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November 30, 2016

Richard Gillihan, Director
California Department of Human Resources
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TAMEKIA N. ROBINSON
Vice President for
Organizing/Representation

MARGARITA MALDONADO
Vice President for Bargaining

Re: Cease and Desist –Interference with Union Protected Activity

Dear Mr. Gillihan:

Local 1000 has received reports that Department managers throughout the State, including those at the Department of Motor Vehicles, are holding illegal captive audience meetings with Local 1000 represented workers. Managers at these meetings are harassing and intimidating members with inaccurate information about their right to strike, and are threatening discipline for participation. This statewide campaign of harassment and threats appears orchestrated to stop employees from engaging in protected union activity in violation of Section 3519, subdivision (a) of the Ralph C. Dills Act.

A wealth of accepted court and administrative decisions of PERB and the NLRB support the Union's right to strike. No employee should be forced to engage in a captive audience meeting to chill their rights. The State's position that employees do not have a right to strike in this setting is preposterous. PERB has long held that the Union has a right to engage in unfair labor practice strikes in response to bad faith conduct. *San Ramon Valley Unified School District* (1984) PERB Order No. IR-46 at p. 10. *Modesto City Schools* (3/8/83) PERB Decision No. 291; *Fresno Unified School District* (4/30/82) PERB Decision No. 208; *Westminster School District* (12/31/82) PERB Decision No. 277; *Rio Hondo Community College District* (3/8/83) PERB Decision No. 292.

The No Strike provision in the MOU does not prohibit unfair labor practice strikes. *Mastro Plastics Corp. v. NLRB*, 350 U.S. 270 (1956) (in which the court rejected an employer's request for injunction, holding that a union retains the right to strike over an unfair labor practice in the absence of an explicit waiver of that right); *Children's Hospital Medical Center of Northern California v. California Nurses Association* (9th Cir. 2002) 283 F.3d 1188 (applying the *Mastro Plastics* analysis to

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uphold a union's right to engage in a sympathy strike in the absence of an explicit waiver of that right). Further, PERB has adopted this analytical framework, holding that even secondary sympathy strikes do not violate a no-strike clause in a valid and enforceable MOU, in the absence of clear and unmistakable waiver of the right to strike in such circumstances. Oxnard Harbor District (2004) PERB No. 1580-M, 28 PERC para. 56. The State's misinformation in regards to the issue of the right to strike, and the worksite conduct of its managers, further reinforces the basis of the Union's right to strike- it is the only possible response to hold the State accountable when it defies its legal duties in such a flagrant manner, and engages in a statewide campaign of threats and misinformation for protected activity.

This letter demands that the State and DMV cease and desist this unauthorized exercise of managerial authority holding captive audience meetings and otherwise chilling the employees right to strike.

As it stands, CalHR appears to have supported and encouraged this abuse of authority and is outright enabling and sanctioning this unlawful conduct. The Union demands that you intervene and prevent the recurrence of this interference with employee rights. If DMV continues this unlawful and retaliatory conduct under color of state authority, Local 1000 intends to exercise all options available to it through PERB in order to protect its legal right to engage in protected activity.

Sincerely,

A handwritten signature in black ink, appearing to read "York Chang".

York Chang
Chief Counsel

YJC:rje

cc: Frolan Aguilin, CalHR Chief Counsel