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8 STATE OF CALIFORNIA
9
10 PUBLIC EMPLOYMENT RELATIONS BOARD

11
12 COUNTY OF SAN LUIS OBISPO,
13
14 and
15 SAN LUIS OBISPO COUNTY EMPLOYEES'
ASSOCIATION

Injunctive Relief Request No.
Case No.:
COUNTY OF SAN LUIS OBISPO'S
REQUEST FOR INJUNCTIVE RELIEF¹

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26 ¹ In accordance with PERB Regulations, this request is filed with the General Counsel at PERB's headquarters office located
27 in Sacramento, California. Likewise, pursuant to the Regulations of PERB, this request for injunctive relief is accompanied
28 by a statement of reasons explaining why injunctive relief is appropriate; a copy of the unfair practice charge filed by the
County against SEIU; Declarations, based on personal knowledge, setting forth in detail the facts underlying the Request for
Injunctive Relief; a Proof of Service on counsel for SEIU; and a Declaration of Notice (see Declaration of Jeff Sloan, filed
herewith).

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1 **I. INTRODUCTION**

2 Pursuant to Sections 3509 and 3541.3(j) of the California Government Code, and Article 5,
3 Section 32450, et seq., of the Regulations of the Public Employment Relations Board (“PERB”), the
4 County of San Luis Obispo (“County”) hereby requests that PERB seek a court order enjoining
5 “essential” employees from participating in any strike or work stoppage called by the San Luis Obispo
6 County Employees’ Association (“SLOCEA”). On or about November 16, 2018, SLOCEA notified the
7 County that SLOCEA may strike any time after November 29, 2018. Since that time SLOCEA has
8 clarified that any strike will occur between December 4 and 11, 2018, and last up to three (3) days.
9 However, despite repeated requests, SLOCEA has refused to provide the County with the exact date and
10 length of the threatened strike.

11 Because SLOCEA has not provided the County with the beginning date of a strike or its length,
12 the County is limited in its ability to plan for the strike. The County is also limited in its ability to predict
13 the staffing necessary for essential positions as staffing would necessarily fluctuate depending on the
14 length of any strike and when it occurred during the week. For example, a three-day strike immediately
15 before or after a weekend poses a different threat than a one-day strike occurring on a Tuesday,
16 Wednesday, or Thursday. Based on the limited information provided by SLOCEA, in making this request
17 for injunctive relief the County has assumed a strike of three (3) days immediately before or after a
18 weekend. If a strike were to last longer than three days, the County reserves the right to file a supplemental
19 request for injunctive relief.

20 In making this request for injunctive relief, the County has made every effort to focus solely on
21 those employees whose duties are essential to maintaining public health and safety. As demonstrated
22 below, without a minimum number of these essential employees, public health and safety will be
23 threatened. Accordingly, the County respectfully requests that PERB act promptly to seek to enjoin
24 essential employees from participating in any strike called by SLOCEA.

25 **II. ESSENTIAL EMPLOYEES SUBJECT TO THIS REQUEST**

26 A strike by employees in these units constitutes an unfair practice because these units contain
27 employees who provide services essential to public health and safety. Under *County Sanitation District*
28 *No. 2 of Los Angeles v. Los Angeles County Employees Assn.* (1985) 38 Cal. 3d 564, 586 and PERB

precedent, a strike that threatens public health and safety is unlawful and constitutes an unfair practice under the Meyers-Milias-Brown Act.

Here, the employees who constitute essential employees for protecting public health and safety include:

No.	Department	Classification	Number Needed/Day
1.	Airport	Operations Specialist	1
2.	Airport	Maintenance Worker	3
3.	Airport	Operations Supervisor	1
4.	Animal Control	Officer	3
5.	Animal Control	Animal Care Technician	2
6.	Animal Control	Admin Asst III	1
7.	Child Support Services	Family Support Officer	2
8.	Child Support Services	Supervising Family Support Officer	1
9.	Child Support Services	Supervising Legal Clerk	1
10.	Child Support Services	Legal Clerks	1
11.	Social Services	Social Workers	8
12.	Social Services	Employment Resource Specialists	6
13.	Social Services	Fiscal Staff	3
14.	District Attorney	Supervising Legal Clerk	2
15.	District Attorney	Automation Specialist	1 on call
16.	Jail	Correctional Nurse	4
17.	Jail	LPT/LVN	8
18.	Jail	Behavioral Health Clinician	1
19.	Juvenile Services Center	Correctional Nurse	2
20.	Juvenile Services Center	Nurse Practitioner	1
21.	Public Health	Microbiologist	3
22.	Public Health	Senior Account Clerk	1
23.	Public Health	Public Health Nutritionist	2
24.	Public Health	Aide	3
25.	Public Health	Admin Asst III	1
26.	Public Health – Johnson	Nurse	2
27.	Public Health – Johnson	Nurse Practitioner	1
28.	Public Health	Environmental Health Specialist	3
29.	Planning & Building	Building Inspectors	6 on-call
30.	Parks Lopez Lake	EMT	1
31.	Parks Santa Margarita Lake	EMT	1
32.	Parks Santa Margarita Lake	Park Workers III	1 on-call

No.	Department	Classification	Number Needed/Day
33.	Parks Lopez Lake	Park Ranger III	2
34.	Parks Santa Margarita Lake	Park Ranger III	2
35.	Information Technology	Communications Technician	3
36.	Probation (Case Loma)	Legal Clerk	2
37.	Probation (JCS)	Legal Clerk	1
38.	Probation (Case Loma)	Supervising Automation Specialist	1 on-call
39.	Lopez Facilities	Water Systems Worker	2
40.	Cayucos Distribution	Chief Plant Operator	1
41.	Nacimiento/Salinas	Water Systems Worker	2
42.	Santa Margarita	Water Systems Worker	1
43.	Los Osos	Waste Water Worker	2
44.	Los Osos	Chief Plant Operator	1
45.	SLO County Club	Supervising Waste Water Worker	1
46.	Countywide	Water Quality Manager	1
47.	Los Osos Landfill	Civil Engineering Tech	1 on-call
48.	Behavioral Health	Behavioral Health Clinician	1
49.	Behavioral Health	Psychiatric Tech	8
50.	Behavioral Health	Registered Nurse	1
51.	Behavioral Health	Admin Assistants	1
52.	Behavioral Health	Behavioral Health Worker	3
53.	Behavioral Health	Behavioral Health Supervisor	2
54.	Behavioral Health	Behavioral Health Clinician	3
55.	Behavioral Health	Psychiatric Technician	3
56.	Behavioral Health (Adult Outpatient)	Health Technician	3
57.	Behavioral Health (Youth Outpatient)	Behavioral Health Clinician	3
58.	Behavioral Health (Youth Outpatient)	Psychiatric Technician	3
59.	Behavioral Health (Youth Outpatient)	Health Technician	3
60.	Behavioral Health (Managed Cases)	Behavioral Health Clinician	1
61.	Behavioral Health (Managed Cases)	Admin Assist	1
62.	Behavioral Health (DAS and DUI)	Behavioral Health Clinician	3
63.	Behavioral Health (DAS and DUI)	Psychiatric Technician	2

No.	Department	Classification	Number Needed/Day
64.	Behavioral Health (DAS and DUI)	Admin Assist	4
65.	Behavioral Health (DAS and DUI)	Behavioral Health Specialist	4
66.	Behavioral Health (DAS and DUI)	Health Information Technician	1
67.	Jail	Correctional Technician	10-12
68.	Sheriff (Patrol)	Legal Clerk	3
69.	Sheriff (Coroner)	Legal Clerk	1
70.	Sheriff (Jail Administration)	Legal Clerk	1
71.	Sheriff (Records)	Legal Clerk	2
72.	Sheriff (Civil)	Legal Clerk	2
73.	Sheriff (Crime Lab)	Legal Clerk	1
74.	Sheriff (Detectives)	Legal Clerk	1
75.	Sheriff (Cook)	Cooks	5
76.	Sheriff	Lab Assistant	1
77.	Sheriff	Storekeeper	1
78.	Sheriff	Automation Specialist	2 on-call
Total			180-182
			12 On-Call

In summary, the County is seeking to enjoin 180-182 essential employees from any strike, and to further place 12 essential employees on-call during any strike. When compared to the 1,700 employees in the bargaining unit represented by SLOCEA, this request is reasonable.

In bringing this Request for Injunctive Relief, the County has made efforts to only include those positions that are clearly essential under *County Sanitation*. In addition, given the failure of SLOCEA to provide the exact dates of the strike, the County must assume the worst: a three-day strike either immediately before or after a two-day weekend. In the event a strike lasts longer than three days or other unforeseen circumstances occur, the County reserves the right to supplement this UPC to seek to enjoin additional essential positions.

1 **III. RELEVANT FACTS**

2 **A. SLOCEA PROVIDES INDEQUATE NOTICE OF “PENDING PROTECTED**
3 **CONCERTED LABOR ACTIONS”**

4 On or about November 16, 2018, Pat McNamara, General Manager for SLOCEA, sent the County
5 a “Notice of Pending Protected Concerted Labor Actions.” In the notice, SLOCEA made a “final”
6 demand for resolving the contract dispute between the parties. The notice states that if the County rejects
7 the demand or fails to respond by the end of business on November 29, 2018, “**protected concerted**
8 **labor actions will commence shortly thereafter. Moreover, if concerted labor actions do commence,**
9 **SLOCEA considers all the employees in its represented classifications to be eligible to assert their**
10 **right to participate in such activity.”** (Exhibit 1 (emphasis added) to Declaration of Jeff Sloan.)

11 On November 19, 2018, the County responded to SLOCEA’s notice (Exhibit 2 to Declaration of
12 Jeff Sloan.) The County informed SLOCEA that it considered the notice improper and unlawful based
13 on several grounds. First, the notice clearly covers all employees despite the fact that the bargaining units
14 at issue contain employees who are essential to public health and safety. Thus, SLOCEA’s notice
15 threatens an illegal strike in violation of *County Sanitation Dist. No. 2 v. Los Angeles County Employees’*
16 *Ass’n.* (1985) 38 Cal.3d 564.

17 Since the County’s response to SLOCEA, the parties have engaged in further communications.
18 As of the filing of this unfair practice charge, SLOCEA has stated that the strike is scheduled for three
19 (3) days sometime between December 4 and 11, 2018. (Exhibit 3 to Declaration of Jeff Sloan.)

20 **IV. THE RELIEF SOUGHT**

21 For the reasons set forth in this Request, the County requests that PERB petition a court of
22 appropriate jurisdiction to enjoin these essential employees from participating in any strike by SLOCEA.
23 Specifically, the County asks that PERB seek a temporary restraining order:

- 24 1. Enjoining SLOCEA and its agents from requesting, encouraging, condoning, aiding, or
25 ratifying any strike, work stoppage, or picketing by any County employee whose absence
26 from work would pose an imminent threat to public health and safety, unless and until the
27 Court determines that injunctive relief is no longer just and proper under the
28 circumstances;

- 1 2. Enjoining SLOCEA bargaining unit members whose absence from work would pose an
- 2 imminent threat to public health and safety from engaging in any strike, sympathy strike,
- 3 work stoppage, or picketing unless and until the Court determines that injunctive relief is
- 4 no longer just and proper under the circumstances; and
- 5 3. Directing SLOCEA and its agents to rescind and withdraw any notice of a threatened
- 6 strike that includes any County employee whose absence from work would pose an
- 7 imminent threat to public health and safety.

8 **V. INJUNCTIVE RELIEF IS NECESSARY AND PROPER**

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

15 **A. THERE IS “REASONABLE CAUSE” TO BELIEVE SLOCEA STRIKE**
16 **CONSTITUTES AN UNFAIR PRACTICE**

17 The “reasonable cause” standard imposes a minimal burden of proof on a party requesting
18 injunctive relief under one of the public employment labor relations statutes. (*Modesto City School*
19 *District, supra*, 136 Cal.App.3d at pp. 896-897.) In *Modesto*, the court stated:

20 [i]n construing whether there is reasonable cause to believe an unfair labor
21 practice has been committed, it has been stated that PERB is required to
22 sustain a minimal burden of proof: ‘It need not establish an unfair labor
 practice has in fact been committed, nor is the court to determine the merits
 of the case.’ [Citation.]

23 (*Ibid.*) The question is not whether the unfair practice theory will eventually prevail, but “whether it is
24 insubstantial or frivolous.” (*City of San Joaquin (Health Care Services)* (2001) PERB Order No. IR-55-
25 M.) As discussed below, the “reasonable cause” prong is easily established here because a strike that
26 includes certain “essential” employees would pose a substantial and imminent threat to public health and
27 safety.

1 **1. PERB Must Apply the Case Specific County Sanitation Standard**

2 In California, a strike by public employees is illegal when the employees perform essential
3 services such that the “strike creates a substantial and imminent threat to the health or safety of the
4 public.” (*County Sanitation Dist. No. 2 of Los Angeles v. Los Angeles City Employees Assn.* (1985) 38
5 Cal.3d 564, 586; *City and City of San Francisco v. United Assn. of Journeymen etc. of United States &*
6 *Canada* (1986) 42 Cal.3d 810, 813.) A strike that endangers public health and safety is an illegal pressure
7 tactic that may constitute an unfair practice. (*City of San Jose v. Operating Engineers Local Union No. 3*
8 (2010) 49 Cal.4th 597, 606-607; see *San Diego Teachers Assn. v. Superior Court* (1979) 24 Cal.3d 1, 8
9 [a strike used as an illegal pressure tactic is an unfair practice].)

10 PERB is bound to follow the California Supreme Court’s *County Sanitation* decision. (Gov. Code,
11 § 3509(b).) In that decision, the Court clearly stated that whether a strike by public employees poses “a
12 substantial and imminent threat to the health or safety of the public” – and thus whether certain “essential
13 employees” may strike – is to be determined on a case-by-case basis. (38 Cal. 3d at p. 586.)

14 **2. County Sanitation Requires the Employer to Demonstrate Risk of Harm to**
15 **Public Health and Safety, Not Actual Harm**

16 *County Sanitation* provides little guidance as to what constitutes a threat to public health and
17 safety. Nonetheless, in adopting the public health and safety exception, the Court relied upon similar
18 standards under federal law and the law of other states. (38 Cal.3d at p. 585.) In these other jurisdictions,
19 courts have defined a threat to public health and safety quite broadly. Specifically, those jurisdictions
20 only require the party seeking the injunction to demonstrate that the strike poses a risk to public health
21 and safety, not that actual harm will come to citizens.

22 In the federal arena, the Labor Management Relations Act gives the President authority to seek
23 an injunction against a strike that “affects an entire industry or a substantial part thereof” and “if permitted
24 to occur or to continue, will imperil the national health or safety.” (29 U.S.C. § 178(a).) Courts
25 interpreting this statute have interpreted “national health and safety” broadly. (*U.S. v. Portland*
26 *Longshoremen’s Benevolent Soc.* (D. Me. 1971) 336 F.Supp. 504, 505; *U.S. v. International*
27 *Longshoremen’s Assn.* (S.D.N.Y. 1968) 293 F.Supp. 97, 103-104.) For example, in *United States v.*
28 *National Marine Engineers’ Beneficial Assn.* (2d Cir. 1961) 294 F.2d 385, the court found a port strike

1 that would deprive the country of “an adequate supply of petroleum products” posed a threat to national
2 health or safety. (*Id.* at p. 387.) Similarly, in *Portland Longshoremen’s Benevolent Society, supra*, the
3 court enjoined a port strike not only on the basis that it would affect “essential military cargo” but also
4 that it would impact food shipments, cause unemployment, and hurt foreign trade relations. (336 F.Supp.
5 at p. 506.) Clearly, the federal courts have not limited public health and safety to considerations of actual
6 physical harm.

7 Pennsylvania cases interpreting the state labor relations statute cited in *County Sanitation* take a
8 similarly broad view of public health and safety. Under Pennsylvania law, a strike by public employees
9 may be enjoined when it “creates a clear and present danger or threat to the health, safety or welfare of
10 the public.” (43 Pa.Stat.Ann. § 1101.1003.) In *Jersey Shore Area School Dist. v. Jersey Shore Educ. Assn.*
11 (Pa. 1988) 548 A.2d 1202, the Pennsylvania Supreme Court affirmed a lower court’s injunction against
12 a teachers’ strike that would have cost the district state subsidies, placed the district’s schools at a
13 competitive disadvantage in state-wide testing, placed seniors at a competitive disadvantage for college
14 admissions, and deprived eligible students of a free, hot lunch. (*Id.* at p. 1205.) In *Bristol Township Educ.*
15 *Assn. v. School Dist. of Bristol* (Pa. Commw. 1974) 322 A.2d 767, the court affirmed an injunction against
16 a teachers’ strike solely on the basis of loss of state subsidies. (*Id.* at p. 770.) In neither of these cases did
17 the school district argue, nor did the court find it necessary for issuance of an injunction, that students
18 were likely to suffer – or even were at risk of – physical harm.

19 Particularly instructive is the Pennsylvania Supreme Court’s decision in *Masloff v. Port Authority*
20 *of Allegheny Cty.* (Pa. 1992) 613 A.2d 1186, which affirmed an injunction of a transit strike on the ground
21 that increased traffic congestion would adversely affect the provision of police, fire, and emergency
22 medical services. (*Id.* at p. 1191.) The court did not require the Port Authority to allege or prove that
23 citizens would suffer actual harm. Instead, it was sufficient that the strike placed citizens at risk of
24 physical harm.

25 In determining whether an employee’s absence during a strike poses a threat of harm, the Second
26 Circuit appropriately noted: “[a]ctual harm to patients is not the issue. The appropriate inquiry is focused
27 on the risk of harm, not its realization.” (*NLRB v. Special Touch Home Care Services, Inc.* (2d Cir. 2013)
28 708 F.3d 447, 460.) Based on the authorities cited by the *County Sanitation* and the cases that follow that

1 decision, “public health and safety” should be given a broad interpretation that supports an injunction
2 whenever the particular circumstances put the public at risk of harm. The moving party should not be
3 required to show actual harm to particular individuals from the strike, just as no moving party was
4 required to do in the cases cited above. Accordingly, PERB should adopt an interpretation of *County*
5 *Sanitation* that errs on the side of protecting the public from the risk of harm from a strike by employees
6 who ensure their water and air are not toxic, and who help protect them and their public safety officers
7 from violent criminals.

8 **3. Replacement Workers Are Not Available for These Essential Positions**

9 PERB has noted that in *County Sanitation*, the sanitation district was able to maintain operations
10 during an 11-day strike “through the efforts of management personnel and certain union members who
11 chose not to strike.” (38 Cal. 3d at p. 568.) Later, the Court noted “had the availability of replacement
12 personnel been insufficient to maintain a reasonable sanitation system,” the district may have been able
13 to show a threat to public health and safety. (*Id.* at p. 587.) From this meager authority, PERB has, in
14 other strike situations, examined the availability of replacement workers.

15 Although the County believes that nothing in *County Sanitation* suggests that reliance on
16 replacements workers is appropriate, the issue is moot in this case because there simply are no
17 replacements workers available for the type of positions at issue. This is because all of the positions
18 require training, and some require certifications, that are simply unavailable with replacements. In those
19 few positions (e.g., nurses) where replacements *might* be available, other factors such as the need to
20 conduct background investigations for employees in the jail prevent the use of replacements on such short
21 notice.

22 **4. The Absence of Essential Employees Poses A Substantial and Imminent**
23 **Threat to Public Health and Safety Under the Proper *County Sanitation***
24 **Standard**

25 Applying the *County Sanitation* standard, the accompanying declarations paint a vivid portrait of
26 the threatened danger and injury that can occur if vital medical services are interrupted for even a single
27 day. For example, it cannot be disputed that the County’s airport operations are highly regulated and that
28 a strike by essential employees at the airport poses an imminent threat to the public. The same applies to
the County’s water quality and wastewater operations. With respect to the County’s jail, juvenile

1 facilities, and locked psychiatric facility, these clearly constitute situations where employees are
2 essential. These facilities maintain individuals who cannot seek services elsewhere and for whom the
3 County bears responsibility. Because of the nature of these facilities, replacements are not available.

4 These are just a few examples of the essential positions at issue in this request. Full details
5 supporting the County’s requests are set forth in the individual declarations submitted as part of this
6 injunctive relief request.

7 Given the limited time available to make this request because of the upcoming holidays, the
8 County will rely directly on the attached declarations in lieu of repeating the same information here.

9 To the extent PERB requires any additional information in support of the County’s requests, the
10 County will be available throughout the coming days, including over the holidays, to respond to PERB’s
11 inquiries.

12 For all these reasons, as detailed in the declarations filed with this request, the County submits
13 that the requested employees must be found to be essential to public health and service.

14 **B. THE REQUESTED INJUNCTIVE RELIEF IS “JUST AND PROPER”**

15 Once it is found that there is reasonable cause to believe that an unfair practice has been, or is
16 being, committed, PERB and a reviewing court must confirm that the requested injunctive relief is “just
17 and proper,” i.e., that the purpose of the Act would be frustrated absent the requested relief. (*Modesto*
18 *City School District, supra*, 136 Cal.App.3d at p. 903; *Fremont Unified School District* (1990) PERB
19 Order No. IR-54.) In determining whether injunctive relief was appropriate under EERA, the Modesto
20 court stated:

21 “[t]his [just and proper] standard has often been described: ‘[Where] there
22 exists a probability that the purposes of the Act will be frustrated unless
23 temporary relief is granted . . . [or] the circumstances of a case create a
24 reasonable apprehension that the efficacy of the Board’s final order may be
25 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.]

26 (*Id.* at p. 902, quoting *Agricultural Labor Relations Bd. v. Ruline Nursery Co.* (1981) 115 Cal.App.3d
27 1005, 1015.)

1 More specifically, a court must enjoin a public employee strike where the striking employees are
2 “workers whose ‘particular jobs ... require unique skills and training,’ and ‘whose absence from their
3 duties would clearly endanger public health and safety.’” (*Sonoma City Organization of Public/Private*
4 *Employees v. City of Sonoma* (1991) 1 Cal.App.4th 267, 279; *City of Santa Ana v. Santa Ana Police*
5 *Benevolent Assn.* (1989) 207 Cal.App.3d 1568, 1572.) In deciding whether to enjoin a public employee
6 strike, courts must err on the side of protecting public health and safety. As the court noted in *City of*
7 *Santa Ana, supra*:

8 [o]n most days, a work slowdown or stoppage by the police will not pose a
9 threat to the public health or safety. On good days, there are no murders,
10 no gridlock, and no chemical spills. A work slowdown by the graveyard
11 shift on a quiet night might never be noticed. How wonderful hindsight.
12 Appellate courts can look back months or years and conclude that a police
13 strike did or did not imperil public safety. Unfortunately, trial judges asked
14 to enjoin police strikes are not blessed with clairvoyant powers—they
15 cannot foresee an earthquake, a madman's shooting spree or a riot. If a
16 disaster occurs during a police slowdown or strike, the inevitable
17 investigation which will follow will undoubtedly point to the absent
18 dispatcher or tardy patrol car as a cause. In the words of Milton, “They also
serve who only stand and wait.” When a city is required to use the service
of every officer who has already worked the night shift to meet the demands
of the day shift, the obvious threat to public safety hardly merits discussion.
The association presents the issue in their brief by asking: “May police
officers lawfully engage in a short-term sick-out during labor negotiations
if the concerted job action is conducted in such a manner as to allow for
adequate staffing?” This framing of the issue begs the question. To argue
that using officers who have already worked a shift constitutes adequate
staffing is hokum.

19 (207 Cal.App.3d at pp. 1571-1573.) Similarly, the court in *Sonoma City Organization of Public/Private*
20 *Employees, supra*, stated: “[t]he forecasting of imponderables should not be paralyzed for fear of being
21 judged incorrect with the benefit of hindsight. Barring the unimaginable — a situation where a work
22 stoppage is the incontestable proximate cause of casualties — a margin for error must be allowed.” (1
23 Cal.App.4th at p. 279.)

24 Furthermore, the Legislature has severely limited PERB’s authority to fashion an after-the-fact
25 remedy for unlawful strike activity. Government Code section 3509, subdivision (b), provides that “in an
26 action to recover damages due to an unlawful strike, the board shall have no authority to award strike-
27 preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or
28 revenue losses incurred during, or as a consequence of, an unlawful strike.” Thus, as a practical matter,

1 PERB’s remedies in this case are limited to a cease and desist order and notice posting. As a result, PERB
2 cannot issue a final order that restores the status quo when the employer incurs “costs, expenses, or
3 revenue losses” because of an unlawful strike. Therefore, injunctive relief is just and proper. (Code Civ.
4 Proc., § 526(a)(2) & (4); *Tahoe Keys Property Owners’ Assn. v. State Water Resources Control Bd.*
5 (1994) 23 Cal.App.4th 1459, 1471 [“In general, if the plaintiff may be fully compensated by the payment
6 of damages in the event he prevails, then preliminary injunctive relief should be denied.”]; *Modesto City*
7 *School District, supra*, 136 Cal.App.3d at p. 902 [“Preservation and restoration of the status quo are then
8 appropriate considerations in granting temporary relief pending determination of the issues by the
9 Board”].) Indeed, if injunctive relief is not available in this case, then public sector employers will have
10 no effective remedy for an unlawful strike.

11 If essential employees are allowed to strike, a final order of PERB would be meaningless. PERB
12 is not granted power under the MMBA to remedy the substantial harm that will be caused by SLOCEA’s
13 strike. Indeed, even the most sweeping statutory grant of power could not remedy the loss of life or health,
14 or the damage to the environment, that could potentially result from SLOCEA’s work stoppage.
15 Accordingly, PERB will easily be able to demonstrate in court that an injunction under these
16 circumstances is entirely just and proper.

17 **VI. CONCLUSION**

18 For the reasons set forth above, the County urgently requests that PERB move immediately to
19 enjoin a strike or work stoppage by essential employees represented by SLOCEA at the County. The
20 County requests that a hearing time be secured with the appropriate superior court as soon as possible.
21 The County stands ready to cooperate in every way with PERB’s efforts to protect the public and hold
22 SLOCEA to its statutory duty to meet and confer in good faith.

23 Dated: November 21, 2018

SLOAN SAKAI YEUNG & WONG LLP



24 By: _____

25 Timothy G. Yeung

26 Attorneys for COUNTY OF SAN LUIS OBISPO

27
28

1 **CERTIFICATE OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

3 I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party
4 to the within action. My business address is 1220 7th Street, 3rd Floor, Berkeley, California, 94710.

5 On November 21, 2018, I served the following document(s) by the method indicated below:

6 **COUNTY OF SAN LUIS OBISPO'S REQUEST FOR INJUNCTIVE RELIEF; UNFAIR
7 PRACTICE CHARGE; STATEMENT OF CHARGE; AND DECLARATIONS IN
8 SUPPORT OF THE COUNTY'S INJUNCTIVE RELIEF**

- 9 **United States Mail.** I enclosed the document(s) in a sealed envelope or package addressed to
10 the persons at the addresses on the attached Service List and deposited the sealed envelope
11 with the United States Postal Service, with the postage fully prepaid.
- 12 **Overnight delivery.** I enclosed the document(s) in an envelope or package provided by an
13 overnight delivery carrier and addressed to the persons at the addresses on the attached Service
14 List. I placed the envelope or package for collection and overnight delivery at an office or a
15 regularly utilized drop box of the overnight delivery carrier.
- 16 **Electronic Mail.** Based on an agreement of the parties to accept service by e-mail, copies of
17 the above document(s) in PDF format were transmitted to the e-mail address(es) of the parties
18 listed below on 11/21/18. No delivery errors were reported.

19 Pat McNamara, General Manager
20 SLOCEA
21 1035 Walnut Street
22 San Luis Obispo, CA 93401
23 Telephone: (805) 543-2021
24 Facsimile: (805) 543-4039
25 Email: pmcnamara@slocea.org

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26 *Representative for SLOCEA*

Attorney for SLOCEA

27 I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
28 Executed on November 21, 2018, at Berkeley, California.



Rochelle Redmayne