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1 MEGAN DEGENEFFE (SBN 301089)
MDegeneffe@cta.org
2 CALIFORNIA TEACHERS ASSOCIATION
11745 E. Telegraph Rd.
3 Santa Fe Springs, California 90670
Telephone: (562) 478-1351
4 Facsimile: (562) 478-1434

5 ERICA DEUTSCH (SBN 204427)
edeutsch@bushgottlieb.com
6 MICHAEL E. PLANK (SBN 290943)
mplank@bushgottlieb.com
7 BUSH GOTTLIEB
A Law Corporation
8 801 North Brand Boulevard, Suite 950
Glendale, California 91203-1237
9 Telephone: (818) 973-3200
Facsimile: (818) 973-3201
10
11 Attorneys for ASSOCIATION OF
CLOVIS EDUCATORS

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13 STATE OF CALIFORNIA
14 PUBLIC EMPLOYMENT RELATIONS BOARD
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16 ASSOCIATION OF CLOVIS
17 EDUCATORS,

18 Charging Party,

19 vs.

20 CLOVIS UNIFIED SCHOOL DISTRICT,

21 Respondent.
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CASE NO. SA-CE-3040-E & SA-CE-3047-E

REQUEST FOR INJUNCTIVE RELIEF

1 **I. INTRODUCTION**

2 Charging Party Association of Clovis Educators (“ACE” or “the Union”) is a
3 nonexclusive representative of teachers employed by the Clovis Unified School District
4 (“CUSD” or “the District”). ACE respectfully requests that the Public Employment
5 Relations Board (“PERB”) seek injunctive relief ordering the District to cease and desist
6 from its unlawful favoritism towards, overt material support for, and domination over the
7 CUSD Faculty Senate—a company union that functions to prevent teachers from
8 exercising their rights within a truly independent organization.¹ Immediate relief is also
9 necessary to prevent the District from interfering with teachers’ rights to organize through
10 an extensive campaign of surveillance and through maintenance of official and misleading
11 board policies that claim the District’s professionals are “proud that we do not have
12 collective bargaining” and also wrongly claim the Faculty Senate is “the representative
13 body for teachers of the District.”

14 Since CUSD learned of teachers’ ongoing efforts to organize, it has attempted to nip
15 those efforts in the bud. While CUSD has employed numerous and varied unlawful tactics
16 in its anti-union campaign, the Faculty Senate has figured centrally in all of them. The
17 District treats ACE as an outside organization, while Faculty Senate is treated as an
18 insider, but is in truth co-opted by District administration. The Faculty Senate receives 1.8
19 FTE positions of salary and benefits from CUSD, tens of thousands of dollars in stipends
20 for additional employee participants, thousands in discretionary spending funds, and access
21 to a District vehicle. The Faculty Senate receives office space—right near Human
22 Resources—explicitly because the District wished to supervise its representative.

23 These benefits come with strings that lead to control over the Faculty Senate. The
24 salaries and stipends allow the District to create policies and responsibilities that hold the
25

26 ¹ On June 1, 2021, ACE filed its first unfair practice charge against CUSD, and filed an
27 amended version of that charge on August 2021. A true and correct copy of the amended
28 first charge is attached hereto as Attachment A. On August 6, 2021, ACE filed its second
unfair practice charge against CUSD. A true and correct copy of this charge is attached
hereto as Attachment B.

1 Faculty Senate representatives to requirements that further the anti-union goals of the
2 District. For example, Faculty Senators are required to participate in the Climate
3 Assessment survey. That survey described the Faculty Senate as the teachers’
4 “representative group,” and the District received access to all of the responses. The
5 District also provides accounting services and legal services to the Faculty Senate,
6 establishing all structures—and rules—that any independent organization would need to
7 establish. And ultimately, whenever Faculty Senate wishes to make changes that could
8 impact its funding, those changes must be authorized by the District—the source of all of
9 its support. Indeed, in a recent effort to further cement its control over the Faculty Senate,
10 the District has assisted with the drafting of new proposed Faculty Senate bylaws which
11 would, among other things, subject Faculty Senate officers to disciplinary oversight by the
12 District’s Human Resources department.

13 Faculty Senate is also given physical access to the worksite for its executive board
14 members, which is denied to ACE organizers, as they are visitors. The District closely
15 polices ACE email communications to assure no work for ACE is done on work time, but
16 Faculty Senate has one full-time and two part-time positions whose jobs are to do Faculty
17 Senate work during the workday.

18 After ACE asked for neutrality, the District has given lip service, but not provided
19 it. Instead, it is delaying including ACE in its decisions and cutting off representation
20 opportunities. Nearly two months after ACE announced its organizing efforts, CUSD
21 declared that it was considering implementing an off-schedule salary increase and a shorter
22 work-year. Although Associate Superintendent Jager offered to meet and discuss the
23 planned changes with ACE, by the time ACE and CUSD met on June 7, 2021, CUSD had
24 already made the decision to proceed with the changes. ACE was not provided an
25 opportunity to meet and discuss these changes in a meaningful way. Conversely, CUSD
26 gave the Faculty Senate credit for these new benefits. The District’s bad faith and intent to
27 disregard ACE’s rights are highlighted by its disregard of ACE’s information request
28 prior to the June 7 meeting, which was again reiterated at the meeting, for “any financial

1 information shared with the ECC and EBC that was used to develop the
2 recommendations”. This information has still not been provided to ACE.

3 ACE met with CUSD again on July 13, 2021. In advance of that meeting, ACE
4 sent CUSD a letter outlining issues that needed to be resolved in order for the District to
5 afford ACE the same representational rights that the Faculty Senate enjoyed. The District
6 failed and refused to address any of ACE’s concerns regarding the unlawful and
7 misleading policies the District maintains regarding representation, the material resources
8 provided to the Faculty Senate, and the statements indicating that Faculty Senate and the
9 District engage in collective bargaining.

10 Instead, the District indicated that it would only afford ACE access to meetings or
11 employee orientations in situations where the Faculty Senate first confirms it would
12 participate, and the District also indicated it would limit the Faculty Senate’s participation
13 in District business, rather than affording ACE equal access as the Faculty Senate. It is
14 easy to see why the District supports the Faculty Senate over ACE. Whereas ACE is an
15 independent union, the Faculty Senate is an archetypal “company union.” It is financed
16 and dominated by CUSD, and its very *raison d’etre* is to keep the District union free – a
17 status it proudly touts. CUSD has also explicitly stated its support for the Faculty Senate
18 and its opposition to ACE’s organizing campaign. It openly promotes its non-union
19 stance, declaring in official District Policy that the District’s professionals are “proud that
20 we do not have collective bargaining.” The District is violating the EERA by forcing ACE
21 to organize in this blatantly hostile and uneven environment.

22 While exhibiting favoritism for the Faculty Senate, and opposition to collective
23 bargaining and union representation of its employees, the District has been openly
24 monitoring and surveilling ACE’s activities. District officials have begun to monitor
25 employee e-mails – a practice it has not exercised in the past – including checking details
26 such as time sent, as well as asking teachers to forward e-mails to administrators. Through
27 the Faculty Senate, the District is also keeping track of how many teachers support ACE,
28 and at which schools. In turn, and to send a message to others, the District retaliated

1 against one of ACE’s most prominent leaders, [REDACTED] – a former Faculty Senate
2 member, by not providing her the opportunity to teach a keyboarding class and receive the
3 accompanying \$8,400 annual stipend – an extra-duty assignment the District has
4 automatically provided to Ms. [REDACTED] for the last 15 years.

5 All of the foregoing conduct is causing ongoing harm to the rights of both CUSD
6 teachers and ACE. The District’s communications about and favorable treatment of the
7 Faculty Senate creates (as it is intended to) confusion among teachers about the Faculty
8 Senate and its role. Some teachers have expressed open confusion about the relationship
9 between the Faculty Senate and the District. Some have asked coworkers if ACE’s efforts
10 to organize are legitimate, or for clarification of whether the Faculty Senate represents
11 them. Others have expressed the view that there would be no point to having a union in
12 the District as a result of the Faculty Senate’s presence. This ongoing harm to teachers’
13 efforts to organize independently of Faculty Senate will only become harder to remedy
14 with time.

15 CUSD’s relationship with the Faculty Senate is a textbook example of an employer
16 using a company union to stifle organizing. Teachers are led to believe that they are
17 already represented by an entity that is financially reliant upon, supervised by, and—at
18 bottom—advocating for the employer’s interest. Nor is this the first time that CUSD has
19 used this old playbook: the District’s unlawful conduct in this case is strikingly similar to
20 the conduct that PERB ruled unlawful over thirty years ago in *Clovis Unified School*
21 *District* (1984) PERB Decision No. 389E.² The District’s blatant, longstanding, and

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23 ² In this previous case, PERB found CUSD violated EERA by meeting and conferring
24 exclusively with the Faculty Senate about matters fundamental to the employment
25 relationship, by providing the Faculty Senate with financial assistance and support, by
26 making express statements favoring the Senate, and conferring a benefit in the form of a
27 reduced workday and crediting it to the Faculty Senate. PERB held that such conduct
28 created the impression that it favored the Senate over the Association, thereby unlawfully
encouraging employees to support the Senate and violating its obligation of strict
neutrality. *Clovis Unified Sch. Dist.*, PERB Dec. No. 398E, at 4 and 7.

1 ongoing support for and domination of the Faculty Senate has thwarted has thwarted
2 genuine organizing in the District for decades. It must be put to an end so that true,
3 independent organizing can proceed.

4 In the face of ACE's organizing effort, the District's blatant support for the Faculty
5 Senate coupled with surveillance of ACE and monitoring of support for ACE, creates a
6 coercive atmosphere intended to interfere with organizing. This is further accomplished
7 by the District's retaliation against one of ACE's prominent leaders – sending a message
8 about what teachers who support ACE can expect.

9 ACE therefore respectfully requests that PERB exercise its statutorily provided
10 authority to pursue an injunction requiring CUSD to cease and desist from supporting and
11 dominating the Faculty Senate, to cease and desist from interfering with the rights of
12 teachers and ACE, to observe strict neutrality between ACE and the Faculty Senate, and to
13 afford ACE all of its representational and access rights under the EERA.