CALIFORNIA TEACHERS ASSOCIATION

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LEGAL DEPARTMENT

August 1, 2025

Via PERB ePortal

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Re: *Sierra Joint Community College District v. Sierra College Faculty Association*
PERB Unfair Practice Charge No. SA-CO-694-E
Respondents' Statement of Position in Response to Unfair Practice Charge

Dear Regional Attorney Martinez,

The California Teachers Association ("CTA") Legal Department represents CTA and Sierra College Faculty Association ("SCFA"), Respondents in the above-captioned Unfair Practice Charge filed by Charging Party Sierra Joint Community College District ("District"). On behalf of SCFA, I submit the following statement of position in response to Charging Party's Unfair Practice Charge.

I. INTRODUCTION

Starting in February 2025, the District fast-tracked off-cycle bargaining with SCFA on the issue of compensation structure for its part-time faculty because it wanted to avoid liability in a lawsuit in which it expected to be named as a defendant. Throughout the bargaining process, the District acted in bad faith, dominating and interfering with the administration of SCFA by meddling in internal affairs, including by composing messages to SCFA members on behalf of SCFA leadership.

In late March 2025, the District and SCFA reached a Tentative Agreement (TA) on the topic. SCFA only signed this TA because it made a unilateral mistake: it believed it was preserving the rights of individual members to pursue retroactive wage and hour claims. When an SCFA member challenged the TA, SCFA realized its mistake and promptly requested that the District modify a sentence of the TA. When the District refused to do so, SCFA notified the District that it was rescinding its approval of the TA and would not be presenting it to its membership for ratification.

But SCFA did not cease to bargain; after rescinding its approval of the TA, it has continued to bargain in good faith with the District. Therefore, SCFA has not acted in bad faith and this Charge should be dismissed in its entirety.

II. BACKGROUND AND FACTS

A. Parties

The District is a public school employer within the meaning of Government Code section 3540.1(k). Respondent SCFA is the exclusive representative of the part-time and full-time community college instructors, including faculty, librarians, and counselors, employed by the District. The District and SCFA are parties to a collective bargaining agreement that is operative from July 1, 2024 until June 30, 2027.

SCFA is affiliated with a statewide organization, Respondent CTA. CTA is an organization that offers voluntary membership to California public school employees and provides professional support and benefits to its members. CTA also offers its affiliate unions bargaining and legal assistance. CTA is not the exclusive representative of any public school employees.

B. Recent Legal Developments Concerning Wages for Community College Faculty

1. Non-Exempt Employees and Minimum Wage Requirements

Wage orders issued by California's Industrial Welfare Commission often require employers to pay covered employees the state minimum wage and an overtime premium, among other things.[1] Under the terms of Wage Order No. 4, "professional" employees such as community college faculty are exempt from the Wage Order's provisions if they "earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment." (*Id.*) In 2025, this figure is $5,720 per month, because the current minimum wage is $16.50 per hour.[2] The amount is not pro-rated for part-time employees.

Accordingly, community college educators (whether full-time or part-time) who make *less* than $5,720 per month are entitled to be paid at least the state minimum wage for all hours worked. (*Id.*)

2. Roberts v. Long Beach

In April 2022, two part-time faculty filed a class action lawsuit against the Long Beach Community College District (LBCCD), representing over 900 part-time faculty. (*See Roberts v. Long Beach Community College District* (Filed April 4, 2022, Sup. Court, Los Angeles County) Case No. 22STCV11381.) LBCCD's compensation arrangement only compensated part-time faculty for time spent teaching in the classroom. The lawsuit addressed the LBCCD's failure to

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[1] The IWC's Wage Orders are available at https://www.dir.ca.gov/iwc/wageorderindustries.htm (last accessed July 15, 2025)

[2] *See* California Department of Industrial Relations, Minimum Wage (available at https://www.dir.ca.gov/dlse/minimum_wage.htm, last accessed July 15, 2025).

compensate part-time faculty for required work outside the classroom, including time spent preparing syllabi, grading student work, meeting with students, and conducting administrative tasks.

On February 18, 2025, the *Roberts* court ruled on cross-motions for summary judgment and held that LBCCD violated wage and hour laws, finding that part-time faculty are not exempt from state minimum wage requirements since their compensation does not meet the required salary threshold test for the professional exemption. The court held that LBCCD violated those applicable minimum wage requirements by not paying faculty at least the minimum wage for hours worked outside the classroom. (A true and correct copy of the court's Ruling on Submitted Matter Re: Defendant's Motion for Summary Judgment or Summary Adjudication and Plaintiffs' Motion for Summary Adjudication, dated February 18, 2025, is attached as **Exhibit A.**)

C. SCFA and the District Bargaining on Tentative Agreement

Upon information and belief, the District reached out to SCFA on or around late January 2025 to suggest the two parties bargain the matter. But the District and SCFA did not consider any written proposals until March 28, 2025, when the District's Vice President of Human Resources Ryan Davis shared a draft of the TA with SCFA's lead negotiator Ms. Perry for the first time. (A true and correct copy of an email from Mr. Davis to Ms. Perry attaching the draft TA, dated March 28, 2025, is attached as **Exhibit B**.)

When the District reached out to SCFA to suggest bargaining, it stated that bargaining was necessary because of concerns arising out of the *Roberts* lawsuit. Upon information and belief, the District also knew that it was likely to be named as a defendant in a separate lawsuit, filed in October 2024, alleging similar causes of action and theories of liability as the *Roberts* lawsuit. That lawsuit was brought by plaintiffs on behalf of a putative class. Among the named plaintiffs were Joan Merriam, a part-time professor employed by the District. (A true and complete copy of the *Complaint in Merriam v. Board of Governors of the Calif. Comm. Colleges* (filed October 24, 2024) Sac. Sup. Ct. Case No. 24CV021690 is attached as **Exhibit C**.)

D. CTA's Assistance to SCFA

The District's allegations regarding CTA's involvement in SCFA's negotiations are greatly exaggerated. CTA never joined SCFA at the bargaining table.[3] Instead, CTA staff provided bargaining and legal support to SCFA a handful of times between February and April 2025.

On or around January 30, 2025, SCFA's lead negotiator Kara Perry reached out to Laura Schultz, the CTA staff representative assigned to provide bargaining support to CTA's affiliate SCFA. Ms. Perry solicited advice and counsel from Ms. Schultz regarding the status of the

[3] As previously noted, it is SCFA's belief that SCFA and the District only held one bargaining session on the matter, on February 27, 2025.

Roberts lawsuit. At the time, the *Roberts* court had not reached a decision on pending cross-motions for summary judgment.

On or around February 5, before SCFA had begun bargaining with the College, Ms. Schultz and SCFA leaders spoke briefly with a CTA staff attorney about the matter. SCFA had not provided Ms. Schultz or the CTA staff attorney with any draft proposals for the TA, as none had been exchanged. With no specific proposal to provide feedback on, the CTA staff attorney suggested that SCFA get back in touch after bargaining commenced.

Between February 5 and February 24, CTA staff members had no contact with SCFA or the District regarding the bargaining on part-time faculty compensation. On February 21, Mr. Davis shared a copy of the *Roberts* decision on cross-motions for summary judgment with Ms. Perry. (A true and correct copy of an email from Mr. Davis to Ms. Perry attaching the *Roberts* decision, dated February 24, 2025, is attached as **Exhibit D**.) Then, on February 24, Ms. Perry reached out to Ms. Schultz for assistance, stating:

> Hi Laura – This is Kara, the chief negotiator for SCFA at Sierra College. I'm reaching out because we got a judgment in the Long Beach case that sta[y]s the PT Faculty are not exempt employees, which is not great news. I was hoping I could chat with you early this week, hopefully today or tomorrow about language we're thinking of bargaining. Thanks!!

(A true and correct copy of text messages exchanged between Ms. Perry and Ms. Schultz dated February 24 to April 4, 2025 is attached as **Exhibit E**.)

On or around February 26, Ms. Schultz and the CTA staff attorney met with SCFA's leadership to inform SCFA of the decision of the *Roberts* court on cross-motions for summary judgment. Ms. Schultz and the CTA staff attorney summarized the general meaning and effect of the *Roberts* decision but did not provide specific advice regarding SCFA's upcoming bargaining with the District on the matter, again because there was no specific proposal to review.

Ms. Perry then asked Ms. Schultz to join her for a call with Mr. Davis on February 27, which she did. (*See* **Ex. E** [text messages between Ms. Perry and Ms. Schultz].)

Between February 27 and March 28, CTA staff members had no contact with SCFA or the District regarding the bargaining on part-time faculty compensation. On or about March 28, 2025, the District created draft language for the TA and send it to SCFA for review. (*See* **Ex. B.**)

The draft TA purported to change the CBA between the District and SCFA in several ways, including that language was added to Article 9 ("Defining the Lecture and Lab Rate") to assert that the hourly Lecture and Lab Rate of pay for faculty "is for a segment of time and money which includes, for instructional teaching faculty, both the pay for the time teaching and the preparation and other outside teaching related duties as described in Article 16 of the CBA." (*See* **Charge, Ex. A**, p. 9.8.) The TA also declared that "This is consistent with the Parties[']past intent, understanding and practice." (*Id.*)

On March 30, SCFA reached out to Ms. Schultz for advice and counsel regarding proposed language for a Tentative Agreement. On April 1, Ms. Schultz solicited advice about the proposed language from the CTA staff attorney. On April 2, the CTA staff attorney advised SCFA that it could not, through a negotiated agreement, waive the wage claims of individual employees, and advised that SCFA should remove language that could be interpreted as retroactive or declarative of the parties' understanding under previous CBAs.

On April 3, SCFA provided the CTA staff attorney with a revised TA that still appeared to waive the wage claims of individual employees, i.e., it retained the language that could be interpreted as retroactive or declarative of the parties' understanding under previous CBAs. The CTA staff attorney repeated her previously-stated concerns. However, SCFA appeared to have misunderstood the CTA staff attorney and believed it had been green-lit to accept the proposed Tentative Agreement as written.

On April 3, SCFA signed the Tentative Agreement.

E. District's Interference with SCFA's Internal Communications About TA

The District's focus on CTA's involvement in bargaining is ironic, considering the District's interference with and domination of SCFA's internal activities.

After SCFA and the District signed the TA, SCFA held meetings with its members and distributed informational materials about the TA at the behest of the District. Ms. Perry informed the District of SCFA's communication plan with its members. (*See* **Exhibit F** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 4, 2025, sharing SCFA's communication/ratification timeline); **Exhibit G** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 4, 2025, offering to share information about SCFA's communication plan).)

On April 9, SCFA's bargaining team distributed a communication about the TA that it and/or Ms. Perry had jointly drafted with the District. (*See* **Exhibit H** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 7, 2025, sharing a draft of the joint communication).)

On April 14, 2025, SCFA sponsored a two-hour open forum regarding the TA and invited the District to speak for the first hour.

On April 21, 2025, SCFA distributed a FAQ document to all of its members; the document had been co-written or at least heavily edited and approved by the District before SCFA sent it to its members. (*See* Charge, Exhibit B. *See also* **Exhibit I** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 10, 2025, sharing a draft of the FAQ).)

During the period roughly from April 9 to April 24, SCFA fielded numerous questions from its members about the effect of the TA. The District repeatedly meddled in SCFA's communications between its leadership and its members, drafting messages for SCFA's leadership and directing SCFA's response. (*See, e.g.*, **Exhibit J** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 9, 2025, forwarding an email from SCFA

member Joan Merriam); **Exhibit K** (a true and correct copy of an email from Mr. Davis to Ms. Perry dated April 9, 2025, suggesting edits to SCFA's response to Ms. Merriam); **Exhibit L** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 9, 2025, soliciting his feedback for an SCFA email to disgruntled SCFA member Heather Eubanks); **Exhibit M** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 9, 2025, asking him for "help please 😋" on an SCFA email to all SCFA members); **Exhibit N** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 10, 2025, asking his approval for an SCFA email to disgruntled SCFA member Dan Groff); **Exhibit O** (a true and correct copy of an email from Ms. Perry to Mr. Davis dated April 13, 2025, asking his input for an SCFA email to SCFA member Sonia Delgadillo.)

F. SCFA Rescinds Approval of TA

On or about April 18, an Association member named Joan Merriam filed an unfair practice charge against SCFA and the District, alleging that the former had violated its duty of fair representation by agreeing to a TA that essentially waived the rights of individual members to sue the District for backpay for past minimum wage violations. Ms. Merriam noted a few days later that she had erroneously filed her charge with the National Labor Relations Board, had withdrawn that charge, and refiled it with PERB, the correct public agency. (A true and correct copy of an email from Ms. Perry to Mr. Davis attaching Ms. Merriam's email and unfair practice charge, dated February 21, 2025, is attached as **Exhibit P.**)

Upon learning of Ms. Merriam's unfair practice charge, SCFA contacted a different CTA staff attorney on or around April 22, 2025. Through Ms. Merriam's unfair practice charge, the second CTA staff attorney learned of and investigated Ms. Merriam's lawsuit against the District and the nature of her individual claims. Then, the second CTA staff attorney, like the previous attorney, advised SCFA that it could not waive the rights of individual members through a negotiated agreement with the District.

At that point, SCFA recognized its previous error (misunderstanding the first CTA staff attorney's advice on the TA), and on April 22, SCFA requested that the District change a line in the TA to account for this concern. Specifically, SCFA requested that the District remove the sentence "This is consistent with the Parties' past intent, understanding, and practice" from the TA. (*See* **Charge, Ex. D**.)

The District responded on the same day indicating that it was willing to remove the sentence that SCFA had requested. However, the District demanded that SCFA induce three acts from CTA: (1) that CTA send a statement to the District's faculty endorsing the TA; (2) that CTA participate in conversations with the League of California Community Colleges; and (3) that CTA ask Ms. Merriam's attorneys to withdraw her charge against the District. (*See* **Charge, Ex. E**.)

These requests from the District were wildly implausible: CTA was not a party to the negotiations between SCFA and the District; CTA is not an employee organization nor an exclusive representative of any employees of the District; SCFA does not control CTA; CTA's rank-and-file staff cannot make commitments on behalf of the organization; and CTA does not control or have sway over Ms. Merriam or her attorneys.

Because the District's demands were impossible for SCFA to meet, SCFA interpreted them as an attempt to prevent agreement and a rejection of SCFA's request to remove a sentence from the TA. Thus, on April 24, SCFA informed the District that it was withdrawing its approval of the TA and would not be submitting it to its membership for ratification. SCFA informed the District of this intention even before it informed its own membership. (A true and correct copy of an email from Ms. Perry to Mr. Davis dated April 24, 2025, attaching a draft of a communication that was sent the next day to SCFA membership, is attached as **Exhibit Q.**) In the communication, SCFA declared to its members and to the District:

> Our plan is to return to the bargaining table to resume negotiations on these issues once we have obtained additional information from our bargaining unit members. We are currently preparing a survey to send out and we will continue holding informational meetings prior to returning to the bargaining table. We hope and expect that will be very soon. We want to be very clear that we are eager to reach an agreement with Sierra College over compensation agreements for our valued members and we look forward to continued bargaining.

(*Id.*)

G. SCFA's Leadership Quits En Masse

On April 25, 2025, six of SCFA's Executive Board members resigned from their positions: the President, the Bargaining Team Chair (Ms. Perry), the Secretary, the Grievance Chair (who was on the Bargaining Team), the Grievance Chair, and a member of the Bargaining Team. (*See* **Charge, Ex. H**.) They resigned with no notice to SCFA's membership or to the remaining member of the Executive Board. This left SCFA with no President and only one Bargaining Team member.

Since these SCFA Executive Board members resigned, some have (1) dropped their membership in the union; (2) encouraged other SCFA members to drop their membership; or (3) organized SCFA members to decertify SCFA and form a separate employee organization to exclusively represent full-time faculty.

H. SCFA's Renewed Attempts to Bargain

Once the six members of SCFA's board, including Ms. Perry, resigned from the union, SCFA acted with haste to reconstitute its leadership team, form a bargaining team, and return to the bargaining table. SCFA had to hold elections twice (in May and again in June) to appoint leaders to fill the vacated positions. The most recently-elected leader was installed during the week of July 7-11, and two positions remain unfilled.

SCFA communicated with the District that it was prepared to continue bargaining but first had to fill its leadership vacuum. Ms. Schultz wrote to Mr. Davis on May 6, 2025, stating as follows:

> Hi Ryan,

> I'm requesting we postpone all bargaining meetings until SCFA is able to appoint a new bargaining team which will be as soon as we have completed our elections to fill both expired term and recently vacated positions. I'll notify you as soon as we have a new bargaining team in place. We anticipate having a new bargaining team in place by June 1st. I assume you do not typically negotiate during summer break however due to the current circumstances SCFA would be willing to negotiate this summer but negotiations would likely need to take place online. Please send possible dates you are available to meet in June and July so we can tentative schedule bargaining.
>
> Moving forward I will be joining SCFA, as their staff person, in all negotiations so there is no need for the district to use valuable resources on a third party facilitator. Regardless if we use an interest-based or traditional bargaining process, we plan to negotiate in compliance with the Educational Employment Relations Act, while ensuring our duty to represent all SCFA bargaining unit members.

(A true and correct copy of the email from Laura Schultz to Ryan Davis dated May 6, 2025 is attached as **Exhibit R**.)

Ms. Schultz also communicated directly with the District's attorney regarding future bargaining sessions:

> I am writing on behalf of SCFA to respond to your April 30, 2025, letter. As you may know, I am in communication with Ryan Davis about rescheduling the next bargaining dates because of the need to hold elections to fill gaps in the SCFA leadership due to the recent departure of several SCFA leaders. We hope to get back to the bargaining table in early June to have additional negotiations resulting from SCFA having to rescind the previous Tentative Agreement ("TA"). Like the College, SCFA also remains committed to reaching agreement on this issue as soon as possible.

(A true and correct copy of the email from Laura Schultz to Michelle Cannon dated May 12, 2025 is attached as **Exhibit S**.)

SCFA and the District have recently been in touch to schedule future bargaining dates. On June 20, SCFA sent the District a demand to bargain salary and compensation. On July 11, SCFA suggested a bargaining date, to which the District agreed. SCFA and the District bargained on July 30, 2025.

Meanwhile, the District has made it more difficult for SCFA to bargain. First, it voted to terminate the Mutual Interest Negotiation Team agreement—a three-way agreement between the District, SCFA, and the classified employee union. Then, with the release time provisions of the MINT agreement nullified, the District has refused to grant release time to SCFA Bargaining Team members to attend bargaining on the issue of part-time faculty compensation.

III. ANALYSIS

The burden is on the Charging Party to allege, with factual specificity, a legal violation. (8 Cal. Code Regs. § 32615(a).) Conclusory allegations do not suffice, and a *prima facie* claim

can only be established by factually specific allegations. (*See* 8 Cal. Code Regs. § 32615(a) (requiring a charge to set forth a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice"); *United Teachers – Los Angeles (Ragsdale)* (1992) PERB Dec. No. 944.)

Under the standards described above, the Charge fails in numerous ways to state a claim.

A. CTA does not have a duty to bargain in good faith because it is not an employee organization or an exclusive representative of any of the employees of the District.

This matter must be dismissed with respect to Respondent CTA, because CTA does have a duty to bargain in good faith with the District.

Under Government Code § 3543.6(c), "[i]t shall be unlawful for an ***employee organization*** to: . . . [r]efuse or fail to meet and negotiate in good faith with a public school employer of any of the ***employees of which it is the exclusive representative***." Government Code § 3540.1(d) defines an "employee organization" to mean "an organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer . . . . [and] any person of the organization authorized to act on its behalf." Government Code § 3540.1(e) defines an "exclusive representative" to mean "the employee organization recognized or certified as the exclusive negotiating representative of public school employees."

CTA's role in this matter has been limited to providing bargaining support and legal advice to SCFA. CTA is not an employee organization or an exclusive representative of any of the employees of the District within the meaning of EERA, and it therefore does not owe the District a duty to meet and negotiate in good faith under Government Code § 3543.6(c).

B. The totality of the circumstances do not demonstrate that SCFA acted in bad faith.

A public employer and the recognized employee organization have a mutual obligation to bargain in good faith on request of either party and to endeavor to reach an agreement on matters within the scope of representation. (*Anaheim Union High School District* (1981) PERB Dec. No. 177.) The requirement that the parties meet and negotiate in good faith has been interpreted by the courts and PERB to mean that the good faith required is a subjective attitude which evidences a genuine desire to reach agreement. (*Placentia Fire Fighters v. City of Placentia* (1976) 57 Cal. App. 3d 9, 25; *Pajaro Valley Unified School District* (1978) PERB Dec. No. 51.

The "totality of the conduct" test examines the entire course of negotiations between the parties to determine whether the responding party had the requisite intention of reaching an agreement. (*Pajaro Unified School District* (1978) PERB Dec. No. 51.) Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (*Oakland Unified School District* (1982) PERB Decision No. 275.) Under the totality of conduct test, PERB considers several factors as indicative of bad faith bargaining, including: (1) frequent turnover in negotiators, (2) negotiator's lack of authority, (3)

lack of preparation for bargaining sessions, (4) missing, delaying of cancelling bargaining sessions, (5) insistence on ground rules before negotiating substantive issues, (6) taking an inflexible position, (7) regressive bargaining proposals, (8) predictably unacceptable counterproposals, and (9) repudiation of a tentative agreement. (*Gavilan Joint Community College District* (1996) PERB Dec. No. 1177E, p. 7.)

The District alleges that SCFA violated its duty to bargain in good faith solely because SCFA reneged on the TA. It does not allege that SCFA has committed any other conduct evincing bad faith bargaining—and it cannot so allege, because SCFA has diligently sought to reach agreement on the issue of compensation for part-time faculty.

1. SCFA did not violate its duty to bargain in good faith by rescinding its approval of an unenforceable agreement.

The District and SCFA never reached a final negotiated agreement, but merely a tentative agreement not yet ratified by the principals. Unlike a final agreement, a "tentative agreement reached by the respective bargaining teams does not bind either side." (*Temple City Unified School District* (2008) PERB Dec. No. 1972, pp. 12.) Reneging on a tentative agreement may be one indicator of surface bargaining but it does not rise to the level of *a per se* violation of the duty to bargain in good faith like unilateral rescission of a negotiated agreement does. (*See supra Gavilan*, PERB Dec. No. 1177E, p. 7.)

Generally, a party does not engage in regressive bargaining if it offers a sufficiently credible and rationally supported justification of changed circumstances that explain why it has made a proposal that ostensibly appears to move the parties further away from a resolution. (*City of Palo Alto* (2019) PERB Decision No. 2664-M, p. 6, fn. 5.) For example, in *Temple City, supra*, PERB held that a school district's board failure to ratify a tentative agreement was excused by the proposed unprecedented and severe mid-year cuts in education funding. (PERB Dec. No. 1972, p. 14.) In addition, "PERB and the NLRB recognize the legal significance of a party's ability to rescind[4] a contract provision based on mistake," where "(1) the mistake is a unilateral one; and (2) rescission is raised as a defense to a bad faith bargaining charge." (*Berkeley Unified School District* (2008) PERB Dec. No. 1976E, pp. 8-9.)

Here, SCFA made a simple good-faith mistake when it misunderstood the advice of the CTA staff attorney. That mistake came to light when, after it signed the TA, Ms. Merriam contacted SCFA, filed an unfair practice charge against it, and SCFA and CTA learned of the claims in Ms. Merriam's lawsuit against the District. When SCFA learned of its mistake, and the changed circumstances as a result of Ms. Merriam's lawsuit, it moved quickly to educate itself on Ms. Merriam's unfair practice charge and lawsuit, and sought legal advice.

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[4] As explained above, the facts of this case involve the union reneging on a *tentative* agreement, not rescinding or repudiating a final negotiated agreement. Nonetheless, PERB and NLRB caselaw on contract rescission provides helpful principles to guide the analysis of SCFA's conduct.

SCFA learned that there was no point in agreeing to the TA as drafted, because it would have been unenforceable. A union cannot waive the individual statutory rights of its members. (*Alexander v. Gardner-Denver Co.* (1974) 415 U.S. 36, pp. 51-52; *Torrez v. Consolidated Freightways Corp.* (1997) 58 Cal. App. 4th 1247, pp. 1251-1259.) Thus, SCFA could not agree to a retroactively-applicable redefinition of hourly pay for part-time faculty members that would effectively nullify minimum wage violation claims by those employees for past work; that agreement would have been unenforceable.

SCFA then promptly notified the District of its mistake and suggested a simple remedy that the District responded to with an absurd counteroffer. SCFA then decided to renege on the TA. Changed circumstances and mistake—namely, the realization that SCFA and the District were about to enter into an agreement that would be at least partially unenforceable—excuse SCFA's decision to rescind its approval of the TA.

2. SCFA has continued to bargain in good faith after reneging on the TA.

As discussed above, the mere act of reneging on a tentative agreement is not necessarily bad faith bargaining under the totality of the circumstances. "[A] tentative agreement reached by the respective bargaining teams does not bind either side" though "where there has been a good faith rejection of the tentative agreement by the principles, the duty to bargain is also revived." *Temple City Unified School District* (2008) PERB Dec. No. 1972, pp. 12-13 (citation and quotation marks omitted).

The facts show that SCFA notified the District of its mistaken understanding of the law and sought diligently to correct it. When the District made impossible demands of CTA, which was not even a party to the negotiations, SCFA understood the District to be rejecting SCFA's proposed correction and SCFA reneged on the tentative agreement in good faith. Since then, SCFA has reconstituted its bargaining team and restarted negotiations with the District. The facts demonstrate that SCFA and the District scheduled bargaining date then met and negotiated., i.e., SCFA has continued to meet its obligation to bargain in good faith with the District on the subject matter.

3. A single indicator of bad faith is insufficient to state a case for bad faith bargaining.

PERB has long held that one indicia of bad faith is not enough to demonstrate a prima facie case of bad faith bargaining. (*See, e.g.*, *Contra Costa Community College District* (2005) PERB Dec. No. 1756, p. 3; *Ventura County Community College District* (1998) PERB Decision No. 1264; *State of California (Department of Education)* (1996) PERB Decision No. 1160-S; *Oakland Unified School District* (1996) PERB Decision No. 1156.)

The District's only evidence of SCFA's bad faith is the fact that it reneged on an unenforceable tentative agreement. Thus, under the "totality" standard applicable to a surface bargaining claim, no prima facie showing is present in this case.

4. The District's bad faith behavior prevented agreement.

SCFA raises, as an affirmative defense, the District's interference with and domination of SCFA in violation of Government Code sections 3543.5(b) and (d).

Government Code section 3543.5(b) makes it unlawful for a public school employer to "deny to employee organizations rights guaranteed to them by this chapter [Gov. Code §§ 3540-3549.3]." Among other things, EERA guarantees employee organizations "the right to represent their members in their employment relations with public school employers." Gov. Code § 3543.1(a). PERB reviews allegations of interference with union rights in violation of Section 3543.5(b), on standards similar to those for interference with employee rights under 3543.5(a). *State of California* (2012) PERB Dec. No. 2282 at 16; *see Regents of the University of California* (1982) PERB Dec. No. 212 at 12-13 (*Carlsbad* analysis appropriate in assessing denial of union rights). In turn, an employer violates Government Code section 3543.5(a) when its conduct harms, or has a tendency to harm, employee rights. (*See, e.g., William S. Hart Union High Sch. Dist.* (2018) PERB Dec. No. 2595E, p. 5.) The employer's motive is irrelevant, and a violation may be established even where the tendency to cause harm is only "slight." (*See id.*)

Government Code section 3543.5(d) makes it unlawful for an employer to "[d]ominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another." There are three ways an employer may violate this subdivision, including by dominating or interfering with the formation or administration of an employee organization. (*Clovis Unified School District* (2024) PERB Dec. No. 2904, p. 36.) The employer's intent is irrelevant to a claim of domination. (*Id.*) In assessing such claims, PERB considers "whether the employer's conduct tends to interfere with the employee organization's ability to maintain an arm's length relationship with the employer." (*Id.*, p. 37.)

Here, the District exercised significant influence upon and involvement in the operations of SCFA. It initiated and fast-tracked off-cycle bargaining on compensation for part-time faculty in order to protect itself from liability. It drafted the TA, joint communications with SCFA about the TA, the FAQs that SCFA sent out to its membership explaining the TA. It drafted or had a heavy hand in approving the internal messages that SCFA sent to its members to explain the effect and purpose of the TA without identifying itself as having drafted them. Then, when informed by counsel that the TA could waive the rights of its members, SCFA's leadership quit en masse. Subsequent to their resignation, some of the former leaders of SCFA have encouraged SCFA members to decertify/sever SCFA as the exclusive representative of the District's certificated full-time employees and to convince other SCFA members to drop their membership. These facts suggest the District's domination of SCFA and interference with SCFA's administration, preventing an arm's length relationship between SCFA and the District.

Thus, it is the District's own behavior—domination of and interference with SCFA in violation of Government Code sections 3543.5(b) and (d), in addition to its restrictions on release time discussed above in Section II.H—that have prevented further bargaining on the TA.

IV. CONCLUSION

For the above reasons, the Charge fails to state a *prima facie* claim and should be dismissed in its entirety.

Respectfully submitted,

Mandy Hu
Staff Attorney, California Teachers Association
mhu@cta.org

VERIFICATION

I am the president of Sierra College Faculty Association, CTA/NEA. I have read the Respondents' Statement of Position in the captioned matter and am familiar with the contents thereof. I verify that the contents of the Statement of Position are true to the best of my knowledge, information, and belief.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed at Grass Valley, CA, California, on July 29, 2025.

NAME: JUDITH A. KREFT

SIGNATURE: Judith A Kreft

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 **July 29, 2025**, I served the foregoing documents described as, **RESPONDENTS' STATEMENT OF POSITION IN RESPONSE TO UNFAIR PRACTICE CHARGE, SIERRA COLLEGE FACULTY *v.* SIERRA COLLEGE FACULTY ASSOCIATION, CTA/NEA, UPC#SA-CO-694-E ,** on all interested parties in this action by electronically transmitting a true copy thereof addressed as follows:

Ryan Davis, Vice President
of Human Resources
SIERRA COLLEGE FACULTY
5100 Sierra College Blvd.,
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☐ **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).*)

Executed on **July 29, 2025**, at Burlingame, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Maria C. Hernandez
MARIA C. HERNANDEZ