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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, Charging Party, and UNITED AUTOMOBILE WORKERS, LOCAL 4811, Respondent.	Case No. SF-CO-246-H; IR No. 844 **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S SUPPLEMENTAL EVIDENCE IN SUPPORT OF REQUEST FOR INJUNCTIVE RELIEF**

I. INTRODUCTION

On May 28, 2024, the United Auto Workers Local 4811 ("UAW") expanded its unlawful work stoppage from a single University of California Campus to three—UC Santa Cruz, UCLA, and UC Davis. There are news reports that the strike could expand to three additional campuses this Friday, May 31, 2024.[1] This strike is unlawful and must be enjoined. As detailed in the University's Unfair Practice Charge (PERB Case No. SF-CO-246-H) and opening brief in support of Injunctive Relief, UAW's strike is unlawful; the conduct in which its members are currently engaging lacks any protection under HEERA. Yet the Union's work stoppage continues to grow, directly violating the no-strike provisions it agreed to in its collective bargaining agreements ("CBAs") with the University, and to the detriment of tens of thousands of students, faculty and other campus community members.

In engaging in an unlawful strike UAW's president Rafael Jaime promised to "maximize chaos and confusion" for the University and its students. This seems to have come to pass. Since the Union announced its unlawful strike vote, its members have forcibly occupied an academic building at UCLA and damaged it with graffiti, invaded classrooms where faculty and students were trying to learn, blocked roadways, and have refused to teach, conduct seminars, administer exams, among other duties that students rely on to complete their course work.

The harm this unlawful conduct is having on the University can never be undone. At just UC Santa Cruz, UCLA and UC Davis, over 9,000 UAW members teach over 5,130 of undergraduate classes, seminars, discussion sections, and laboratory sections. These classes have literally hundreds of thousands of students enrolled in them—students who have paid tuition for a full quarter's worth of instruction, and in many cases whose grades and academic futures rely on the completing their courses.[2] Allowing the strike to continue deprives students of access to key instructors as they prepare for finals and work to

[1] https://www.latimes.com/california/story/2024-05-28/ucla-uc-davis-brace-for-strike-as-union-alleges-free-speech-violations-in-pro-palestinian-protests

[2] This raises an additional harm UAW's actions threatens against the University. After a prior UAW wildcat strike at UC Santa Cruz, students filed a class action lawsuit seeking reimbursement canceled classes. The University has settled the matter, but UAW's conduct raises the risk of further action in light of the newly canceled classes UAW's conduct is causing. (*See Chandler v. Regents*, Case No. 30-2020-01169261, Orange County Superior Court.)

complete final projects. This instructional time can never be made up, nor can the impact of lost projects, and exams.

Further, the students being affected by UAW's unlawful strike have already endured UAW's wildcat strike at UC Santa Cruz in 2020 that only ended due to the COVID-19 pandemic, the COVID-19 pandemic (and its disruption to education opportunities), and UAW's 2022-2023 strike.

To be clear, UAW protestors at UC locations are focused on political demands – chanting "Free Palestine" and aligning with groups protesting the dispute in the Middle East across the system. UAW's public demands are similarly focused on non-employment related issues, such as asking for amnesty (i.e., an exception to the University's student conduct policies) for its members. This is true even though at this point, no employment discipline has been issued nor have notices of potential employment discipline been issued to any UAW-represented employees.[3]

UAW members can continue to protest. Groups such as Students for Justice in Palestine remain active on many campuses, organizing protests, encampments, and even engaging in acts of civil disobedience. HEERA, however, does not protect these UAW members' decision to withhold their labor to pressure the University to agree to these protester's demands. If UAW members believe the University has somehow violated the terms of the CBAs or HEERA, they have clear methods for litigating (and resolving) their disputes: arbitration and PERB; not by striking. The harm UAW is imposing on students, faculty, and the University community—not to mention the bargaining relationship with the University—must end. An injunction is just and proper and PERB must pursue it.

II. RENEWED REQUEST FOR INJUNCTIVE RELIEF

Pursuant to Section 3563, subdivision (i) of the California Government Code, and Article 5, Section 32450, *et seq*., of the Regulations of the Public Employment Relations Board, the University of California hereby renews its request that PERB seek a court order enjoining UAW Local 4811, and all the bargaining

[3] To the extent UAW-represented employees are subject to potential consequences for associated actions taken over the last several weeks, it is in the form of student conduct charges for their underlying student status at the University for the Academic Student Employees and Graduate Student Researchers in the BX/BR units or arrests made by the police, generally made after protestors were given time to leave the encampments if they did not want to be arrested. Postdoctoral Scholars and Academic Researchers in the PX and RA units do not have an underlying student status.

unit members represented by UAW Local 4811, from engaging in any strike activity in violation of the parties' CBAs.

In its preliminary denial of the University's request for injunctive relief on May 23, 2024, PERB stated that it would "leave open UC's request in the event it learns of evidence or facts to support a finding that injunctive relief is just and proper." The University has since gathered more than enough evidence to meet the "just and proper" standard under *Public Employment Relations Board v. Modesto City Schools District* (1982) 136 Cal.App.3d 881.

Accordingly, for all these reasons the University urges PERB to grant this request for injunctive relief as soon as possible.

III. INJUNCTIVE RELIEF IS NECESSARY AND PROPER

A. LEGAL STANDARD FOR INJUNCTIVE RELIEF

A superior court must grant PERB's request for injunctive relief when two elements are shown: (1) the Board has "reasonable cause" to believe an unfair practice has been committed; and (2) the injunctive relief requested is "just and proper." (*Public Employment Relations Board v. Modesto City School District* (1982) 136 Cal.App.3d 881, 886 ("*Modesto*"); *Fremont Unified School District* (1990) PERB Order No. IR-54.) Both of these elements are satisfied in this case. Therefore, injunctive relief is not only proper, but urgently necessary.

B. PERB HAS ALREADY DETERMINED THAT REASONABLE CAUSE EXISTS TO BELIEVE AN UNFAIR PRACTICE HAS BEEN COMMITTED

On May 23, 2024, the Office of the General Counsel issued a Complaint on the University's unfair practice charge in PERB Case No. SF-CO-246-H. Accordingly, this element of the standard in *Modesto* has been met.

C. INJUNCTIVE RELIEF IS "JUST AND PROPER"

1. *Modesto* Does Not Require Actual Harm to Occur Before Granting Injunctive Relief.

Injunctive relief is just and proper where any one of three conditions are met: either (1) there is a probability that the purposes of the HEERA will be frustrated unless temporary relief is granted; (2) the circumstances of the case create a reasonable apprehension that the efficacy of the Board's final order may be nullified; or (3) the administrative procedures will be rendered meaningless if injunctive relief is not

granted. (*Public Employment Relations Bd. v. Modesto City School Dist.* (1982) 136 Cal.App.3d 881, 902("*Modesto*"); *see also City of Fremont* (2013) PERB Decision No. IR-57, at p. 24.) PERB decisions have often described this standard as one of "irreparable harm." (*See Regents of the University of California* (2019) PERB Order No. IR-62-H, at p. 6.) However, the court decisions describing the "just and proper" standard focus more than on "irreparable harm" as that standard has been commonly applied.

For example, the court in *Modesto* cited to the following sections of the court's decision in *Agricultural Labor Relations Board v. Ruline Nursery Co*. (1981) 115 Cal.App.3d 1005, 1015:

> "This standard has often been described: '[Where] there exists a probability that the purposes of the Act will be frustrated unless temporary relief is granted ... [or] the circumstances of a case create a reasonable apprehension that the efficacy of the Board's final order may be nullified, or the administrative procedures will be rendered meaningless, [the just and proper standard is met] .... Preservation and restoration of the status quo are then appropriate considerations in granting temporary relief pending determination of the issues by the Board. [Citations.]' (*Angle v. Sacks, supra*, 382 F.2d 655, 660; see also *Boire v. Pilot Freight Carriers, Inc., supra,* 515 F.2d 1185.)

The court in *Modesto* emphasized that it may consider *any fact* pertinent to the issue of whether injunctive relief is "just and proper." (*Modesto*, at p. 903.) For example,

> " 'The court may properly consider any fact relevant to the question whether the requested relief is just and proper, including the nature of the alleged unfair labor practice (i.e., whether it is violent, coercive, etc., and whether it is ongoing or consisted of a single act), its probable effect in relation to the status quo and the statutory objectives, the nature of the relief sought, the timing of the request, the circumstances of the parties, and the probable effects upon them of the order requested. [Citations omitted.]' " (*Ibid*. citing to *Agricultural Labor Relations Board v. California Coastal Farms, Inc.* (1982) 31 Cal.3d 469, 479.)

Overall, the *Modesto* court summarized the standard as follows:

> Although injunctive relief is an extraordinary remedy, it may be used whenever either an employer or a union has committed unfair labor practices which, under the circumstances, would render any final order of PERB meaningless. (*Ibid*.)

Further, courts have made clear that they do not have to wait until actual harm results before there can be a finding of irreparable harm for purposes of an injunction. (*County Sanitation Dist. No. 2 v. Los Angeles County Employees Ass'n* (1985) 38 Cal.3d 564 ("*County Sanitation*").) Although many of these cases involve public health and safety, the same logic applies here. The University seeks an injunction to protect the rights of third-party students, faculty and other community members while PERB determines

the merits of the University (and Union's) charges. While the University is not seeking an injunction under *County Sanitation*, the analysis of potential harm utilized in the above cases is entirely consistent with the standard in *Modesto*. In short, PERB cannot demand that the University wait until there has been *actual* irreparable harm before determining that the "just and proper" standard under *Modesto* has been satisfied. Doing so would result in the paralysis the court warned against in other cases. (*See Sonoma County Organization of Public/Private Employees v. County of Sonoma* (1991) 1 Cal.App.4th 267, 279 ("The forecasting of imponderables should not be paralyzed for fear of being judged incorrect with the benefit of hindsight. Barring the unimaginable — a situation where a work stoppage is the incontestable proximate cause of casualties — a margin for error must be allowed.").)

2. The Strike's Effects On Students Will Render Any Subsequent Board Order Meaningless

As *Modesto* makes clear, "[a]lthough injunctive relief is an extraordinary remedy, it may be used whenever either an employer or a union has committed unfair labor practices which, under the circumstances, would render any final order of PERB meaningless." (*Modesto*, at p. 902-03.) The Court noted that temporary relief through an injunction preserves the status quo. (*Id*., at p. 903-04.) Here, the University's additional declarations establish that an injunction is necessary to do just that—preserve the status quo.

Although PERB has already issued a complaint on the University's ULP, the Union has 20 days to respond to it, and then PERB will schedule a hearing weeks or months after. By the time the University gets a hearing, PERB will be unable to address the harm caused by UAW's unlawful strike. As detailed by UCLA, UC Santa Cruz, UC San Diego and UC Berkeley, striking UAW members have and will continue to derail the education of tens of thousands of students if PERB permits this unlawful strike to continue. UAW members teach classes and discussion sections, advise undergraduates in discussion groups and laboratory settings, manage labs, tutor students, administer exams, grade papers, conduct extramurally sponsored research, and supervise undergraduate research, among other tasks.[4] Campuses on the quarter

[4] Declaration of Elizabeth Simmons ("UCSD Decl.") ¶¶2-14; Declaration of Darnell Hunt ("UCLA Decl.") ¶¶2-7; Declaration of Benjamine Hermalin ("UC Berkeley Decl.") ¶5; Declaration of Lori Kletzer ("Supp. UCSC Decl.") ¶3.

system are in the final month of classes, which is a crucial period.[5] Now is when UAW members teach some of the most advanced materials in their courses, and when they are expected to help students complete final projects, prepare for and conduct final exams, provide feedback on dissertations, among other things.[6] Losing this instructional and assessment time deprives students of irreplaceable instructional opportunities, and will damage students' academic standing.[7] Further, the timing of this strike, the volume of classes, and the specialized nature of skills UAW members possess, makes it impossible for the University to make viable contingency plans.[8] If PERB allows this unlawful strike to continue, the instruction, mentoring, exams, projects and other hard work of students will be lost forever.[9] Put differently, by the time this matter gets to a hearing, PERB will lack a remedy to correct the wrong these students have suffered.

Indeed, students at multiple campuses have already expressed their dismay at the harm UAW's conduct has and will continue to cause. For instance, a number at UC Santa Cruz—the campus subject to UAW's longest unlawful strike activity—have lamented the loss of instruction from UAW members and that this is not the first time UAW has disrupted the students' University experience.[10] These students should not be subject to further disruption by UAW's unlawful action. Simply put, the negative effects caused by the strike on students and their education cannot be remedied. PERB's authority is limited to remedies against UAW. After academic sessions concludes in June, PERB will be powerless to assist students and the University in ensuring educational continuity and righting UAWs wrong.

Further, it is worth emphasizing that, absent an injunction, PERBs hands are tied with respect to a remedy. PERB cannot order damages against UAW for an unlawful strike. (Gov. Code, §3563.3.) Nor, in contrast to other cases, would PERB's available remedy—a cease and desist order after a hearing—provide any assistance. This is not a run-of-the-mill ULP, or even an economic strike after the parties have reached impasse. It is a work stoppage in direct contravention of UAW's CBAs with dramatic, immediate effects

[5] *See* UCSD Decl. ¶¶13-14;

[6] *See Id.* at 13-14; UCLA Decl. ¶4-6;

[7] UCSD Decl. ¶¶4-16; UCLA Decl. ¶¶4-7, 9(c), 10;

[8] UCSD Decl. ¶¶4-16; UCLA Decl. ¶4; UC Berkeley Decl. ¶2, 5; Supp. UCSC Decl. ¶8.

[9] UCSD Decl. ¶¶4-14, 16; UCLA Decl. ¶4-7; UC Berkeley Decl. ¶4-7

[10] Supp. UCSC Decl. ¶¶5-6; UCLA Decl. ¶10.

on students and the entire University community. Not only are students' classes being canceled, but UAW members, in the guise of a "strike" are occupying buildings, blocking access to campuses, disrupting classes, and causing others to stop performing work on campuses.[11]

Under these facts, PERB should exercise the discretion is so often shows employees in expanding available remedies.

For example, when it comes to unfair practice charges against *employers* PERB has consistently expanded the remedies available to unions for the last several years. As PERB recently stated in *El Centro Regional Medical Center* (2024) PERB Decision Noi. 2890-M ("*El Centro*"), "[R]emedial awards should make injured parties whole and deter future interference and discrimination." (*Id*. at p. 21.) In *El Centro*, the Board held that interest on monetary awards should be compounded daily, as opposed to applying simple interest. According to the Board, "… to the extent that monetary remedies can deter employers from engaging in harmful conduct, daily compounding interest is preferable to simple interest. While our goal is to implement a policy that will more fully compensate victims of unfair practices, an additional advantage of awarding daily compounding interest is that it will, ideally, cause employers to comply with their legal obligations more carefully." (*Id*. at 23.)

In reality, the difference between compound and simply interest is negligible in most instances. Yet PERB believed strongly that *fully compensating victims* is a fundamental public policy goal under California's collective bargaining statutes. PERB should apply the same logic here and grant the University injunctive relief. Students, faculty, and others on campus are innocent bystanders in the Union's current fight. They should not be forced to suffer while the disputes underlying it move through PERB's process. How then can PERB claim—with any credibility—that it can fully remedy the wrong perpetrated on the University by a cease and desist order? The harm in this case will have already been done, and by the time this case gets to hearing UAW's strike—currently authorized to June 30—will likely be over. A cease and desist order—absent injunctive relief to preserve the status quo while this case moves through the process—would be meaningless. Injunctive relief must be granted.

[11] Declaration of Anthony Solana ("Solana Decl.") ¶¶4-6, 8, 11; Supp. UCSC Decl. ¶¶9-12.

3. The Strike's Effect On The Bargaining Relationship Between UAW and The University Will Be Permanently Damaged Unless The Strike Is Enjoined

Further, allowing this strike to continue will frustrate the purposes of HEERA, which is an alternative basis for seeking injunctive relief. HEERA was enacted to foster "the development of harmonious and cooperative labor relations between the public institutions of higher education and their employees." (Gov't Code § 3560(a).) As *Modesto* makes clear, the purpose of statutes such as HEERA is to "promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California." (*Id*. at 903.) PERB has recognized that one way in which this "labor peace" is achieved is through no-strike and arbitration clauses in CBAs. (*Fresno In-Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M *citing to Boys Market, Inc. v. Retail Clerk's Union, Local 770* (1970 398 U.S. 235, 251-255 ("*Boys Market*").) Although *Boys Market* is not directly binding on PERB, it stands for the well-known labor policy that binding arbitration is the favored method of dispute resolution. (*Boys Market*, at p. 248 [arbitration as quid pro quo for no-strike promise].)[12] Under the NLRA, *Boys Market* also stands for the proposition that injunctive relief is an appropriate remedy to halt a strike in breach of a collective bargaining agreement. (*Boys Market*, at p. 251-255.) Specifically, a *Boys Market* injunction is appropriate where there is an existing collective bargaining agreement containing a no-strike clause and an agreement to arbitrate contractual disputes. (*See Spreckels Sugar Co., Inc. v. United Food & Com. Workers, Loc. 135, AFL-CIO, CLC* (S.D. Cal. 2023) 669 F. Supp. 3d 967, 975.)

While perhaps not directly binding on PERB, the principles articulated in *Boys Market* are appropriately incorporated into the "just and proper" standard under *Modesto*. Specifically, many, if not all, of UAW's alleged unfair practices against the University are subject to the arbitration provisions in the CBA. For example, to the extent UAW challenged any discipline to be imposed upon its bargaining unit members, such discipline is subject to arbitration. Similarly, any violations of the CBA are subject to arbitration. By allowing UAW to unilaterally violate the no-strike clause in the CBA, PERB is allowing extensive harm to the parties' relationship. This harm can, and should, be a consideration under *Modesto*'s

[12] When interpreting HEERA, PERB takes guidance from cases interpreting the National Labor Relations Act. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

"just and proper" standard.

And regardless, UAW's blatant disregard for the no-strike provision—and the bargaining process that led up to it—have and will continue to damage the parties' bargaining relationship until UAW's unlawful strike is stopped. In 2022 and 2023, UAW engaged in contentious bargaining during which UAW struck for multiple weeks. The University did not seek to enjoin this conduct, and eventually reached a deal with UAW. In the deal, the University granted the Union numerous concessions on wages, benefits, tuition, among other things. The University made these concessions in exchange for the labor piece a closed contract with a strong no-strike provision brought it.[13] UAW's conduct has repudiated this agreement, destroyed the trust the parties had worked hard to rebuild after the strike, and—if allowed to continue—will do lasting damage to the ". . . cooperative labor relations between the public institutions of higher education and their employees." (Gov't Code § 3560(a).)[14] For this alternative reason, UAW's conduct must be enjoined.

4. The Circumstances Of This Case Require The Board's Action

Finally, the circumstances surrounding UAWs strike cries out for injunctive relief. Specifically, UAW—or at least individuals operating under apparent authorization from UAW—have engaged in unlawful and dangerous activities under the guise of a strike. For example, individuals claiming to represent UAW hit a police officer over the head with a UAW sign, occupied an important academic building at UCLA, attempted to barricade its entrances, and left graffiti inside the building when they were finally dispersed.[15] A few days later, individuals carrying UAW picket signs at UCLA unlawfully blocked roadways forcing drivers to weave through people in order to escape the blockage.[16] The same conduct has occurred at UC Santa Cruz, with UAW picketers and protesters blocking both entrances to UC Santa

[13] Declaration of Daniel Menezes ("Menezes Decl.") ¶3.

[14] A long standing Labor Relations Director with UCLA lamented the Union's conduct during this unlawful strike: "During my 13-year career at UCLA, I have worked closely with several bargaining units to ensure their free-speech rights were protected during strikes and protests. I have never previously experienced a union organizing and endorsing violent confrontations with law enforcement, taking over a campus building, and completely blocking access to several parking structures with the express intent of not allowing our colleagues to perform their public service duties." (Solana Decl. ¶10.)

[15] Solana Decl. ¶¶4-6, 8, 11; Supp. UCSC Decl. ¶¶9-12.

[16] *Id.*

Cruz's campus. [17] Individuals purporting to represent UAW at other campuses have also disrupt University operations including classes and other operations.

This cannot continue. UAWs actions not only unlawfully impede the education of thousands of students, they have posed significant danger to the public. While the University is doing everything it can to prevent injury, the University fears that if UAW's actions remain unchecked that its actions will cause action injury to participants and/or the public.

The University urges PERB to act.

IV. PERB SHOULD JOIN THE UNIVERSITY IN SEEKING CONCURRENT COURT JURISDICTION TO PROTECT THE PUBLIC

Separate and apart from HEERA, Labor Code section 1126 states that, "Any collective bargaining agreement between an employer and a labor organization shall be enforceable at law or in equity, and a breach of such collective bargaining agreement by any party thereto shall be subject to the same remedies, including injunctive relief, as are available on other contracts in the courts of this State." (Lab. Code, §1126.) In *Fresno Unified School Dist. v. National Education Ass'n* (1981) 125 Cal.App.3d 259 ("*Fresno Unified*"), the court recognized that while PERB may have initial exclusive jurisdiction to decide if conduct constitutes an unfair practice, the courts have *concurrent* jurisdiction to enforce violations of Labor Code 1126. (*Fresno Unified*, at p. 174.) Thus, PERB's determination on whether UAW's strike "frustrates" the purposes of HEERA under *Modesto* does not bind the superior court on a breach of contract action under Labor Code section 1126. If and when the University brings an action under Labor Code section 1126, the University urges PERB to join the University in seeking injunctive relief in superior court against UAW's breach of contract.

V. CONCLUSION

For these reasons, the University again urges PERB to grant this request for injunctive relief.

Dated: May 29, 2024

SLOAN SAKAI YEUNG & WONG LLP

By: _____
TIMOTHY G. YEUNG
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[17] *Id.*

PROOF OF SERVICE

I, the undersigned, declare that I am employed in the County of Sacramento, State of California. I am over the age of 18 years and employed by Sloan Sakai Yeung & Wong LLP and my business address is 555 Capitol Mall, Suite 600, Sacramento, California 95814.

On May 29, 2024, I served the following document(s):

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA'S SUPPLEMENTAL EVIDENCE IN SUPPORT OF REQUEST FOR INJUNCTIVE RELIEF

on the parties listed below by the following method(s):

X electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. (May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)

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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 29, 2024, at Sacramento, California.

By: */s/ Rochelle Redmayne*
Rochelle Redmayne

SLOAN SAKAI YEUNG & WONG LLP
Attorneys at Law