Case#_____

IN THE SUPREME COURT OF

THE UNITED STATES OF AMERICA

REBECCA WU,

PETITIONER

V.

PUBLIC EMPLOYMENT RELATIONS BOARD, (1831 18th Street Sacramento, Ca 95811)

Respondent;

TWIN RIVERS UNITED EDUCATORS,

Real Party in Interest and Respondent.

California Supreme Court Case S278551

3rd Court of Appeals case C092640

PUBLISHED

(Super. Ct. No. 34-2019-80003289-CU-WM-GDS) Sacramento Superior Court, California

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Court of Appeals, California.

After a Decision by the Court of Appeal, California Third Appellate District, (No.) _C092640__

PETITION FOR WRIT OF CERTIORARI

Rebecca Wu PO BOX 543, APPLEGATE CA 95703 916-308-2190
Rebeccadawnwu@yahoo.com

QUESTIONS FOR REVIEW

Is it unconstitutional to have an interpretation of a statute that creates an Arbitrary classification in violation of the constitution of the 14th Amendment?

When an employee is misclassified, claims to be so, and in Wu case recognized by the local union as misclassified (see Appendix H, emails between union president and HR chief) then is is a DUTY of Fair Representation (DFR) to recognize or start the grievance procedure?

Would Wu have constitutional rights to the union and its representation,even as a misclassified public employee wrongly placed outside of the union, (determined Wu was misclassified in Court of Appeals in a related case)?

Do Substitute teachers, one of the Four classification of Teachers in California, belong to the teachers union under Government Code 3545 b.1 from the Blatant

Can California interpret a law that allows for a discretionary review of a classification of a teacher, in this case a substitute teacher and a misclassified teacher, to be interpreted as not in the classification regardless of the clearity of the statute?

If substitutes at a school do not rise up to create their own union are they by default in the teacher union?

Does a Union have a Duty of Fair Representation to represent a misclassified employee, especially if there is clear evidence of it?

Does California violate federal constitutional right to deny the right to file a writ of mandate in Superior court for a denial of an Unfair Practice Claim that goes to the board and is not issued as a UPC with no right to challenged stated in appeal but then can they not have the right to file in Superior court and thus should their past ruling of Firefighters 188 be overturned?

Is it unconstitutional to have an interpretation of a statute that creates an Arbitrary classification in violation of the constitution of the 14th Amendment?

Is it Arbitrary classification of public employees to have one type of public employee not fall under a local union, and thus in violation of the 14th constitution?

Should FireFighters 188 be overturned that limits review for Employment Unfair Practice Charges that get dismissed in Public Employment Relations Board and thus have unlimited rights to challenge a dismissed UPC charge with rights under CCP California Code of Procedures 1085, 1086 that allows for filings challenging agency decisions?

Do unions have the right to Challenge a school district's classification of a teacher when classified as something else, or at least when not given the names as required in a CBA of teachers and start a grievance?

Does the Court of Appeals, that represents a district with state agencies, have to have the required time allotted for oral argument and not half and should it be televised or at least transcribed if there are technical difficulties when there is Oral argument?

Do the School Districts only have the right to classification and not the union to challenge such classification? Would the overall picture of making sure teachers are properly placed in a union and the best interest of the students be a factor in the power that would be given to a union to have that right to challenge a misclassified employee?

SHOULD 3545 b.1 BE COMBINED WITH 3545 a WHERE A COMMUNITY OF INTEREST CAN BE REVIEWED OR TEMPERED TO DETERMINE IF THEY ARE UNDER b?

SHOULD FIREFIGHTERS 188 BE OVERTURNED International Assn. of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd. (2011) 51 Cal.4th 259, 271 (Fire Fighters).) SHOULD THERE BE LIMITED THREE EXCEPTIONS that allow a writ to challenge a denial of a BUT ALL EMPLOYMENT ISSUES SHOULD BE ACCEPTED OR AT LEAST REVIEWED ON AN INDIVIDUAL BASES ESPECIALLY BECUASE IT RELATES TO ONE'S SHELTER, FOOD AND SURVIVAL IN EMPLOYMENT?

IS IT UNCONSTITUTIONAL OR IN DISAGREEMENT WITH THE PAST SUPREME COURT DECISION IN THE UNITED STATES THAT SHOULD NOT ALLOW FOR STRICT THREE LIMITATIONS ON WHAT CAN BE CHALLENGED IN SUPERIOR COURT FROM A STATE AGENCY or PERB?

UNDER MMBA IN [FIREFIGHTERS] and IN EERA PERB CLAIMS THAT THE LAW DOES NOT ALLOW A UPC TO BE CHALLENGED IN SUPERIOR COURT UNDER A ccp 1085,1094, 1086 YET IT SAYS IT CAN UNDER THREE EXCEPTIONS AND SHOULD THIS BE THE ALLOWED INTERPRETATION OF A CCP 1085. DOES THE LAW REALLY SAY UNDER C that COMENCING WITH CCP 1064 DOES ALLOW UPC's TO BE CHALLENGED AND THEREFORE, NO LAW RESTRICTS A FILING OF

A UPC CHALLENGE AS PER WHAT THE NLRA SUPPORTS, THE US SUPREME COURT SUPPORTS ALL UNLIMITED UPCS TO BE CHALLENGED?

IS A UNION CBA OR UNION MEMBERSHIP A PROPERTY THAT WOULD BE RECOGNIZED UNDER THE 14TH AMENDMENT FOR A CONSTITUTIONAL RIGHT TO IT IF IT IS DENIED?

SHOULD THE APPELLATE COURT BE BOUND BY THE California SUPREME COURT PRECEDENT IN FIREFIGHTERS 188 (International Assn. of FireFighters, Local 188, AFL-CIO v. Public Employment Relations Bd. (2011) 51 Cal.4th 259, 271 (Fire Fighters) even if they do not agree?

SHOULD COURTS DEFER TO PERB OR AN AGENCY'S EXPERTISE IN THE INTERPRETATION OF GOV CODE 3545 AND 3540? OR IS THAT NOT TREATING THE PEOPLE AS UNEQUAL IN THE EYES OF THE LAW?

ALL THE ABOVE ARGUMENTS OR UNDER MAIN ARGUMENTS ARE FOUND ON PAGE 10-12 of THE PETITION FOR REVIEW IN STATE SUPREME COURT

SHOULD APPELLATE COURTS BE REQUIRED TO BE TRANSCRIBED?

LIST OF PARTIES

Rebecca Wu [**APPELLANT]**

PO BOX 543, Applegate, CA 95703

Public Employment Relations Board. [**RESPONDENT**]

Attorneys Laura Davis and Danial Crossen

1831 18th Street Sacramento, CA 95811

(916) 322-3198

[x] **All parties appear in the caption** of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows

The REAL PARTY OF INTEREST is Twin Rivers Unified EDUCATORS who are under California Teachers Association (CTA)

Jacob Rukeyser Attorney for TRUE/CTA

1705 Murchison Dr.
Burlingame, CA 94010
Phone 650-552-556

RELATED CASES

FIRST RELATED CASE:

I have a few related cases and one of them is being filed soon that was ruled on in May 2023 with a denial of the Petition for review in the State Supreme Court. In that case Wu was Misclassified and was not a substitute but a probationary employee for the years Wu worked by the Court of Appeals but did not have rights to tenure and did not mention damages for the years she was misclassified. Court Ruled Wu did not have tenure based on the Days of service versus the time teaching in the classroom.

Rebecca Wu vs Twin Rivers Unified School District.

In the Court of Appeal of the State of California in and for the Third Appellate District in C088570 and in Superior Court of Sacramento it is 34201580002234CUWMGDS. In the State Supreme Court of California it is

SECOND RELATED CASE

Rebecca Wu vs State Teachers Retirement System Case # C095632

For the case in Court of Appeals of the State of California in th and for the Third Appellate District Case # C095632

Sueprior Court of Sacramento 34202080003303CUWMGDS

THIRD RELATED CASE

In Public Employment Relations Board

Rebecca Wu Vs Twin Rivers Unified School District Case SA-CE-2867-E For Issued Complaint by PERB for Retaliation for not hiring Wu for the 2016-2017 school year (now determined by Court of Appeals to be Misclassified in CO88570). Informally Negotiating on behalf of other teachers, participating in a Misclassification lawsuit, no claim of misconduct. Wu had worked at KHS but was not reclassified, all other teachers were reclassified.

LISTING OF ALL PROCEEDINGS

1. Public Employment Relations Board, Rebecca Wu vs Twin Rivers United Educators. SA-CO-618-E. Board Denied the claim of Unfair Practice Claim as not stating a claim and dismissed the case. **Appendix F**.
2. Dismissal of the UPC by the Agent in PERB **Appendix G**.
3. Sacramento Superior Court Case Judgement on **Case 34-2019-8003289 CBWMGDS** Writ of Mandate - Denied. Rebecca Wu vs Public Employment Relations Board and Real Party of Interests Twin Rivers United Educators. **Appendix D** July 10, 2020
4. ORder of The Superior Court Sustaining Demur on Petition 6/26/2020 **Appendix F** Wu vs Public Employment Relations Board
5. Third District Court of Appeals.California Date 12/28/2022 Writ of Mandate Denied. **Case C092640**. PUBLISHED. Rebecca Wu vs Public Employment Relations Board **Appendix B.**
6. Rehearing Denied in Third Court of Appeals 1/23/2023 Appendix C
7. California State Supreme Court Petition for Review. Rebecca Wu vs PERB **Denied review on 4/26/2023 Case S278551**

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STATUTES AND CASE AUTHORITY

California Code of Procedures (CCP) 1085, and 1094 (opinion p. 3)

California *Administrative procedures Act, Government Code beginning with section 11340.*

United States Constitution Fourteenth Amendment Section 1 *All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

United STates Constitution First Amendment *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

Rebecca Wu v. Pub. Emp't Relations Bd., 87 Cal.App.5th 715, 303 Cal. Rptr. 3d 693 (Cal. Ct. App. 2022) Published 12/28/2022

Taylor v. Board of Trustees, 683 P.2d 710, 204 Cal. Rptr. 711, 36 Cal. 3d 500. Ed code 44916, 44918, 44908, 44292.21

California Education Code 44916, 44918, 44908, 44292.21

California Government Code 3545. *(a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.*
(b) In all cases: (1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

California Government Code 3540 *It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee*

organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.....

...It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that this legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

Government Code 3509.5 (a)- allowed to file in appeals court b. SAME AS C in 3542 CCP 1085 applies and a petitioner can file in superior court.

Government Code 3542 *(a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.*

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) ***Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.***

(c) Such a petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. ..... ***The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.***

California Gov Code 3543 (a) *Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own*

choosing for the purpose of representation on all matters of employer-employee relations.

California Government Code 3543.6 *It shall be unlawful for an employee organization to:(a) Cause or attempt to cause a public school employer to violate Section 3543. 5.(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.* **(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.**

California Cal Gov Code 3544.9.*The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.*

California ***Gov Code 3543.2.****(a) (1) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees,*

Machinists, Local 697, 223 NLRB 832, 91 LRRM 1529 (1976). A Union breaches its duty of fair representation if it discriminates against non-Union members in the pursuit of Grievances.

Communications Workers v. Beck, 487 U.S. 735,108 S.Ct. 2641,128 Humphrey v. Moore, 375 U.S. 335, 55 LRRM 2031 (1964). The exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.

Vaca v. Sipes, 386 U.S. 171,190, 64 LRRM 2369, 2376 (1967)

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California Government Code3542.....p.10,9,13
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44929,20, 44918, 44917, With a contract comes Probationary status or tenure and more due process rights p. 16-17
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Unions are monopolies, and act like quasi-judicial entities - James v. Marinship Corp., supra, at p. 731; Ezekial v. Winkley, supra, 20 Cal.3d at p. 271.)" -AOB p. p. 14 Steele v L&N.R.Co. 323 U.S. 192 (1994) Wu p.23

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362, 374, (1990). Gov't Code § 3541.3(i);
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California Ed code 45025, Service Credits in STRS 22700–03, Government Code 3547.5 Audit for fiscal sound.
California Ed code 41020 Annual Audits for vacancies and misalignments..

STATUTORY PROVISIONS FOR THE US SUPREME COURT TO REVIEW

IN THE SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

Denied Petition for Review in State Supreme Court of California on 4/26/2023 **Case S278551**
For Rebecca Wu vs Public Employment Relations Board. (and Real Party of Interest Twin Rivers Unified School District) This is in Appendix A.

The opinion of the highest state court to review the merits appears at appendix _B_ to the petition and is [x] reported as__Denial for the Writ of Mandate.

(The opinion of the ____THIRD COURT OF APPEALS CALIFORNIA __ court appears at appendix _B __B__ to the petition and is: Case C092640 Rebecca Wu vs Public Employment Relations Board ***Rebecca Wu v. Pub. Emp't Relations Bd.*, 87 Cal.App.5th 715, 303 Cal. Rptr. 3d 693 (Cal. Ct. App. 2022)**
[x] reported at ___PUBLISHED___

Sacramento Superior Court Case Denied the Writ of Mandate is in Appendix D. ORder and Opinion of the Superior Court 34-2019-80003289CVWMGDS is in Appendix E.

JURISDICTION OF UNITED STATES SUPREME COURT

The date of the **Denied Petition for Review was on 4/26/2023 in the State Supreme Court.**
Denial of Petition for Review Dated **4/26/2023_** (90 days after date of Denial is 7/25/2023)
The copy of this on the file and notice given to Wu is at Appendix A. Case S278551

[x] For cases from state courts:
The date on which the highest state court decided my case was the Third Court of Appeals __on 12/28/2022_
A copy of that decision appears at appendix __B_____. Case Wu vs PERB Case C092640

[x] A timely petition for rehearing in the Third Court of Appeals was thereafter denied on the following date __Denied on 1/23/2023____, and a copy of the order denying rehearing appears at appendix __C_____.

DATE to file would be July 25th 2023 for this review.
The jurisdiction of the U.S. Supreme Court is invoked under **28 U. S. C. §1257(a).**

Government Code 3545 b.1 to determine if All teachers as stated include Substitute teachers. Would Misclassified teachers with rights to a local Exclusive union by law have rights to union representation even if they are placed outside the union, especially if evidence exists (Appendix H from the Original writ filed) showing the union knew and agreed a teacher was misclassified and or evidence exists enough to support a grievance.

Does **Government Code 3542**_(a)_interpret for the except a decision to dismiss a UPC for not stating a claim to all filing in Superior Court. Determining if this means for all UPC, or allowed under C. Yet does that give authority to narrow it down and should all employment issues be allowed. Under 3542 (c) allows for the filings of California code of Procedures for 1085 or Writs of Mandate challenging an Agency board decision that did not get a hearing. CCP 1094.5 allows for a writ with a hearing but under Gov Code 3542 (a) allows for it to go straight to

If California Code of Procedures [CCP] 1085 allows a Petitioner to file a Writ of Mandate on a Decision by the board to dismiss an Unfair Practice Charge with no hearing.

Interpretation of the 14th Amendment with Gov Codes 3542 b Determination on Firefighters 188 (above) ruling in the State Supreme Court that only allows for THREE exceptions ONLY under Gov Code 3542 (b) to file a challenge in the Superior Court and (c). Was Wu under these Exception and do the Narrow Exceptions under this interpretation of this Law Violate the Constitution right to due process under the **United**

States 14th Amendment to Due Process, especially when the US Supreme Court has ruled in the past cases should be looked at individually and employment is a necessity like food and clean water. Therefore under California Code of Procedures 1085(b) a challenge to an employment issue of serious nature would have the right to challenge if not an **Unlimited Challenge to a dismissal of a Unfair Practice Chage and Refusal to issue a Complaint.**

CCP 1085 (b) ***Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.***

STATEMENT OF THE CASE AND ARGUMENTS

Background: Wu was a misclassified Teacher for almost ten years at Twin Rivers Unified School District (TRUSD) . The local county office of Education failed to do its duties to review, and the District was using Personal Action forms that say not for use with Substitutes to pay up to 56 teachers over the years including Rebecca Wu (Wu) for years with no lunch, preparatory period, breaks, no union, no medical benefits and she was working the same full time set teaching hours as her students only teacher and ther e. Wu had no Contract at her school in Keema High School nor ever any contract even though in the Court of Appeals (CO088570 Wu vs TRUSD) the court claimed she was let go without reason and allowed to be based on notice in a contract. Neither the district nor Wu claimed any such contract ever existed nor any misconduct at her KHS position. Wu had joined the statewide union, CTA, but that union does not have

grievance rights under EERA law or California Government Code 3540 and only Twin Rivers United Educators have that rights.

When Wu joined attorneys for the union, CTA filed a Case for misclassification in Superior court for Tenure or just and proper and claimed Wu would have been probationary for at least two years then tenure in 2015. Wu negotiated on behalf of dozens of teachers, unknown to them, and was the only one with a suit. In 2016 All teachers were reclassified unless they had some Golden Handshake and had been retired, which was only two teachers that did not get that reclassification to tenure (per TRUSD public board notes seen on 9-13-2016). All teachers were reclassified but Wu when the Hourly substitute teacher position went away. Wu did not have a temporary contract and she then was demoted to substitute but continued to work. The union CTA attorney filed a claim for damages that she still had rights to due process as a misclassified teacher with right to the union Collective Bargaining Agreement by law. Wu was told in summer 2016 when teachers were reclassified she would potentially be dropped from representation in her suit if she did not settle but with all the emails in her PERB case on retaliation she was willing to settle for a few thousand but wanted her retirement fixed and would not settle in part for that. Then in 2017 Wu was let go as a regular substitute with her email turned off where she also had some Home Hospital students through the district that she had picked up for the first time around February 2017. also at the time in February she was told she would be dropped for refusing to settle, and also in that month a letter was sent by Jacob Rukeyser that Wu's funding by CTA would be cut due to the filing of case Wu vs TRUE SA-CO-616-E which was for not doing a grievance by the local union TRUE which like this case no COMPLAINT

was issued or refusal to issue a complaint or Unfair Practice Charge was done and no hearing was done. Wu was then relieved of counsel and became pro per. That's how I became pro per.

This CASE before the United States Supreme Court:

Wu filed a petition for peremptory writ of mandate pursuant to Code of Civil Procedure sections 1085 and 1086 against the Board (respondent) and the Union (real party in interest). The Union and PERB demurred to the petition. The trial court sustained the demurrer and claimed Wu could no 10 challenge a decision by PERB not to issue a complaint under the exceptions allowed in International Assn. of Fire Fighters Bd. (2011) 51 Cal.4th 259, 271 (Fire Fighters). The judge said it was not a matter of misclassification in oral argument. Wu argued orally the CBA cannot trump the law and under Gov Code 3545 b.1 substitute teachers are teachers. A DFR duty is owed to a misclassified teacher and it did fall under Firefighters.

WU contends that Misclassified Substitutes AND regular substitutes have rights to a Duty of Fair Representation or DFR for such serious employment issues even as a non-member. While the union (Twin Rivers United Educators) claims that as a substitute the union has no DFR. The union and the Ruling by the Third Court of Appeals claims that Wu was not a member of the CBA and thus they do not have a DFR. The ruling claims that a union cannot interfere with the classification of employees and only a district can. The rights for due process were not claimed acord to the Opinion of the court (p.2-3) but they were . Calfiornia ED CODE--44288.9, 44288...44929.21,

44929,20, 44918, 44917, With a contract comes Probationary status or tenure and more due process rights.

The Third court Opinion agreed with the lower court and additionally claimed that no argument was presented by Either PERB or TRUE why the claim that Community of interest under 3545 a gives the right to that decision to the districts and that there is a community of interest that is different among substitutes teachers and regular teachers. has interpreted the claim by the Respondent that Government Code 3545 b1 that it does not have to include all teachers and this is in direct opposite of the clear language of the ACT. Rather it claims under a. An interpretation can be found. Yet Wu claims b is separate from a. This was argued in two cases in PERB labor board case authority (Peralta and Belmont cases) in the 1970s and NO case according to the Respondent has this ever been otherwise decided in any appeal case.

Gov Code 3545 *b) In all cases: (1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.*

IS this interpretation of Gov code 3545 b.1 denying a constitutional right to Equal Protection of the laws and equal treatment of public employees? This is a constitutional right not to arbitrary positions, due process which the CBA union provides not to be dismissed without process or notification, and or represented as misclassified. It is also a right to the property which the CBA and US supreme courts have recognized potential in the property. A government agency could in theory just misclassify all employees (in Wu

case it was the entire school set of teachers except five of up to fifty at one point)

The Ruling ruled that this case cannot meet Firefighters 188 where it is not under the three exceptions to be allowed to have it challenged by filing in Superior court. Firefighters claims that only three exceptions like constitiunal ones would give someone the right to challenge a Government agency like Public Employment Relations Board decision not to issue a Complaint and file it under a CCP 1085 (allows writs to file for non hearing decisions of a government board). Even if these narrow exceptions do not include Wu the Supreme court has claimed cases should be reviewed individually especially in relation to necessities like food and shelter which employment would ALWAYS fall under and thus it should be UNLIMITED. The COURT OF APPEALS Ruled that it has no authority to decide that, basically even if they disagree with the California State Supreme court on the limited review, because their hands are tied to the state precedent from the past. I challenge this unconstitutional interpretation.

In 2017 Wu filed this Case in PERB because she lost her position as a regular substitute. She claimed she used the printer for whistleblowing purposes of illegal actions and the district Chief of HR claimed in the PERB retaliation case she had no misconduct other than use of the printer and her bosses seemed to like her. Substitutes make a lot less money and no one has ever challenged this in appeals court before and why it is published. The case was dismissed because it claimed Wu was not a member

of the Union as a substitute. Wu has claimed that a union has a Duty of Fair representation to engage in the collective bargaining agreement that allows for a union to bring issues up and represent members. Members, according to Wu, are those who are misclassified because they have rights to it or entitled by law to the CBA contract. Additionally, regular substitutes should ALSO be under the union under Government Code 3545 b1. She brings up these issues in all her briefs. In the rehearing filed in the Court of appeals Wu challenges that Wu did argue Constitutional due process rights and 1st amendment rights to her denial of her union grievance or representation by the union.

Government Code 3545 b.1 allows for All teachers as stated include Substitute teachers to be under the local Exclusive Association or Union. Misclassified teachers with rights to a local Exclusive union by law have rights to union representation even if they are placed outside the union, especially if evidence exists (Appendix H from the Original writ filed) showing the union knew and agreed a teacher was misclassified and or evidence exists enough to support a grievance.

BOTH Government code 3509.5 and Government Code 3542_(a) should be _interpret for the except a decision to dismiss a UPC for not stating a claim to all filing in Superior Court. Determining if this means for all UPC, or allowed under C. Yet does that give authority to narrow it down and should all employment issues be allowed. **Under 3542 (c)** allows for the filings of California code of Procedures for 1085 or Writs of Mandate challenging an Agency board decision that did not get a hearing. CCP 1094.5 allows for a writ with a hearing but under Gov Code 3542 (a) allows for it to go straight to Appeals court.

UNDER 3509.5 As argued by TRUE and Court of appeals claim that it does not allow filings in superior court challenging a decision not to issue a complaint and therefore only case law allows. Not true. This law EXACTLY states that under b. The rights are preserved under CCP 1085. I argued in the rehearing and petition in supreme court that It is in both of these laws that allow for a bypass of the regular CCP 1094.5 filing a Writ challenging a decision can be done in Superior court but that these government codes allow to bypass and go to Appeals court and SIMPLY does not allow a bypass if no hearing was done and the proper place in superior court to challenge a dismissal and refusal to not issue a complaint.

NOTE: 3509.5 is b. 3542 is c. 3509.5 (b) ".*Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.*3542 (c) Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section

The Education Code classifies California teachers into four different categories: permanent (tenured), probationary, substitute, and temporary. "In the case of permanent and probationary employees, the employer's power to terminate employment is restricted by statute. Substitute and temporary employees, on the other hand, fill the short range needs of a school district and generally may be summarily released. [Citation.]" (Taylor v. Board of Trustees (1984) 36 Cal.3d 500, 504-505, 204 Cal.Rptr. 711, 683 P.2d 710.)

Although the NLRB [National Labor Relations Board] does have provisions that do not allow a challenge to the General Counsel it is because either there is some binding arbitration or because a challenge is allowed to proceed to the Board in NLRB. Regardless, A substitute in most all school districts in California does not have binding arbitration, and the law provides for challenge under CCP 1085 under Gov code 3542 c.

Wu claimed in the ORAL argument where the technical issues happened and it was not televised, recorded, nor transcribed in the District court with all the state agencies within

it. Wu brought this up in Oral argument in her next case she will file in about a Week in this Supreme Court Wu vs Twin Rivers Unified School District as well as only allowing 15 minutes not the standard of 30 as allowed by statute and most all other districts allow 30 and some website recording or live video. Wu was allowed 30 minutes in this case but not in her Tenure case Wu vs TRUSD.

" *WHY ARE WE [SUBSTITUTES] THE ONLY PUBLIC EMPLOYEES TO NOT HAVE A UNION?* "--Wu Oral Argument, and said most all the districts or 90% do not have substitutes under the union.

CCP 1085 (b) *Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.*

REASONS FOR GRANTING THE PETITION

(incorporating all arguments above)

There could be hundreds or thousands of people affected who cannot challenge a UPC when they should have the right to it and this could affect their shelter, food and other things from the effects on their employment. The ruling opinion is out of harmony with all other laws and constitutional laws and case authority. It was published because this has never been ruled on outside of the PERB case law probably because substitutes cannot afford to. If substitutes are under the union where a public employee union exists then it is in the best interest of the students, parents,and community. Under Gov Code 3540 it claims the EERA law wants to expand and include more employees to harmonize and improve employee employer relations. They should be included and in some districts

they just have a different payscale and may or may not get benefits but they are still protected by a union. I said in Oral argument in the court of appeals "why should substitutes be the only public employees with no union?" and the court asked TRUE/CTA attorney MR. Rukeyser whom said yes that is so.

In cases involving the Board's refusal to file an unfair practice complaint, the court of appeals determined that review is limited to whether the Board violated the Constitution, misinterpreted a statute, or exceeded its authority. (International Assn. of FireFighters, Local 188, AFL-CIO v. Public Employment Relations Bd. (2011) 51 Cal.4th 259, 271 (Fire Fighters).) I claim the EERA nor MMBA law does not say that and under ccp 1085 anyone can file for any reason against an agency. I claim I did argue constitutional rights in trial court, but it was not clear as it was in appeals. A DFR exists under 3544.9

The Court of Appeal Opinion (opinion p. 8) claims that it is not clearly erroneous to determine that under Gov code 3544.9 and 3543 and right to challenge and a duty of fair representation only extends to the employees not ones claiming to be misclassified based on their work duties.

"We defer to the Board's interpretation of the Act unless the interpretation is erroneous. (Fire Fighters, supra, 51 Cal.4th. at pp. 269-270.)" (**OPINION p. 7**)

This court should look at Interpretation of the **US 14th Amendment** with Gov Codes 3542 b Determination on Firefighters 188 (above) ruling in the State Supreme Court is violating the 14th Amendment when it only allows for THREE exceptions ONLY under Gov Code 3542 (b) to file a challenge in the Superior Court and (c). Was Wu under these Exceptions and do the Narrow Exceptions under this interpretation of this Law

Violate the Constitution right to due process under the **United States 14th Amendment to Due Process**.

Additionally, the Opinion p. 8 also claims that in Firefighters that weight or difference can be afforded to be given to PERB in their interpretation of the Act. I disagree with that too. I am the People and the people cannot be treated as unequal to the labor board in their interpretation. Even if the interpretation is not clearly erroneous it should still be allowed to be challenged and in a ruling no weight should be given to a state agency or violates constitutional rights to due process and eyes of the law as equal.

> *"We defer to the Board's interpretation of the Act unless the interpretation is erroneous. (Fire Fighters, supra, 51 Cal.4th. at pp. 269-270.)"* (**OPINION p. 7**)

. There is no Federal US Supreme Court case that allows a narrow review of denied UPC by a labor board! It doesn't exist.

"The essence of due process is the requirement that a person is in jeopardy of serious loss. Mathews v. Eldridge (1976) 424 U.S. 319, 335.) ".. requirements of due process are flexible and call for such procedural protections as the particular situation demands." (Vasquez v. Rackauckas (9th Cir. 2013) 734 F.3d 1025, 1044." – WU -AOB p. 8

"There is a Doctrine of Fair Procedures that protects people from arbitrary exclusion from unions. Otto v. Tailors P. & B. Union (1888) 75 Cal. 308; Von Arx v. San Francisco G. Verein (1896) 113 Cal. 377.) Unions are monopolies, and act like quasi-judicial entities - James v. Marinship Corp., supra, at p. 731; Ezekial v. Winkley, supra, 20 Cal.3d at p. 271.)" -AOB p. 8

The US Supreme Court has ruled in the past cases should be looked at individually and employment is a necessity like food and clean water. Therefore under California Code of Procedures 1085(b) a challenge to an employment issue of serious nature would have the right to challenge if not an **Unlimited Challenge to a dismissal of a Unfair Practice Chage and Refusal to issue a Complaint.** If California Code of Procedures [CCP] 1085 allows a Petitioner to file a Writ of Mandate on a Decision by the board to dismiss an Unfair Practice Charge with no hearing.

Wu AOB p. 6-8--*Strength that nonmembers derive the benefits of representation . Cumero Vs PERB 49, Ca 3rd 375 (Cal 1989) "The authority to protect all employees in the class is not derived from the contract or CBA but from the whole of the act.." - Railway Act. "Are not members of the Brotherhood of eligible for membership the authority to act for them is derived not fro their action or consent [like a contract or CBA in 6 Wu's case] but Wholly form the command of the Act" Steele v L&N.R.Co. 323 U.S. 192 (1994) Wu had property rights- (Opp by Wu CT page 00261 and 00225) Wu was an Involuntary excluded member (Opp by Wu CT00261 and 00225)*

"A union must act in the interests of all its members and the supreme court has ruled on that. The class of employees must be protected. Illinois, Harris vs Quinn 134 Ct 2618 (2014) (Opp Wu CT 00263/ CT 00228) I mention that the Williams act under 44258.9, 35186, and 44258.3 all support that it is illegal and wrong to misclassify substitutes because it causes civil rights violations for

children. (Opp Wu CT 00263/ CT 00228) A DFR must be driven from the Whole of the EERA act not the CBA (Opp Wu CT 00265/ CT 00229) I mention Steele Vs L&N. R. Co 323 U.S. 192 (1944) that congress wanted the nonmembers to be protected by whole from act. That a union does not get the plenary power upon the union to sacrifice the minority of the craft and a Duty exists for the minority. I claim substitutes are a minority or small percentage of the craft. (Opp Wu CT 00265/ CT 00229)

I mention that in the Ed code 3540 the legislature Declares and finds the policy is to EXPAND the jurisdiction to the board and to COVER [more] other employers 7 and their employees. It does not state subs are excluded (Opp Wu CT 00265/ CT 00229) This law should be read literally and narrowly (Opp Wu CT 00265/ CT 00229) I mention That Ed Code 3540 of EERA the PURPOSE of the legislature is that there is a Uniform basis of the right of public school employees to join, to be represented by the organization ..and to afford certificated employees a voice in the formulation of education policy [thus shape education] This supports all my contention that the interest of the children were included when it literally says "All" classroom teachers and that substitutes are classroom teachers. This makes this ruling an erroneous ruling. (Opp Wu CT 00266/ CT 00230)

I claim CTA has no authority over EERA, only TRUE (Opp Wu CT 00266/ CT

00230) Under Steele vs L & N.R. Co 323 U.S. 192 (1944) a union has, ***"the power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates***." and that it is like a government.

The whole of education must be looked at, the protection of public schools and employees must be reviewed when denied a DFR. A minority member cannot be denied, especially a misclassified or member outside the union involuntarily excluded. An African American was involuntarily denied membership as I was too and yet the supreme court spoke in 1944 you cannot do that. (Opp Wu CT 00267/ CT 00231) I mention in Ed code 3540 it cannot "supersede other provisions of the EC....so long as the rule and regulations or other methods of the public school employer do not conflict with the lawful collective agreement." (Opp Wu CT 00268/ CT 00232)

I also mention that in National Education Association Jurupa in Norman 2014 PERb decision 2371 the duty is owed if *"the exclusive representative* possesses the exclusive means by which a member can vindicate an individual right and the right in question derives from the CBA" (Opp Wu CT 00268/ CT 00232) I mention it is a constitutional fair Trial Right under 6th and 14th amendment (Gideon vs Wainwright 1963 US supreme court) to have an attorney and due process. I also mention it is chilling to have me not represented by TRUE. (Opp Wu CT 00268/ CT 00232) I mention that "As the

exclusive Bargaining Agent for all employees a union has a statutory duty to represent the interest of non-members" 56 Cal 4th 905, 157 Cal RPTR 3rd LRRM and Humphrey vs More 1964 375 US. 335, 342) It is well established in PERB that unions have a right to contact non-members. And A UNION Breached its duty of fair representation if it discriminates against NON-MEMBERS in pursuit of a grievance (G. Machinist Local 697, 223, NLRB, LLRM 1592 (1976) (Opp Wu CT 00269/ CT 00233) I mention a Duty of Fair representation is found in the intent of the legislature that a union must file or proceed with a grievance of a non-member if knows or has reason to believe a member has been denied membership. (Opp Wu CT 00270/ CT 00234) I mention under case authority a union has a duty of fair representation to Non-members ***(Vaca v sipes 386 U.S.*** *171 190 (1967) and Steele Vs Louisville N.R. Co 323 192 (9144) and must be in good faith, and honestly (United Steelworkers v Rawson 495 U.S. 362, 374, (1990).(Opp Wu CT 00270/ CT 00234)"*

Section 3543. 5..... AND (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative. Wu Cites this section and the argument that a misclassified must be included in – ARB p. 10

3543- employees should get their right to choose and join the union - I was denied this as BOTH a misclassified teacher and as a substitute

It is well established that A writ of Mandate can be for discretion of a government entity. Gov't Code § 3541.3(i); Cal. Code Regs., tit. 8, § 32602.)

EERA Government code 3540 - 3549.3 was created to incorporate certificated employees, give them a voice in the formation of the education policy, and let them choose to have a union. – WU AOB p. 16

WU ARGUES THAT UNDER GOV CODE 3545 b 1 ALL TEACHERS ARE INCLUDED IN THE UNION UNIT IS EXACTLY THAT AND (b) CANNOT BE COMBINED WITH (a) TO RULE OUT SUBSTITUTE TEACHERS FOR ANY REASON BECAUSE NOT ONLY DID THE LEGISLATURE WANT IT THAT WAY IT IS THE MOST PROPER WAY.

The court claims in the Opinion that under PERALTA that Government code 3545 b 1 will be tempered with a. The union said - in oral argument- that most substitutes are not under the local union. This is DISTURBING and I think the judges were concerned when they said maybe the legislature needs to do something. But the Subs are under b1 -that's it. Substitutes, public employees, do not have money to fight, they can be chilled from talking without a union and this would go against maintaining a smooth good government.

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Yet, I think in both Belmont and Peralta it seems to me they are just trying to circumvent the law. It is clear to me that Decision 77 was wrong. "*Belmont avoided dealing with this problem by finding a limited meaning for "classroom*

teacher." In so doing, it attributed to the legislature a unique definition found nowhere else". –p.11 PERALTA If the legislature wanted to exclude substitutes and make them somehow prove they were or should be in a union for each case then it would say so but it did not. What is clear - there are contradictions in both cases that are making b in 3545 meaningless.

> *"First, the use of the word "shall" in section 3545(b) precludes the exercise of discretion by this Board"* - p. 10 PERALTA

"*Section 3545 remains a burdensome provision*" -Peralta PERB Decision #77 *"There seems to be little doubt that the Legislature meant to minimize the dispersion of school district faculty into unnecessary negotiating units.*"

"*Under Belmont, the Board would retain the right to exclude from a unit of classroom teachers other teachers who share a community of interest with those in the basic unit. This is simply because the EERA does not mandate the most appropriate unit and no such legislative preference is seen in the statutory language. On the other hand, the Board under Peralta would be obligated to combine different groups of instructional personnel absent a finding that such community of interest does not exist*"

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Belmont and Peralta are both trying to figure out how to get around b in 3545 but Belmont narrows the definition of teacher to probationary and tenure while Peralta tries to claim it is based on a community of interest. Then why have b?

"Thus, the Board interpreted "classroom teachers" to mean "all of the regular full time probationary and permanent teachers in a district,".....

" it has not invited us to, in effect, repeal a duly-enacted statute by ***ignoring*** *its clear language and purpose as the majority does now in this case.* ***Without any statutory authority whatsoever, the majority somehow manages to ignore what is a clear substantive rule of law given to us by the Legislature****, section 3545(b)(1), which this Board is obligated to follow" – Gonzales Peralta Decision 77 p. 23–* concurring in part but not for all of it.

The court of Appeal in Wu case itself acknowledges the plane language of the ACT ``**A *literal interpretation of [section 3545, subdivision] (b)(1) is unlikely to serve the statutory purpose*** *(Wu vs PERB OPINION p. 11* but 3540 contradicts the court's opinion and "*Section 3545 remains a burdensome provision. ..*" p. 12

WU ARGUES THAT EVEN IF THEY WERE COMBINED in PERALTA ALL SUBSTITUTES SHOULD BE INCLUDED BECAUSE THEY DO HAVE A COMMUNITY OF INTEREST WU ARGUES THAT THE WHOLE OF THE LAWS MUST BE IN HARMONY AND THAT THE LEGISLATURE THEN MEANT FOR ALL SUBSTITUTES TO BE ONLY IN THE TEACHER UNIT BECAUSE **A.**. IT IS IN THE BEST INTEREST OF THE CHILDREN AND IN A SMOOTH SCHOOL SYSTEM **B** PROTECTS AND PROVIDES A UNION FOR THE MOST VULNERABLE PUBLIC EMPLOYEES NOT GIVEN ELSEWHERE IN THE LAWS AND THEY CAN FEEL SAFE TO SPEAK UP, **C** GIVES A NEEDED, ESSENTIAL AND UNIQUE VOICE TO THE TEACHERS UNION. WU ARGUES ALL OF THESE IN BOTH THE TRIAL AND APPEALS BRIEFS.D. The CONSTITUTION DOES NOT ALLOW ARBITRARY CLASSIFICATIONS.

E. STRS law, Federal law on TITLE 1 money, FISCAL LAWs, COUNTY Monitoring laws All point to CHECKS AND BALANCES THAT ATTEMPT (IN A NON CORRUPT WORLD) TO MAKE SURE THERE ARE TEACHERS NOT SUBSTITUTES IN THE

TITLE 1 SCHOOLS FOR EQUAL EDUCATION AND CIVIL RIGHTS. **F.** CONTRIBUTE TO THE FORMATION OF POLICY AS RAYMOND GONZALES SPOKE OF. (WHO HIRED CEASER CHAVEZ AND CHAMPIONED CIVIL RIGHTS)

THE APPELLATE COURT SHOULD NOT BE BOUND BY THE SUPREME COURT PRECEDENT EVEN IF THEY DO NOT AGREE. THE COURT MUST RECOGNIZE THAT CCP 1085, 1094 DO ALLOW A CLAIMANT TO FILE WHEN THERE IS AN ISSUE WITH THE DECISION OF A QUASI JUDICIAL ENTITY LIKE PERB. THEREFORE, THERE SHOULD NOT BE ANY RESTRICTIONS ON WHAT UPC CAN OR CANNOT BE REVIEWED UNDER FIREFIGHTERS 188.

Review should be allowed because it interferes with the due process rights in the 14th amendment.

Opinion P. 4 –*"Wu contends the trial court should have reviewed her constitutional and statutory challenges to the Board's order. She argues Fire Fighters was wrongly decided and judicial review of Board determinations to not issue a complaint should be* ***unlimited****. She also argues her challenges to the Board's determination fall within the recognized exceptions articulated in Fire Fighters… We do not address Wu's claim that Fire Fighters was wrongly decided because we are bound by our Supreme Court's precedent even if we disagree with its holding. (Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455.)*

Auto Equity is not interpreted by the court correctly. CCP 1085 allows it.

> *California mandamus is available to compel an official to exercise his discretion when his refusal is based on an erroneous view of the power vested in him.* (Hollman v. Warren (1948) 32 Cal. 2d 351, 355-357 [196 P.2d 562]

PERB believed that Gov Code 3545 b1 had no relevance to the Superior court

Petition but the Appeals Court determined it did have significance.(PERB ROB Appeals court p.9) — "*According to Wu, EERA requires that any bargaining unit of certificated teachers must include substitute teachers. (AB at p. 48.) But PERB's decision did not rely on this provision*" — Yet it did and the Court of Appeals Decision focused on this interpretation of this statute as the core of the case. The trial court did not run this and it would have given Wu the ability to fully understand the constitutional violations in a PERB complaint

Yet, in Firefighters, they refer to Belridge farms and Leedon v Kyne 1958, but these cases do not in any way claim only in narrow limitations can a case not

have due process in courts to challenge. They discuss federal jurisdiction vs another jurisdiction as limited, but these are not relevant. They misstate the cases in Firefighters and in Belridge Farms. No case in federal or State Supreme court denies a NLRB or labor board decision not to issue UPC not to be challenged.

The court thinks that the case Steele vs was not applicable to Wu situation because it thinks the point of the ruling in Steele was that race cannot be used to not allow members to be denied the right to be represented as a whole in negotiation but that was misplaced because it did involve the petitioner who had an individual situation. Regardless, In PERB, trial court, and in appeals I have always stated that an involuntary Excluded member due to some illegal reason would be a DFR..

In Steele only white firemen can be promoted to serve as engineers, and the notice proposed that only "promotable," *i.e.,* white, men should be employed as firemen or assigned to new runs or jobs or permanent vacancies in established runs or jobs. Because of this new change in the CBA then he lost 16 days of work and that was particular to him individually, the petitioner.

> *"She [wu] argues Fire Fighters were wrongly decided and judicial review of Board determinations to not issue a complaint should be unlimited. She also argues her challenges to the Board's determination fall within the recognized exceptions articulated in Fire Fighters..... We do not address Wu's claim that Fire Fighters was wrongly decided because we are bound by our Supreme Court's precedent even if we disagree with its holding" OPINION p.*
>
> *"Our Supreme Court has noted that, generally, the Board's decision to decline to issue a complaint is not reviewable. (Fire Fighters, supra, 51 Cal.4th at pp. 267-268.) (Id. at p. 271.) "[A] superior court may exercise mandamus jurisdiction to determine whether [the Board's] decision violates a constitutional right, exceeds a specific grant of authority, or is based on an erroneous statutory construction. We stress, however, that it remains true that a refusal by [the Board] to issue a complaint . . . is not subject to judicial review for ordinary" ..."**it is unclear whether the trial court considered the substance of Wu's arguments or simply believed it lacked jurisdiction to rule on those substantive argument"***

WU CLAIMS IT IS A CONSTITUTIONAL RIGHT TO BE REPRESENTED BY AN UNION AS A MISCLASSIFIED TEACHER AND AS A REGULAR SUBSTITUTE WHICH SHE DID RAISE THE ISSUE IN LOWER COURT AND IN APPEAL. SHE ARGUES THIS IN THE REHEARING AS WELL. Contrary to the Opinion Why did raise issues in the lower court and in her appeal briefs as per the Rehearing.

The court of APPEALS CLAIMED WU did NOT show DUE PROCESS 14th amendment rights to a Union Contract but that is not totally accurate. Unions are

the EXCLUSIVE association. This is discussed in all briefs by all parties in Wu's case. There can not be another union. The contract allows a process for grievances including final arbitration or maybe binding arbitration in the collective Bargaining Unit. It is well established that

(See generally *Goldberg v. Kelly* (1970) 397 U.S. 254, 263-265 [procedural due process requires an evidentiary hearing before a government agency can terminate essential resources that have provided the basis upon which the recipient has subsisted].)

UNDER GOV CODE 3544.9 A UNION MUST REPRESENT A MEMBER FAIRLY INCLUDING A MISCLASSIFIED ONE CLAIMING TO BE LEGALLY INSIDE THE UNION AND THE OPINION (P.8-9) WAS INACCURATE IN CLAIMING A UNION HAS NO DUTY TO THOSE OUTSIDE THE UNION REGARDLESS IF THEY ARE MISCLASSIFIED.

> *"The doctrine of fair procedure also has been applied in the context of other private professional organizations. Courts originally appealed to a basic concept of fairness in an effort to protect individuals from* ***arbitrary exclusion from unions*** *and other professional associations. (See Otto v. Tailors P. & B. Union (1888) 75 Cal. 308; Von Arx v. San Francisco G. Verein (1896) 113 Cal. 377.)"--* ***ARB p.25***
>
> *Courts have created a common law doctrine of fair procedures and it includes union membership. Cason v. Glass Bottle Blowers Assn. (1951) 37 Cal.2d 134, 143-144;* p.25 ***(ARB" Wu Rehearing p.20)***

Wu was a member by statute as a misclassified teacher using substitute timesheets for "unique Purposes" and the union president agreed she was misclassified in a letter filed in superior court.**(CT. V.1 Petition p. 10-11) (p. 20 rehearing)** She would be entitled to a hearing per the CBA, required to have notice for a layoff, especially when

she was the only one with a misclassification writ in court and the only one not reclassified for the 25 plus other teachers whom she negotiated on their behalf with the union. The trial court said in oral argument this was not about if wu was misclassified. The union is a monopoly with a power like that of the legislature and I would be denied my rights to speak up, help in policy, and it interfered with my constitutional rights to Due process as well as freedom of association and freedom of speech. Those subjects are touched upon in the trial court. (**Petition for Rehearing - Purpose of EERA p. 12, Voice P. 13 Tenure/probationary rights to due process** p. 14, and property rights CBA p. 16)I cite the Trial court.

THE COURT OF APPEAL OPINION CLAIMS THAT THE COMMUNITY OF INTEREST FOR SUBSTITUTES ARE NOT THE SAME AND THEY CAN APPLY a. To b. In Government Code 3545 a and b1.

> *"In her petition for writ of mandate and in her appellate briefing, Wu contends the Act extends a union's duty of fair representation to misclassified and substitute teachers in addition to full-time classroom teachers…The exclusive representative must "fairly represent each and every employee in the appropriate unit.""* (§ 3544.9.) (opin. p. 7)
>
> *"Wu contends that because she worked the same hours and performed the same functions as a represented classroom teacher, the Union is required to represent her under the Act. ..3544.9 extends a union's duty of fair representation to employees classified into the unit it represents and not to employees claiming to belong in the unit by virtue of their employment duties."* **(Opin. p.8-9)**

The purpose of the ACT would support substitutes obtaining voice, making a choice, not being chilled by potential whistleblowing like Wu, create a smooth relationship because then people would less likely be misclassified if they have representation, and in 3540 it also says it wants to Expand and include more employees. The act must be

in harmony with other laws like the Williams Act that requires notice on walls of each classroom in California providing places to go if there are substitutes not teachers, as well as county auditing to make sure there are teachers not subs in classes in the interest of civil rights of students. Substitutes get no due process that a regular teacher in probationary or tenure gets.

A union is a monopoly, property and denial of it is a violation to the free speech, and association along with no internal due process rights as well as it is common law property and rights when an employee works in a position they have legal entitlement to the union contract. .Therefore, the intent of 3540 is for all substitutes to be in the local union. (REHEARING Petition – p. 16, whole of laws 3,p. 17, Williams Act p. 17, Expand and include more employees p. 16. 1st, 14th amendment, tenure p.14, 15, 18. Purpose of EERA p. 12, Voice 13, property p. 16, common law p. 8, Monopoly)

> "***The purpose of the [Act] is set forth in section 3540:*** *'to promote the improvement of personnel management and employer-employee relations within the public school systems in . . . California by providing a uniform basis for recognizing the right of public school employees to* ***join organizations of their own choice, to be represented by such organizations*** *in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated* ***employees a voice*** *in the formulation of educational policy.' "* — ***(Opin. p. 8)***

All LAWS MUST BE IN HARMONY (CT.V1. p. 20-21, RT p. 15, 16, AOB p. 37, CT. V1 p. 19 CBA) All the laws on Ed code, including the well established in courts in the United States that children and students wellbeing is factored into laws in an umbrella theme. The Teachers who are recognized at least in a district with a union get the training that I did not get and get the assistance and

help that substitutes do not get. It is Unequal treatment if substitutes are placed as teachers illegally or they are used improperly without some checks and balances. Teachers are paid differently and attract more qualified teachers as well. CCR 5 T5 11700 Independent studies a Day is based on the hours worked in comparison to full time teachers.

THE RULING CLAIMS A DFR WOULD SOMEHOW ALLOW THE UNION TO DETERMINE CLASSIFICATION BUT THAT IS NOT CLAIMED BY WU BECAUSE WU CLAIMS THAT IT IS A DFR ON A UNION FOR FAILING TO REPRESENT FOR MISCLASSIFICATION AND MEMBERS WHO ARE WRONGLY PLACED OUTSIDE OF MEMBERSHIP HAVE RIGHTS AND THIS WOULD NOT GIVE ANY MORE AUTHORITY TO A UNION.(Opin p. 8-9)

The union would simply be arguing on behalf of a misclassified member not changing or dictating the classification. **Gov. Code 3540.(Opin on 3540 p.8)**

> *"As Wu acknowledges, the Union has no control over the classification of any given teacher upon a teacher's hiring. That job is left to the school district that hired the teacher. (Ed. Code, § 44916.) Thus, if the Union was empowered to determine the classification of teachers by virtue of its placing them into a specific unit of representation, the* ***Union could potentially change the tenure,*** *merit, or civil service rules applicable to teachers simply by placing them into a specific unit of representation that excludes the classification given to them by the school district. ..* (§ 3540.)

AN INDIVIDUAL SHOULD BE REPRESENTED BECAUSE UNDER STEELE Vs LOUISVILLE WU WOULD HAVE A RIGHT TO BE REPRESENTED AS A MISCLASSIFIED MEMBER WRONGLY PLACED OUTSIDE THE UNION BECAUSE LIKE AN EMPLOYEE WHO IS MISCLASSIFIED DUE TO RACE THEN ANYONE WHO IS MISCLASSIFIED FOR ANY REASONS WOULD HAVE RIGHTS TO REPRESENTATION INDIVIDUALLY AND IN STEELE THERE WAS INDIVIDUAL

REPRESENTATION WANTED.

Steele v. Louisville & N. R. Co. (1944) 323 U.S. 192

", not to represent nonmember employees during individual disputes with an employer. .. ... Race is irrelevant to labor negotiations" – **(Opin p. 9)**

WU CLAIMED THAT A MEMBER WHOM IS PLACED WRONGLY OUTSIDE MEMBERSHIP BASED ON JOB DUTIES AND OTHER ACTIONS LIKE NOT FOLLOWING PROTOCOL MUST BE REPRESENTED BY THE UNION IN HER GRIEVANCE PURSUIT BECAUSE MEMBERSHIP IS A CONSTITUTIONAL RIGHT UNDER THE 1ST AMENDMENT TO FREE SPEECH, ASSEMBLY, AND ASSOCIATION (the Opinion was inaccurate about her comments regarding being chilled as a whistleblower)

1st and 14th amendment is discussed in attached Rehearing p. 22-23, Aob 22- 23, Not notified of due process CT. V.1 p. 20-21

WU CLAIMS THE RIGHT TO REPRESENTATION BY A UNION FOR HER MISCLASSIFICATION CANNOT BE DENIED UNDER THE 14TH AMENDMENT RIGHT TO DUE PROCESS BECAUSE A CBA COLLECTIVE BARGAINING UNIT HAS A DUE PROCESS RIGHT IN IT WITH ITS GRIEVANCE PROCESS THAT A NON MEMBER DOES NOT HAVE. Wu not only had Due process rights but Property Rights in a CBA union.

The right to fair representation by the local exclusive association (Bargaining Unit organization) guaranteed by EERA section 3544.9 and thereby violated section 3543.6(b). EERA 3540-3549.3,

." A Union breaches its duty of fair representation if it discriminates against non-Union members in the pursuit of Grievances. Communications Workers v. Beck, 487 U.S. 735,108 S.Ct. 2641,128 Humphrey v. Moore, 375 U.S. 335, 55 LRRM 2031 (1964). The exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and

honesty, and to avoid arbitrary conduct. B. Vaca v. Sipes, 386 U.S. 171,190, 64 LRRM 2369, 2376 (1967 EERA law "All Teachers" are covered."

"In the case Steele v. Louisville & N. R. Co., 323 U.S. 192 (1944) It is clear that the legislature intended to include those involuntarily excluded by the local union who are real members by law and CBA's. Although, it is pointing to a racial discrimination, non-the-less I see this as regardless they are excluded members. At that time, the union excluded them, and if the supreme law of the land decides that if it is wrong then they must be recognized. In my case. It was wrong, and I should be recognized. This 1944 case - Ultimately favors my argument, because African American people "Negroes" could Not be excluded. Yet under the PERB board ruling in my case, they would not be members then they would have No authority, right or wrong, to be recognized. EITHER THE exclusive association has the authority invested to file a grievance over an involuntary excluded member or THEY DO NOT. Yet, in this case, the wrong actions by the union in not recognizing members was unacceptable. Discriminatory, and not in line with Justice and Intent of the legislature. In my case, the local exclusive union knew I was misclassified but claimed no power. Under this theory an entire district could Never hire another teacher and if their union did not want to act they would not have to. That AUTHORITY in STEELE v LOUISVILLE cannot decipher only to have that authority for Discrimination and race. The authority exists or It does not. I say It does exist for racial discrimination, an unthinkable act, and also exists for a misclassified teacher another unthinkable act a" ***p. 11 Writ of Mandate in Superior court***

APPELLATE COURT Opinion CLAIMS WU HAS NO PROPERTY INTERESTS FOR A UNION MEMBERSHIP PER POSITION AS A SUBSTITUTE OR MISCLASSIFIED TEACHER. **The** Respondent does not argue that the CBA has its own grievance process that is well established that they do. This is nationally understood.

Mathew Vs Eldridge 1976 424 US supreme court - hearing is required when deprived of property or liberty interest. Sniadach vs Family Corp 395 US supreme Court 1969 Essential to livelihood is protected and gets due process (I say that is union and CBA) . Cannot be irrational - AirLine Pilots 1991 Williams vs State of California 2004. Equal education and audits for Vacancies and substitutes in place of teachers. Ed code 45025, Service Credits in STRS 22700– 03, Government Code 3547.5 Audit for fiscal sound. Ed code 41020 Annual Audits for vacancies and misassignments.

CBA is for all the teachers and Wu was a misclassified teacher and a regular

substitute. CBA explains what a day is (4.5 hours High school teaching hours) and Wu worked 9 hours back to back hours of SET classroom hours. CT.V. Petition.19.

Opinion p. 12 - "*[i]n the case of permanent and probationary employees, the employer's power to terminate employment is restricted by statute. Substitute and temporary employees, on the other hand, fill the short-range needs of a school district and generally may be summarily released." (Taylor v. Board of Trustees (1984) 36 Cal.3d 500, 504-505.)*

Tenure (Rehearing p. 22-23)(p. 14 RT) Ed code 44929.21, Ed code 44918 (RT p. 16) 44908. 44917

Substitutes are teachers by the four classifications well established in law, they take attendance, are in the classroom, Roll call, teach, and are of community interest. (AOB p. 42, oral argument)

*" I find this **result repugnant** to the declared purpose of the Act, particularly since I find no basis for concluding that all summer and long-term substitute teachers are not employees within the meaning of the Act. As employees they have the right to organize and the consequent right to negotiate. with their employer over those matters within the scope of representation." - p. 11 Belmont (Jerilou H. Cossack)" **AOB P.44***

I would say Cossack is right in Belmont, except that I would see no logical reason to exclude day to day substitutes. They have rights and it helps the students. The bickering between the two cases regarding all substitutes is not rational.

I argue in the Rehearing as well as briefs and in trial that 3540 is meant to include substitutes in the local union because they are teachers, have insights into policy, 3540 is inclusive and wants more employees in it, they have not added them to the list of exclusions, they are the only government employee who has no union, and all the laws support including them including the best interest of the children and the overall

theme of Education code. These outweigh the reasons of PERB and appellate court. Public Policy is what ERA is and union membership gives members voice in public policy and substitutes were meant to be included because they can add to the public policy formation. (CT. V1. Writ Petition p. 10-11). AOB p. 37,Petition for Rehearing p.22)

THE LEGISLATURE MEANT FOR SUBSTITUTES TO BE UNDER THE UNION. *EERA claims UNDER Gov Code 3540 THE LEGISLATURE WANTS MORE PUBLIC EMPLOYEES TO BE INCLUDED AND TO EXPAND. THIS WOULD INCLUDE SUBSTITUTES."* **(Rehearing Petition P.10)** AOB p. 40 P.10 (RT on June 23 2020) Under 3545 a notice by the district to union of members. Wu cities in the AOB the OPP in Trial court. "Members bring strength to the union" AOB p. 40. Wu reviews case law AOB p. 33 and cites the Opp to demur . Strengths in numbers Authority to protect all employees from the Act. (**OppDem Wu CT 263/277)**

AOB p.33-umbrella of ed code is the Interest of the students. Williams ACt. Ed code 44258.9, 35786, 44258.3, (**Opp Wu CT 263/288**) Wu cites the OPP in Trial court. Subs are minority and duty exists to them AOBp.33 and (**OPP Wu CT 265/299**) P. 43 AOB-Substitutes do have long term continuing relationships for long term subs. AOB p. 40–The legislature wanted Narrow interpretation in 3545 b1. AOB p. 50 –They need union protection and are "*most abused by students in general and the district at times.*" They are teachers by license in CCTC, they take attendance, and are in the

classroom. – **(Rehearing Petition P.10)** The trial court demurred to the petition and in the appellate court Wu did not get a full chance to review why substitutes are excluded.

" ... Board has repeatedly and consistently permitted substitute teachers to be excluded from bargaining units containing teacher members. ***Neither the Board nor the Union, however, provide us with an analytical framework from which to conclude the Act provides for such an outcome****. Regardless, upon our own analysis, we conclude it is not an erroneous interpretation of the Act....."*

(OPINION p. 10-11)

"i*ncluding day-to-day substitutes, based on three factors [contained in subdivision (a)]: (1) community of interest; (2) established practices . . . ; and (3) employer efficiency." (St. HOPE Public Schools (2018) PERB Order No. Ad-472 [43 PERC ¶ 86, pp. 4-5].) The Board's construction provides for exceptions to the general rule that all classroom teachers (including substitutes) must be represented by the same union*(**OPINION p.10)**

"*Section 3545 remains a burdensome provision. . . . [¶] There seems to be little doubt that the Legislature meant to minimize the dispersion of school district faculty into unnecessary negotiating units.* ***(OPINION P. 12)*** ... .community *of interest is weakened by disparate pay structures and the limited schedule of substitute teachers.* ***(P.13)***

There are various subcategories like a counselor in a teachers union as it too requires a credential and thus substitutes can be in a union without everyone on the same pay so that is irrelevant. Therefore I would say The intent of the Legislature is more important.

"*Under Gov 3546, 3545 b Wu had the right to notification from the district to the union.* ***P.40 AOB.*** *She also claims she had a right to Notification of her dismissal which she did not receive when terminated.*

WU HAD DE FACTO RIGHTS TO THE UNION EVEN IF SHE WAS NOT A MEMBER THE SUPREME COURT HAS RULED THERE ARE DE FACTO COMMON LAW RIGHTS TO TENURE THEN THERE CAN BE THE SAME FOR A UNION CONTRACT

Wu argued. REGARDLESS, DE FACTO MEMBERSHIP FROM COMMON LAW EXISTS. (p. Appellant Reply Brief p. 8. Clearly, EERA would have said Excluding Substitutes but it did not. P. 13 Appellant Reply Brief. ARB p. 13.Whole of EERA not the CBA should be looked at and it can violate civil rights AOB p. 36, and I cite in the AOB OPP Wu CT 265/229" **(Rehearing p. 12)** "Constitutional right to CBA , Property" p. CT. V.1 P. 218

WU CLAIMS SHE HAS A RIGHT TO AN ATTORNEY FOR ISSUES AFFECTING public policy and large class of people. Wu argued that Wu has a right to a "civil Gideon " and claimed Wu had a right to an attorney when an issue could affect a large class of people, especially public employees and she should get one to argue her case.

CONCLUSION: The ruling should be reversed.

I declare under penalty of perjury that the foregoing is true and correct.
Executed on 7/24/2023

REBECCA WU Rebecca Wu.

APPENDIX

1. ORder/ Judgement on State Supreme Court of California Denial of the Petition for Review. Denied 1/26/2023. Rebecca Wu vs Public Employment Relations Board Case S278551 APPENDIX A
2. OPINION Judgement by Third Court of Appeals 12/28/2023 CASE C092640 APPENDIX B