UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:20-cv-00358-JLS-ADS Date: May 07, 2020
Title: Jeffrey I. Barke et al v. Eric Banks et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero	N/A
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
Not Present	Not Present

PROCEEDINGS: (IN CHAMBERS) ORDER GRANTING UNIONS' MOTION FOR LEAVE TO INTERVENE (Doc. 33)

Before the Court is a Motion for Leave to Intervene filed by the California Teachers Association, SEIU California State Council, California Federation of Teachers, California School Employees Association, and California Labor Federation (the "Unions"). (Mot., Doc. 33-1.) Plaintiffs opposed and the Unions replied.[1] (Opp., Doc. 48; Reply, Doc. 50.) The Court finds this matter appropriate for disposition without oral argument. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing on this Motion scheduled for May 8, 2020 at 10:30 a.m. is VACATED. For the following reasons, the Court GRANTS the Unions' Motion.

I. BACKGROUND

The Plaintiffs in this action are elected members of representative bodies of various California "public employers,' as that term is defined under California Government Code Section 3552, including city councils and school boards, among others. (Compl. ¶¶ 3,10-18, Doc. 1.) They bring this action in order to resolve a First Amendment challenge to Section 3550, which states that "[a] public employer shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing

[1] The named Defendants do not oppose the Union's Motion. (*See* Notice of Motion at 1, Doc. 33.)

representation by an employee organization, or from authorizing dues or fee deductions to an employee organization." The named Defendants in this action are individuals sued in their official capacities as members of the California Public Employment Relations Board ("PERB"), as well as the general counsel of PERB. PERB is the state agency charged by law with the responsibility to administer and enforce Section 3350. *See* Cal. Gov. Code § 3551(a).

In the instant Motion, the Unions seek leave to intervene in this action as Defendants, in order to defend the constitutionality of Section 3550.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 24 governs when a non-party may intervene in on-going litigation. *See* Fed. R. Civ. P. 24. Rule 24(a) provides that a court must allow intervention when a non-party "is given an unconditional right to intervene by a federal statute[,]" or, in the alternative, "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the [non-party's] ability to protect its interest[.]" Fed. R. Civ. P. 24(a)(1)-(2). Where, as here, there is no unconditional federal statutory right of intervention and the proposed intervenor relies on Rule 24(a)(2), the court applies a four-part test:

> (1) the motion must be timely; (2) the applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

Wilderness Soc. v. U.S. Forest Serv., 630 F.3d 1173, 1177 (9th Cir. 2011) (quoting *Sierra Club v. U.S. E.P.A.*, 995 F.2d 1478, 1481 (9th Cir. 1993), *abrogated by Wilderness Soc*, 630 F.3d 1173). And the Ninth Circuit has explained that:

> In evaluating whether these requirements are met, courts "are guided primarily by practical and equitable considerations." *Id*. Further, courts generally "construe[ ] [the Rule] broadly in favor of proposed intervenors." *United States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir.1992). "'A liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts. By allowing parties with a practical interest in the outcome of a particular case to intervene, we often prevent or simplify future litigation involving related issues; at the same time, we allow an additional interested party to express its views before the court.'" *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n. 8 (9th Cir.1995) (quoting *Greene v. United States*, 996 F.2d 973, 980 (9th Cir.1993) (Reinhardt, J., dissenting)).

United States v. City of Los Angeles, Cal., 288 F.3d 391, 397–98 (9th Cir. 2002).

III. DISCUSSION

The Unions contend that they satisfy both Rule 24(a)(2)'s requirements for intervention as of right, as well as those of Rule 24(b)(1), for permissive intervention. (Mot. at 3, 9-18.) Plaintiffs argue to the contrary on both points but regarding intervention as of right, dispute only whether the Unions have satisfied the fourth requirement outlined above – whether they have demonstrated that they are "inadequately represented by the parties to the action."[2] (*See* Opp. at 12-22.)

[2] As the Unions set forth in their brief, it is clear that (1) this Motion, filed essentially at the outset of the litigation, was timely brought; (2) the Unions have a significantly protectable interest in the outcome of this litigation as they are protected by the challenged statute and an adverse outcome of this suit would require the Unions to expend additional resources in their efforts to communicate with members and potential members; and (3) the disposition of this matter may impair that interest because an injunction prohibiting PERB's enforcement of Section 3550 would completely neutralize the statute, impacting the Unions' operation as a practical matter. (Mot. at 10-13.)

"This Court considers three factors in determining the adequacy of representation: (1) whether the interest of a present party is such that it will undoubtedly make all of a proposed intervenor's arguments; (2) whether the present party is capable and willing to make such arguments; and (3) whether a proposed intervenor would offer any necessary elements to the proceeding that other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003) (citing *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir.1986)). "The most important factor in determining the adequacy of representation is how the [intervenor's] interest compares with the interests of existing parties." *Id*. (citing 7C Wright, Miller & Kane, § 1909, at 318 (1986)). In general, "[t]he burden of showing inadequacy of representation is minimal and is satisfied if the applicant shows that representation of its interests 'may be' inadequate[.]" *Prete v. Bradbury*, 438 F.3d 949, 956 (9th Cir. 2006) (internal quotation omitted). However, a presumption of adequacy of representation arises (1) "[w]hen an applicant for intervention and an existing party have the same ultimate objective" and (2) "[w]hen the government is acting on behalf of a constituency that it represents." *Arakaki*, 324 F.3d at 1086 (citing *League of United Latin Am. Citizens*, 131 F.3d at 1305). "If the applicant's interest is identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation." *Id*. (citing 7C Wright, Miller & Kane, § 1909, at 318–19).

The Unions rely principally on a line of cases characterized by the Ninth Circuit's reasoning in *Californians For Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1189 (9th Cir. 1998). (*See* Opp. at 13-18.) In *Mendonca*, a group of public works contactors challenged a portion of the California Labor Code known as the California Prevailing Wage Law ("CPWL"), which required that contractors awarded public works contracts pay their laborers a specific prevailing wage. *Id*. at 1185-86. While the named Defendants were a collection of California agencies and their agents in which the statutory authority to enforce the CPWL was vested, the International Brotherhood of Teamsters ("IBT") moved for leave to intervene in the action as a defendant. *Id*. at 1186. As to the question of whether IBT's interest were adequately represented by the California defendants, the Ninth Circuit stated that "because the employment interests of IBT's members were potentially more narrow and parochial than

the interests of the public at large, IBT demonstrated that the representation of its interests by the named defendants-appellees may have been inadequate." *Id*. at 1190. This reasoning has since been applied in a number of cases where intervenors' interests diverged from those of existing defendants and justified a finding of inadequate representation. *See, e.g*., *Golden Gate Rest. Ass'n v. City & Cty. of San Francisco*, No. C 06-06997 JSW, 2007 WL 1052820, at *4 (N.D. Cal. Apr. 5, 2007) (explaining that presumptions of adequate representations are overcome where a proposed intervenor union has more particularized interests at stake than those of the existing defendants); *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1067 (9th Cir. 2018) (applying *Mendonca*); *Air Conditioning Trade Ass'n v. Baker*, No. CIV S-12-132 KJM DAD, 2012 WL 3205422, at *4 (E.D. Cal. July 31, 2012) (same); *W. States Trucking Ass'n v. Schoorl*, No. 2:18-CV-1989-MCE-KJN, 2018 WL 5920148, at *2 (E.D. Cal. Nov. 13, 2018) (same); *see also In re Sierra Club*, 945 F.2d 776, 780 (4th Cir. 1991) (finding that although proposed intervenor and state agency had same ultimate goal of demonstrating that certain regulations did not violate the Commerce Clause, their interests could diverge in multiple respects and noting that, in contrast with the state agency, the intervenor had obligations to only a particular segment of the state population).

Here, the Unions argue that they have more "narrow and parochial" interests than those of the California PERB defendants, members of a "quasi-law enforcement" and "quasi-judicial agency" that serves as a neutral adjudicator of public sector labor-management disputes, represents the public at large, and simply has a generalized interest in upholding the laws of California. (Mot. at 15.) In contrast, the Unions advocate and collectively bargain on behalf of their members, evidencing a much more particularized interest in the outcome of this litigation. (*Id*.) And as the Unions note, it is no novel legal conclusion to determine that a neutral governmental body's interests sufficiently diverge from those of an organization representing a specific sub-set of the public to satisfy the inadequate representation prong. *See, e.g,, California Dump Truck Owners Ass'n v. Nichols*, 275 F.R.D. 303, 308 (E.D. Cal. 2011); *United States v. Palermino*, 238 F.R.D. 118, 122 (D. Conn. 2006). The Unions additionally contend that their (1) unique experience in the area of public-sector collective bargaining, (2) knowledge of, and participation in, the campaign to enact Section 3550, and (3) efforts to combat attempts

by public employers to interfere with the rights of public employees constitute a "necessary element[] to the proceeding that other parties would neglect" absent the Unions' presence. (Mot. at 17-18.)

Plaintiffs argue in essence that: (1) the Unions read *Mendonca* and *Allied Concrete* too broadly, and their interests do not sufficiently diverge with the PERB defendants to justify intervention; (2) the Unions and PERB are pursuing the same ultimate objective; and (3) as PERB was created to administer laws vindicating public rights, the Unions' asserted more narrow interests are irrelevant. (Opp. at 12-22.) For those reasons, Plaintiffs contend that the Unions have failed to make a compelling showing that overcomes the presumption that PERB adequately represents the Unions' interests. The parties disagree whether the PERB Defendants' and Unions' unitary goal of demonstrating that Section 3550 is constitutional necessitates a such a compelling showing. But even assuming that such a showing is required, the Unions' have satisfactorily demonstrated an inadequacy of representation. *See Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 823 (9th Cir. 2001) ("But even if the presumption applies, it is rebutted here because Applicants and Defendants do not have sufficiently congruent interests.")

Plaintiffs assert that in *Mendonca*, the intervenor, IBT, must have had very different interests from the California defendants because if the CPWL were upheld, any increased wages enjoyed by the IBT's members would come out of the taxpayers' pockets. (Opp. at 20.) As Plaintiffs put it, *Allied Concrete* and other cases cited by the Unions are simply variations of the facts in *Mendonca*, involving similar preemption challenges, which differ from the constitutional challenge in this matter. (*Id*. at 20-22.) Plaintiffs believe that *Mendonca*'s reasoning should be confined to those facts. (*Id*. at 21.) However, the logic in *Mendonca* and its progeny did not hinge on any of the factual circumstances identified by Plaintiffs. Instead, the Ninth Circuit was clear that where the existing state defendants and the union applicants for intervention shared an identical ultimate goal of upholding state law, the narrower interests of intervening unions sufficiently demonstrated inadequate representation. *Mendonca*, 152 F.3d at 1190; *Allied Concrete*, 904 F.3d at 1068. Accordingly, Plaintiffs have provided no persuasive justification why the reasoning of those cases should not apply.

Plaintiffs do correctly point out that courts have declined to grant leave to intervene in some instances where potential intervenors share the same final goal as government defendants in demonstrating a law's constitutionality. (Opp. at 13.) But in the cases cited by Plaintiffs, additional factors were critical to the courts' determination that representation by existing parties was inadequate. *See Arakaki*, 324 F.3d at 1087 (explaining that the facts presented were different from cases like *Mendonca* because (1) a similarly situated intervenor already was already granted leave to intervene and had stated it was willing to raise the arguments of the proposed intervenors, and (2) the original state defendants had specific statutory and constitutional obligations to protect the proposed intervenor's interests, namely, those of native Hawaiians); *Prete*, 438 F.3d at 957-59 (finding that that, in addition to their ultimate goals, the proposed intervenor's and state defendants' interests were aligned, and determining that based on the knowledge, capabilities, and experience of those state defendants, the intervenor's presence would add nothing to the litigation); *Wilson*, 131 F.3d at 1304-07 (noting that (1) it was clear from actions taken before and during the lawsuit that the state defendants would argue in support of the challenged law just as vociferously as the proposed intervenor, (2) the proposed intervenors were relying on speculation of a future divergence of interests with the party-defendants to argue inadequacy of representation, and (3) the only disagreement between the two groups at the time appeared to be one of legal strategy). This case is much more straightforward than those and falls squarely under the Ninth Circuit's reasoning in *Mendonca* and *Allied Concrete*.

Finally, the Plaintiffs' arguments that any divergence of interests between the Unions and the California Defendants is irrelevant because PERB enforces, on behalf of the public, laws meant to vindicate public rights, is itself irrelevant. If Plaintiffs were correct, intervention by a private party would always be improper where government defendants are defending legislation from attack. However, the cases discussed herein clearly demonstrate that is not the case. An intervenor must merely meet the standard outlined above, timely demonstrating potential impairment of a significantly protectable interest and inadequate representation by existing parties. *Wilderness Soc.*, 630 F.3d at 1177 (9th Cir. 2011).

"Resolution of this case will decidedly affect [the Unions'] legally protectable interests and 'there is sufficient doubt about the adequacy of representation to warrant intervention.'" *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 824 (9th Cir. 2001) (citing *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 (1972)). Because the Unions have narrower interests than those of the PERB Defendants, it cannot be stated that the PERB Defendants will "undoubtedly make all of [the Unions'] arguments." *Arakaki*, 324 F.3d at 1086. Further, "[i]n addition to having expertise apart from that of the [PERB Defendants], the [Unions offer] a perspective which differs materially from that of the present parties to this litigation." *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983). A valuable perspective, and a necessary element that might otherwise be neglected by the existing parties is added to the matter in allowing the Unions, who are the beneficiaries of the challenged statute and sit across the table from Plaintiffs during labor negotiations, to intervene. The is especially so when considering that Rule 24 is read broadly, in favor of intervenors. *City of Los Angeles*, 288 F.3d at 397-98.

Because the Court concludes that the Unions have demonstrated that their interests are inadequately represented by the current parties to the action, intervention as of right pursuant to Rule 24(a)(2) is warranted.[3]

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS the Unions' Motion.

Initials of Preparer: tg

[3] Because the Court concludes that intervention as of right is appropriate, it need not reach the parties' arguments on permissive intervention under Rule 24(b)(1). (Mot. at 18; Opp. at 23-24.)