



California  
School  
Employees  
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November 21, 2018

Austin Beutner  
Superintendent  
Los Angeles Unified School District  
333 S. Beaudry Ave.  
Los Angeles, CA 90017

**Re: CSEA Member Rights and District Responsibilities in a Potential Strike by UTLA**

Dear Superintendent Beutner:

The California School Employees Association (CSEA) has been watching with great concern and interest, as the Los Angeles School District (District) and the United Teachers of Los Angeles (UTLA) proceed through the impasse process. CSEA urges you to respect District educators and settle a fair contract with UTLA that provides for smaller class sizes and more resources for our students. The support that CSEA members furnish to the teachers, nurses, and counselors of UTLA every day at work also includes support for UTLA's bargaining demands. CSEA is hopeful that the District and UTLA will reach an agreement during the impasse proceedings; however, we are preparing for any eventuality. This letter will outline CSEA's position on several important questions should there be a strike at LAUSD after the exhaustion of the impasse procedure.

**EERA Protected Activity by CSEA Members**

CSEA will vigorously defend our members' rights under the Educational Employment Relations Act (EERA), the collective bargaining agreement, and any other applicable statute or agreement. District administrators and representatives should in no way discourage or interfere with CSEA members' participation in EERA protected activities. Examples of these activities include, but are not limited to:

- The posting of signs or posters supportive of the strike on designated union bulletin boards.
- The posting of signs or posters supportive of the strike in an employee's personal workspace.
- Answering general questions posed by parents and community members about UTLA's strike while on duty. (*Mt. San Antonio Community College District (1982) PERB Decision No. 224.*)
- Wearing union buttons, t-shirts, and other insignia at work, including those indicating support for the District's certificated staff. (*East Whittier School District (2004) PERB Decision No. 1727; Fresno County Superior Court (2017) PERB Dec. No. 2517; County of Sacramento (2014) PERB Decision No. 2393-M.*)
- The distribution of messages supportive of the strike, union materials, and information through the District's means of communication, including e-mail. (*Napa Valley Community College District (2018) PERB Decision No. 2563; Gov. Code section 3543.1.*)
- Participation in UTLA picket lines before or after work, and during duty-free breaks.

In addition to the protected activities listed above, CSEA members also have the protected right under EERA to engage in a sympathy strike, that is, to refuse to cross UTLA picket lines and conduct a work stoppage. In *Service Employees International Union Local 1021* (2017) PERB Decision No. 2536-M, the Board upheld the standard from *Oxnard Harbor District* (2004) PERB Decision No. 1580-M, that sympathy strikes are not prohibited by a general no-strike clause unless there is a “clear and unmistakable waiver” of the right to engage in sympathy strikes. It is CSEA's position that, absent any extrinsic evidence from the District showing a “clear and unmistakable waiver,” the right to sympathy strike is not waived under the general no-strike clause in the parties’ current collective bargaining agreement. Any retaliation against or interference with CSEA members’ choice to sympathy strike will be treated as a violation of EERA.

### **Supervision of Students by CSEA Members**

It has been reported to CSEA that the District intends to assign CSEA members to school sites around the District in the event UTLA goes on strike. CSEA wants to be clear that classified employees cannot be given sole responsibility for student supervision because the Education Code requires that classified employees who are supervising children must themselves be overseen by certificated staff. (Education Code §§ 45330(b) & 45344(a).)

Education Code section 45530(b) states in relevant part:

A paraprofessional shall perform only duties that, in the judgment of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher...

Education Code section 45344(a) states in relevant part:

An instructional aide shall perform only such duties as, in the judgment of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher... An instructional aide need not perform such duties in the physical presence of the teacher but the teacher shall retain his responsibility for the instruction and supervision of the pupils in his charge.

Education Code section 44807 provides that teachers have the primary responsibility of supervising students on their way to and from school, on the playgrounds and during recess. Education Code section 5531 provides that a certificated employee must supervise social activities. Education Code section 5530 provides that certificated employees are required to oversee the moral conditions of their schools. Therefore, certificated employees are expected to supervise students at all times unless there is an express statutory exception.

Furthermore, the Education Code requires that a student be “under the immediate supervision and control of an employee of the District... who possess[es] a valid certification document...” in order to be counted in the average daily attendance of a school district. (Education Code section 46300(a).) The clear intent of the statutory scheme is to require responsible oversight and supervision by certificated employees. Classified staff on their own cannot make up for the lack of certificated staff at schools or in the classroom.

### **Demand to Bargain Effects of a UTLA Strike and Strike Preparation**

In preparing for a strike by certificated employees, the District is likely to make numerous decisions that impact our members’ wages, hours, and working conditions. CSEA demands to bargain any negotiable

decisions or effects that result from the District's preparation for a strike by UTLA or from the strike itself. Examples of these negotiable decisions or effects may include:

- The changing of sign-in or reporting procedures during a strike
- Changes to unit members' work schedules and the effects of such a change
- Changes to unit members' work location and the effects of such a change
- The assignment of unit members to the duties of striking workers and the effects of such an allocation of duties
- Increases in workload due to the absence of teachers, nurses, and counselors

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The above list is not exhaustive and CSEA reserves the right to negotiate any decision or effects resulting from strike preparations or the UTLA strike itself that is negotiable under EERA and our current collective bargaining agreement.

Furthermore, Education Code section 45110 provides that classified employees cannot be required to "perform duties which are not fixed and prescribed for their position," for more than five days in a 15-calendar day period except if their salary is adjusted upward. This language is also incorporated in Article 12, Section 7.0 of CSEA's collective bargaining agreement with the District. CSEA will enforce this collective bargaining agreement provision and Section 45110 if necessary.

### **Conclusion**

While CSEA is hopeful that the District and UTLA will reach an agreement, CSEA must be prepared for any eventuality. Please confer with your team and notify us of your availability for negotiations regarding strike preparation and the impacts of the strike on CSEA members. If you have any questions or concerns, you can reach me by phone at (818) 502-3856 or email at [amoore@csea.com](mailto:amoore@csea.com).

We look forward to fruitful negotiations on the multiple issues of concern to CSEA members as well as clear communication regarding the District's plan for a potential strike by certificated employees.

Sincerely,

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION

*Alexander Moore/lk*

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Labor Relations Representative

AM/lk

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