



PERB
California Public Employment
Relations Board

Sacramento Regional Office
1031 18th Street
Sacramento, CA, 95811-4124
Telephone: (916) 324-0143



September 25, 2023

Re: *Teamsters Local 2010 v. Trustees of the California State University (San Diego)*
Unfair Practice Case No. LA-CE-1370-H

Dear Parties:

Attached is the Public Employment Relations Board (PERB or Board) agent's Proposed Decision in the above-entitled matter.

Any party to the proceeding may file with the Board itself a statement of exceptions to the Proposed Decision. The statement of exceptions should be electronically filed using the "ePERB portal" accessible from PERB's website (<https://eperb-portal.ecourt.com/public-portal/>). (PERB Reg. 32110, subd. (a).)¹ Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents using the ePERB portal; however, such individuals may submit their documents to PERB for filing via in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110, subds. (a) and (b).) The Board's mailing address and contact information is as follows:

PUBLIC EMPLOYMENT RELATIONS BOARD
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
Telephone: (916) 322-8231

Pursuant to PERB Regulation 32300, the statement of exceptions must be filed with the Board itself within 20 days of service of this proposed decision. A document submitted through ePERB after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed "**filed**" the next regular PERB business day. (PERB Reg. 32110, subd. (f).) A document submitted via non-electronic means will be considered "**filed**" when the originals, including proof of service (see below), are actually received by PERB's Headquarters during a regular PERB business day. (PERB Reg. 32135, subd. (a); see also PERB Reg. 32130.)

The statement of exceptions must be a single, integrated document that may be in the form of a brief and may contain tables of contents and authorities, but may not exceed 14,000 words, including footnotes, but excluding the tables of contents and authorities. Requests to exceed the 14,000-word limit must establish good cause for exceeding

¹ PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

the limit and be filed with the Board itself and served on all parties no later than five days before the statement of exceptions is due. PERB Regulation 32300, subdivision (a), is specific as to what the statement of exceptions must contain. The statement of exceptions shall: (1) clearly and concisely state why the proposed decision is in error, (2) cite to the relevant exhibit or transcript page in the case record to support factual arguments, and (3) cite to relevant legal authority to support legal arguments. Exceptions shall cite only to evidence in the record of the case and of which administrative notice may properly be taken. (PERB Reg. 32300, subd. (c).) Non-compliance with the requirements of PERB Regulation 32300 will result in the Board not considering such filing, absent good cause. (PERB Reg. 32300, subd. (d).)

Within 20 days following the date of service of a statement of exceptions, any party may file with the Board a response to the statement of exceptions. The response shall be filed with the Board itself in the same manner set forth in this letter for the statement of exceptions (see paragraphs two and three of this letter). The response may contain a statement of any cross-exceptions the responding party wishes to take to the proposed decision. The response shall comply in form with the requirements of PERB Regulation 32300 set forth above, except that a party both responding to exceptions and filing cross-exceptions shall be permitted to submit up to 28,000 words total, including footnotes, without requesting permission. A response (with or without an inclusive statement of cross-exceptions) to such exceptions may be filed within 20 days. Such response shall comply in form with the provisions of PERB Regulation 32310.

All documents authorized to be filed herein must also be “served” upon all parties to the proceeding, and a “proof of service” must accompany each copy of a document served upon a party or filed with the Board itself. (See PERB Regs. 32300, subd. (a) and 32093; see also PERB Reg. 32140 for the required contents.) Proof of service forms are available for download on PERB’s website: www.perb.ca.gov/about/forms/. Electronic service of documents through ePERB or e-mail is authorized only when the party being served has agreed to accept electronic service in this matter. (See PERB Regs. 32140, subd. (b) and 32093.)

Any party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response thereto a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument. (PERB Reg. 32315.) All requests for oral argument shall be filed as a separate document.

An extension of time to file a statement of exceptions can be requested only in some cases. (PERB Reg. 32305, subds. (b) and (c).) A request for an extension of time in which to file a statement of exceptions with the Board itself must be in writing and filed with the Board at least three calendar days before the expiration of the time required to file the statement of exceptions. The request must indicate good cause and, if known, the position of each of the other parties regarding the request. The request shall be accompanied by proof of service of the request upon each party. (PERB Reg.

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32132.)

Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final. (PERB Reg. 32305.)

Sincerely,

A handwritten signature in blue ink, appearing to read "S. P. Cloughesy", with a long horizontal flourish extending to the right.

Shawn Cloughesy
Chief Administrative Law Judge



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD**

TEAMSTERS LOCAL 2010,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY (SAN DIEGO),

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CE-1370-H

PROPOSED DECISION
(September 25, 2023)

Appearances: Beeson, Taylor & Bodine, by Susan K. Garea, Attorney, for Teamsters Local 2010; Diva M. Sanchez-Trevino, Senior Manager of Systemwide Labor Relations, Office of the Chancellor, for Trustees of the California State University (San Diego).

Before Christine A. Bologna, Administrative Law Judge.

INTRODUCTION

This case alleges interference/prohibition on sticks attached to signs during informational picketing. The employer denies any unfair practices or violations of law.

PROCEDURAL HISTORY

On January 14, 2022, Charging Party Teamsters Local 2010 (Teamsters) electronically filed (e-filed) an unfair practice charge (charge) against the Trustees of the California State University (San Diego) (CSU/CSUSD).¹

¹ On March 1, 2022, Respondent CSU/CSUSD requested an extension of time to file a position statement responding to the charge. On March 4, Teamsters, CSU/CSUSD, and the Public Employment Relations Board (PERB or Board) Senior Regional Attorney stipulated to the extension. On December 8, CSU/CSUSD confirmed by electronic mail message (e-mail) it did not file a position statement.

On April 5, 2022, the PERB Office of the General Counsel (OGC) issued an unfair practice complaint (complaint) alleging: on December 3, 2021, at 11:00 a.m., Teamsters and bargaining unit members met in front of the CSUSD Alumni Center to protest CSU's unfair practice/refusal to bargain in good faith over wages for Fiscal Year (FY) 2020-21; while picket signs were given out, CSU/CSUSD police officers issued a directive prohibiting the use of pickets/sticks affixed to union picket signs; and Teamsters complied with the directive, removed the pickets/sticks from the signs, and held the rally without the items. This conduct was claimed to interfere with unit members' rights guaranteed by the Higher Education Employer Employee Relations Act (HEERA),² and violate section 3571, subdivisions (a) and (b).³

On May 2, 2022, CSU/CSUSD e-filed an answer to the complaint, admitting certain allegations,⁴ denying all substantive claims, and asserting additional and affirmative defenses. A June 27 informal settlement videoconference did not resolve

² Unless otherwise indicated, all statutory references are to the Government Code. HEERA is codified at section 3560 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

³ The complaint also alleged that the interference/conduct concurrently/derivatively or independently denied Teamsters' HEERA-guaranteed organizational representation rights.

⁴ CSU/CSUSD admitted jurisdictional allegations. Respondent also admitted factual allegations that on December 3, 2021, at 11:00 a.m., Teamsters and CSUSD bargaining unit members met at the CSUSD Alumni Center; CSUSD police officers issued a directive prohibiting the use of pickets/sticks affixed to union signs; and Teamsters complied with the directive, removed the pickets/sticks, and held the rally without the items.

the dispute, but the parties agreed to place the case in abeyance for 60 days; on September 20, the abeyance was extended for three weeks by mutual agreement.⁵

On January 5, 2023, the Administrative Law Judge (ALJ) conducted a prehearing videoconference on the mechanics of a formal videoconference hearing under PERB Webex Virtual Hearing Protocols, and to mutually exchange exhibits before the hearing.

On February 2, 2023, a formal videoconference hearing was held on the PERB Webex Meetings Platform.

On June 7, 2023, the case was submitted for decision after receipt of post-hearing briefs.⁶

⁵ On November 4, 2022, notices of the prehearing videoconference and formal videoconference hearing, and e-mail correspondence, were issued to the advocates. The e-mail advised Respondent that its May 2 answer did not meet PERB Regulation 32644, subdivision (b)(7) requirements because a verification/sworn declaration was not included; CSU/CSUSD could file an amended answer by November 21. On December 8, Respondent requested an extension of time to file an amended answer on December 9, and e-filed an amended answer and unsworn declaration. My December 8 e-mail order denied CSU/CSUSD's request for failure to meet PERB Regulations 32132, subdivision (c) (Extension of Time) and 32136 (Late Filing) requirements, and did not accept the amended answer. On December 8, Respondent requested reconsideration of the denial of its late-filed amended answer. My December 8 order denied reconsideration for failure to demonstrate good cause for the late filing under PERB Regulations 32132, subdivision (c) and 32136, and because the unsworn declaration did not comply with PERB Regulation 32644, subdivision (b)(7).

⁶ Five extensions of time to the post-hearing briefing schedule were requested and granted, two for Teamsters and three by CSU/CSUSD.

FINDINGS OF FACT

Jurisdiction

Respondent CSU/CSUSD admitted it is an employer within the meaning of HEERA section 3562, subdivision (g), and Charging Party Teamsters is an exclusive representative of the Skilled Trades bargaining unit under section 3562, subdivision (i).

Background

The complaint alleged, and CSU/CSUSD's answer admitted:

“On or about December 3, 2021, Charging Party and bargaining unit members met at CSUSD in front of the Alumni Center at approximately 11:00 a.m.

[¶] . . . [¶]

“During this event, as Charging Party and Unit members were gathering and giving out picket signs, Respondent's agents, ‘SDSU police officers,’ issued a directive prohibiting the use of pickets or sticks, which were affixed to union signs; Charging Party complied with such directive, removed the pickets and sticks from the signs, and held the rally without those items.”⁷

Teamsters exclusively represents Unit 6, 1100 Skilled Crafts/Trades bargaining unit employees on 22 of 23 CSU campuses, 70 at CSUSD.

⁷ Facts admitted/not denied in an answer are considered “judicial admissions,” and conclusive concessions by the pleader of the truth of the matters. The admission of a material allegation in the answer removes the issue from the controversy, barring a respondent from offering evidence contrary to the admission. Judgment may rest in whole or part on the admission without proof of the fact. (*Turlock Unified School District* (2017) PERB Decision No. 2543; *City of Callexico* (2017) PERB Decision No. 2541-M; *County of San Luis Obispo* (2015) PERB Decision No. 2427-M; *Regents of the University of California* (2012) PERB Decision No. 2302-H.)

The January 26, 2016-June 30, 2020 Teamsters-CSU Trustees Systemwide Skilled Crafts collective bargaining agreement (CBA) was extended through June 2022 by a June 2020 side letter agreement, and extended through June 2023 by a settlement agreement.⁸

Jason Rabinowicz (Rabinowicz) was Teamsters Secretary-Treasurer and Principal Officer for daily operations.⁹ Scott Guymon (Guymon) is a Supervising Building Services Engineer at CSUSD and Teamsters steward.¹⁰ Drew Scott (Scott) is Teamsters Skilled Trades Unit Director.

Joseph Castro (Castro) was CSU Chancellor in December 2021. Lieutenant (Lt.) Gregory Robertson (Robertson)¹¹ and Sergeant (Sgt.) Peter Dupree (Dupree)¹² work for the CSUSD Police Department.

The November 20, 2018 CSUSD Regulations for Use of Buildings and Grounds (Building & Grounds Regs.), Signs, section 12.2.3 states:

⁸ The side letter agreement, negotiated during the pandemic, included wage reopeners if State and CSU budgets improved. The settlement agreement included the August 2022 withdrawal of PERB Case No. LA-CE-1369-H, in which Teamsters alleged CSU refused to bargain over the wage reopeners in October 2021.

⁹ Rabinowicz worked for Local 2010 for ten and one-half years as Executive Director and General Counsel. He is now President of Teamsters Joint Council 7, 20 locals with 100,000 members in Northern California and Northern Nevada.

¹⁰ Guymon has held this Skilled Trades bargaining unit position for one and one-half years, and was a CSUSD Building Services Engineer for 20 years.

¹¹ Lt. Robertson has worked for CSUSD for four and one-half years. He was a police officer in the City of El Cajon for 26 1/2 years.

¹² Sgt. Dupree has worked for CSUSD for four years. He was a police officer, corporal, and patrol sergeant with CSU Fullerton Police Department for 13 years.

“For safety reasons, staked signs are not permitted at any time inside campus facilities. Participants in outdoor demonstrations, rallies, picket lines, or public assemblies shall not carry or possess any metal stake, club, pipe, or any length of lumber, wood, or lath, unless that wooden object is 1/4” or less in thickness and 2” or less in width. If not generally rectangular in shape, such wooden object shall not exceed 1/2” in its thickest dimension. (§ 53.30, San Diego Municipal Code.)”

(Emphasis added.)

December 3, 2021 CSUSD Picketing

Teamsters learned that CSU Chancellor Castro would meet with CSUSD campus leaders, including union stewards, at the Alumni Center on December 3, 2021. Rabinowicz organized an informational picket line that day to protest the wage reopener dispute. Forty bargaining unit 6 Skilled Crafts/Trades employees came to a public area in front of the Center during their lunch break. One or two distributed flyers to people walking by, entering, or exiting the Center, and the rest carried picket signs, marching in a circle. Rabinowicz, Scott, and Guymon passed out standard Teamsters picket signs.¹³

Lt. Robertson and Sgt. Dupree went to the Alumni Center to check on two plain-clothed officers assigned to escort the Chancellor. Neither knew about the picketing.

¹³ The picket signs had two placards with messages, “Safe Campus Fair Pay” and “Heroes Not Zeroes,” and the Teamsters logo stapled on both sides of four foot (4’) long, 1/4 inch (1/4”) thick, and one and one-half inch (1 1/2”) wide wooden sticks. The sticks are ordered in bulk, and reused at CSU campuses. Rabinowicz testified that Teamsters had used the sticks in picket signs at all other CSU campuses and Long Beach headquarters without restriction; his testimony was not challenged. This was Rabinowicz’ first picket line at CSUSD.

All percipient witnesses (Rabinowicz, Lt. Robertson, Sgt. Dupree, Guymon) testified that the two officers told unit 6 employees and Teamsters leaders to remove the sticks from the picket signs because campus policy/Building & Grounds Regs. prohibited them (“No Sticks.”). Both Lt. Robertson and Sgt. Dupree admitted: (1) they knew Building & Grounds Regs. limited the size of sticks used on signs; (2) the sticks “appeared” to be “over/larger” than the size allowed by campus policy, but they did not measure the sticks, ask any picketer about their dimensions, or mention any size limitation to any Teamsters representative/bargaining unit employee; and (3) for “safety” reasons, decided to require removal of the sticks although they observed no threats of, tendency toward, and/or unsafe, violent conduct.

Rabinowicz and Lt. Robertson testified about their conversation; Rabinowicz identified himself as a labor law attorney, asserting Teamsters, a labor union, had a First Amendment right to peacefully picket; Lt. Robertson responded he was enforcing policy, and Teamsters could picket, but without the sticks.¹⁴

Rabinowicz consulted with Scott, then told Lt. Robertson and Sgt. Dupree that Teamsters would comply with the order, but would file legal action against CSU for the violation of their rights. The officers left the area as the picketers began removing the sticks from their picket signs.¹⁵ The picketers then carried the picket signs in their hands, or held them with the remainder of the sticks, and continued the march. The picketing lasted 20-30 minutes. Unit 6 employees returned to work.

¹⁴ Lt. Robertson testified that he “felt” it was unsafe for the picketers to walk with the sticks.

¹⁵ The picketers either removed the sticks from, or broke them off the signs.

After reviewing the Building and Grounds Regs. during their testimony, Lt. Robertson and Sgt. Dupree conceded: (1) the prohibition on sticks attached to picket signs applies only inside campus facilities; and (2) the policy limits the size of sticks affixed to picket signs in outdoor demonstrations/rallies/picket lines, but otherwise allows their use.

Sgt. Dupree had not asked picketers to remove sticks from picket signs before this event. Lt. Robertson testified about one incident when his partner asked a demonstrator to remove a stick from a sign at a Town Hall meeting inside a CSUSD building. The individual left the building with the sign.

Guymon took photographs of the Teamsters picket signs and sticks later that day. He took the signs/sticks to his office in the Facilities Services Plant, took the pictures, and stored the signs in the closet. Guymon subsequently measured the sticks attached to the picket signs at Scott's request. Guymon testified that the sticks' dimensions were: 1/4" thick, 1 1/4" wide, and 47" long; his testimony was not controverted. The Building & Grounds Regs. contain no limit on the length of sticks attached to signs; the Teamsters picket sticks met the 1/4" thickness requirement, and were less than the 2" width maximum.

The preponderance of the evidence supports a finding that the Teamsters' picket signs complied with CSUSD campus policy on December 3, 2021.

ISSUE

Did CSU/CSUSD unlawfully interfere with bargaining unit employees' HEERA-protected rights by requiring removal of sticks on picket signs used in the December 3, 2021 informational picketing?

CONCLUSIONS OF LAW

The parties do not litigate the allegations of a charge at hearing; they try the allegations in the complaint. When a complaint issues, the PERB General Counsel has discretion to decide which allegations and legal theories to assert and violations to include.

The burdens of going forward with evidence/persuasion and proving the allegations in the complaint at hearing are Charging Party's. (*Cabrillo Community College District* (2019) PERB Decision No. 2622; *City of Roseville* (2016) PERB Decision No. 2505-M; *Oakland Unified School District* (2009) PERB Decision No. 2061.) The burdens of persuasion and proof on matters raised by the answer and/or affirmative defenses at hearing are Respondent's. (*Los Angeles Unified School District* (2014) PERB Decision No. 2359; *Regents of the University of California* (2014) PERB Decision No. 2398-H.)

A charging party must prove the allegations of a complaint by a preponderance of the evidence. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 27 (*Bellflower*); *California State University (San Francisco)* (1986) PERB Decision No. 559-H; PERB Reg. 32178.) Similarly, a respondent must prove new matters and affirmative defenses raised in the answer by a preponderance of the evidence. (*Los Angeles Unified School District, supra*, PERB Decision No. 2359.) Proof by a preponderance of the evidence requires a party to convince the trier of fact that the existence of a particular fact is more probable than its nonexistence. (*Bellflower, supra*, PERB Decision No. 2796, p. 27 citing *Los Angeles Unified School District, supra*, PERB Decision No. 2359, fn. 22, citing Evid. Code § 500, Law Revision

Commission comments.) “Preponderance of the evidence has also been defined by the courts as ‘evidence that has more convincing force than that opposed to it’ (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314 (*Glage*)), in terms of the probability of truth; or such evidence, which when weighed against opposing evidence, has the greater probability of truth.” (*County of Tulare* (2020) PERB Decision No. 2697-M, p. 37; *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133.) If the evidence is so evenly balanced that one is unable to say evidence on either side of an issue preponderates, the finding on the issue must be against the party who has the burden of proving it. (*County of Tulare, supra*, PERB Decision No. 2697-M, p. 37; *Glage, supra*, 226 Cal.App.3d 314.)

Interference

Unlike discrimination/retaliation, the test for whether a respondent has interfered with protected rights of employees under HEERA¹⁶ does not require unlawful motive or intent, but only that at least slight harm to employee rights results from the conduct. (*San Diego Unified School District* (2019) PERB Decision No. 2634,

¹⁶ HEERA section 3565 provides that higher education employees 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. HEERA sections 3571 and 3571.1 prohibits the higher education employer and employee organizations from interfering, restraining, coercing, or discriminating/retaliating against higher education employees because of their exercise of section 3565 rights. The same language establishing employee protected activity and prohibiting interference with and discrimination/retaliation against employees because of their exercise of statutorily guaranteed rights is also in other statutes administered by PERB. (Educational Employment Relations Act (EERA) sections 3543, 3543.5 and 3543.6; Ralph C. Dills Act (Dills Act) sections 3515, 3519 and 3519.5; Meyers-Milias-Brown Act (MMBA) sections 3502 and 3506.)

p. 17.) Where a prima facie case is made that the employer's conduct interferes with, or tends to interfere with protected conduct, the harm to employee rights is slight, and the employer offers a legitimate justification for its conduct based on operational necessity, the competing interests are balanced. (*Carlsbad Unified School District* (1979) PERB Decision No. 89; *Alameda Health System* (2023) PERB Decision No. 2856-M; *Clovis Unified School District* (1984) PERB Decision No. 389 (*Clovis*); *Regents of the University of California (Berkeley)* (1985) PERB Decision No. 534-H; *Simi Valley Unified School District* (2004) PERB Decision No. 1714 (*Simi Valley*); *Hilmar Unified School District* (2004) PERB Decision No. 1725; *Omnitrans* (2009) PERB Decision No. 2030-M; *County of Riverside* (2010) PERB Decision No. 2119-M (*Riverside*); *State of California (Department of Personnel Administration)* (2011) PERB Decision No. 2106a-S; *Jurupa Unified School District* (2012) PERB Decision No. 2283 (*Jurupa*); *Los Angeles Community College District* (2014) PERB Decision No. 2404; *County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M; *City & County of San Francisco* (2017) PERB Decision No. 2536-M; *Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C; *City of San Diego* (2020) PERB Decision No. 2747-M; *Claremont Unified School District* (2019) PERB Decision No. 2654.) If the interference with employee statutorily guaranteed rights outweighs the business justification for the employer conduct, a violation is found. (*State of California (Department of Corrections & Rehabilitation)* (2012) PERB Decision No. 2285-S.)

If the harm is inherently destructive of employee rights, the employer 's conduct will be excused only upon proof that it was caused by circumstances beyond its

control and no alternative course of action was available. (*County of Santa Clara* (2018) PERB Decision No. 2613-M, p. 8.) Courts have described the standard as:

“All [a charging party] must prove to establish an interference violation . . . is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that the employer’s conduct was not justified by legitimate business reasons.”

(*Public Employees Assn. v. Board of Supervisors* (1985) 167 Cal.App.3d 797.) The employer bears the burden of proof that its actions were necessary. (*Simi Valley, supra*, PERB Decision No. 1714.)

The Board has described the standard similarly under EERA, the Dills Act, HEERA, and MMBA to both employer interference and interference by employee organizations:

“[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under [EERA, Dills Act, HEERA, MMBA]”

(*Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106; *California State University, Sacramento* (1982) PERB Decision No. 211-H; *State of California (Department of Developmental Services)* (1982) PERB Decision No. 228-S; *Regents of the University of California (Berkeley)* (1983) PERB Decision No. 308-H; *State of California (Department of Developmental Services)* (1983) PERB Decision No. 344-S; *Regents of the University of California* (1997) PERB Decision No. 1188-H (*UC Regents*); *Regents of the University of California* (2006) PERB

Decision No. 1804-H; *Riverside, supra*, PERB Decision No. 2119-M; *Regents of the University of California (Irvine)* (2011) PERB Decision No. 2177-H; *City and County of San Francisco* (2011) PERB Decision No. 2206-M.)

Under the above test, a violation may be found only if the statute/HEERA provides the claimed rights. In *Clovis, supra*, PERB Decision No. 389, the Board held that a finding of coercion does not require evidence that the employee subjectively felt threatened, intimidated, or was actually discouraged from participating in protected conduct. (See also *City of Commerce* (2018) PERB Decision No. 2602-M.) The inquiry is objective; under the circumstances, would the employee reasonably be discouraged from engaging in the protected activity. (*Cabrillo Community College District* (2015) PERB Decision No. 2453.) The totality of circumstances is considered. (*Los Angeles Community College District* (1989) PERB Decision No. 748.)

An employee engages in protected activity when individually seeking to enforce rights stated in a collective bargaining agreement or when employees jointly prosecute alleged violations of workplace rights (*Jurupa, supra*, PERB Decision No. 2283.) The reporting of alleged cheating by teachers does not seek to enforce employee workplace rights or contract rights and is not protected activity (*Coachella Valley Unified School District* (2013) PERB Decision No. 2342.)

Interference is not limited to threats of reprisal or coercion. Interference may also be found when the employer promises a benefit. (*Regents of the University of California* (1983) PERB Decision No. 366-H; *The Regents of the University of California, supra*, PERB Decision No. 1188-H.)

Although a prima facie case of interference can be established without evidence of the employer's motive, motive may be examined as part of a respondent's affirmative defense, such as a legitimate business purpose. PERB has analyzed the proffered defense similar to a mixed motive discrimination case, determining not only whether the employer's stated justification is legitimate, but if it was the "but for cause"/real reason for the employer's action. Motive, and specifically whether the respondent's proffered motive is pretextual, may be an issue relevant to an employer's defense to an interference allegation. (*Trustees of The California State University (Northridge)* (2019) PERB Decision No. 2687-H, p. 4; *Community Learning Center Schools, Inc.* (2017) PERB Order No. Ad-448; *Regents of the University of California* (2012) PERB Decision No. 2300-H; *State of California (Department of Corrections & Rehabilitation)*, *supra*, PERB Decision No. 2285-S; *Regents of the University of California* (1984) PERB Decision No. 470-H.)

Picketing/Leafletting

PERB has long recognized the right of employees and employee organizations to picket, leaflet, and engage in other protected activity in public places. (*Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, pp. 43-44.) The Board has found non-disruptive picketing is collective activity protected constitutionally and under labor statutes because it is related to employees' ability to engage in union activities. (*San Marcos Unified School District* (2003) PERB Decision No. 1508, p. 29 (*San Marcos*); *Hilmar Unified School District* (2004) PERB Decision No. 1725, p. 12.) PERB has interpreted the public sector labor laws it administers to protect speech activities more than that afforded

under the National Labor Relations Act (NLRA). (*County of Riverside* (2012) PERB Decision No. 2233-M, p. 7 (*Riverside*); *Regents of the University of California, Lawrence Livermore National Laboratory* (1982) PERB Decision No. 212-H, pp. 13-14 (UC/LLNL); *UCLA Medical Center* (1983) PERB Decision No. 329-H, p. 8 (*UCLA MC*).)

Collective picketing/leafletting activity is presumed to be protected, and the employer bears the burden of demonstrating justifiable concerns about disruption. (*Riverside, supra*, PERB Decision No. 2233-M, pp. 7-8; *UC/LLNL, supra*, PERB Decision No. 52-53.) The employer must show that any restriction is both necessary to its efficient or safe business operations, and narrowly drawn to avoid overbroad, unnecessary interference with the exercise of statutory rights. (*Riverside, supra*, PERB Decision No. 2233-M, p. 7; *UCLA MC, supra*, PERB Decision No. 329, p. 53; *Regents of the University of California* (2004) PERB Decision No. 1700-H, p. 2; *San Marcos, supra*, PERB Decision No. 1508, p. 27; *State of California (Employment Development Department)* (1999) PERB Decision No. 1365-S, pp. 10-11; *San Ramon Valley Unified School District* (1982) PERB Decision No. 230, p. 13.)

The Board has adopted the National Labor Relations Board (NLRB) standard for alleged picket line misconduct. The test is objective: whether the misconduct may reasonably tend to coerce or intimidate employees in the exercise of their statutory rights to refrain from participating in the collective activities. Threats of physical violence and bodily injury are unlawful, but name-calling and abusive, vulgar language or epithets are not. Isolated, short delays in getting to and from the worksite caused by picketing which are not accompanied by violence, threats, or menacing gestures

are not unlawful coercion; neither are photographing and recording license plate numbers if isolated, non-violent, and not in a menacing, coercive atmosphere.

(Fresno Unified School District (1982) PERB Decision No. 208, pp. 12-14.)

Analysis/The Merits

It is undisputed, and Respondent CSU/CSUSD admitted in its answer, that during the December 3, 2021 informational picketing, CSUSD police officers prohibited the use of sticks attached to Charging Party Teamsters' picket signs, and directed their removal. The "No Sticks" orders of Lt. Robertson and Sgt. Dupree were purportedly based on the CSUSD Building & Grounds Regs. for Signs. That policy, however, as the two officers admitted in testimony, only prohibits staked signs inside campus facilities, and allows picket signs with sticks to be carried at outdoor demonstrations subject to size limitations. The uncontroverted evidence demonstrates that the same sized picket signs with sticks were used at past Teamsters' rallies at the other 21 CSU campuses and CSU headquarters without incident, and the December 3 Teamsters picket signs with sticks complied with the thickness and width requirements of the CSUSD Building & Grounds Regs.

CSU/CSUSD has not met its burdens of proof and persuasion to show any other operational necessity, business justification, and/or disruption to support its "No Sticks" restriction on the Teamsters' December 3, 2021 picketing activity at CSUSD. The picketing occurred during bargaining unit 6 employees' lunch hour for less than 30 minutes in a public area. Lt. Robertson and Sgt. Dupree admitted there was no observable threatening, unsafe, and/or violent conduct. No evidence was presented that entrance to or exit from the Alumni Center was affected in any way.

For all of the foregoing reasons, Teamsters has met its burdens of proof and persuasion that CSU/CSUSD's "No Sticks" directive unlawfully interfered with CSUSD bargaining unit 6 Skilled Crafts/Trades employees' HEERA-guaranteed rights to engage in collective, peaceful informational picketing on December 3, 2021 in violation of HEERA section 3571, subdivision (a). By this same conduct, CSU/CSUSD denied Teamsters its right to represent unit 6 members in violation of section 3571, subdivision (b).

REMEDY

The Legislature has vested PERB with broad authority to decide what remedies are necessary to effectuate the purposes and policies of HEERA and the other statutes it administers. (Section 3563.3; *Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178.) This remedial authority includes ordering a party to cease and desist from conduct that violates HEERA, as well as requiring affirmative actions designed to effectuate the statute's purposes. (*City of Torrance* (2008) PERB Decision No. 1971-M, pp. 28-29.) PERB remedies must serve the dual purposes of compensation for the harm a violation causes and deterrence of future violations. (*County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053; *Bellflower Unified School District* (2022) PERB Decision No. 2544a, p. 26.)

A properly designed remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair practice. (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68; *County of Sacramento* (2008) PERB Decision No. 1943-M; *Desert Sands Unified School*

District (2004) PERB Decision No. 1682; *Santa Clara Unified School District* (1979) PERB Decision No. 104.) Although remedial orders may rely on estimates, that is preferable to allowing uncertainty caused by unlawful conduct to leave an unfair practice without an effective remedy. (*City and County of San Francisco* (2023) PERB Decision No. 2858-M; *Bellflower Unified School District* (2021) PERB Decision No. 2796; *Lodi Unified School District* (2020) PERB Decision No. 2723; *City of Pasadena* (2014) PERB Order No. Ad-406-M.)

A finding that an unfair practice has been committed creates a presumption that employees suffered some loss due to the employer's unlawful conduct, and normally results in an opportunity for a charging party to establish in compliance proceedings that the offending conduct caused harm. Teamsters will therefore have an opportunity to establish in compliance proceedings that any bargaining unit 6 Skilled Crafts/Trades employees at CSUSD suffered losses as a result of the improper "No Sticks" restriction on their December 3, 2021 informational picketing. (*County of Santa Clara* (2021) PERB Decision No. 2799-M, pp. 15-16; *Regents of the University of California* (2021) PERB Decision No. 2783-H, p. 30.)

It is appropriate to order CSU/CSUSD to cease and desist from the unlawful conduct found in this proposed decision and to post physical and electronic notices of its violation, standard remedies in unfair practice cases. (*City of Sacramento* (2013) PERB Decision No. 2351-M, pp. 44-45; *Omnitrans* (2010) PERB Decision No. 2143-M, p. 8; *Regents of the University of California* (1998) PERB Decision No. 1263-H; *Chula Vista City School District* (1990) PERB Decision No. 834; *Trustees of the California State University* (1987) PERB Decision No. 613-H; *Rio Hondo*

Community College District (1983) PERB Decision No. 292; *Placerville Union School District* (1978) PERB Decision No. 69.)

Teamsters also seek a “spoken notice reading,” for bargaining unit 6 Skilled Crafts/Trades employees at CSUSD, a non-standard remedy that is warranted when customary remedies are insufficient. (*Mt. San Jacinto Community College District* (2023) PERB Decision No. 2865, p. 42 (*Mt. San Jacinto*); *Regents of the University of California* (2021) PERB Decision No. 2755-H, p. 56.) The Board has declined to order spoken notice in two cases (*County of San Joaquin (Sheriff’s Department)* (2018) PERB Decision No. 2619-M, p.14, fn. 14; *Alliance College-Ready Public Schools* (2017) PERB Decision No. 2545, pp. 17-18), but recently granted this remedy in *Mt. San Jacinto*, a discrimination/retaliation case involving the removal of two community college department chairpersons. (*Mt. San Jacinto, supra*, PERB Decision No. 2545, pp. 42-43, fn. 23.) *Mt. San Jacinto* is distinguishable because of its findings of the employer’s unlawful motive, its refusal to recognize the re-election of the department chairs, and other egregious conduct. The above customary remedies are adequate to resolve the unfair practices found in this case.

Finally, Teamsters request that CSUSD police officers receive training provided by PERB on union and employees’ HEERA rights, including the right to engage in informational picketing. This remedy is too vague to implement and is unsupported by any legal authority. As with the spoken notice reading, the foregoing traditional PERB remedies are sufficient to resolve the violations established here.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (SAN DIEGO) (CSU/CSUSD) violated the Higher Education Employer Employee Relations Act (HEERA), Government Code section 3560 et seq., on December 3, 2021 by prohibiting sticks attached to TEAMSTERS LOCAL 2010 (Teamsters) picket signs that comply with campus policy, thereby interfering with CSUSD bargaining unit 6 Skilled Crafts/Trades employees' rights to engage in collective, peaceful informational picketing in violation of HEERA section 3571, subdivision (a). By this same conduct, CSU/CSUSD denied Teamsters its right to represent unit employees in violation of section 3571, subdivision (b).

Pursuant to HEERA section 3563.3, it is hereby ORDERED that CSU/CSUSD and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with bargaining unit 6 Skilled Crafts/Trades employees' HEERA-guaranteed rights to engage in informational picketing by prohibiting picket signs with sticks that meet campus policy requirements.

2. Denying Teamsters its right to represent unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Make CSUSD bargaining unit 6 Skilled Crafts/Trades employees whole for any losses suffered as a result of CSU/CSUSD's unlawful interference with their statutory rights to engage in informational picketing on December 3, 2021. Any

compensation awarded shall be augmented by interest at the rate of seven percent (7%) per year.

2. Within 10 workdays of the service of a final decision in this matter, post at all CSU campus work locations where notices to bargaining unit 6 Skilled Crafts/Trades employees represented by Teamsters are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSU/CSUSD, indicating that CSU/CSUSD will comply with the terms of this Order. Such postings shall remain in place for a period of 30 consecutive workdays. CSU/CSUSD shall take reasonable steps to ensure that the Notice is not altered, defaced or covered with any other material. In addition to physically posting this Notice, CSU/CSUSD shall also post it by electronic message, intranet, internet site, and other electronic means CSU/CSUSD uses to communicate with Teamsters-represented unit employees.¹⁷

3. Notify OGC of the actions CSU/CSUSD has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on Teamsters.

RIGHT OF APPEAL

A party may appeal this proposed decision by filing with the Board itself a statement of exceptions within 20 days after the proposed decision is served. (PERB

¹⁷ Either Teamsters or CSU/CSUSD may ask the PERB OGC to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice. (*Mt. San Jacinto, supra*, PERB Decision No. 2865, p. 45, fn. 24.)

Reg. 32300.) If a timely statement of exceptions is not filed, the proposed decision will become final. (PERB Reg. 32305, subd. (a).)

The statement of exceptions must be a single, integrated document that may be in the form of a brief and may contain tables of contents and authorities, but may not exceed 14,000 words, excluding tables of contents and authorities. Requests to exceed the 14,000-word limit must establish good cause for exceeding the limit and be filed with the Board itself and served on all parties no later than five days before the statement of exceptions is due. PERB Regulation 32300, subdivision (a), is specific as to what the statement of exceptions must contain. Non-compliance with the requirements of PERB Regulation 32300 will result in the Board not considering such filing, absent good cause. (PERB Reg. 32300, subd. (d).)

The text of PERB's regulations may be found at PERB's website:

www.perb.ca.gov/laws-and-regulations/.

A. Electronic Filing Requirements

Unless otherwise specified, electronic filings are mandatory when filing appeal documents with PERB. (PERB Reg. 32110, subd. (a).) Appeal documents may be electronically filed by registering with and uploading documents to the "ePERB Portal" that is found on PERB's website: <https://eperb-portal.ecourt.com/public-portal/>. To the extent possible, all documents that are electronically filed must be in a PDF format and text searchable. (PERB Reg. 32110, subd. (d).) A filing party must adhere to electronic service requirements described below.

B. Filing Requirements for Unrepresented Individuals

Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents as specified above; however, such individuals may also submit their documents to PERB for filing via in-person delivery, US Mail, or other delivery service. (PERB Reg. 32110, subds. (a) and (b).) All paper documents are considered “filed” when the originals, including proof of service (see below), are actually received by PERB’s Headquarters during a regular PERB business day. (PERB Reg. 32135, subd. (a).) Documents may be double-sided, but must not be stapled or otherwise bound. (PERB Reg. 32135, subd. (b).)

The Board’s mailing address and contact information is as follows:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
Telephone: (916) 322-8231

C. Service and Proof of Service

Concurrent service of documents on the other party and proof of service are required. (PERB Regs. 32300, subd. (a), 32140, subd. (c), and 32093.) A proof of service form is located on PERB’s website: www.perb.ca.gov/about/forms/. Electronic service of documents through ePERB or e-mail is authorized only when the party being served has agreed to accept electronic service in this matter. (See PERB Regs. 32140, subd. (b), and 32093.)

D. Extension of Time

An extension of time to file a statement of exceptions can be requested only in some cases. (PERB Reg. 32305, subds. (b) and (c).) A request for an extension of

time in which to file a statement of exceptions with the Board itself must be in writing and filed with the Board at least three calendar days before the expiration of the time required to file the statement of exceptions. The request must indicate good cause and, if known, the position of each of the other parties regarding the request. The request shall be accompanied by proof of service of the request upon each party. (PERB Reg. 32132.)



**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**

After a hearing in Unfair Practice Case No. LA-CE-1370-H, *Teamsters Local 2010 (Teamsters) v. Trustees of the California State University (San Diego)* (CSU/CSUSD), in which all parties had the right to participate, it has been found that CSU/CSUSD violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3560 et seq. by prohibiting sticks attached to Teamsters' picket signs that comply with campus policy during December 3, 2021 bargaining unit 6 Skilled Crafts/Trades informational picketing at CSUSD.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Interfering with bargaining unit 6 Skilled Crafts/Trades employees' HEERA-guaranteed rights to engage in protected informational picketing by prohibiting picket signs with sticks meeting campus policy requirements.
2. Denying Teamsters its right to represent unit employees.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF HEERA:

1. Make CSUSD bargaining unit 6 Skilled Crafts/Trades employees whole for any losses suffered as a result of CSU/CSUSD's interference with their statutory right to engage in informational picketing on December 3, 2021. Any compensation awarded shall be augmented by interest at the rate of seven percent (7%) per year.

Dated: _____

Trustees of the California State University

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, Sacramento Regional Office, 1031 18th Street, Sacramento, CA, 95811-4124.

On September 25, 2023, I served the Proposed Decision regarding *Teamsters Local 2010 v. Trustees of the California State University (San Diego)*, Case No. LA-CE-1370-H on the parties listed below by

I am personally and readily familiar with the business practice of the Public Employment Relations Board for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Sacramento, California.

Personal delivery.

Electronic service (e-mail).

Susan Garea, Attorney
Beeson, Tayer & Bodine
492 Ninth Street, Suite 350
Oakland, CA 94607
Email: sgarea@beesontayer.com

Diva M. Sanchez Trevino, Manager, Labor Relations
California State University Chancellor's Office
401 Golden Shore
Long Beach, CA 90802-4210
Email: dsancheztrevino@calstate.edu

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 25, 2023, at Sacramento, California.

Henry Stevens

(Type or print name)

Henry Stevens

(Signature)