

Partially Overturning PERB, Court Holds that California State University Did Not Violate HEERA

March 9, 2026
Number 10

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California State University (CSU) prevailed in part against the California Public Employment Relations Board (PERB) on a negotiability issue under the Higher Education Employer-Employee Relations Act (HEERA) related to changes in CSU's student vaccination requirements. In *Trustees of California State University v. Public Employment Relations Board* (Cal. Ct. App., Jan. 26, 2026, No. B340818) 2026 WL 194033, California's Second District Court of Appeal affirmed PERB's conclusion that CSU had a duty to engage in effects bargaining. However, it struck down, or vacated, PERB's finding that CSU violated HEERA since the record lacked substantial evidence that CSU had implemented the policy or refused to bargain before the unfair labor practice charge was filed with PERB.

Background

In February 2023, CSU adopted Executive Order 803, which scaled back student vaccination requirements. The 2023 policy only required students under 19 to be vaccinated against hepatitis B, while the prior policy required vaccinations for a variety of diseases.

CSU did not formally notify the California Faculty Association (CFA) that it had adopted the 2023 policy, but CFA learned of it within two weeks of its adoption. CFA demanded bargaining over the change, asserting that it posed health and safety risks, particularly to immunocompromised faculty who rely on "community immunity." CSU responded that it had no duty to bargain since the vaccination policy applied only to students and did not have foreseeable impacts on matters within the scope of representation. Nevertheless, CSU offered twice to meet informally so CFA could explain why it believed the change was negotiable. CFA declined to meet with CSU, and instead filed an unfair practice charge with PERB, alleging CSU failed to bargain in good faith with CFA in connection with the policy change.

In August 2024, PERB issued a final decision finding that CSU violated HEERA by beginning to implement the 2023 policy before affording CFA notice and an opportunity to bargain over any reasonably foreseeable negotiable effects of the 2023 policy on CFA's members.

Second District Court of Appeals Decision

CSU challenged PERB's decision in court. The court affirmed some parts of it and vacated others.

1. *Duty to Engage in Effects Bargaining (Affirmed).*

The court upheld PERB's conclusion that CSU had a duty to engage in effects bargaining over the reasonably foreseeable effects of the 2023 policy on faculty health and safety. Although the policy itself was outside CFA's scope of representation, the court agreed that substantial evidence supported the determination that the policy change could reduce "community immunity" and affect the health and safety of immunocompromised faculty.

CSU argued that any such impacts were already fully addressed through the ADA/FEHA accommodation framework. However, the court rejected the notion that ADA/FEHA accommodations displace collective bargaining obligations. It recognized that, while individualized accommodation rights under ADA/FEHA could be pursued, other avenues to address such workplace effects remained.

2. *HEERA Violation (Vacated).*

The court set aside PERB's finding that CSU committed an unfair labor practice for two reasons.

First, there was no substantial evidence that CSU began implementing the 2023 policy by the time CFA filed its unfair practice charge. Although the vaccination policy was adopted in February 2023, it applied to students entering in or after Fall 2023, and there was no evidence that CSU took any concrete steps to carry it out before the charge was filed.

Second, there was no substantial evidence that CSU refused to bargain effects. CSU offered twice to meet informally with CFA to discuss and clarify why it believed the student vaccine policy was negotiable, which CFA rejected. The court held that employers may satisfy their duty to seek clarification through informal discussions, not only through formal bargaining sessions.

Accordingly, because the record did not support an implementation or a refusal-to-bargain finding, PERB's unfair practice determination was vacated.

Takeaways

This decision clarifies that even when an underlying policy decision is non-negotiable, employers may still have a duty to engage in effects bargaining if the decision has reasonably foreseeable effects on even a subset of members. ADA/FEHA accommodation processes do not eliminate these bargaining obligations.

Relatedly, where parties dispute whether a change implicates negotiable effects, an employer may satisfy its duty by seeking clarification through informal discussions. While courts owe PERB deference over matters within its expertise, that deference is not absolute and courts have the ultimate responsibility for interpreting laws within PERB's jurisdiction.

If you have any questions about this case, or for any questions regarding collective bargaining or labor and employment matters in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#) and [LinkedIn](#), or download our [mobile app](#).

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