CASE NO. 19-56271

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARA O'CALLAGHAN and JENEE MISRAJE

Plaintiffs and Appellants,

v.

JANET NAPOLITANO, in her official capacity as President of the University of California; TEAMSTERS LOCAL 2010; and XAVIER BECERRA, in his Official Capacity as Attorney General of California

Defendants and Appellees.

Appeal from the United States District Court,
for the Central District of California,
Case No. 2:19-cv-02289, Hon. James V. Selna

APPELLEE JANET NAPOLITANO'S ANSWERING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Defendant and Appellee Janet Napolitano is an individual, sued in her official capacity as the President of the University of California, a government organization existing under the laws of the State of California. Accordingly, there are no disclosures required under Fed. R. App. P. 26.1.

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INTRODUCTION

The district court correctly ruled that plaintiffs and appellants Cara O'Callaghan and Jenee Misraje failed to plead cognizable, federal claims for relief against defendant and respondent Janet Napolitano. Appellants did not and could not allege that Ms. Napolitano, sued in her official capacity as President of the University of California (the "University"), infringed Appellants' constitutional rights to freedom of speech or association. Rather, Appellants allegations demonstrate that Ms. Napolitano merely facilitated Appellants' payment of dues consistent with the terms of their membership agreements with defendant and respondent Teamsters Local 2010, exactly as California law required her to do.

Nor is there any merit to Appellants' contention that their contractual obligations to the Union infringe their constitutional rights. As this Court has ruled, along with every other court to consider the issue so far, the U.S. Supreme Court's decision in *Janus v. American Federation of State, County, & Municipal Employees, Council 31* did not recognize any right that is implicated by Appellants' contractual obligation to continue paying dues to the Union until excused from that obligation in the manner prescribed by their respective membership agreements.

In addition, Appellants' challenge to their Union agreements constitute unfair labor challenges under California law. Such challenges must be brought in the State's Public Employment Relations Board, and cannot be maintained in federal courts. Although the district court dismissed Appellants' claims for failing to state cognizable claims, rather than on jurisdictional grounds, the jurisdictional defect in this case stands as an alternative ground for affirming that dismissal.

The Court should affirm the judgment below.

JURISDICTIONAL STATEMENT

Ms. Napolitano contends that the dispute underlying this case falls within the exclusive jurisdiction of California's Public Employment Relations Board ("PERB") and cannot be adjudicated by a federal court. *See* Cal. Gov't Code §§ 3563, 3571.1(f), (g). The district court rejected that argument. ER 11-12. If it erred in this regard—as Ms. Napolitano contends it did—this Court must dismiss the action. *See Rains v. Criterion Sys., Inc.*, 80 F.3d 339, 342 (9th Cir. 1996); *May Dep't Store v. Graphic Process Co.*, 637 F.2d 1211, 1216 (9th Cir. 1980).

If, however, the district court was correct when it ruled it had original jurisdiction over Appellants federal claims—*see* 28 U.S.C. §§ 1331 or 1343—this Court has jurisdiction over the resulting appeal. The district court's October 4, 2019 judgment was final and appealable, and Appellants' November 1, 2019 notice of appeal was timely. *See* ER 6-7; 28 U.S.C. §§ 1291, 2107(a); Fed. R. App. P. 4(a)(1)(A).

STATEMENT REGARDING PRIMARY AUTHORITIES

Pursuant to 9th Circuit Rule 28-2.7, pertinent statutes are set forth verbatim in an indexed addendum attached hereto.

STATEMENT OF THE CASE

A. Appellants are University of California employees who joined Teamsters Local 2010 and authorized deduction of union dues from their paychecks.

Ms. O'Callaghan alleges that she is a finance manager employed in the Department of Recreation at the University of California, Santa Barbara. SER 3. After several years working at the University, she joined the Union on May 31, 2018, by signing an application and authorizing the deduction of union dues from her paycheck. SER 4.

Ms. Misraje alleges that she is employed as an administrative assistant in the Geography Department at the University of California, Los Angeles. SER 3. Early in her career at the University, on July 27, 2015, she joined the Union by signing an application and authorizing the deduction of union dues from her paycheck. SER 5.

B. Appellants later resigned from the Union and requested to stop paying union dues, but were advised by the Union that they were contractually obligated to continue contributing dues for a contractually specified period of time.

Plaintiffs allege that they requested that their union membership be terminated, but the Union responded that, although they were free to resign their membership at any time, payroll deductions would continue until and unless they gave notice pursuant to the terms of their union applications. SER 4-6. As a result, consistent with the Union's direction, the University has continued to deduct union dues from their paychecks. SER 4, 6.

C. Appellants filed suit to challenge their obligation to continue paying union dues and to challenge the Union's status as an exclusive bargaining representative.

On March 27, 2019, Appellants sued the Regents of the University of California, the Union, and Xavier Becerra in his official capacity as the Attorney General of California. ER 64. Then, on June 14, 2019, Appellants filed a First Amended Complaint, substituting Ms. Napolitano, in her official capacity as the President of the University of California, for the Regents of the University of California. ER 8, 68; SER 3. Their First Amended Complaint challenged the ongoing deduction of union dues from their paychecks and the Union's status as exclusive representatives for the bargaining units of which Appellants were a part, and they sought a refund of dues paid to the Union. AOB 6; SER 2, 7-13. As it related to Napolitano, however, they sought only two forms of relief, specifically, to prohibit Ms. Napolitano (and through her the University) (1) from deducting union dues from their paychecks and (2) from recognizing the Union as Appellants' representatives. SER 13.

D. The district court dismissed Appellants' suit, finding that their contractual obligation to the Union to continue paying dues for the time specified in their union agreements did not implicate the First Amendment.

All three defendants then moved to dismiss Appellants' First Amended Complaint. ER 68-69. Relevantly, Ms. Napolitano argued that the district court lacked jurisdiction over Appellants' claims, which constituted claims of "unfair labor practices" subject to PERB's exclusive jurisdiction. ER 12. And she argued that

Appellants' obligation to pay union dues in the manner they had authorized—and consistent with the terms of that authorization—did not violate their First Amendment rights. ER 13.

The district court rejected Ms. Napolitano's jurisdictional objection, finding that Appellants had asserted claims under the First Amendment, not unfair labor claims, and those claims accordingly fell within the court's jurisdiction. ER 12. But the district court agreed with Ms. Napolitano that Appellants failed to plead any violation of their First Amendment rights and granted her motion to dismiss on that ground. ER 13-14.

The district court also granted the motions to dismiss filed by the Union and the Attorney General. ER 14-21. And, having resolved all the claims in the case, the district court entered judgment on October 4, 2019. ER 4-5.

This timely appeal followed. ER 1-2.

SUMMARY OF ARGUMENT

The district court correctly dismissed Appellants' challenge to the University's continued deduction of union dues from Appellants' paychecks.

First, as the court found, Appellants authorized those deductions as part of their respective membership agreements with the Union, and the Union instructed the University to deduct dues from Appellants' paychecks. Accordingly, California law required the University to make those deductions; it could only stop deducting union dues when directed to do so by the Union. In turn, Appellants' constitutional rights to freedom of speech and association were not violated by the limits their union-

membership agreements placed on their ability to revoke their dues authorizations. The U.S. Supreme Court's decision in *Janus v. American Federation of State, County, & Municipal Employees, Council 31* did not establish otherwise, as this Court and every other court to consider the question has ruled.

Second, the heart of Appellants' claims and supporting arguments is a contractual dispute with the Union. In California, such claims constitute unfair-labor charges that fall within PERB's exclusive jurisdiction. While the district court found otherwise and ruled on the substance of Appellants' claims, this Court must determine the existence of its own jurisdiction. And the jurisdictional defects in this case constitute an alternative ground to affirm the judgment.

STANDARD OF REVIEW

When a complaint is dismissed for failure to state a claim, this Court independently reviews the resulting judgment. *Carlin v. DairyAmerica, Inc.*, 705 F.3d 856, 866 (9th Cir. 2013). In considering whether the appellant pleaded a cognizable claim for relief, the Court accepts the truth of all well-pleaded allegations of material fact and construes the complaint in the light most favorable to the appellant. *Id.* But the Court disregards conclusory allegations, unwarranted deductions, and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Similarly, the existence of subject matter jurisdiction is reviewed de novo. *Kingman Reef Atoll Investments, L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008); *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009). When a motion to

dismiss asserts that the allegations in the operative complaint facially fall outside the district court's jurisdiction, this Court assumes the truth of those allegations and independently evaluates the jurisdictional question as a matter of law. *Young v. United States*, 769 F.3d 1047, 1052 (2009) (quoting *United States v. Gaubert*, 499 U.S. 315, 327 (1991)).

ARGUMENT

I. The district court correctly ruled that *Janus* does not require the University of California to stop deducting union dues from Appellants' paychecks.

The district court dismissed Appellants' claims against Ms. Napolitano after finding that *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018) does not require state employers to stop deducting union dues from the paychecks of employees who chose to become union members and authorized the deduction of union dues and whose ability to revoke that authorization is constrained by contract. ER 13-14. Rightly so.

A. Once authorized by an employee, the University must continue to deduct union dues from the employee's paychecks in the manner directed by the Union.

The University is a higher education employer within the meaning of California's Higher Education Employer-Employee Relations Act ("HEERA") and a public employer bound by the dictates of the State's Government Code. *See* Cal. Gov't Code §§ 1150(f), 3560 *et seq.* As such, it is statutorily obligated to respect the

rights of its employees' unions.[1] Cal. Gov't Code § 3571(b), (c). For example, once an employee authorizes the University to deduct dues for a union's benefit, the University must do so in accordance with that union's direction. Cal. Gov't Code §§ 1157.3, 1157.12(a). The employee retains the ability to revoke that authorization, but only on the terms set out in the authorization itself. Cal. Gov't Code § 1157.3(b); *see also* Cal. Gov't Code § 1157.12(b). And the University must direct any request to cancel or change such a deduction to the relevant union and must rely on the union to advise when an employee's deductions have been properly cancelled or changed. Cal. Gov't Code § 1157.12(b).

Here, Appellants' allegations reflect that Ms. Napolitano and the University have merely done as the governing law required. Appellants joined the Union, and each signed a written authorization permitting the deduction of union dues from their respective paychecks.[2] *Compare* SER 4-5, *with* Cal. Gov't Code §§ 1157.3, 1157.12(a). They later sought to withdraw that authorization, and the University directed them to present that request to the Union. *Compare* SER 4-6, *with* Cal. Gov't Code § 1157.12(b). In the absence of contrary direction from the Union, however, the University advised that it would continue to deduct dues pursuant to Appellants' prior authorizations. *Compare* SER 4-6, *with* Cal. Gov't Code § 1157.12(b). And the Union

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[1] While Appellants have emphasized that they no longer wish for the Union to represent *them*, Appellants have raised no dispute regarding the fact that the Union is the organization designated by a majority of employees in the relevant bargaining units.

[2] Neither Appellant was, as was the plaintiff in *Janus v. Associated Federation of State, County, and Municipal Employees, Council 31*, an employee who had refused to join a union but was made to pay a share of union dues she never voluntarily authorized. *See* 138 S. Ct. 2448, 2461 (2018).

has refused to direct the University to stop deductions because the terms of Appellants' authorization limit the time and manner in which they can request such a revocation. *Compare* SER 4-6, with Cal. Gov't Code § 1157.3(b).

In short, Appellants have not alleged any action by Ms. Napolitano except the fulfillment of the University's statutory obligation to take direction from the Union regarding the deduction of union dues. Appellants' complaint, thus, is not with Ms. Napolitano, but with the Union and with the terms of the Union's membership agreements.[3] The district court thus properly found that Appellants failed to plead a claim for relief as against Ms. Napolitano.

B. As the district court ruled, the First Amendment does not guarantee union members a swift opportunity to revoke their authorizations for deduction of union dues.

Plaintiffs challenge the constitutionality of California's governing statutes on the grounds that the United States Supreme Court's decision in *Janus v. Associated Federation of State, County, and Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018) prohibits the deduction of dues from state employees' paychecks absent their consent. Yet, as this Court has already ruled, *Janus* does not require state employers to cease deductions for employees who voluntarily entered into contracts to become dues-paying union members. *See Fisk v. Inslee*, 759 F. App'x 632, 633 (9th Cir. 2019) ("Appellees' deduction of union dues in accordance with the membership cards' dues irrevocability provision does not violate Appellants' First Amendment rights."); *see also*

[3] And, as discussed in Section II, *infra*, Appellants have statutory remedies and a dedicated venue for resolving their concerns regarding their relationship with the Union. *See*, *e.g.*, Cal. Gov't Code § 3571.1(f), (g).

Smith v. Bieker, No. 18-CV-05472-VC, 2019 WL 2476679, at *2 (N.D. Cal. June 13, 2019) ("*Janus* did not concern the relationship of unions and members; it concerned the relationship of unions and non-members."), appeal filed No. 19-16381 (9th Cir. July 12, 2019). That is because "the First Amendment does not confer . . . a constitutional right to disregard promises that would otherwise be enforced under state law." *Cohen v. Cowles Media Co.*, 501 U.S. 663, 672 (1991). Thus, as the Northern District of California succinctly explained it, *Janus* does not stand for the proposition that "any union member can change his mind at the drop of a hat, invoke the First Amendment, and renege on his contractual obligation to pay dues." *Smith v. Superior Court, Cty. of Contra Costa*, No. 18-CV-05472-VC, 2018 WL 6072806, at *1 (N.D. Cal. Nov. 16, 2018).

Several federal district courts, including courts in the Northern, Eastern, and Central Districts of California, have agreed. *See Smith*, 2019 WL 2476679, at *2; *Babb v. Cal. Teachers Ass'n*, 378 F. Supp. 3d 857, 876-77 (C.D. Cal. May 8, 2019) (granting defendants' motion to dismiss because plaintiffs "voluntarily chose to pay membership dues in exchange for certain benefits"); *Cooley v. Cal. Statewide Law Enforcement Ass'n*, No. 2:18-cv-02961-JAM-AC, 2019 WL 2994502, at *1 (E.D. Cal. July 9, 2019) (granting defendants' motion to dismiss because union was authorized to continue collecting agreed-upon dues from union member under valid and enforceable agreement), appeal filed No. 19-16498 (9th Cir. July 12, 2019); *Hernandez v. Am. Fed'n of State, Cty., & Mun. Emps. Cal.*, No. 2:18-CV-02419-WBS-EFB, 2019 WL 7038389, at *5-6 (E.D. Cal. Dec. 20, 2019) (same), appeal filed No. 20-15076 (9th

Cir. Jan. 16, 2020). Indeed, research revealed no court that has yet upheld Appellants' contrary reading of *Janus*, and Appellants have cited none in their Opening Brief.

Nonetheless, in response to the district court's ruling, Appellants have argued that they should not be held to the terms of their agreements with the Union because (1) they felt pressured by the Union to join; (2) they were not adequately advised of their rights under *Janus*, and/or (3) Appellants and the Union entered into their membership agreements under mutual mistake of law. AOB 11-12, 16-18. But those are contract disputes between Appellants and the Union, not constitutional claims and not claims against Ms. Napolitano.

Appellants attempt to constitutionalize their contract dispute with the Union by arguing that, under the facts alleged, Appellants cannot be found to have knowingly and voluntarily waived their rights under *Janus*. AOB 10-12. But their argument misunderstands the defect in their claim. Here, the issue is not whether Appellants knowingly waived constitutional rights; it is whether the terms of their contracts with the Union—by which they accepted the benefits of union membership in exchange for accepting an obligation to pay dues for a specified period—implicate their free-speech or association rights at all. As set forth above, they do not. *See*, *e.g.*, *Seager v. United Teachers Los Angeles,* No. 2:19-CV-00469-JLS-DFM, 2019 WL 3822001, at *2 (C.D. Cal. Aug. 14, 2019) (citing *Babb*, 378 F. Supp. 3d at 886); *Belgau v. Inslee*, 359 F. Supp. 3d 1000, 1017 (W.D. Wash. Feb. 15, 2019) ("The notion that the Plaintiffs may have made a different choice if they knew 'the Supreme Court [in *Janus*] would later invalidate public employee agency fee arrangements does not void' their previous

knowing agreements.") (citing *Cooley*, 2019 WL 331170, at *2), appeal filed No. 19-35137 (9th Cir. Feb. 20, 2019).

Appellants also claim that there is something "arbitrary" and "unconstitutional" about the contractual limitations that the Union places on revocation of dues authorization. AOB 12. And they suggest, without quite saying so, that the Union can restrict such revocation, but only if it did so on terms other than those established by the contracts Appellants actually signed. AOB 12-14. But again, nothing in *Janus* even considers, let alone delimits, how public-employee unions may set the contractual terms of membership or prescribes a minimum period for providing union members an opportunity to withdraw their financial support. And Appellants certainly have not identified any legal authority that would require the University to investigate the terms of a union's agreements with its members, or the circumstances under which such an agreement was formed, to determine whether the union was impermissibly restricting the ability of its members to stop previously authorized dues.

Nor does *Smith v. N.J. Education Association*, No. 18-10381 (RMB/KMW), 2019 WL 6337991 (D.N.J. Nov. 27, 2019) hold otherwise. *See* AOB 14-15. That district court decision questioned the constitutionality of a *state statute* that required continued contribution of union dues for a period of one year after an employee resigned from his or her union. In other words, the challenged obligation to continue paying dues in that case was imposed by state law, not by private agreement as in this case. And, like *Janus*, the case did not consider a limit on the terms unions prescribe in their membership agreements. *Smith*, 2019 WL 6337991, at *7. Appellants' *ipse dixit*

insistence that the Union's contract terms are unconstitutional is thus wholly unsupported.

II. Appellants' claims fall within the exclusive jurisdiction of the California Public Employment Relations Board and should have been dismissed by the district court for lack of jurisdiction, as a result.

As noted, in addition to challenging the legal viability of Appellants' claims against her, Ms. Napolitano also challenged the district court's jurisdiction over those claims. ER 12. She argued that Appellants' challenge to the continued deduction of union dues constituted an unfair labor charge, and that dispute fell within the exclusive jurisdiction of PERB. *Id.* The district court disagreed. *Id.* Nonetheless, as noted, this Court has an independent obligation to consider the district court's jurisdiction over Appellants' claims and to dismiss the action if it finds that jurisdiction lacking. *See Rains*, 80 F.3d at 342; *May Dep't Store*, 637 F.2d at 1216. Moreover, the Court should affirm the judgment of dismissal if correct on any legal basis. *See Logan v. U.S. Bank Nat'l Ass'n*, 722 F.3d 1163, 1169 (9th Cir. 2013). As a result, the Court can and should affirm the judgment on jurisdictional grounds, even if it otherwise finds Appellants' legal theories have potential merit.

Plaintiffs' allegations of improper dues and scope of the Union's representation arise out of, and would form the basis for, unfair practice allegations against the Union. As noted, the University's relationship with its employees and their unions is governed by HEERA. "In enacting HEERA, the Legislature, after noting that all other employees of the public school systems in the state had been granted the opportunity for collective bargaining, found it desirable to expand the jurisdiction of

the Board [PERB] to cover the employees of the University of California, Hastings College of the Law, and the California State University." *The Regents of the Univ. of California v. Pub. Emp't Relations Bd.*, 168 Cal. App. 3d 937, 943 (1985).

In turn, PERB is the administrative agency charged with administering the provisions of HEERA. Cal. Gov't Code § 3563. When it established PERB, California's Legislature granted PERB exclusive jurisdiction to adjudicate unfair labor practice charges: "The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board." Cal. Gov't Code § 3563.2.

The scope of disputes falling within PERB's remit is correspondingly broad. For example, under HEERA, it is unlawful for an employee organization to require employees to pay fees "in an amount which the board finds excessive or discriminatory under all the circumstances." Cal. Gov't Code § 3571.1(f). It also is unlawful for an employee organization to "[c]ause, or attempt to cause, an employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or are not to be performed." Cal. Gov't Code § 3571.1(g); *see also* Cal. Gov't Code § 3565 (recognizing employees' right to refuse to join a union or participate in union activities).

These powers encompass Appellants' claims. Appellants allege that the Union continues to charge them dues in an unfair or excessive manner, and they further allege that the Union has caused the employer (the University) to deliver the payment of union dues for services that Plaintiffs do not want performed—allegations that

would sound in unfair practice charges against the Union under HEERA. *See* Cal. Gov't Code § 3571.1(f), (g). They also challenge the Union's authority to represent them.[4] Such disputes over scope of representation fall squarely in PERB's jurisdiction. *See* Cal. Gov't Code § 3563.

Furthermore, "[t]he mere fact that constitutional rights may be implicated or have some bearing on this dispute" does not divest PERB of its jurisdiction. *San Diego Mun. Emps. Ass'n v. Superior Court*, 206 Cal. App. 4th 1447, 1458, 1460 (2012) (claims seeking injunctive relief do not divest PERB of jurisdiction); *see also Am. Fed'n of State, Cty., & Mun. Emps. Local 3299 v. The Regents of the Univ. of Cal.*, PERB Dec. No. 2300-H, at pp. 14-15 (December 20, 2012) (citing *Leek v. Washington Unified School Dist.*, 124 Cal. App. 3d 43, 53 (1981)) (holding legislature intended that PERB exercise jurisdiction over matters that could be unfair practices or other violations of HEERA, even if the claims also alleged constitutional violations); *Link v. Antioch Unified School Dist.*, 142 Cal. App. 3d 765, 769 (1983) (same)). Thus, in *Stevenson v. Los Angeles Unified School District*, the district court dismissed an assortment of claims filed in California's Central District because the dispute alleged could have constituted unfair practices over which PERB had exclusive jurisdiction. No. CV-09-6497-ODW (PLAx), 2010 WL 11596479, at *3-4 (C.D. Cal. June 28, 2010).

So too, here. As discussed above, the University has no authority to interfere with the Union's relationship or contractual agreements with past or present

[4] It is not entirely clear in what manner Appellants believe the Union continues to represent them when, as they acknowledge, they have been permitted to withdraw their membership and the University has no obligation to bargain with Appellants separately. AOB 40-48.

members. Instead, the heart of this case is a contract dispute between Appellants and the Union. That dispute sounds in unfair labor practices under HEERA and falls within PERB's exclusive jurisdiction. Cal. Gov't Code § 3571.1(f), (g). It should never have been entertained as a federal case, and this Court should affirm the dismissal. *Rains*, 80 F.3d at 342; *May Dep't Store*, 637 F.2d at 1216.

CONCLUSION

Appellants' frustrations with the Union do not rise to the level of constitutional grievances, and they provide no basis for asserting claims against Ms. Napolitano. The Court should affirm the district court's judgment dismissing it.

DATED: March 2, 2020

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STATEMENT OF RELATED CASES

Appellees are not aware of any related cases pending before the Court.

DATED: March 2, 2020

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By: */s/ Adam Hofmann*

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CERTIFICATION OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, I certify that the attached brief complies with the type-volume limitation. It is proportionally spaced, has a typeface of 14 points (Garamond), and contains 4,045 words.

DATED: March 2, 2020

HANSON BRIDGETT LLP

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ADDENDUM OF PRIMARY AUTHORITIES
9th Cir. Rule 28-2.7

California Government Code,

California Government Code

Section 1157.3

(a) Employees, including retired employees, of a public employer in addition to any other purposes authorized in this article, may also authorize deductions to be made from their salaries, wages, or retirement allowances for the payment of dues in, or for any other service, program, or committee provided or sponsored by, any employee organization or bona fide association whose membership is comprised, in whole or in part, of employees of the public employer and employees of such organization and which has as one of its objectives improvements in the terms or conditions of employment for the advancement of the welfare of the employees.

(b) The public employer shall honor employee authorizations for the deductions described in subdivision (a). The revocability of an authorization shall be determined by the terms of the authorization.

California Government Code

Section 1157.12

Public employers other than the state that provide for the administration of payroll deductions authorized by employees for employee organizations as set forth in Sections 1152 and 1157.3 or pursuant to other public employee labor relations statutes, shall:

(a) Rely on a certification from any employee organization requesting a deduction or reduction that they have and will maintain an authorization, signed by the individual from whose salary or wages the deduction or reduction is to be made. An employee organization that certifies that it has and will maintain individual employee authorizations shall not be required to provide a copy of an individual authorization to the public employer unless a dispute arises about the existence or terms of the authorization. The employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that certification.

(b) Direct employee requests to cancel or change deductions for employee organizations to the employee organization, rather than to the public employer. The public employer shall rely on information provided by the employee organization regarding whether deductions for an employee organization were properly canceled or changed, and the employee organization shall indemnify the public employer for any claims made by the employee for deductions made in reliance on that information. Deductions may be revoked only pursuant to the terms of the employee's written authorization.

California Government Code

Section 3563

This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an

unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(l) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

California Government Code

Section 3563.2

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board.

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

California Government Code

Section 3571.1

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the higher education employer to violate Section 3571.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to engage in meeting and conferring with the higher education employer.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

(e) Fail to represent fairly and impartially all the employees in the unit for which it is the exclusive representative.

(f) Require of employees covered by a memorandum of understanding to which it is a party the payment of a fee, as a condition precedent to becoming a member of such organization, in an amount which the board finds excessive or discriminatory under all the circumstances. In making such a finding, the board shall consider, among other relevant factors, the practices and customs of employee organizations in higher education, and the wages currently paid to the employees affected.

(g) Cause, or attempt to cause, an employer to pay or deliver, or agree to pay or deliver, any money or other thing of value, in the nature of an exaction, for services which are not performed or are not to be performed.