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Student Board Member

June 5, 2020

Via E-Mail: [jborsos@cta.org](mailto:jborsos@cta.org)

John Borsos  
Executive Director  
Sacramento City Teachers Association  
5300 Elvas Avenue  
Sacramento, CA 95819

Re: Demand for SCOE Representative to be Present at June 9, 2020 Budget Presentation and Negotiation Session

Dear Mr. Borsos:

I am in receipt of your June 2, 2020 email wherein SCTA demands that a representative from Sacramento County Office of Education (“SCOE”) with “decision making authority” be included in the collective bargaining negotiations between the District and SCTA, including the next negotiation session scheduled for June 9, 2020. According to your email, SCTA’s demand is based on the contention that SCOE meets the definition of a joint employer of SCTA represented certificated staff under current labor law standards.

As you may recall, on March 5, 2020, the District sent a letter to SCTA leaders responding to SCTA’s claims at the March 3, 2020 negotiations session that the District’s team lacked authority to negotiate without the presence of the fiscal advisor or other SCOE representative. The District’s March 5, 2020 letter reminded SCTA of the role SCOE, and specifically the role of the fiscal advisor appointed by SCOE, plays in the District generally and as it relates to the District’s negotiations. The District’s March 5, 2020 letter is enclosed for your convenience.

As explained in the March 5, 2020 letter, while SCOE has the duty to review and comment on any proposed tentative agreement made between a union and the District and to make sure the District has the financial capability to carry out tentative agreements reached between a union and the District, SCOE’s involvement does not include negotiating with third parties, such as unions, or making decisions *for* a district. While SCOE has the ability to stay and rescind any *action* that is determined to be inconsistent with the ability of the District for the current or subsequent fiscal year, that ability applies to action taken by the District; it does not impact the District’s ability to make proposals during negotiations prior to taking action on an issue. Therefore, the District maintains its position that the District’s negotiation team has the authority to negotiate and reach tentative agreements without the presence of a representative from SCOE.

Your June 2 email suggests SCOE is required to be present at the negotiations table with the District and SCTA because SCOE is a joint employer of SCTA unit members “under current labor law standards.” While your email is absent of the specific labor laws SCTA

relies on to assert SCOE is a joint employer, it is the District's position that, pursuant to case law from the Public Employment Relations Board ("PERB"), SCOE is not a joint employer of SCTA-represented employees.

PERB case law has established that a joint-employer relationship exists when "two or more employers exert significant control over the same employees—where from evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." (*United Public Employees v. Public Employment Relations Bd.* (1989) 213 Cal.App.3d 1119, 1128, adopting the federal test in *NLRB v. Browning-Ferris Industries, Inc.* (3d Cir. 1982) 691 F.2d 1117, 1124; *Turlock School District* (1977) EERB Order No. AD-18, at pp. 16-17.) A joint-employer relationship is established if an entity retains the right to "control both what shall be done and how it shall be done," such that it retains the "right to control and direct the activities of the person rendering service, or the manner and method in which the work is performed." (*County of Ventura v. Public Employment Relations Bd.* (2019) 254 Cal.Rptr.3d 902, quoting *Service Employees Internat. Union v. County of Los Angeles* (1990) 225 Cal.App.3d 761, 769.)

SCOE does not exert control over the certificated employees of the District such that SCOE would be considered a joint employer with the District. The role of SCOE is to provide technical assistance and oversight to all Sacramento County school districts, including this District. Despite the heightened role that SCOE currently plays in the District's due to the District's negative budget certification, the role of SCOE is not to exert control over the day-to-day manner and method work is performed by SCTA employees; the District alone determines those matters governing essential terms and conditions of employment.

Based on the above, it is the District's position that a representative from SCOE "with decision making authority" is not required at the next negotiations session, or at any future negotiations session, as the District's negotiation team has the authority to negotiate and reach tentative agreements without the presence of a representative from SCOE. Therefore, neither the fiscal advisor assigned by SCOE nor a SCOE representative will not be present at the next scheduled negotiation session.

The District's negotiations team looks forward to resuming successor contract negotiations with SCTA on June 9, 2020 and receiving SCTA's responses to the District's previous proposals.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge A. Aguilar'. The signature is stylized with a large loop and a dot above the 'i'.

Jorge A. Aguilar  
Superintendent

Enclosure



**OFFICE OF THE SUPERINTENDENT**

5735 47th Avenue • Sacramento, CA 95824

*Jorge A. Aguilar, Superintendent*

**BOARD OF EDUCATION**

March 5, 2020

Jessie Ryan  
President  
Trustee Area 7

Sent via email to [dfisher@saccityta.com](mailto:dfisher@saccityta.com)

Christina Pritchett  
Vice President  
Trustee Area 3

David Fisher  
Sacramento City Teachers Association  
5300 Elvas Avenue  
Sacramento, CA 95819

Michael Minnick  
2<sup>nd</sup> Vice President  
Trustee Area 4

RE: Successor Contract Negotiations

Lisa Murawski  
Trustee Area 1

Dear Mr. Fisher:

Leticia Garcia  
Trustee Area 2

I write to thank you and the Sacramento City Teachers Association (“SCTA”) negotiations team for meeting with the District’s negotiations team on March 3, 2020 to begin successor contract negotiations. I understand that there were some productive conversations. I also understand that SCTA requested some follow up information and documents and our District staff is working to get you the requested items as quickly as possible so that you have those before the next bargaining session.

Mai Vang  
Trustee Area 5

The District’s negotiations team reported to me that SCTA’s lead negotiator, Mr. John Borsos, raised some questions during the March 3 negotiations session about the authority of the District’s negotiations team to reach agreements at the negotiations table without the Sacramento County Office of Education’s Fiscal Advisor being on the negotiations team. In order to address your concerns and allow our important negotiations work to move forward, I am sharing the District’s understanding of the role that the Fiscal Advisor plays generally and, more specifically, as it relates to negotiations. It has been and remains the District’s position that we do not need the Fiscal Advisor or any representative of the Sacramento County Office of Education (“SCOE”) to be on the District’s negotiations team. Rather, our team has the authority of the Governing Board of our District to negotiate and reach tentative agreements with SCTA.

Darrel Woo  
Trustee Area 6

As you may know, Education Code section 42127.6(a)(1)(A) allows the county superintendent of schools to “assign a fiscal expert” to advise a district “on its financial problems” if the district has a qualified or negative budget certification. The purpose of such advisement is to “ensure that the district meets its financial obligations.” (*Id.*) SCOE has assigned a fiscal advisor, Terri Ryland, to our District and works closely with our District staff in that capacity.

Olivia Ang-Olson  
Student Board Member

As you may also know, a school district with a qualified or negative rating must also allow the county office of education at least 10 working days to review and comment on any proposed tentative agreement made between the exclusive representative (union) and

the district. (Gov. Code § 3540.2(a).) The district must provide the county superintendent of schools with all information relevant to yield an understanding of the financial impact of such an agreement. (*Id.*)

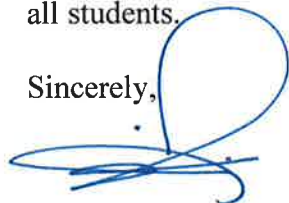
Reading Government Code section 3540.2(a) and Education Code section 42127.6(a)(1)(A) together, it is not within the duties of a fiscal expert appointed by a county superintendent to sit at a bargaining table. The fiscal expert's duties revolve around advisement, guidance, and assistance based on data and conversations with district employees, but does not include involvement in making deals with third parties, such as unions, vendors, consultants, etc., or making decisions *for* a district.

In addition, the powers of stay and rescind do not require SCOE or its Fiscal Advisor to be present at the bargaining table. Stay and rescind allows a county office to stay or rescind any *action* that is determined to be inconsistent with the ability of the district to meet its obligations for the current or subsequent fiscal year. (Education Code section 42127.6 (e)(2), (5)). As such, the power to stay and rescind applies to actions taken by the District, not proposals that the District may make prior to taking action on an issue. The District's negotiations team, like SCTA, is required by law to come to the negotiations table with authority and to take any necessary steps prior to negotiations to receive the direction and authority that will allow it to negotiate in good faith. Nothing in the Education Code or in the Educational Employment Relations Act ("EERA") authorizes or requires SCOE or its fiscal advisor to be on the District's negotiations team.

Further, as specified in Government Code section 3540.2(a), it is a county office's and county superintendent's duty to review and comment on any proposed tentative agreements between a district and a union, not that of the fiscal expert.

I want to reiterate that the District's negotiations team has the authority to bargain and reach tentative agreements with SCTA through the negotiations process. The District looks forward to continuing the bargaining process with SCTA so that we can together identify solutions to our budget challenges that are acceptable for the District and our employees, thereby allowing the District and its employees to continue the shared goal of enhancing educational opportunities for all students.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jorge A. Aguilar". The signature is stylized with a large loop at the top and a horizontal line at the bottom.

Jorge A. Aguilar  
Superintendent