Charging Party in violation of Government Code section 3543.5(c).

12. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3543.5(a).

13. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3543.5(b).

14. On or about April 9, 2020, Respondent informed Charging Party that it was halting negotiations relating to the distance learning place described in paragraph 3 and would instead implement its April 7, 2020 proposal that requires unit members to begin providing long distance instruction on April 13, 2020.

15. Respondent engaged in the conduct described in paragraph 14 without having negotiated with Charging Party to agreement or through the exhaustion of impasse procedures concerning the negotiable effects of the implementation of such policy.

16. By the acts and conduct described in paragraphs 14 and 15, Respondent failed and refused to bargain in good faith in violation of Government Code section 3543.5(c).

17. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3543.5(a).

18. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3543.5(b).

19. Before April 13, 2020, Respondent did not have policy concerning a distance learning plan that provides, for example: (a) “distance learning [is] a model that will require flexibility in scheduling” and requires teachers to accommodate students and their families scheduling preferences; (b) requires teachers to familiarize themselves with, and transition to, distance learning techniques and technology on their own time; (c) requires teachers to provide classroom instruction in part through digital videoconference and which allows supervisors to observe educator instruction through videoconference applications; and (d) requires teachers to engage in additional outreach to and surveying of students and parents regarding the COVID-19 related shutdown and distance learning issues.

20. On or about April 13, 2020, Respondent changed this policy by implementing a distance learning plan that provides, for example: (a) “distance learning [is] a model that will require flexibility in scheduling” and requires teachers to accommodate students and their families scheduling preferences; (b) requires teachers to familiarize themselves with, and transition to, distance learning techniques and technology on their own time; (c) requires teachers to provide classroom instruction in part through digital videoconference and which

allows supervisors to observe educator instruction through videoconference applications; and (d) requires teachers to engage in additional outreach to and surveying of students and parents regarding the COVID-19 related shutdown and distance learning issues.

21. Respondent engaged in the conduct described in paragraph 20 without having negotiated with Charging Party to agreement or through the exhaustion of impasse procedures concerning the decision to implement the change in policy and/or the effects of the change in policy.

22. By the acts and conduct described in paragraphs 20 and 21, Respondent failed and refused to bargain in good faith in violation of Government Code section 3543.5(c).

23. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3543.5(a).

24. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3543.5(b).

25. Before April 20, 2020, Respondent's did not have a "Distance Learning Engagement Monitoring" policy.

26. On or about April 20, 2020, Respondent implemented a new "Distance Learning Engagement Monitoring" policy that imposed new and additional work obligations for teachers, including: customizing a new "Daily Student Engagement Survey," daily transmitting this survey to all students, and daily reviewing student survey results and answering administrator questions regarding the same.

27. Respondent engaged in the conduct described in paragraph 26 without having negotiated with Charging Party to agreement or through the exhaustion of impasse procedures concerning the decision to implement the change in policy and/or the effects of the change in policy.

28. By the acts and conduct described in paragraphs 26 and 27, Respondent failed and refused to bargain in good faith in violation of Government Code section 3543.5(c).

29. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3543.5(a).

30. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3543.5(b).

31. The April 7, 2020 distance learning plan implemented by Respondent requires that teachers at the secondary level “work with their principal to create a schedule” for distance learning that accommodates the preferences of students and their families.

32. Respondent has dealt directly with teachers in developing the “Distance Learning Engagement Monitoring” policy referenced above. Thus, for example, in an April 19, 2020 email regarding this policy, Respondent’s Chief Academic Officer Christine Baeta acknowledged working with one or more teachers to “adjust” the policy and related guidance.

33. By the acts and conduct described in paragraphs 31 and 32, Respondent attempted to bypass, undermine and derogate the authority of Charging Party in violation of Government Code section 3543.5(c).

34. This conduct interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3543.5(a).

35. This conduct also denied Charging Party its right to represent bargaining unit employees in violation of Government Code section 3543.5(b).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: June 24, 2020

J. Felix De La Torre
General Counsel

By Yaron Partovi
Yaron Partovi
Senior Regional Attorney