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05/13/22 14:08 PM

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 05/13/2022

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No _____ NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

- a. Full name: Sacramento City Teachers Association
- b. Mailing Address: 1705 Murchison Drive, Burlingame, CA 94010-4583
- c. Telephone number: (650) 552-5414
- d. Name and title of agent to contact: Jacob F. Rukeyser, Attorney E-mail Address: jrukeyser@cta.org
Telephone number: (650) 552-5414 Fax No.: (650) 552-5019
- e. Bargaining Unit(s) involved: Sacramento City Teachers Association

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

- a. Full name: Sacramento City Unified School District
- b. Mailing Address: 5735 47th Avenue Sacramento, CA 95824
- c. Telephone number: (916) 643-7400
- d. Name and title of agent to contact: Jorge A. Aguilar, Superintendent E-mail Address: superintendent@scusd.edu
Telephone number: (916) 643-7400 Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name:
- b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

- a. Full name:
- b. Mailing Address:
- c. Agent:

5. GRIEVANCE PROCEDURE

¹An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No Unknown

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6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
 Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
 Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
 Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
 Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code, § 99560 et seq.)
 Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
 Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (*a copy of the applicable local rule(s) MUST be attached to the charge*):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

John Borsos
(Type or Print Name)

/s/ John Borsos
(Signature)

05/13/2022
Date



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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No: Date Filed:

INSTRUCTIONS: File this charge form via the e-PERB Portal, with proof of service. Parties exempt from using the e-PERB Portal may file the original charge in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES If so, Case No. NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: SACRAMENTO TEACHERS ASSOCIATION, CTA/NEA
b. Mailing address: c/o California Teachers Association, Legal Dept., 1705 Murchison, Burlingame, CA 94010
c. Telephone number: 650-552-5425
d. Name and title of person filing charge: Jacob F. Rukeyser, CTA Staff Counsel E-mail Address: jrukeyser@cta.org
Telephone number: 650-552-5414 Fax No.: 650-552-5019
e. Bargaining unit(s) involved: Certificated employees

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
b. Mailing address: 5735 47th Avenue, Sacramento, California 95824
c. Telephone number: 916-643-7400
d. Name and title of agent to contact: Jorge Aguilar, Superintendent E-mail Address: superintendent@scusd.edu
Telephone number: 916-643-7400 Fax No.:

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:
b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Gov. Code, § 18524.)

a. Full name:
b. Mailing address:
c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code, § 3540 et seq.)
- Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- Meyers-Miliias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- A Covered Public Utilities Code Transit Employer (BART (Pub. Util. Code, § 28848 et seq.), Orange County Transportation Authority (Pub. Util. Code, § 40000 et seq.), and supervisory employees of the Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code, § 99560 et seq.)).
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)

b. The specific Government or Public Utilities Code section(s) or PERB regulation section(s) alleged to have been violated is/are:

Government Code section 3543.5, subs. (a), (b), and (c)

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (**a copy of the applicable local rule(s) MUST be attached to the charge**):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

See Statement of Charge, attached hereto as Attachment "A"

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on May 13, 2022

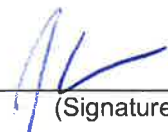
(Date)

at Sacramento, California

(City and State)

John Borsos

(Type or Print Name)



(Signature)

Title, if any: Executive Director, SCTA

Mailing address: SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA, 5300 Elvas Avenue
Sacramento, CA 95819

Telephone Number: 916-452-4591

E-Mail Address: jborsos@cta.org

STATEMENT OF CHARGE

Within the six months preceding the filing of this unfair practice charge, the Sacramento City Unified School District (District) has unlawfully failed and refused to bargain in good faith with, and has unlawfully denied the statutory rights of, the Sacramento City Teachers Association, CTA/NEA (SCTA), the exclusive representative of the District's certificated employees, and has unlawfully interfered with the statutory rights of the SCTA bargaining unit members, all in violation of the Educational Employment Relations Act, Government Code section 3540 et seq., and as evidenced by, but not limited to, the following:

Background Allegations

1. At all times relevant, the District has been a public school employer within the meaning of Government Code section 3540.1, subd. (k).
2. At all times relevant, SCTA has been the exclusive representative of the District's certificated employees within the meaning of Government Code section 3540.1, subd. (e).
3. During the fall of 2021, the District and SCTA (collectively, Parties) were engaged in collective bargaining over numerous items within the scope of representation. In or about mid-December 2021, the District declared impasse, after which the Parties continued their bargaining through impasse mediation and fact-finding. On or about March 17, 2022, the fact-finder issued a report to which SCTA's fact-finding panelist joined and the District's panelist dissented. In further discussions, the District continued to reject the fact-finding report as a basis for a negotiated agreement.
4. On or about March 23, 2022, SCTA, having earlier provided the District notice, called a strike. The SCTA strike lasted until April 3, 2022, for a total of eight school days.
5. The District closed all its school sites and offered no student instruction during the entire duration of the strike. The State of California subsequently assessed the District significant financial penalties for the lost instructional days caused by its closure of the schools, which penalties the District may avoid in whole or in part by scheduling make-up instructional days.
6. SCTA called off its strike on April 3, 2022 after the Parties succeeded in reaching a tentative strike settlement agreement, which they later approved. The Parties' strike settlement agreement did not address the District making up instructional days during this current 2021-22 school year, which issue the Parties agreed to address in separate and subsequent negotiations.

Count One: Unlawful Interference (Gov't Code § 3543.5(a))

7. Well before the SCTA strike began, the District had determined that in the event of a strike it would close all schools and cancel all student instruction and extra-curricular activities.

8. Also before the SCTA strike began, the District widely publicized its plans to close all schools and cancel all student instruction. Among other audiences, the District publicized its plan to the SCTA bargaining unit members. Thus, for example, in a March 21, 2022, the District informed SCTA bargaining unit members that “In the event the strike takes place, the District will close schools for instruction beginning Wednesday, March 23, 2022.”

9. At the same time as it was thus publicizing its plan to shut all schools and cancel all student instruction, the District was also urging SCTA unit members to break the strike. In that same March 21 letter, the District, having just stated that it would “close schools for instruction,” informed SCTA unit members that “Employees are expected to report to their regular assignment.”

10. However, there were not regular assignments during the strike—precisely because, and as the District made perfectly clear in its March 21 letter and other communications, it had cancelled all student instruction at its schools during the strike.

11. By simultaneously informing the SCTA bargaining unit members both that there would be no work during the strike and that they were expected to report to work during the strike, the District was promising SCTA unit members who crossed their colleagues’ picket lines that they would be paid for not working during the strike.

12. In this manner, the District promised SCTA unit members actual benefits—i.e., pay for not working—if they refused to participate in the SCTA strike, crossed their colleagues’ picket line and reported to “work” during the strike.

13. By the acts and omissions alleged above, the District unlawfully interfered with the protected statutory rights of the SCTA bargaining unit members in violation of Government Code section 3543.5, subd. (a).

Count Two: Unlawful Discrimination (Gov't Code § 3543.5(a))

14. On information and belief, a small number of SCTA unit members declined to participate in the SCTA strike and accepted the District’s invitation to report to their school sites and be paid for not working during the strike.

15. In this manner, the District followed through on its promise of benefits, and did in fact provide significant actual benefits to non-striking SCTA unit members that it did not also provide to SCTA unit members who struck.

16. By the acts and omissions alleged above, the District unlawfully discriminated against SCTA bargaining unit members who engaged in protected concerted activity, in violation of Government Code section 3543.5, subd. (a).

Count Three: Refusal to Furnish Information (Gov't Code § 3543.5(c))

17. Beginning in or about April 2022 and continuing to the present, the Parties have bargained over issues relating to changes to the District's 2021-22 calendar, as explained more fully in Paragraphs 5-6, above.

18. On or about April 25, the District's negotiators rejected an SCTA counterproposal made in the course of these negotiations at least in part because the counterproposal did not address strike-breaking SCTA unit members whom the District paid for not working during the strike.

19. In order better to understand the District's position regarding this matter, SCTA requested the following information, all necessary and relevant to the Parties' ongoing bargaining: (a) the name and school site of any SCTA bargaining unit member who worked during the strike; (b) the exact type of work performed by each such SCTA bargaining unit member, and the amount of time spent on such work; and (c) any correspondence referring to or discussing the type of work to be performed during the strike.

20. SCTA requested that the District furnish the requested information by the close of business on May 3.

21. To date, the District has neither furnished the requested information nor responded to SCTA's information request in any manner.

22. By the acts and omissions alleged above, the District unlawfully failed and refused to bargain with SCTA in good faith, in violation of Government Code section 3543.5, subd. (c).

Count Four: Bad Faith Bargaining (Gov't Code § 3543.5(c))

23. The Parties continued their bargaining over issues relating to changes to the District's 2021-22 calendar during the month of May 2022.

24. On or about May 4, the District provided SCTA with a new proposal "Extending the 2021-2022 School Year." To its earlier proposals, the District now added a number of new provisions, including: capping, for the first time ever, leaves of absences during the extended

school year to 20% of each particular school site; making the agreement contingent on the District securing “sufficient employee coverage for all services required to be provided during regular school days”; insulating the District from all tax or retirement liability or consequences relating to the agreement; and burdening SCTA with new one-sided liabilities relating to the agreement. All of these were new provisions; none had been proposed previously.

25. By thus larding its May 4 proposal with entirely new provisions that placed additional burdens on the SCTA unit members (i.e., those restricting unit members’ ability to use contractually-guaranteed leave and requiring unit members to “assume sole liability for all state, federal and employment tax consequences and all retirement consequences flowing from this Agreement”), imposed new legal burdens and liabilities on SCTA and its unit members (i.e., the requirement that “SCTA declares that prior to signing this Agreement they are apprised of relevant data and received independent advice and counsel regarding the state, federal and employment tax consequences and retirement consequences of this Agreement”), and imposed new contractual contingencies (i.e., making the agreement contingent on the District securing sufficient employee coverage), the District moved the Parties away from a negotiated deal, by engaging in regressive bargaining and/or making predictably unacceptable proposals.

26. Then, during the Parties’ May 9 bargaining session, the District’s lead negotiator charged that SCTA had “disappointed” her by making proposals that placed the Parties “far apart.” When SCTA responded by asking what, specifically, it had done allegedly to place the Parties “far apart,” the District’s lead negotiator refused to answer.

27. In this manner, the District further frustrated bargaining, by throwing up fictitious obstacles to negotiation and refusing to clarify what those obstacle are and/or how they could be addressed.

28. By the acts and omissions alleged above, the District unlawfully failed and refused to bargain with SCTA in good faith, in violation of Government Code section 3543.5, subd. (c).

Count Five: Unlawful Interference (Gov’t Code § 3543.5(a))

29. By the acts and omissions alleged in Counts Three and Four, above, the District has derivatively unlawfully interfered with the statutory rights of the SCTA bargaining unit members, in violation of Government Code section 3543.5, subd. (a).

Count Six: Unlawful Denial of Rights (Gov't Code § 3543.5(b))

30. By the acts and omissions alleged in Counts One, Two, Three, and Four, above, the District has derivatively unlawfully denied the statutory rights of SCTA, in violation of Government Code section 3543.5, subd. (b).

WHEREFORE, Charging Party Sacramento City Teachers Association, CTA/NEA, requests that PERB issue an order:

1. That the District violated Government Code section 3543.5, subs. (a), (b), and (c);
2. That the District cease and desist from bargaining in bad faith with SCTA, from denying the statutory rights of SCTA, from interfering with the statutory rights of the SCTA unit members, and from discriminating against SCTA unit members for the exercise of such rights;
3. That the District bargain in good faith with SCTA;
4. That the District remedy its unlawful discrimination against SCTA unit members for the exercise of the protected statutory right to engage in concerted activity by paying to every unit member an amount equal to that which it paid to the unit members for crossing the picket line;
5. That the District post an appropriate notice at all places where such notices are regularly placed informing the community of PERB's determination that the District violated the Educational Employment Relations Act; and
6. For all other appropriate and just relief.

PROOF OF SERVICE
State of California, County of San Mateo

I am employed in County of San Mateo, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1705 Murchison Drive, Burlingame, California, 94010.

On **May 13, 2022**, I served the foregoing documents described as, **UNFAIR PRACTICE CHARGE, SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT**, on all interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Jorge A. Aguilar, Superintendent
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
5735 47TH Avenue
Sacramento, CA 95824

BY MAIL

I am "readily familiar" with practice of collection and processing correspondence for mailing in this office. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Burlingame, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

BY ELECTRONIC

based upon court order or an agreement of the parties to accept service by electronic transmission, by electronically mailing the document(s) listed above to the e-mail address(es) set forth below, or as stated on the attached service list and/or by electronically notifying the parties set forth below that the document(s) listed above can be located and downloaded from the hyperlink provided. No error was received, within a reasonable time after the transmission, nor any electronic message or other indication that the transmission was unsuccessful.

PERB ELECTRONIC SERVICE

I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. *(May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)*

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **May 13, 2022**, at Burlingame, California.



MARIA C. HERNANDEZ