

**BUSH GOTTLIEB  
A Law Corporation**

David E. Ahdoot  
Robert A. Bush PE  
Adrian R. Butler  
Hector De Haro  
Lisa C. Demidovich #  
Erica Deutsch  
Peter S. Dickinson +  
Ana Garcia  
Ira L. Gottlieb \*  
Julie Gutman Dickinson  
Samantha M. Keng  
Joseph A. Kohanski \*

801 North Brand Boulevard, Suite 950  
Glendale, California 91203  
Telephone (818) 973-3200  
Facsimile (818) 973-3201  
www.bushgottlieb.com

Adam Kornetsky #  
Richard Luna #&  
Dana S. Martinez  
J. Paul Moorhead  
Michael Plank  
Kirk M. Prestegard  
Dexter Rappleye  
Luke Taylor  
Estephanie Villalpando  
Jason Wojciechowski  
Vanessa C. Wright  
Sara Yufa

March 1, 2022

PE Partner Emeritus  
\* Also admitted in New York  
+ Also admitted in Nevada  
# Also admitted in Washington DC  
& Also admitted in Maryland

33151-31002

Direct Dial: (818) 973-3208  
jasonw@bushgottlieb.com

**VIA E-FILE**

Stephanie O'Hara  
Regional Attorney  
Public Employment Relations Board  
Los Angeles Regional Office  
425 West Broadway, Suite 400  
Glendale, CA 91204

Re: Lompoc Unified School District v. Lompoc Federation of Teachers  
Amended Unfair Practice Charge No. LA-CO-1814E

Dear Regional Attorney O'Hara:

This firm represents Respondent Lompoc Federation of Teachers ("LFT" or "Union") in the charge referred to above. Please accept this letter as the Union's position statement requesting dismissal of the first amended unfair practice charge filed by Lompoc Unified School District ("District" or "Charging Party") for failure to establish a prima facie violation of the Educational Employment Relations Act ("EERA").

**I. SUMMARY OF FACTUAL ALLEGATIONS**

On September 1, 2021, Charging Party filed the above referenced charge. On September 22, 2021, Charging Party filed a revised charge and on February 8, 2022 Charging Party filed a first additional amended charge ("FAC").

In its FAC, Charging Party reiterates the broad and baseless allegations made in the original charge, stating,

The Lompoc Federation of Teachers (LFT) has been negotiating directly with the Board of Education for the Lompoc Unified School District circumventing the designated District Negotiating Team. Individual Board Members are directly approached. In addition, LFT uses individual Board members to negotiate items not originally sunshined, violating the Rhodda Act. Similarly, LFT violates the EERA by negotiating with Board Members instead of the designated negotiations

representatives of the District. LFT purposely undermined the District negotiating team members to the LUSD School Board. LFT demanded a change in Board Member representation after the Board had chosen their representative for LFT negotiations during a public meeting. This was after the Board member chosen during a public Board meeting, shared an opinion during negotiations contrary to what LFT wanted. Therefore, they reached out to a different Board member to solicit their involvement.

Additionally, Charging Party provides three emails allegedly evidencing the instances of direct dealing stated in the original charge and a compilation of six emails, letters and video regarding what the District characterizes as the Union's continued attempts to negotiate with the Lompoc Board of Education (the "Board").

## **II. ARGUMENT**

### **A. Pleading Standard**

A charging party must provide "[a] clear and concise statement of the facts and conduct alleged to constitute an unfair practice . . . ." PERB Regulations § 32615(a)(5). A charge must contain

a clear and concise statement of facts with sufficient specificity to permit the investigating Board agent to determine whether the facts as alleged in the charge state a legal cause of action and [whether] the charging party is capable of providing admissible evidence in support of the allegations.

*Lake Elsinore Unified Sch. Dist. (Edwards)* (2018) PERB Dec. No. 2548 at 17-18.

### **B. Direct Dealing Standard**

Employee organizations have the right to represent their members at public meetings of the employer and the same statutory right to participate at public agency meetings as the general public. *County of Tulare*, PERB Dec. No. 2697 (2020) (citing *Westminster Sch. Dist.*, PERB Dec. No. 277 (1982)). "Advocacy support" of working conditions at a public meeting of the employer is a permissible exercise of an exclusive representative's right to represent employees in employment relations. *Id.* (citing *Sierra Joint Cmty. Coll. Dist.*, PERB Dec. No. 345 (1983); *San Ramon Valley Unified Sch. Dist.*, PERB Dec. No. 230 (1982)).

An employer policy denying an exclusive representative's right to speak at its public meetings on any matter related to negotiations, grievances, arbitrations, and/or personnel matters would be overly broad, and would violate employee and organizational rights. *Id.* (citing *San Ramon Valley*, *supra*).

An exclusive representative has a right to engage in direct and indirect advocacy with an employer's elected and unelected officials, up to and including the employer's highest levels,

**VIA E-MAIL**  
Stephanie O'Hara  
March 1, 2022  
Page 3

provided that the exclusive representative does not make new collective bargaining proposals that the exclusive representative has not already made in negotiations with the employer's chosen bargaining team. *Anaheim Union High Sch. Dist.*, PERB Dec. No. 2434 at 52-53 (2015); *Westminster Sch. Dist.*, *supra* at 10; *San Ramon Valley*, *supra* at 16-18.

**C. The District Continues to Fail to State a Prima Facie Case of Direct Dealing**

Charging Party continues to fail to satisfy PERB regulation section 32615(a)(5) by not providing a "clear and concise statement of facts with sufficient specificity." Simply dumping a pile of emails on PERB and the Union is insufficient to satisfy the pleading standard.

In any event, the three emails alleged to evidence the broad allegations made by Charging Party fail to do that; their inclusion in this amended charge does not support issuance of a complaint.

(1) The first email, dated Tuesday, June 8, 2021, is incomplete. The email shows it was written by Cindy Spangler but does not show who the email was sent to. As a result, PERB cannot determine that Ms. Spangler communicated with the Board through this email. Further, while Ms. Spangler identifies herself as a member of the bargaining team, the District alleges no facts showing that Ms. Spangler was speaking on behalf of the entire team, or on behalf of the Union, in writing this email. A Union is not liable for the acts of all its members, and the District has made no showing that Ms. Spangler was a Union agent in writing this email.

Even if PERB did consider the contents of the email, Ms. Spangler only shares her "anger and disappointment" at the proposed replacement of long-time negotiations facilitator Jim Walker. At no point does Ms. Spangler make a new collective bargaining proposal, let alone attempt to negotiate over it. Thus, PERB should disregard this email in its entirety.

(2) In the email dated Thursday, June 6, 2021, LFT President Skyler Petersen shares with School Board members an email written by Deputy Superintendent Valla (who filed this charge, apparently without counsel) in which she communicates with Mr. Walker about renewing his contract. Ms. Petersen's communication with Board Members is limited to questions regarding the Board's intent in order to better understand circumstances surrounding the replacing of Mr. Walker. At no point does Ms. Petersen attempt to negotiate or deal directly with the Board. Plainly, Ms. Valla is angry that her email conversation with Mr. Walker was shared with the Board, and filed this charge in retaliation. Just as plainly, Ms. Petersen's email does not violate EERA.

(3) The third email, dated Friday, June 11, 2021, includes a joint letter signed by Ms. Petersen and the Chapter President of the California School Employees Association (CSEA), Jerry White. In the letter, Ms. Petersen and Mr. White

**VIA E-MAIL**

Stephanie O'Hara

March 1, 2022

Page 4

express their outrage over the misrepresentation by District administrators of the Board's intent relating to the replacing of Mr. Walker. At no point in the letter do Ms. Petersen and Mr. White introduce or attempt to negotiate over bargaining proposals. Again, it is plain that Ms. Valla is personally aggrieved about this completely lawful—indeed, constitutionally protected—complaint to the Board and has decided to abuse PERB's process in order to retaliate against the Union. This charge is plainly filed in bad faith and PERB should make clear in no uncertain terms that it will not countenance such behavior by the District.

The statements in the FAC that “individual Board Members are directly approached,” that LFT negotiates items not originally sunshined, that LFT demanded a change in Board Member representation, and that LFT reached out to a different Board Member to solicit their involvement are completely unsupported by the above referenced emails. Charging Party does not provide any evidence of individual board members being approached nor does it even attempt to explain which Board Member was approached, by whom, when, and regarding what subject. Further, even if it were unlawful to lobby individual Board members, it is clear from the emails where the recipient information is not mysteriously missing that the emails were directed to the full Board, not individuals. None of the emails contain or even reference bargaining items “not originally sunshined,” nor do they reference a change in Board Member representation.

The FAC goes on to allege that since the filing of the charge LFT has continued to attempt to negotiate with the Board and provides six emails, letters and video as evidence. Just as the above referenced emails failed to demonstrate direct dealing by LFT, the six additional pieces of evidence also fail to demonstrate direct dealing by LFT.

(1) In the email dated November 24, 2021, written by Ms. Petersen to Board Members, Ms. Petersen informs Board Members about a frivolous unfair practice charge filed by the District. (PERB has since dismissed that charge.) Ms. Petersen explains why she characterizes the charge as frivolous and questions why the District filed the charge. Contrary to Charging Party's allegations, Ms. Petersen does not threaten a mass exodus of teachers but simply expresses her concern that a mass exodus may result due to the District's horrendous treatment of teachers and better opportunities available at nearby districts. Ms. Petersen nowhere attempts to negotiate bargaining proposals.

(2) In the email dated Monday, November 29, 2021, Ms. Petersen asks the District's administration, with a copy to the Board to keep them informed, why LFT was not afforded the opportunity to select and send a representative to sit on an interview panel for elementary dean positions. It is clear that at no point did Ms. Petersen attempt to negotiate with the District through this communication, and in particular did not do so to the exclusion of the District's chosen bargaining representatives, *to whom the email is directed*. Most telling is that Charging Party does not even make an effort to argue that Ms. Petersen attempted to negotiate

**VIA E-MAIL**

Stephanie O'Hara

March 1, 2022

Page 5

with the Board. Instead Charging Party mischaracterizes Ms. Petersen's email and states that Ms. Petersen requested to be on an interview panel herself. Accordingly, PERB should disregard this email in its entirety.

(3) In the letter read by Ms. Petersen during the public comment portion of a Board meeting on December 13, 2021, Ms. Petersen outlines several concerns relating to labor-management relations. Specifically, Ms. Petersen addresses the misrepresentation of the will of the Board in replacing Mr. Walker, a sham investigation of an LFT officer, frivolous unfair labor practice charges, grievances filed against the District, failure of the Superintendent to attend meetings with the LFT Executive Board, the exclusion of LFT from interview panels, and working conditions during the COVID-19 pandemic. Here Ms. Petersen, is acting within her right as LFT President to represent LFT members at public meetings and engage in direct advocacy. None of the issues of concern expressed in her letter constitute a new or not-previously-discussed bargaining proposal.

(4) During the Special Board Meeting Ms. Petersen provides public comment regarding the change in the source of funding for substitute teacher pay raises. Ms. Petersen asks the board to investigate and hold accountable parties that falsified documents relating to source of funding. While Ms. Petersen refers to raises for teachers, she does attempt to negotiate over pay raises. Ms. Petersen simply engages in advocacy within the parameters established by PERB precedent.

(5) During the public comment period of a Board meeting an LFT Executive Board Member read a letter written by LFT members of Vandenberg Middle School regarding the contentious relationship between District administration and teaching staff and the disparity in pay raises between the District and surrounding districts. Nothing in the letter constitutes an attempt to negotiate over compensation. Instead, it expresses dissatisfaction over District-employee relations and compensation. Moreover, the action of reading the letter during public comment falls squarely within permitted advocacy established by PERB. Finally, the District alleges no facts to support the Union member being an agent of the Union during this advocacy.

(6) Lastly, the District claims that an email written by Ms. Spangler asks the Board to consider reinstating a stipend given to teachers who participate in a multiday fieldtrip. Nothing in the text constitutes an attempt to negotiate over bargaining proposals. Further, the document submitted by the District is incomplete, as it lacks information regarding who it was sent to and when. Finally, again, there are no facts supporting a conclusion that Ms. Spangler was acting as an agent of the Union in this communication. Thus, PERB should disregard this document in its entirety.

**VIA E-MAIL**  
Stephanie O'Hara  
March 1, 2022  
Page 6

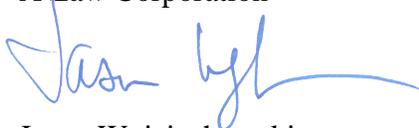
### **III. CONCLUSION**

Charging Party once again falls well short of establishing a prima facie case of direct dealing. The first three emails provided by Charging Party provide no evidence of LFT's alleged attempts to negotiate and deal directly with individual Board Members. Similarly, the additional six documents provided also fail to demonstrate that LFT attempted to negotiate with Board. The evidence provided by Charging Party is more indicative of Charging Party's animosity towards LFT—and toward Ms. Petersen in particular—and its willingness to falsely characterize any advocacy communication as an attempt to negotiate. The District is, in the final analysis, attempting to chill constitutionally and statutorily protected political advocacy engaged in by the Union and its members. LFT respectfully requests that PERB dismiss the charge with prejudice, and further that the General Counsel put the District on notice that further bad-faith, vexatious conduct will result in sanctions.

I declare under penalty of perjury, based on information and belief, that the statements contained in this position statement are true and complete.

Very truly yours,

Bush Gottlieb  
A Law Corporation



Jason Wojciechowski

cc: Skyler Petersen

**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 Bush Gottlieb, A Law Corporation  
801 North Brand Boulevard, Suite 950, Glendale, California 91203

On 03/01/2022, I served the Respondent's Position Statement  
(Date) (Description of document(s))

(Description of document(s) continued) in Case No. LA-CO-1814-E  
PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- 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;
- 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).)*

*(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)*

Skyler Petersen Email: <a href="mailto:petersen.skyler@lusd.org">petersen.skyler@lusd.org</a>	Stephanie O'Hara Regional Attorney Public Employment Relations Board Los Angeles Regional Office 425 West Broadway, Suite 400 Glendale, CA 91204 Email: <a href="mailto:Stephanie.ohara@perb.ca.gov">Stephanie.ohara@perb.ca.gov</a>
--	--

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 03/01/2022,  
(Date)  
at Tulare California.  
(City) (State)

**Nelly Guzman**

(Type or print name)

(Signature)