

1 J. FELIX DE LA TORRE, Bar No. 204282  
General Counsel  
2 MARY WEISS, Bar No. 227600  
Deputy General Counsel  
3 JOSEPH W. ECKHART, Bar No. 284628  
Principal Attorney Supervisor  
4 JESSICA S. KIM, Bar No. 257766  
Senior Regional Attorney  
5 STEPHANIE A. O’HARA, Bar No. 311739  
Senior Regional Attorney  
6 PUBLIC EMPLOYMENT RELATIONS BOARD  
7 1031 18th Street  
8 Sacramento, CA 95811-4174  
9 Telephone: (916) 322-3198  
Facsimile: (916) 327-6377  
10 E-mail: [PERBLitigation@perb.ca.gov](mailto:PERBLitigation@perb.ca.gov)

11  
12 Attorneys for Proposed Intervenor,  
13 PUBLIC EMPLOYMENT RELATIONS BOARD

14 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
15  
16 COUNTY OF ORANGE

17 REGENTS OF THE UNIVERSITY OF CALIFORNIA,  
18  
19 Plaintiff,  
20  
21 v.  
22 INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND  
23 AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO AND  
24 ITS LOCAL UNION 4811; and DOES 1 through 30, inclusive,  
25  
26 Defendants.  
27 PUBLIC EMPLOYMENT RELATIONS BOARD,  
28  
Proposed Intervenor.

Case No.: 30-2024-01403666-CU-MC-NJC  
  
**PUBLIC EMPLOYMENT RELATIONS BOARD’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR LEAVE TO INTERVENE**

Ex Parte Hearing Date: June 7, 2024  
Time: ~~11:45 am~~ 2:30 pm  
Dept.: ~~N06~~ CX-105  
Judge: ~~Hon. Glenn Salter~~ Hon. Randall Sherman

**Exempt from Fees (Gov. Code, § 6103)**

Date action filed: June 3, 2024

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1 **INTRODUCTION**

2 The Public Employment Relations Board (PERB or Board) requests to intervene in this  
3 matter, an action by the Regents of the University of California (University) seeking to enjoin  
4 the International Union, United Automobile, Aerospace and Agricultural Implement Workers of  
5 America, AFL-CIO, Local Union 4811 (UAW), from continuing a strike by University  
6 employees that began on May 20, 2024. PERB is entitled to intervene as of right because the  
7 parties’ labor dispute involves matters within the Board’s exclusive initial jurisdiction under the  
8 Higher Education Employer-Employee Relations Act (HEERA; Gov. Code, § 3560 et seq.).<sup>1</sup>  
9 Although the University’s complaint raises breach-of-contract claims that are not within PERB’s  
10 jurisdiction, the issues pending before PERB and the Court overlap significantly, and precedent  
11 indicates that a stay of the court litigation may be appropriate.

12 HEERA governs labor relations for California’s public higher education employees,  
13 including the University. As the quasi-judicial agency charged with administering HEERA,  
14 PERB has exclusive initial jurisdiction to determine whether a strike by these public employees  
15 violates HEERA, and it has exclusive authority to seek to enjoin a strike that allegedly violates  
16 HEERA. (*City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597,  
17 604-605 (*San Jose*).

18 Here, the University and UAW have each filed unfair practice charges with PERB, and  
19 the University has twice requested that PERB seek an injunction against UAW’s ongoing strike.  
20 The Board denied the University’s initial request on May 23, 2024, informing the parties that it  
21 “presently declines to pursue an injunction . . . , as [the University] has not established that  
22 injunctive relief is ‘just and proper’ under the standard set forth in *Public Employment Relations*  
23 *Board v. Modesto City Schools District* (1982) 136 Cal.App.3d 881,” but left open the request  
24 “in the event it learns of evidence or facts to support a finding that injunctive relief is just and  
25 proper.” (Declaration of Mary Weiss (Weiss Decl.), ¶ 13.) The University filed supplemental  
26 declarations and renewed its injunctive relief request on May 29, 2024. The Board denied that  
27

28 <sup>1</sup> All undifferentiated statutory references are to the Government Code.

1 request on June 3, 2024, finding “sufficient grounds therefor not having been demonstrated.”  
2 (Weiss Decl., ¶ 22.) Importantly, however, the parties’ underlying unfair practice charges  
3 remain pending an administrative adjudication at PERB.

4 PERB acknowledges that jurisdiction over the University’s breach-of-contract claims lies  
5 in the courts, not at PERB. (§ 3563.2, subd. (b); *Fresno Unified School Dist. v. National*  
6 *Education Assn.* (1981) 125 Cal.App.3d 259, 264 (*Fresno*) [construing analogous language in  
7 section 3541.5].) But *Fresno* found, in analogous circumstances, that it was appropriate to stay a  
8 contract law claim until PERB processes were completed to accommodate PERB’s “statutory  
9 priority.” (*Fresno, supra*, at p. 273.)

10 Therefore, PERB seeks leave to intervene to assist the Court in determining how to  
11 accommodate the overlapping issues pending before this Court and before PERB.

## 12 ARGUMENT

### 13 I. PERB should be granted leave to intervene because it has exclusive initial 14 jurisdiction over HEERA.

#### 15 A. The Board must be allowed to intervene to protect its interest in 16 administering HEERA.

17 A non-party has the right to intervene in an action when it has “an interest relating to the  
18 property or transaction” at issue and “the disposition of the action may impair or impede that  
19 person’s ability to protect that interest, unless that person’s interest is adequately represented by”  
20 an existing party. (Code Civ. Proc., § 387, subd. (d)(1)(B).) Section 387 should be liberally  
21 construed in favor of intervention.” (*Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th  
22 1499, 1505.)

23 The intervenor’s interest in the litigation need not be pecuniary, particularly in the case of  
24 a public agency. (*County of San Bernardino v. Harsh California Corp.* (1959) 52 Cal.2d 341,  
25 345-346 (*San Bernadino*)). For instance, the United States was permitted to intervene in a  
26 county’s action to recover unsecured personal property taxes where the defendant’s objection  
27 was based on a federal statute. (*Id.* at p. 345.) In that case, the court reasoned that the case  
28 “directly involve[d] . . . the validity and operation of federal fiscal policy defined by federal  
statute,” and the federal government’s interest “in sustaining its fiscal policy by securing an

1 adjudication of the validity and correct interpretation of its statute is fully sufficient to support its  
2 intervention whether or not the judgment will directly and immediately affect its pecuniary  
3 interests.” (*Ibid.*)

4 Similarly, the Public Utilities Commission, in the name of the People, was allowed to  
5 intervene in an action to recover undercharges, pursuant to a Commission order, on the reasoning  
6 that “[t]he interest of the People in maintaining the integrity of the order . . . is clearly sufficient”  
7 for intervention. (*People ex rel. Public Utility Com. v. Ryerson* (1966) 241 Cal.App.2d 115,  
8 120.) And in *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 882,  
9 a school district was allowed to intervene in an action challenging a city’s “school impact fee  
10 policy,” on the grounds that “[t]he District had a statutory duty to provide a proper education for  
11 its schools’ students,” as “[a]ll public agencies have an ‘interest’ which is ‘direct,’ in meeting  
12 their official responsibilities.”

13 PERB’s interest in this matter is evident. PERB is the expert labor relations agency  
14 charged with interpreting and administering HEERA. (§§ 3563, 3541.3.)<sup>2</sup> HEERA specifies  
15 that PERB has the “power[] and dut[y]” to “investigate unfair practice charges or alleged  
16 violations of this chapter, and to take any action and make any determinations in respect of these  
17 charges or alleged violations as [PERB] deems necessary to effectuate the policies of this  
18 chapter.” (Gov. Code, § 3563, subd. (h).) In short, PERB is tasked by the Legislature with  
19 “bring[ing] expertise and uniformity to the delicate task of stabilizing labor relations.” (*San*  
20 *Diego Teachers Assn. v. Super. Ct.* (1979) 24 Cal.3d 1, 12 (*San Diego Teachers Assn.*))

21 PERB has an interest in ensuring the uniform interpretation and application of the  
22 statutes it enforces. Under the collective bargaining statutes that PERB administers, including  
23 HEERA, public employees have the “right to form, join, and participate in the activities of  
24 employee organizations[.]” (Gov. Code, § 3565.) The Board has held that this right generally  
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26 <sup>2</sup> The Board also has exclusive initial jurisdiction over several other public-sector labor  
27 relations statutes, including those governing employees of public schools (§ 3540 et seq.); cities,  
28 counties and special districts (§ 3500 et seq.); the State government (§ 3512 et seq.); and trial  
courts (§§ 71630 et seq. & 71800 et seq.).

1 includes a right to strike, and strikes are therefore “statutorily protected.” (*Fresno County In-*  
2 *Home Supportive Services Public Authority* (2015) PERB Decision No. 2418-M, p. 33  
3 (*Fresno*); see also *City & County of San Francisco* (2017) PERB Decision No. 2536-M, p. 18.)

4         Nonetheless, there are several theories under which strike-related activity can be an  
5 unfair practice under the statutes the Board enforces. For instance, striking before the parties  
6 complete statutory impasse-resolution procedures violates the duty to bargain in good faith,  
7 unless the union proves that the employer’s unfair practices provoked the strike. (*Fresno, supra*,  
8 PERB Decision No. 2418-M, p. 28; *Sweetwater Union High School District* (2014) PERB Order  
9 No. IR-58, pp. 8-9.) Certain strike activities may also violate a union’s bargaining duty,  
10 regardless of when they occur in the bargaining process, if found to constitute “unlawful  
11 pressure tactics.” (See, e.g. *Fremont Unified School District* (1990) PERB Order No. IR-54, p.  
12 13; *El Dorado Union High School District* (1985) PERB Decision No. 537, adopted prop. dec. at  
13 p. 21.) In addition, and as relevant here, a strike that breaches a term of a collective bargaining  
14 agreement is a per se violation of the union’s duty to bargain in good faith if it constitutes a  
15 unilateral change to terms and conditions of employment. (*State of California (Departments of*  
16 *Veterans Affairs & Personnel Administration)* (2008) PERB Decision No. 1997-S, p. 9; *Regents*  
17 *of the University of California* (2004) PERB Decision No. 1638-H, p. 3; *Oxnard Harbor District*  
18 (2004) PERB Decision No. 1580-M, p. 5.)

19         As the California Supreme Court has made clear, the question of the “legality of a public  
20 employee strike” is “an issue that goes to the essence of labor law.” (*San Jose, supra*, 49 Cal.4th  
21 597, 609.) Thus, PERB’s exclusive initial jurisdiction includes determining whether a labor  
22 strike is an unfair practice, and if so, the appropriate remedy. (*Id.* at pp. 605-606; *El Rancho*  
23 *Unified School Dist. v. National Education Assn.* (1983) 33 Cal.3d 946, 961; *Fresno, supra*, 125  
24 Cal.App.3d 259, 273; *San Diego Teachers Assn., supra*, 24 Cal.3d 1, 12.)

25         Likewise, PERB has an interest in ensuring that its administrative processes continue  
26 without interference from parties prematurely seeking judicial remedies. PERB’s administrative  
27 process includes an investigation by PERB’s Office of the General Counsel, and, if an  
28 administrative complaint is issued, an informal settlement conference; a formal evidentiary



1 hearing with briefing and a proposed decision issued by an administrative law judge (ALJ); and  
2 a final decision by the Board itself, if requested by either party. (Cal. Code Regs., tit. 8, §§  
3 32620, 32215, 32680.) The Board’s final decisions are subject to judicial review by petition for  
4 writ of extraordinary relief in the Court of Appeal. (§ 3564, subs. (b), (c).) In advance of a  
5 final decision, a party may ask PERB to seek a court order enjoining alleged violations of the  
6 labor relations statutes the Board enforces. (§ 3563, subd. (i); *San Diego Teachers Assn., supra*,  
7 24 Cal.3d 1, 13-14.)

8 PERB’s interest in this case extends beyond its general subject matter because both  
9 parties have specifically invoked PERB’s jurisdiction. Each party has filed unfair practice  
10 charges against the other. (Weiss Decl., ¶¶ 6, 8) And the University filed a request that PERB  
11 seek to enjoin UAW’s upcoming strike. (Weiss Decl., ¶ 9.) Although the Board denied,  
12 without prejudice, the University’s injunctive relief request (Weiss Decl., ¶¶ 13, 22), both  
13 parties’ unfair practice charges remain pending at PERB. PERB’s Office of the General Counsel  
14 issued an administrative complaint on the University’s charge concerning the strike on May 23,  
15 2024, and informal settlement conferences were held on May 24, 29, and 31, 2024. (Weiss  
16 Decl., ¶ 14.) An administrative complaint was issued on UAW’s charge against the University  
17 on June 3, 2024. If these cases are not resolved through settlement, they will be scheduled for a  
18 formal hearing before an ALJ. (Weiss Decl., ¶ 16.) Both cases will therefore proceed—unless  
19 resolved sooner—through the remaining steps of PERB’s administrative process. (See Cal.  
20 Code Regs., tit. 8, §§ 32680 & 32215 [formal hearing and proposed decision by ALJ]; § 32300  
21 [appeal to the Board itself].)

22 PERB acknowledges that this court has “apparent concurrent jurisdiction” in this instance  
23 to resolve the University’s contract law claims. (*Fresno, supra*, 125 Cal.App.3d 259, 273-274.)  
24 However, as *Fresno* noted, PERB nevertheless maintains “statutory priority,” and it may be  
25 appropriate to stay any contract claims pending resolution of the HEERA claims before PERB.

26 Here, there is significant overlap between the issues pending before PERB and those  
27 pending before this Court. In response to the allegation that its strike represents a unilateral  
28 change to the parties’ no-strike clauses—which would be a per se violation of the duty to bargain

1 under HEERA—UAW has asserted, as a defense, that the no-strike clauses do not waive its right  
2 to strike in response to serious unfair practices, citing *Mastro Plastics Corp. v. National Labor*  
3 *Relations Board* (1956) 350 U.S. 270. (Weiss Decl., Exh. H, pp. 5-6.) As UAW acknowledges,  
4 PERB has relied on *Mastro Plastics* for other principles, and it urges PERB to follow *Mastro*  
5 *Plastics* here. (*Id.* at p. 6.)

6 If PERB were to apply *Mastro Plastics*, it would also be required to decide further  
7 questions: (1) whether the University’s alleged unfair practices occurred; (2) whether those  
8 unfair practices provoked UAW’s strike; and (3) whether they were sufficiently serious to justify  
9 a strike despite the parties’ no-strike clauses, i.e., whether the University’s actions were  
10 “destructive of the foundation on which collective bargaining must rest.” (*Mastro Plastics*,  
11 *supra*, 350 U.S. 270, 281.) A stay of the court’s proceedings is appropriate here because PERB  
12 has exclusive initial jurisdiction to decide whether *Mastro Plastics* provides UAW a defense to  
13 allegations that UAW violated the no-strike clauses. UAW is precluded from raising that  
14 defense before the court, as the court lacks jurisdiction to assess whether the University  
15 committed an unfair practice significant enough to excuse UAW from its no-strike clause.

16 Given these overlapping issues, the Board is entitled to intervene as a matter of right in  
17 this matter to assist the court in determining the propriety of the type of stay contemplated by  
18 *Fresno, supra*, 125 Cal.App.3d 259.

19 **B. In the alternative, this Court should exercise its discretion to permit PERB to**  
20 **intervene.**

21 A court has discretion to allow intervention when: (1) the non-party has a direct and  
22 immediate interest in the litigation; (2) intervention will not enlarge the issues in the case; and  
23 (3) the reasons in favor of intervention outweigh any opposition by the existing parties. (Code  
24 Civ. Proc., § 387, subd. (d)(2); *Reliance Ins. Co. v. Superior Court (Wells)* (2000) 84  
25 Cal.App.4th 383, 386; *Truck Ins. Exch. v. Superior Court (Transco Syndicate #1)* (1997) 60  
26 Cal.App.4th 342, 346.)

27 **1. PERB has a direct and immediate interest in this litigation.**

28 A judicial ruling here would directly affect PERB’s ability to issue an administrative  
remedy in the pending unfair practice cases. Like the federal government in *San Bernardino*,

1 *supra*, 52 Cal.2d 341, 345, PERB has an interest in “sustaining its . . . policy by securing an  
2 adjudication of the . . . correct interpretation of its statutes.” Furthermore, just as the People had  
3 an interest in maintaining the integrity of the Public Utility Commission order in *Ryerson, supra*,  
4 241 Cal.App.2d 115, so too PERB has an interest in maintaining the integrity of its exclusive  
5 jurisdiction and remedial authority. And like the school district in *Timberidge Enterprises, Inc.*  
6 *v. City of Santa Rosa, supra*, 86 Cal.App.3d 873, PERB has a direct interest in carrying out its  
7 statutory duties and official responsibilities, including making the initial determination regarding  
8 disputes within its exclusive jurisdiction. All these interests will be affected by the Court’s  
9 decision in this action.

10 **2. PERB’s intervention will not enlarge the issues in the case.**

11 Allowing PERB to intervene will not enlarge the issues in this case. PERB seeks only to  
12 demonstrate what settled law already provides: that the University’s claims under HEERA fall  
13 within the Board’s exclusive initial jurisdiction and cannot be pursued in this Court.

14 **3. PERB’s interests in favor of intervention outweigh any  
15 opposition by existing parties.**

16 PERB has a direct and immediate interest that outweighs the opposition of any of the  
17 parties. PERB’s interest in exercising its exclusive jurisdiction over unfair labor practices and  
18 enforcement of HEERA on a uniform basis must, as a matter of fairness, substantially outweigh  
19 any claim by the University to exclude PERB from preserving its authority and jurisdiction.

20 **II. PERB’s request to intervene is procedurally proper.**

21 Under California law, a non-party may seek leave to intervene by either “noticed motion  
22 *or ex parte* application.” (Code Civ. Proc., § 387, subd. (c), emphasis added; see also *Adoption*  
23 *of Lenn E.* (1986) 182 Cal.App.3d 210, 217.) A request for leave to intervene is “properly made  
24 *ex parte*,” when that request serves to “obviate[] delay and multiplicity of actions by creating an  
25 opportunity for those directly interested in the subject matter to join in an action already  
26 instituted.” (*Marc Bellaire, Inc. v. Fleischman* (1960) 185 Cal.App.2d 591, 595.)

27 Here, an *ex parte* application is the appropriate vehicle for PERB to request leave to  
28 intervene in this case. The University is pursuing an *ex parte* application to enjoin UAW from  
continuing its strike which commenced on May 20, 2024. (Weiss Decl., ¶ 17.) The Court will

1 hear the University’s application on June 7, 2024. (*Ibid.*) By considering PERB’s request for  
2 leave to intervene now, the Court will allow PERB to assert its unique interest in “bringing  
3 expertise and uniformity to the delicate task of stabilizing labor relations” (*San Diego Teachers*  
4 *Assn., supra*, 24 Cal.3d 1, 12) *before* deciding the important question of whether to grant or deny  
5 the University’s injunction. By contrast, requiring PERB to proceed through a noticed motion  
6 would render PERB unable to meaningfully protect its interest in this case because that motion  
7 would likely not be heard until after the strike is scheduled to end.

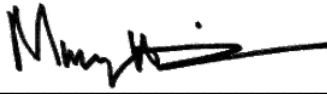
8 **CONCLUSION**

9 For the reasons set forth above, Proposed Intervenor PERB respectfully requests that the  
10 Court grant it leave to intervene.

11 Dated: June 6, 2024

Respectfully submitted,

12 J. FELIX DE LA TORRE, General Counsel

13 By  \_\_\_\_\_

14 MARY WEISS, Deputy General Counsel  
15 Attorneys for Proposed Intervenor  
16 PUBLIC EMPLOYMENT RELATIONS BOARD