STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

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

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 ☑ PUBLIC[1] ☐

a. Full name: Los Angeles Unified School District

b. Mailing address: 333 South Beaudry Avenue
Los Angeles, CA 90017

c. Telephone number: 213.241.1000

d. Name and title of person filing charge: David Holmquist, General Counsel
E-mail Address: david.holmquist@lausd.net
Telephone number: 213.241.4513
Fax No.: 213.241.8444

e. Bargaining unit(s) involved: United Teachers Los Angeles

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

a. Full name: United Teachers Los Angeles

b. Mailing address: 3303 Wilshire Blvd., 10th Floor, Los Angeles, CA 90010

c. Telephone number: 213.487.5560

d. Name and title of agent to contact: Alex Caputo-Pearl, President
E-mail Address: acaputopearl@utla.net
Telephone number: 213.368.6245
Fax No.: 213.368.6256

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

a. Full name: Los Angeles Unified School District

b. Mailing address: 333 South Beaudry Avenue, Los Angeles, CA 90017

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-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:

Gov. Code section 3543.6(c) and (d)

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 "Attachment To Unfair Practice Charge." Pursuant to PERB Regulation 32147, Charging Party requests that a hearing in this matter be expedited.

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 August 28, 2018
(Date)

at Los Angeles, California
(City and State)

Robert A. Samples
(Type or Print Name)

(Signature)

Title, if any: Interim Director of Labor Relations

Mailing address: 333 South Beaudry Avenue Los Angeles, CA 90017

Telephone Number: 213.241.7602 E-Mail Address: robert.samples@lausd.net

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Los Angeles, State of California. I am over the age of 18 years. The name and address of my residence or business is Littler Mendelson PC.

On August 27, 2018 (Date), I served the Unfair Practice Charge and Notice Of Appearance Form (Description of document(s)) (Description of document(s) continued) on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

___ 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;

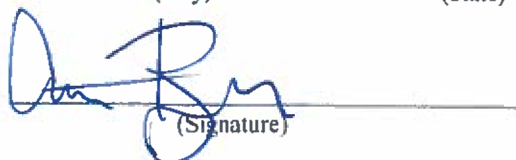
X facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

(Include here the name, address and, where applicable, fax number of the Respondent and any other parties served.)

Alex Caputo-Pearl, President
United Teachers Los Angeles
3303 Wilshire Blvd., 10th Floor,
Los Angeles, CA 90010
Fax - 213.368.6256

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on August 28, 2018 (Date), at Los Angeles (City) CA (State).

Annette Ryan
(Type or print name)


(Signature)

ATTACHMENT TO UNFAIR PRACTICE CHARGE

I. INTRODUCTION

Under the Educational Employment Relations Act (EERA), specifically Government Code Section 3543.6, it is unlawful for an employee organization to refuse or fail to meet and negotiate in good faith with a public school employer, and it is unlawful for an employee organization to refuse to participate in good faith in the impasse procedure set forth in the EERA.

As set forth in more detail below, Respondent United Teachers Los Angeles (UTLA) has refused or failed to meet and negotiate in good faith with Charging Party Los Angeles Unified School District (LAUSD or District), and has refused to participate in good faith in the impasse procedure set forth in EERA.

Instead, UTLA has engaged in course of conduct calculated to time a strike for a period where it can inflict maximum punishment on children and parents so that UTLA may extract financial concessions from the District.

UTLA's unlawful conduct includes engaging in surface bargaining, take-it-or-leave-it bargaining, ultimatums, and rushes to and through the impasse process.

UTLA has also engaged in a *per se* unfair practice by scheduling and conducting a strike vote before the first session of impasse process mediation. LAUSD submits that an employee organization commits a *per se* violation of the EERA when it holds a strike vote before the conclusion of factfinding and, *a fortiori*, before the commencement of impasse process mediation.

The District requests that a Complaint be issued, and that the Public Employment Relations Board (PERB) issue the following remedial orders:

1. UTLA ordered to cease and desist from failing to negotiate with the District in good faith, including failure to engage in good faith with all applicable impasse procedures;
2. UTLA leadership ordered to attend a minimum 3-day training session regarding the duties and obligations of unions/associations to negotiate in good faith under the EERA;
3. UTLA ordered to make the District whole for any losses suffered by UTLA's conduct;
4. UTLA ordered to post a notice in locations to be determined and to issue a notice to all UTLA bargaining unit members advising them of UTLA's violations of the EERA, and of the content of the PERB order; and
5. Any and all further remedial action as PERB deems appropriate.

II. FACTS

A. The Parties

LAUSD is the largest public school district in the State of California and the second largest public school district in the United States. LAUSD serves over 500,000 students, and employs approximately 60,000 employees. LAUSD is the second largest employer in Los Angeles County, after the county government, and the District's budget is in excess of $7 billion.

LAUSD and UTLA are parties to a collective bargaining agreement covering over 25,000 certificated employees of the District, including teachers as well as health and human services certificated employees.

UTLA was at all relevant times, and is now, a recognized employee organization within the meaning of Government Code section 3540.1(1), and is the exclusive representative of the positions that fall within the UTLA unit.

LAUSD is a public school employer within the meaning of Government Code section 3540.1(k).

B. UTLA's Unlawful And Bad Faith Course Of Dealings.

With respect to negotiations on a successor agreement to the parties' current agreement, the parties held their first negotiation session on or around April 20, 2017.

Below is an overview of UTLA's conduct which demonstrates that UTLA has engaged in bad faith/surface bargaining throughout the course of the parties' negotiations.

1. UTLA Repeatedly Failed Or Refused To Make Movement Towards Compromise On The Numerous Items That Were The Subject Of At-The-Table Negotiations.

a. On or about June 1, 2017, UTLA made an initial proposal on Article IX, Hours, Duties and Work Year. Despite the District issuing a counter-proposal, in reply UTLA essentially resubmitted the same initial proposal six more times, as follows: on September 15, 2017, October 12, 2017, March 1, 2018, May 24, 2018, June 1, 2018, and July 24, 2018.

b. On or about June 6, 2017, UTLA made an initial proposal on Article X, Educator Development, Support and Evaluation. Despite the District twice issuing counter-proposals, UTLA resubmitted the same initial proposal four more times, as follows: on October 4, 2017, March 15, 2018, June 1, 2018, and July 24, 2018.

c. On or about July 7, 2017, UTLA made an initial proposal on Article XI, Transfers. Despite the District issuing a counter-proposal, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been

designed to frustrate the parties' negotiations, as follows: on October 4, 2017, January 12, 2018, April 12, 2018, June 1, 2018, and July 24, 2018.

d. On or about April 20, 2017, UTLA made an initial proposal on Article XII, Leaves of Absence. Despite the District issuing a counter-proposal, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on October 4, 2017, April 12, 2018, June 1, 2018, and July 24, 2018.

e. On or about May 25, 2017, UTLA made an initial proposal on Article XIV, Salaries. Despite the District issuing several counter-proposals, and with the exception of one very minor reply counter, in reply UTLA either resubmitted essentially the same proposal or included new proposals that were regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on October 4, 2017, October 12, 2017, November 2, 2017, March 15, 2018, June 1, 2018, and July 24, 2018. In particular, after the District issued a counter of 2% one-time, UTLA took six months before moving off its initial proposal of 7% on-schedule retroactive to July 1, 2016, and even then only reduced the demand by .5% to 6.5% (UTLA proposal made November 2017). The District made substantial movement, by adding a proposal for a 2% on-schedule raise, effective July 1, 2017. At no time since the District's concession (November 2017), has UTLA made any movement on salary, even though the District has openly stated that it could move further if there were movement from UTLA in bargaining.

f. On or about May 25, 2017, UTLA made an initial proposal on Article XVIII, Class Size. Despite the District issuing several counter-proposals, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on August 21, 2017, September 15, 2017, October 4, 2017, March 15, 2018, April 26, 2018, June 1, 2018, and July 24, 2018.

g. On or about June 20, 2017, UTLA made a proposal on Article XIX, Substitutes. Despite the District issuing several counter-proposals, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on October 30, 2017, February 1, 2018, June 1, 2018, and July 24, 2018.

h. On or about June 20, 2017, UTLA made a proposal on Article XXIII, Early Education Centers. Despite the District issuing several counter-proposals, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on September 15, 2017, February 1, 2018, April 26, 2018, June 1, 2018, and July 24, 2018.

i. On or about July 7, 2017, UTLA made an initial proposal on Article XXIV, Student Discipline. Despite the District issuing several counter-proposals, in reply UTLA essentially resubmitted the same proposal four more times, as follows: on January 12, 2018, March 15, 2018, June 1, 2018 and July 24, 2018.

j. On or about August 21, 2017, UTLA made a proposal on Article XXV, Academic Freedom and Responsibility. Despite the District issuing several counter-proposals, in reply UTLA essentially resubmitted the same proposal six more times, as follows: on September 15, 2017, November 2, 2017, January 12, 2018, May 24, 2018, June 1, 2018 and July 24, 2018.

k. On or about April 20, 2017, UTLA made an initial proposal on Article XXVII, Shared Decision Making and School Based Management. Despite the District issuing several counter-proposals, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on September 15, 2017, November 2, 2017, January 12, 2018, March 1, 2018, June 1, 2018, and July 24, 2018.

l. On or about June 1, 2017, UTLA made an initial proposal on Article IX-A, Assignment. Despite the District issuing several counter-proposals, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on September 15, 2017, October 4, 2017, April 12, 2018, May 24, 2018, June 1, 2018, and July 24, 2018.

m. On or about July 19, 2017, UTLA made an initial proposal on Article XI-B, Master Plan Program. Despite the District issuing several counter-proposals, in reply UTLA either resubmitted essentially the same proposal or included new language that was regressive, contained predictably unacceptable language, and which was so inflexible that it could only have been designed to frustrate the parties' negotiations, as follows: on September 15, 2017, February 15, 2018, June 1, 2018, and July 24, 2018.

2. UTLA Persisted In Demanding Bargaining On Non-Negotiable Items, Relenting Only On The Day UTLA Unexpectedly And Prematurely Declared Impasse.

On or about September 15, 2017, UTLA provided the District a packet of bargaining proposals entitled "Supporting Our Students and Empowering Our Community Empowerment."

The District provided responses to these proposals on November 2, 2017, November 30, 2017, January 12, 2018, and February 15, 2018, explaining to UTLA that the bargaining demands related to public policy and were outside the scope of bargaining and prohibited from bargaining under the EERA.

The District did, however, express its willingness to work collaboratively with UTLA on these issues outside of the bargaining process. UTLA ignored the District's objections and continued to assert these proposals and provided them to the District again in another packet as a proposal on June 1, 2018.

UTLA did not withdraw these outside-the-scope-of-bargaining proposals until July 2, 2018 – the same day that UTLA unexpectedly and prematurely declared impasse for the first time.

3. From 2016 Through To UTLA's Declarations Of Impasse In Summer 2018, UTLA Openly Announced Their Strike Strategy.

From 2016 through to UTLA's declarations of impasse in Summer 2018, UTLA openly announced their strike strategy.

Examples include the following:

a. "With our contract expiring in June 2017, … the next year and a half must be founded upon building our capacity to strike, and our capacity to create a state crisis, in early 2018. There simply may be no other way to protect our health benefits and to shock the system into investing in the civic institution of public education." (Alex Caputo-Pearl, State of the Union 2016 Address, August 24, 2016)

b. "While 20 by 20 does not align on the calendar perfectly with our February 2018 compression point, using the next six months to push 20 by 20 onto the public stage, and organize support behind it, will force elected officials all over the city, county, state, and nation to consider how to intervene in a 2018 LA public school crisis or strike if the district forces us in that direction." (UTLA-News, Alex Caputo-Pearl, State of the Union Speech, August 2, 2017)

4. UTLA Hastily Declared Impasse, And Based The Declaration On Improper Extraneous Matters.

With little to no advance warning, by letter dated July 2, 2018, UTLA advised LAUSD that UTLA intended to file a declaration of impasse with the PERB, even though UTLA had a pre-scheduled bargaining session on July 24, 2018.

In UTLA's July 2, 2018 letter, UTLA emphasized the District's selection of a new Superintendent and recommendations made by a blue-ribbon panel as reasons for declaring impasse. These matters were not a proper basis to declare impasse.

A copy of UTLA's July 2, 2018 letter is attached hereto as Exhibit 1.

5. UTLA Withdraws Its Impasse Declaration, Submits A Take-It-Or-Leave It Set Of Demands, Schedules A Strike Vote, And Redeclares Impasse.

After the District opposed the impasse declaration and proffered extensive evidence and argument reflecting the absence of a true impasse, UTLA reluctantly withdrew its impasse declaration before PERB issued its decision on whether there really was a proper impasse.

UTLA then engaged in the following further bad-faith conduct:

- Submitted a take-it-or-leave-it set of bargaining demands
- Scheduled a strike vote

6. Upon Commencement Of The Impasse Process, UTLA Issued Histrionical Demands That The Mediation Process Wrap-up Quickly So That It Could Commence Its Strike In October.

With nearly 20 open issues, and the school year just commencing, upon redeclaring impasse, UTLA sought to race through the impasse process so that it could commence a strike in October 2018.

When the schedule was not swift enough, UTLA went around the assigned mediator, writing to the Chief mediator, and demanding that mediation be bypassed, and the matter certified to factfinding, so that UTLA could strike as soon as possible ("engage in self-help").

When that request was denied, UTLA, in violation of PERB rules, wrote directly to the PERB General Counsel and the Board itself, demanding that the process be expedited.

Copies of UTLA's letters are attached hereto collectively as Exhibit 2.

7. UTLA Scheduled And Is Conducting A Strike Vote From August 23 to 30, 2018, Before Even One Impasse Process Mediation Session Has Been Held.

UTLA scheduled and is now conducting a strike on August 23 to 30, 2018.

C. Standard For Evaluating Claims Of Bad Faith Bargaining.

Bad faith bargaining occurs when a party goes through the motions of negotiations but, in fact, engages in other conduct to delay, prevent agreement, frustrate, or avoid the negotiation process. *Pajaro Valley Unified School Dist.* (1978) PERB Dec. No. 51. As PERB has stated:

> It is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise objectionable conduct into an entangling fabric to delay or prevent agreement. Specific conduct of the charged party, which when viewed in isolation may be wholly proper, may when placed in the narrative history of the negotiations, support a conclusion that the charged party was not negotiating with the requisite subjective intent to reach agreement. Such behavior is the antithesis of negotiating in good faith.

Muroc Unified School Dist. (1978) PERB Dec. No. 80.

Under the totality of the circumstances test, PERB looks to the entire course of negotiations to determine the subjective intent of the party. *Pajaro Valley Unified School Dist.* (1978) PERB Decision No. 51; *South Bay Union School Dist.* (1990) PERB Decision No. 815.

A party may engage in surface bargaining when it goes through the motions of negotiating but engages in other conduct meant to "delay, prevent agreement, frustrate or avoid the negotiation process." *South Bay Union School Dist.* (1990) PERB Decision No. 815 Factors considered include: (1) frequent turnover in negotiators, (2) negotiator's lack of authority, (3) lack of preparation for bargaining sessions, (4) missing, delayed 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. *Regents of the University of California* (2010) PERB Dec. No. 2094-H A party's conditioning an agreement on economic matters upon agreement on non-economic matters may also demonstrate bad faith bargaining. *Fremont Unified School Dist.* (1990) PERB Decision No. 136. Furthermore, a predetermined plan to strike before completion of the impasse procedures also constitutes a failure to participate in the impasse procedures in good faith. *South Bay Union School Dist.* (1990) PERB Dec. No. 815.

A single incident is sufficient to state a claim for bad faith bargaining. *City of San Jose* (2013) PERB Decision No. 2341-M.

Here, as demonstrated above, ULTA has done nothing more than go through the motions of bargaining with no true intent of reaching an agreement.

The above detailed facts are all strong indicia that ULTA has not fulfilled its obligation to bargain with the District in good faith.

To further carry out EERA's purpose, the Legislature established extensive post-impasse dispute resolution procedures, which apply when the parties cannot reach agreement through good faith negotiation. *See* Gov. Code section 3548 *et seq*. (PERB determines impasse upon either party's declaration of impasse and appoints a mediator; failing mediation, the dispute must be submitted to a neutral fact-finder, who shall make advisory findings if the parties are unable to reach a settlement). It is well established that a threatened strike, even if not illegal per se, may constitute an unfair practice under the EERA. *San Diego Teachers Assn. v. San Diego Co. Superior Ct.* (1979) 24 Cal.3d 1, 8-9.

Here, as shown more fully above, during the parties' bargaining and even after rushing to impasse, ULTA has engaged in strike related conduct, including scheduling a strike vote, all of which conduct is a violation of EERA and further evidence of the fact that UTLA has not engaged in the bargaining process in good faith. *See, e.g. Regents of the University of California* (2010) PERB Dec. No. 2094-H at *32 ("A strike prior to the exhaustion of statutory impasse procedures creates a rebuttable presumption that the employee organization is either refusing to negotiate in good faith (if the strike occurs before impasse is declared) or to participate in the impasse procedures in good faith."); *accord Westminster School Dist.* (1982) PERB Dec. No. 227, 7 PERC ¶ 14034, *Fresno School Dist.* (1982) PERB Dec. No. 208, 6 PERC ¶ 13110, and *Fremont Unified School Dist.* (1990) PERB Order No. IR-54, 14 PERC ¶ 21107 (same).

The District alleges that the holding of a strike authorization vote before exhaustion of the impasse process and, *a fortiori*, pre-mediation is *per se* proof of bad faith bargaining.

Prior to exhaustion of the impasse process, it is impossible for union leadership to properly inform its membership of the position of the parties because the bargaining process is ongoing. Any authorization would be obtained for the sole purpose of coercing concessions during a collaborative process, and would undermine the conciliatory environment designed to be fostered through the state-mandated impasse procedures.

UTLA's conduct – individually and collectively – establishes that it has violated Government Code section 3543.6(c) and (d), and that a Complaint should be issued against UTLA.

III. REMEDY REQUESTED

By the above, ULTA has violated its duty to bargain in good faith under Government Code section 3543.6(c), and its duty to participate in good faith in the impasse process under section 3543.6(d).

The District requests that a Complaint be issued, and that the PERB issue the following remedial orders:

1. UTLA ordered to cease and desist from failing to negotiate with the District in good faith, including failure to engage in good faith with all applicable impasse procedures;
2. UTLA leadership ordered to attend a minimum 3-day training session regarding the duties and obligations of unions/associations to negotiate in good faith under the EERA;
3. UTLA ordered to make the District whole for any losses suffered by UTLA's conduct;
4. UTLA ordered to post a notice in locations to be determined and to issue a notice to all UTLA bargaining unit members advising them of UTLA's violations of the EERA, and of the content of the PERB order; and
5. Any and all further remedial action as PERB deems appropriate.

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EXHIBIT 1

UTLA
UNITED TEACHERS
LOS ANGELES

OFFICERS

ALEX CAPUTO-PEARL
President

CECILY MYART-CRUZ
UTLA/NEA Vice President
UTLA/NEA Affiliate President

JUAN RAMIREZ
UTLA/AFT Vice President
AFT Local 1021 President

GLORIA MARTINEZ
Elementary Vice President

DANIEL BARNHART
Secondary Vice President

ALEX OROZCO
Treasurer

ARLENE INOUYE
Secretary

JEFF GOOD
Executive Director

July 2, 2018

Najeeb Khoury,
LAUSD, Office of Labor Relations
333 S. Beaudry Avenue
Los Angeles, CA 90017

Hello Najeeb,

The members of United Teachers Los Angeles believe that neighborhood public schools should serve as the essential anchors of our communities. As educators we see first-hand what students need in our classrooms, our schools, our clinics, and our neighborhoods, and we deal with the issues that too often prevent those needs from being met. UTLA believes that educators, parents, and community partners must work together to take on the issues of economic, social, and racial justice—all of which impact student learning and our ability to meet their holistic needs. We also believe that collective bargaining is a process through which this can happen.

Unfortunately, the current LAUSD Board of Education majority, paid for by corporate interests from around the country, has no respect for the civic institution of public education. Furthermore, the same Board majority's recent selection of a wealthy businessman with no experience in education as the new superintendent, in the most undemocratic fashion imaginable, is evidence of a master plan to convince the public that our schools are failing, demonize career educators, enact policies that facilitate the growth of charter schools, and to ultimately downsize and dismantle the district.

The UTLA Bargaining Team began negotiating a successor collective bargaining agreement between UTLA and LAUSD on April 20, 2017 and has bargained in good faith with the district over 18 sessions, with the goal of using this process to achieve transformative change for our school communities.

Our proposals would increase educator salaries, reduce class sizes, provide more health & human services staff, significantly reduce testing, increase parent and educator power over school site spending, require investment in community schools, expand the Master Plan for language learning, ensure access to ethnic studies for all students, improve school safety and student discipline practices, provide reasonable oversight at co-located schools and basic accountability for charter schools within the district, and improve our programs for early education and adult education. We have made proposals that would fundamentally improve the learning conditions of students and the working conditions of educators.

Additionally, we've challenged LAUSD to think boldly and broadly about how to use bargaining to address the myriad challenges in our school communities that impact student success. We've made proposals for more green space on campuses, an end to the random weapon searches that alienate our students, district investments to support students and their families in response to the horrific immigration policies of the Trump administration, and institutional support from the district for greater school funding, sustainable housing policies in a city overwhelmed by homelessness, and an end to discrimination against students of color in our public transit systems.

Unfortunately, the district has approached collective bargaining in a very different way. From our perspective, you, as the district's chief negotiator, have been inappropriately denied the authority to bargain in good faith by the Board majority, and thus prevented from working collaboratively at the table toward an agreement. LAUSD has responded to our bargaining package with very few new proposals, limited counterproposals, an unwillingness to bargain on permissive subjects that will help students succeed, and an overall disdain for the process. Despite the continued loss of students

United Teachers Los Angeles • 3303 Wilshire Blvd, 10th Floor, Los Angeles, CA 90010 • (213) 487-5560 • www.utla.net
Serving Los Angeles teachers with the California Teachers Association/National Education Association
and the California Federation of Teachers/American Federation of Teachers, AFL-CIO

UTLA
UNITED TEACHERS LOS ANGELES

OFFICERS

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Executive Director

to charter expansion and city-wide gentrification, the Board majority has taken actions to accelerate the loss of students, paid lip service to addressing the lack of necessary state funding, and defended their maintenance of the largest unrestricted reserves in the state. UTLA has attempted to engage the district in a thoughtful and progressive bargaining relationship that paves the way toward a better future for LAUSD, but it's become increasingly clear that the current Board majority, along with their handpicked superintendent, has a different goal.

Prior to his official appointment (he clearly had the job for months), Austin Beutner put together a "District Advisory Task Force" which contracted with an outside company called ERS to create a report that analyzes the allocation of resources in LAUSD. Predictably, the report uses dishonest research and ludicrous comparisons, while laying down a cynical roadmap of destruction for the district. It's essentially a report created to support predetermined conclusions and justify a type of private equity "wind down" of LAUSD.

Creating the task force and pushing their slanted report is a tactic consistent with the general animus shown by the Board majority for the district they run and the employees who work for them. It's a tactic consistent with Beutner's resume, which includes years of buying up corporations and then tearing them apart. Finally, it's a tactic consistent with the Board majority's approach to bargaining and their unwillingness to bargain in good faith on proposals that will help students, help the district, and help our school communities.

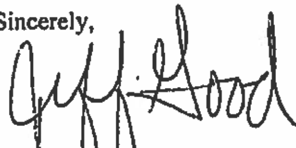
Therefore, it is abundantly clear that the parties have reached a bargaining deadlock.

Accordingly, UTLA is withdrawing its proposals on all permissive subjects of bargaining, including proposals resubmitted at our last bargaining session on June 1, 2018 under the topics of *Affordable Housing & Student Homelessness, Green Space on Campuses, Student Rights & Support, Support for Immigrant Families*, and *Certificated Support for Training Fund.* To be clear, educators understand that the lives of our students outside of the classroom are fundamentally relevant to what happens inside the classroom. So while the district abdicates responsibility for addressing these issues despite their impact on student success, UTLA will continue organizing with parents, students, and the community to press the Board majority for solutions.

Furthermore, in accordance with Article IX, Section 3548 of the Educational Employment Relations Act, UTLA hereby declares that an impasse has been reached in bargaining with LAUSD over matters within the mandatory scope of bargaining and will submit the appropriate paperwork to the California Public Employment Relations Board on Tuesday, July 3, 2018.

It is our hope that a state appointed mediator can assist the parties in achieving a bargaining agreement on terms which are mutually acceptable.

Sincerely,



Jeff Good
UTLA Executive Director

cc: Alex Caputo-Pearl, UTLA President
Arlene Inouye, UTLA Bargaining Chair
Austin Beutner, LAUSD Superintendent
Rob Samples, Office of Labor Relations

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Serving Los Angeles teachers with the California Teachers Association/National Education Association
and the California Federation of Teachers/American Federation of Teachers, AFL-CIO

EXHIBIT 2

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11250-28020

August 10, 2018

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VIA E-MAIL AND U.S. MAIL

Loretta van der Pol
Chief
State Mediation and Conciliation Service
1031 18th Street
Sacramento, CA 95811

Re: UTLA and LAUSD

Dear Ms. van der Pol:

This office represents United Teachers-Los Angeles ("UTLA" or "Union") in connection with the above-referenced labor dispute, currently in mediation – albeit only nominally so, for reasons that prompt this letter, explained below.

In response to UTLA's declaration of impasse on July 24th, and over the July 26th objections of the Los Angeles Unified School District ("LAUSD" or "District") (letter attached), your agency agreed that the parties had reached impasse, and on August 2nd appointed Mediator Gerald Adams, in accordance with California Government Code §3548. In light of the foot-dragging that has followed, it is worthy of note that in the District's July 26th letter denying impasse, its Director of Labor Relations Najeeb Khoury declared – without irony, as far as we're aware – that the District was "committed to continue working toward a fair contract, which supports students, teachers, and all Los Angeles Unified stakeholders." In furtherance of that stated objective, Mr. Khoury pronounced the District "prepared to continue bargaining", proposing a session for August 7th.

In keeping with the brisk pace for this impasse process mandated by the legislature (see Gov't. Code 3548.1[1]), on the very day of his appointment Mr. Adams offered the parties the following

[1] 3548.1. Fact finding panel; request; selection of panel; chairperson

(a) *If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel.* Within five days after receipt of the written request, each party

mediation dates: Monday, August 21st, Tuesday, August 22nd[2], Thursday, Sept 6th, Monday, Sept 10th, and Wednesday, Sept 12th. On Saturday, August 4th, the Union notified Mr. Adams that it was available on *all* of those proposed dates. Suddenly, however, the District's pre-impasse enthusiasm for bargaining vanished, replaced by resistance and evasion. It found none of the proposed dates acceptable, and with much prodding, offered up September 27th. Interim Labor Relations Director Robert Samples confirmed the District's bad faith about-face when he told UTLA Executive Director Jeff Good that the reason for the District's abrupt desire for a lengthy hiatus was the need for "a smooth beginning to the school year."

That is patent nonsense. The District is aware that at least absent bad faith, the parties cannot engage in self-help until impasse procedures are completed, and that completion could not be accomplished, even if the District fully cooperated with statutorily-required alacrity, until after the school year – which starts this coming Monday, August 13th -- was well underway. If Mr. Samples' stated desire for early serenity was intended to reflect a concern about UTLA's possible exercise of its lawful expressive rights distinct from self-help, that potential is not in any way tied to or dictated by the stage of collective bargaining the parties find themselves in. Nor is the District's inordinate delay a permissible device to use to attempt to regulate the Union's organizing activities. Indeed, the District's attempt to apply the brakes at precisely the moment when the law requires an increasingly robust focus on the process is a provocation that makes such action by the Union more attractive.

As noted above, the statute authorizes the mediator to declare that mediation is ineffective and factfinding appropriate as quickly as *15 days* after his appointment. While UTLA is fully cognizant of the parties' other obligations and the need for careful preparation and coordination, there is no excuse for a *56-day* chasm between appointment and the first day of mediation, as requested by LAUSD. The District's stated rationale for the delay, having nothing to do with participants' availability or preparation, but instead an invalid yearning for a fictive peace that in any event has no connection to the delay it seeks, smacks of bad faith. Government Code §3543.5(e) specifically enumerates employer bad faith to include a "(r)efus(al) to participate in good faith in the impasse procedure set forth in Article 9." See, *Fresno Unified School Dist. v. National Education Assn.*, (1981) 125 Cal. App. 3d 259, 265, 177 Cal. Rptr. 888.

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shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairperson of the factfinding panel. The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

[2] To be sure, August 21st and 22nd are a Tuesday and a Wednesday. We suspect that the dates intended to be offered were Monday and Tuesday, August 20 and 21.

The Union therefore respectfully requests that unless the District reconsiders its proposed delay in scheduling the first session of mediation, and accepts a mediation date in August[2], the SMCS declare mediation futile and order the parties to factfinding in accordance with EERA 3548.1.

Thank you for your courtesy and cooperation.

Very truly yours,

Bush Gottlieb
A Law Corporation

Ira L. Gottlieb

cc: Alex Caputo-Pearl
Arlene Inouye
Jeff Good
Josh Adams
Vern Gates
Gerry Adams
Robert Samples

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[2] In that regard, insofar as another available mediator may have other dates in August that the District will agree to, the Union would urge that the SMCS appoint that mediator to assist the parties.

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11250-28020

August 16, 2018

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VIA E-MAIL AND U.S. MAIL

Felix De La Torre
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Public Employment Relations Board
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Sacramento, CA 95811
fdelatorre@perb.ca.gov

Re: LAUSD Mediation Stalling and SMCS Toleration; Case No. LA-IM-4001-E

Dear Mr De La Torre:

This office represents United Teachers-Los Angeles ("UTLA" or "Union") in connection with the above-referenced labor dispute, currently in mediation, subject to slow-walking by the employer, Los Angeles Unified School District ("LAUSD" or "District"), contrary to the governing law. I write to complain of the District's stalling tactics, and the SMCS's failure to adequately respond thereto, in fact seeming to cooperate with the District's unprecedented defiance of what is intended to be an expeditious and focused process.

Sequence of Events

In response to UTLA's declaration of impasse on July 24th [1], and over the July 26th and 31st objections of the Los Angeles Unified School District ("LAUSD" or "District") (letter attached), on August 1, your agency agreed that the parties had reached impasse, and on August 2nd appointed Mediator Gerald Adams, in accordance with California Government Code §3548. In light of the District foot-dragging that followed, it is worthy of note that in the District's July 26th letter denying impasse, its then-Director of Labor Relations Najeeb Khoury declared that the District was "committed to continue working toward a fair contract, which supports students, teachers, and all Los Angeles Unified stakeholders." In furtherance of that stated objective, Mr. Khoury pronounced the District "prepared to continue bargaining," *proposing a session for August 7th.*

[1] All dates noted are in 2018 unless otherwise stated.

In keeping with the brisk pace for this impasse process mandated by the legislature (see Gov't. Code 3548.1[2]), on the very day of his August 2 appointment Mr. Adams offered the parties the following mediation dates: Monday, August 21st, Tuesday, August 22nd [3], Thursday, Sept 6th, Monday, Sept 10th, and Wednesday, Sept 12th. On Saturday, August 4th, the Union notified Mr. Adams that it was available to mediate on *all* of those proposed dates. Suddenly, however, the District's pre-impasse enthusiasm for bargaining vanished, replaced by resistance and evasion. It found none of the proposed dates acceptable, and with much prodding, offered up September 27th. Interim Labor Relations Director Robert Samples confirmed the District's bad faith about-face when he told UTLA Executive Director Jeff Good that the reason for the District's abrupt desire for a lengthy hiatus was the need for "a smooth beginning to the school year."

On August 10, I wrote to Chief Mediator Loretta van der Pol to protest the District's delay tactics, demanding that in light of the District's admission that it was unwilling to devote any of its vast resources to mediation in or near the time frame contemplated by statute, it exercise its authority to bypass mediation and progress to factfinding.

On August 12, attorney Barrett Green, representing LAUSD wrote to Ms. van der Pol in response to my letter. Mr. Green deliberately misinterpreted my August 10 letter in several respects, notably in incorrectly attributing the Union's intent related to "self-help" as a desire to rush to complete the impasse process to enable the Union's exercise of that right. While I will not rehearse for Mr. Green's edification in this letter the entirety, qualifications on, availability or sequence of those rights, in fact the District's bad faith conduct in connection with the pending process may well accelerate the Union's ability to exercise them.

As for the District's stated desire to conduct a "smooth" beginning to the school year this week that allegedly precludes engaging in mediation because of the need to include more unspecified "higher-level administration and resources" than does mere bilateral bargaining, that is patent nonsense demonstrative of bad faith. As I noted to Ms. van der Pol, the District is aware that at least absent bad faith or other unfair practices, the parties cannot engage in self-help (that might disrupt the District's even-keeled opening days objective) until impasse procedures are

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[2] 3548.1. Fact finding panel; request; selection of panel; chairperson

(a) *If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel.* Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairperson of the factfinding panel. The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

[3] To be sure, August 21st and 22nd are a Tuesday and a Wednesday. We suspect that the dates intended to be offered were Monday and Tuesday, August 20 and 21.

completed. That completion could not be accomplished, even if the District fully cooperated with statutorily-required alacrity, until after the school year (which began this week) was well underway. If Mr. Samples' stated desire for early serenity was intended to reflect a concern about UTLA's possible exercise of its lawful expressive rights distinct from self-help, that potential is not in any way limited, tied to or dictated by the stage of collective bargaining the parties find themselves in. Nor is the District's inordinate delay a permissible device to use to attempt to regulate the Union's organizing activities. Indeed, the District's attempt to apply the brakes at precisely the moment when the law requires an increasingly robust focus on the process is a provocation that makes such action by the Union more attractive.

On August 13, Ms. van der Pol wrote the parties, declining to move to factfinding, demurring as to the notion that the parties were under any obligation to move forward with urgency. Instead, she noted that SMCS "will not make any commitment related to a release to fact finding based on a fixed number of mediation sessions", but instead "will proceed as usual, making such a determination only when, in the judgment of the mediator, it becomes necessary." She added that "(w)e have faith in the mediation process, and are always hopeful of a settlement, as we are certain the parties are, as well." Finally, she noted that in addition to Mr. Adams, Thomas Ruiz was assigned to this matter.

Unacceptable defiance of Statutory Urgency

Respectfully, it is difficult to have faith in a mediation process that should have begun, in accordance with the statute (footnote 2) no later than this week, but because of *one party's* intransigence and arrogance, may not begin until the end of next month. And it is hard to maintain confidence in the presiding agency when it allows one party to thwart the statute, when it has the power and authority to exact consequences for that unequivocal display of disrespect for the process and the other participants.

Neither UTLA nor this office are aware of any precedent for a two-month delay in commencement of statutory mediation, absent agreement by *all* the parties. This unnecessary extraordinary delay in beginning mediation some eight weeks after mediator appointment may well create a new normal for whatever party wants to stall the process, labor organization or employer. It therefore erodes all parties' confidence in the process, and its prospects for success.

Again, as I stated to Ms. van der Pol, the statute authorizes the mediator to declare that mediation is ineffective and factfinding appropriate as quickly as *15 days* after his appointment. While UTLA is fully cognizant of the parties' other obligations and the need for careful preparation and coordination, there is no excuse for a *56-day* chasm between appointment and the first day of mediation, as requested by LAUSD. The District's stated rationale for the delay, having nothing to do with participants' availability or preparation, but instead an invalid yearning for a fictive peace that in any event has no connection to the delay it seeks, smacks of bad faith. Government Code §3543.5(e) specifically enumerates employer bad faith to include a "(r)efus(al) to

participate in good faith in the impasse procedure set forth in Article 9." See, *Fresno Unified School Dist. v. National Education Assn.*, (1981) 125 Cal. App. 3d 259, 265, 177 Cal. Rptr. 888.

The Union urges you to inquire into why the agency has thus far tolerated this inexcusable unilaterally imposed delay in a process that is supposed to be conducted expeditiously. Mr. Green asserted in his August 12 letter that "the District remains available to coordinate dates for mediation sessions, and is open to the use of alternative mediators." Perhaps with any unfounded fears of not having a tranquil opening to the school year in the past, the District can be prevailed upon to abide by its statutory duty to fully and promptly participate in the mediation process, beginning on dates this month.

Thank you for your courtesy and cooperation.

Very truly yours,

Bush Gottlieb
A Law Corporation

Ira L. Gottlieb

Encs. Correspondence:

- August 13 van der Pol to parties
- August 13 Gottlieb to van der Pol responding to Green
- August 12 Green to van der Pol responding to Gottlieb
- August 10 Gottlieb to van der Pol
- August 1 from PERB declaring impasse
- July 26 Khoury to Good

cc: Eric Banks
Priscilla Winslow
Erich Shiners
Arthur A. Krantz
Alex Caputo-Pearl
Arlene Inouye
Jeff Good
Vern Gates
Loretta van der Pol

Gerry Adams
Tom Ruiz
Barrett Green
Robert Samples
Josh Adams, Esq.