

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

19STCV00518

**LOS ANGELES UNIFIED SCHOOL DISTRICT vs DOES 1
THROUGH 100, INCLUSIVE, et al.**

January 10, 2019

9:30 AM

Judge: Honorable Mary H. Strobel

CSR: PRO TEMPORE/Laurie Miller/CSR
6457

Judicial Assistant: Nancy DiGiambattista

ERM: None

Courtroom Assistant: B Hall

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Adam J. Fiss (x); Barrett K. Green (x)

For Defendant(s): United Teachers Los Angeles By: Joshua Adams and Ira L. Gottlieb (x)

Other Appearance Notes: Wendi L. Ross (x) for PERB

NATURE OF PROCEEDINGS: EX PARTE APPLICATION OF PLAINTIFF, LOS ANGELES UNIFIED SCHOOL DISTRICT, FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION

The court signs and files this date the Order Appointing Court Approved Reporter As Official Reporter Pro Tempore this date.

Matter comes on for hearing and is argued.

Court now has the requests for ex parte relief in both 19STCV00518 and 19STCV00534 before it, as the cases have been related. The court will act on both ex partes this morning. The court has received a declaration from Felix De La Torre, General Counsel for PERB, and a response to that declaration from LAUSD. PERB is not a party to either action and has not sought to intervene. Courts do not generally consider arguments from non-parties. While the court may have been interested in hearing PERB's perspective, LAUSD has objected. The objection is well taken and the court will not consider the PERB declaration. This ruling is without prejudice to counsel for PERB filing a motion for leave to intervene in Department 40.

The court rules as follows on the ex parte application:

LAUSD seeks a temporary restraining order enjoining UTLA from encouraging or ratifying any strike or work stoppage by any UTLA unit member or sister-union to UTLA; Enjoining the members of UTLA from engaging in any strike, or partial or full work stoppage.

In deciding whether or not to grant a preliminary injunction, the court looks to two factors, including "(1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief."

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(White v. Davis (2003) 30 Cal.4th 528, 553-54.) The factors are interrelated, with a greater showing on one permitting a lesser showing on the other. (Dodge, Warren & Peters Ins. Services, Inc. v. Riley (2003) 105 Cal.App.4th 1414, 1420.) However, the party seeking an injunction must demonstrate at least a reasonable probability of success on the merits. (IT Corp. v. County of Imperial (1983) 35 Cal.3d 63, 73-74.)

LAUSD bases its request on its cause of action for breach of contract, namely the Collective Bargaining Agreement. An injunction is not available to enjoin a breach of contract, unless the contract is specifically enforceable. CCP 526(b)(5).

Article VI of the CBA prohibits UTLA and its officers from encouraging, condoning or participating in any strike or work stoppage during the term of the Agreement.

Article XXXII of the CBA provides that the Agreement remain in full force and effect through June 30, 2017 and thereafter shall remain in effect on a day-to-day basis until terminated by either party upon ten days written notice.

When LAUSD brought this ex parte to the court on January 9, 2019, the scheduled strike date was January 10, 2019. However, before the matter was heard on the merits, the parties informed the court that they had agreed the request was moot as to January 10 and January 11, as UTLA had agreed the strike would occur no earlier than January 14, 2019. The court continued the matter until January 10, 2019.

LAUSD originally argued that UTLA did not give ten days' written notice of the termination of the CBA and that therefore the CBA is still in effect and UTLA should be enjoined from violating Article VI of the CBA. UTLA contends that PERB's fact finding panel determined the CBA was no longer in effect in a report issued on December 17, 2018. (Good declaration, exh. H). UTLA contends that this report, the fact that UTLA announced a proposed January 10 strike the next, day, and numerous ensuing communications between LAUSD and UTLA concerning the strike meant that District had sufficient notice and that the CBA terminated as of the impasse declaration.

Alternatively, UTLA argues that the January 3, 2019 e-mail to LAUSD constituted the required written notice of termination of the CBA. For purposes of determining whether LAUSD is entitled to an injunction, the court finds that UTLA has the better argument here. LAUSD concedes, for purposes of the TRO hearing, that the Jan. 3 e-mail was sufficient notice so that the CBA is terminated as of January 13.

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The January 3, 2019 e-mail states in part as follows: “The neutral fact-finder declared on December 17, 2018 that our contract has expired, and with the Union’s public announcement the next day of the January 10, 2019 strike date (which the District has acknowledged and requested PERB to enjoin), the District was on notice that the contract is terminated. This is to confirm that notice and the Union’s resolve, and to express the importance of genuinely exhausting all bargaining avenues before a strike.”

Whether or not the fact-finder’s determination in December or the impasse declaration sufficed as written notice of the termination of the CBA, UTLA’s argument that the January 3, 2019 e-mail constituted written termination of the CBA is persuasive at this juncture. Under this interpretation the CBA will terminate as of January 13, 2019. Since the strike is not scheduled to occur until after the termination of the CBA, there is no basis to enjoin the strike under a contract which will no longer be in effect.

LAUSD argues that some of the activities of UTLA preceding the termination of the CBA allegedly violated Article VI. However, whether UTLA violated Article VI in the past is not a basis to enjoin the strike. The CBA will no longer be in effect as of the scheduled strike date. There will be no contract to specifically enforce.

At the hearing, LAUSD argues that it is entitled to a “clean” 10 days to prepare for the strike, and that UTLA’s actions since Jan. 3 in encouraging the strike should be enjoined. Since the parties stipulated the request was moot as to Jan. 10 and 11, presumably the requested TRO would enjoin UTLA from “encouraging” the strike by actions it would take on Jan. 12 and perhaps January 13. This request comes quite late in the sequence of events. The strike vote was made in August 2018; and UTLA publicly announced its intended strike in mid-December. Any irreparable harm LAUSD may have suffered as a result of UTLA’s alleged breach of the CBA has largely already occurred. LAUSD has not persuasively shown that additional “encouragement” efforts which may occur between now and Jan. 14 would add appreciably to that harm. Issues of past breaches of the CBA, including questions of unfair labor practices, can be resolved through other methods whether by PERB or in a court proceeding.

Since LAUSD has not shown its breach of contract claim supports an injunction, the court does not reach the issue of balance of harms.

The request for a TRO is denied.

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Counsel for plaintiff is to give notice.