

1 MICHAEL J. VARTAIN [SBN 92366]
2 ROSS J. VARTAIN [SBN Pending]
3 **VARTAIN LAW GROUP, P.C.**
4 601 Montgomery Street, Suite 780
5 San Francisco, CA 94111-2664
6 Telephone: [415] 391-1155
7 Facsimile: [415] 391-1177

8 Attorneys for Respondent
9 CALIFORNIA COLLEGE OF THE ARTS

10 UNITED STATES OF AMERICA
11 BEFORE THE NATIONAL LABOR RELATIONS BOARD
12 REGION 32

13 CALIFORNIA COLLEGE OF THE ARTS,) Case No.: 32 - C A - 278831
14)
15 and)
16) **ANSWER TO COMPLAINT BY**
17 SERVICE EMPLOYEES INTERNATIONAL) **RESPONDENT CALIFORNIA COLLEGE**
18 UNION, LOCAL 1021) **OF THE ARTS**

19)
20)
21) Complaint Filed: September 27, 2021
22) Hearing Date: December 14, 2021

1 CALIFORNIA COLLEGE OF THE ARTS (the "College") hereby answers the Complaint
2 filed on September 27, 2021, as follows:

3 **ANSWER**

4 The College now answers said Complaint and each paragraph thereof as follows:

5 Answering Paragraph 1(a): The allegation is denied as to filing and service date. The
6 remaining allegation is admitted.

7 Answering Paragraph 1(b): The allegation is denied as to filing and service date. The
8 remaining allegation is admitted.

9 Answering Paragraph 2(a): The allegation is admitted.

10 Answering Paragraph 2(b): The allegation is admitted.

11 Answering Paragraph 2(c): The allegation is admitted.

12 Answering Paragraph 3: The allegation is admitted.

13 Answering Paragraph 4: The allegation is admitted.

14 Answering Paragraph 5(a): The allegation is denied as to titles. The remaining allegation
15 is admitted.

16 Answering Paragraph 6(a): The allegation is admitted.

17 Answering Paragraph 6(b): The allegation is admitted.

18 Answering Paragraph 6(c): The allegation is admitted.

19 Answering Paragraph 7(a): The allegation is admitted that a written proposal was
20 presented by Respondent to Union. The remainder of the allegation is denied.

21 Answering Paragraph 7(b): The allegation is denied.

22 Answering Paragraph 7(c): The allegation is denied.

23 Answering Paragraph 7(d): The allegation is admitted that in the summer 2021, the
24 Respondent posted and hired for bargaining unit positions. The remainder of the allegation is
25 denied.

26 Answering Paragraph 7(e): The allegation is denied.

27 Answering Paragraph 8(a): The allegation is denied.

28 Answering Paragraph 8(b): The allegation is denied.

1 Answering Paragraph 9: The allegation is denied.

2 Answering Paragraph 10: The allegation is denied. The request for remedy is denied.

3 **AFFIRMATIVE DEFENSES**

- 4 1. *Actions Consistent with Status Quo*: Respondent posted and hired during the summer
5 of 2021 for job vacancies within existing unit job classifications and at the existing
6 rates of pay, hours and other terms and conditions of employment of those job
7 classification.
- 8 2. *Actions Consistent with Section 8(a)(5)*: Respondent afforded the Union the
9 opportunity to participate in representing both of the two existing unit employees
10 whom Respondent invited to consider a voluntary transfer from furlough status. The
11 Union did not object to the transfers, which both employees voluntarily accepted.
- 12 3. *The Pandemic Exigency and Legitimate Business Needs*: Respondent had a legitimate
13 business need in connection with the Pandemic, to post the positions before
14 negotiations for a new Collective Bargaining Agreement could possibly be completed.
15 Respondent offered and intended that subsequent to posting, the parties continue to
16 negotiate to agreement.
- 17 4. *Discrete Issue and Not Material*: The issue for hearing does not involve a material
18 change in the unit terms and conditions and is discrete within the meaning of
19 applicable Board law.
- 20 5. *Deferral*: The binding arbitration provision of the Letter of Understanding between
21 the parties cover the material parts or all of the dispute and the matter can (and should)
22 be resolved by neutral labor arbitration in a manner consistent with the purposes of the
23 Act.

24 DATED: October 8, 2021

VARTAIN LAW GROUP, P.C.



26 BY:

27 MICHAEL J. VARTAIN
28 ROSS J. VARTAIN
Attorneys for Respondent
CALIFORNIA COLLEGE OF THE ARTS