

# **PUBLIC EMPLOYMENT RELATIONS BOARD**

## **2006-2007 ANNUAL REPORT**

**October 15, 2007**



### **Board Members**

JOHN C. DUNCAN  
LILIAN S. SHEK  
SALLY M. MCKEAG  
KAREN L. NEUWALD

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## PUBLIC EMPLOYMENT RELATIONS BOARD



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October 15, 2007

Dear Members of the Legislature and fellow Californians:

We are pleased to present this annual report summarizing the activities of the Public Employment Relations Board (PERB or Board) during the preceding fiscal year. PERB was established 31 years ago, with its jurisdiction initially comprising only the Educational Employment Relations Act (EERA) establishing collective bargaining in California's public schools and community colleges. Over this 30+ year period, PERB's jurisdiction has expanded to encompass seven collective bargaining statutes, 7,000 public-sector employers, and more than 2-million public-sector employees. PERB is responsible for administering and enforcing these laws in an expert, fair and consistent manner.

Times remain busy at PERB. The number of cases reviewed each year by the Board has significantly increased since cities, counties and special districts under the Meyers-Milias-Brown Act were added to PERB's jurisdiction through legislation passed in 2000. The number of unfair labor practice charges has climbed dramatically from 461 in Fiscal Year (FY) 2000-2001 to 823 in FY 2006-2007.

The majority of the Board's complaints are resolved through voluntary settlement agreements, an important step among the resolution processes that we offer. In FY 2006-2007, the rate of settlement during or as a result of PERB's informal settlement conference process was 76%, an increasingly higher rate over the past few years. In cases where mediation is not successful, the parties are provided the opportunity to litigate their disputes quickly and efficiently. One of the Board's most critical jobs is to provide guidance to the parties through clear and concise decisions. The Board itself issued 87 decisions in the last fiscal year.

PERB's litigation workload in FY 2006-07 remained consistent with that of FY 2005-06, wherein we experienced a 69% increase in new litigation cases. While some of this activity involved defending Board decisions in the California Court of Appeal, the litigation growth is also partly attributable to efforts to protect PERB's exclusive initial jurisdiction over the statutes it administers. The Board considered 16 injunctive relief requests in FY 2006-07 compared to 23 in FY 2005-06 and 14 in FY 2004-05. Only one was granted in FY 2006-07 reflecting the high standard of proof the affected party must meet when attempting to pursue this course of action.

As we reported last year, PERB continues reaching out to its constituents in a multitude of ways. Coming off the successful 30th Anniversary Conference held in 2006, we conducted in September 2007 a similar event in Southern California to enable PERB constituents in that geographic area to benefit from this comprehensive training program. We continue to update our website allowing Board decisions and regulations to be accessed and reviewed on-line. Unfair practice charges can now be filed on-line. The Advisory Committee composed of key members of the public sector labor and management communities continued to assist in developing further recommendations on how PERB can improve.

All of us at PERB hope you find this report informative and helpful. The Board remains committed to providing exceptional service to the people of California and the swift resolution of labor-relations disputes.

Respectfully submitted,

Karen L. Neuwald  
Chair

## **Introduction of Board Members and Administrators**

### **Board Members**

**John Duncan** was appointed to the Public Employment Relations Board (PERB or Board) and designated Chairman by Governor Arnold Schwarzenegger February 2004. In August 2007, Mr. Duncan was appointed by the Governor as the Director of the Department of Industrial Relations. Prior to his appointment at PERB, he was president of Duncan Consulting, Inc. and served as a member of the Governor-Elect's Transition Team staff. Mr. Duncan previously served in the cabinet of Governor Pete Wilson as the Director of the Department of Industrial Relations. Following that service he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in history and holds a masters degree in public administration from Harvard University's John F. Kennedy School of Government.

**Lilian S. Shek** was appointed to the Board by Governor Arnold Schwarzenegger in November 2004. Prior to her appointment, she was an Administrative Law Judge II for the Unemployment Insurance Appeals Board, where she served from April 1992 to November 2004. In 1994, Governor Pete Wilson appointed her to the Governor's Advisory Selection Committee, the Regents of the University of California. Before April, 1992, she was an attorney in private practice, an assistant professor and lecturer in business law at California State University, Sacramento; a hearing officer for the Sacramento County Civil Service Commission; and a judge pro tem for the Small Claims Department of Sacramento County Superior and Municipal Courts. She was an assistant counsel for the California Farm Bureau Federation; and received a Reginald Heber Smith Community Lawyer Fellowship to serve as a staff attorney for the San Francisco Neighborhood Legal Assistance Foundation and Legal Services of Northern California. She was actively involved in several professional organizations. She was a Barrister of the Anthony M. Kennedy American Inns of Court; Chair of the California State Bar Committee on Women in the Law; President of Women Lawyers of Sacramento; and a member of the American Women Judges Delegation to the People's Republic of China. She earned her Bachelor of Arts degree in sociology from the University of California, Berkeley; her Doctor of Jurisprudence degree from Hastings College of the Law, University of California; and her Masters of Business Administration degree from California State University, Sacramento. Her term expires on December 31, 2007.

**Sally M. McKeag** was reappointed to PERB by Governor Arnold Schwarzenegger on February 23, 2007. She has served in this capacity since March 2005. Her term ends on December 31, 2011.

Prior to her appointment to the Board, she served as Chief Deputy Director of the California Employment Development Department. She also served as Deputy Staff Director of the Governor-Elect's Transition Team.

Ms. McKeag returned to California after two years in Washington, D.C. where she worked for the U.S. Department of Labor. Specifically, she was recruited to serve as Chief of Staff to the Department of Labor's Employment and Training Administration Assistant Secretary.

Prior to her employment at the Department of Labor, Ms. McKeag served in a variety of capacities for the California State Senate and the Wilson Administration. Specifically, she was Director of Public Affairs for the Senate Republican Caucus where she oversaw the development and implementation of strategies to support Senate members in representing their constituencies. Under Governor Pete Wilson, she served as Deputy Director of Operations for the Department of Consumer Affairs, Acting Deputy Director of the Department of Fish and Game, and Director of the Governor's Office of Constituent Affairs.

Before coming to California to work for Governor Wilson, Ms. McKeag served in the Reagan and Bush Administrations in Washington, D.C. She was the Director of the Executive Secretariat at the Environmental Protection Agency, overseeing the coordination of all correspondence and other official documents for the EPA Administrator. Ms. McKeag was also Special Assistant to the Secretary of the Interior, supervising all functions related to scheduling of the Secretary's participation in official and political events.

**Karen L. Neuwald** was appointed to the Board July 2005 and became the Chair in August of 2007. Prior to her appointment she was the Chief of the Office of Governmental Affairs at the California Public Employees' Retirement System for two years. She served as the Assistant Director for Legislation at the Department of General Services from November, 1996 to July, 2003. For 11 years prior to DGS, Ms. Neuwald worked at the Department of Personnel Administration. She began her career at DPA working on policy and legal issues, and then spent six years directing DPA's legislative program. Ms. Neuwald had her entrée in state government in 1982 working as an analyst at the Legislative Analyst's Office. As a program analyst, she worked on budget matters related to employee compensation, collective bargaining, health care, and retirement issues. Overall, Ms. Neuwald has enjoyed a 24 year career in state government service. Ms. Neuwald is a graduate of the University of Oklahoma and the University of Texas, where she received a master's degree in public affairs. Her term expires on December 31, 2009.

### **Board Members Appointed After July 1, 2007**

**Robin W. Wesley** was appointed to the position of Board Member on July 5, 2007. She has served PERB in a variety of capacities since 1991, including legal adviser, regional attorney, acting general counsel and administrative law judge. From 1983 to 1991, Ms. Wesley served as deputy director for local government affairs for the Governor's Office of Planning and Research.

**Tiffany Rystrom** was appointed to the Board in August 2007. Prior to her appointment, and since 2001, she has been of counsel with the law firm Carroll, Burdick & McDonough. From 1983 to 2000, Ms. Rystrom was a partner in the law firm Franchetti & Rystrom. Previously, she served as a deputy attorney general for the California Attorney General's Office from 1980 to 1983 and a deputy district attorney for the Marin County District Attorney's Office from 1978 to 1979. From 1977 to 1978 she served as a judicial clerk for Division One of the First District Court of Appeal. Ms. Rystrom is a member of the California State Bar.

## Legal Advisers

**Gregory T. Lyall** was appointed as Legal Adviser to Member Sally M. McKeag in June 2005. Previously, Mr. Lyall served as a staff counsel at the California Department of Personnel Administration from 2001 to 2005. Before entering state service, Mr. Lyall was an associate attorney with the law firms of Kronick, Moscovitz, Tiedemann & Girard (1997-2001) and Pinnell & Kingsley (1994-1997). Mr. Lyall received his B.S. degree in Biology from the University of Southern California and his Juris Doctorate from the University of San Diego School of Law where he graduated with *cum laude* honors and served as a member of the San Diego Law Review. Mr. Lyall currently teaches a class on labor and employment law through U.C. Davis Extension.

In September 2005, **Heather Glick** was appointed as Legal Adviser to Member Karen L. Neuwald. Ms. Glick began her career in labor and employment law in law school when she clerked for Los Angeles Unified School District and Milwaukee Public Schools in their respective labor relations departments. Upon graduating from Valparaiso University School of Law, she worked for the State of Illinois as Labor Relations Counsel where she represented all agencies under the auspice of the Governor in arbitrations and before the Illinois Labor Relations Board. After leaving state service, Ms. Glick worked for Ancel, Glink, Diamond, Bush, DiCianni & Rolek (2002-2004) and Liebert Cassidy Whitmore (2004-2005) boutique firms specializing in local government law. Ms. Glick received a B.A. degree in Sociology of Law and English from the University of California, Davis and her Juris Doctorate from Valparaiso University School of Law.

**Christine D. Lovely** was appointed as Legal Adviser to John Duncan, the former Chairman of PERB in November 2006. Since mid-August 2007 Ms. Lovely has served as Legal Adviser to PERB Member Robin Wesley. Before coming to PERB, Ms. Lovely represented school districts and community college districts in various matters as an associate in the Pleasanton office of Atkinson, Andelson, Loya, Ruud & Romo (1996-2006). At Atkinson, Andelson, Loya, Ruud & Romo, Ms. Lovely developed a specialization in disability matters and personnel issues. Ms. Lovely received her B.A. in Mass Communications from the University of California, Berkeley, and her Juris Doctorate from the University of California Davis School of Law (King Hall).

**Jean C. Fung** was appointed as a Legal Adviser to Board member Lilian Shek in October 2006. Ms. Fung graduated from Stanford University in 1992, with A.B. and B.S. degrees in civil engineering and English. She received her J.D. from UC Berkeley, Boalt Hall School of Law, in 1995. From 1995 to 1997, she was an associate at Fitzgerald, Abbott & Beardsley LLP in Oakland. From 1998-2002, Ms. Fung was an associate at Murtha Cullina LLP in Hartford, Connecticut. After moving back to California, she performed contract work for Sacramento law firms until her appointment at PERB.

## Administrators

**Bernard McMonigle** is the Chief Administrative Law Judge for PERB. He has been on the staff of PERB since 1988. Prior to his permanent appointment as an administrative law judge, he served as a senior counsel in the office of the General Counsel.

McMonigle has worked as a labor relations neutral since 1977, when he was appointed as a Commissioner of Mediation for the Federal Mediation and Conciliation Service. Before joining PERB he was a Board Counsel for the California Agricultural Labor Relations Board. He has also served as a labor arbitrator and an ad hoc hearing officer for the Sacramento County Civil Service Commission.

A 1984 graduate of the University of the Pacific McGeorge School of Law, McMonigle also earned a B.B.A. in Economics from the University of Georgia and an M.S. in Employment Relations from American University in Washington, D.C. A member of the Labor and Employment section of the state bar, he served as the 1999 Chair of the Sacramento County Bar Labor and Employment Law section.

Former Chief Administrative Law Judge **Fred D'Orazio** joined PERB as an administrative law judge in 1978. He was promoted to chief administrative law judge in 2003. He served for ten years as annual editor of California Public Sector Labor Relations, a treatise sponsored by the Employment and Labor Law Section of the State Bar of California and published by Matthew Bender. He authored a Pocket Guide to the Ralph C. Dills Act, published by the California Public Employee Relations, Institute of Industrial Relations, University of California, Berkeley. He has also taught public sector labor law at Golden Gate University School of Law and administrative law at University of San Francisco School of Law. He received his B.S. from George Washington University and his J.D. from American University, Washington College of Law. Prior to joining PERB, he was Assistant General Counsel for the National Treasury Employees Union.

**Tami R. Bogert** was appointed General Counsel of PERB in February 2007. Before joining PERB, Ms. Bogert served as Deputy Legal Affairs Secretary for and in the office of Governor Schwarzenegger from 2003 to 2007. Prior to that, she served at the California District Attorneys Association as a Director, a Supervising Attorney, and earlier on as Counsel for the Violence Against Women Project. Ms. Bogert also served during the 1990s as a member of the legal affairs team under Governor Wilson and in the California Attorney General's Office.

Former PERB General Counsel **Robert Thompson** began working for PERB in 1980 as a Legal Adviser to then Chair Harry Gluck. He has also worked as a Regional Attorney and Deputy General Counsel. He received a Bachelor of Sciences degree in Chemical Engineering from Northwestern University and is an adviser to the Executive Committee of the Labor and Employment Law Section of the State Bar of California.

**Wendi L. Ross** joined PERB as Deputy General Counsel in April 2007 and has more than 18 years of experience practicing labor and employment law. Ms. Ross was previously employed by the State of California, Department of Personnel Administration as a Labor Relations Counsel. Prior to that position, she was employed as an associate attorney with the law firms of Pinnell & Kingsley and Theirman, Cook, Brown & Prager. She has also served as Chair of the Sacramento County Labor and Employment Law Section.

**Eileen Potter** began working for PERB in 1993 as the Administrative Officer. Her state service includes the Governor's Office of Planning and Research (OPR) from 1979 through 1990 culminating in her appointment as the Assistant Chief of Administration. After leaving OPR, Ms. Potter worked at the Office of Statewide Health Planning and Development and the Department of Health Services before coming to PERB as its Administrative Officer. She has a degree in Criminal Justice Administration with minors in Accounting and English from California State University, Sacramento.

**Anita I. Martinez** has been employed with PERB since 1976 and has served as San Francisco Regional Director since 1982. Her duties include supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of settlement conferences, representation hearings, and elections. Before joining PERB, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, California Public Sector Labor Relations, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her B.A. from the University of San Francisco.

**Les Chisholm** currently serves as Division Chief, Office of the General Counsel for PERB and served as Sacramento regional director since 1987. His duties include investigation of representation cases and unfair practice charges, and conduct of settlement conferences and representation hearings and elections. Mr. Chisholm also has responsibilities in the areas of legislation, rulemaking and technology projects for the Board. He received a B.A. from Florida Atlantic University and M.A. in political science from the University of Iowa.

## I. OVERVIEW

### Statutory Authority and Jurisdiction

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public-sector collective bargaining in California. The Board administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties. The statutes administered by PERB since the mid-1970s are: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code, § 3540 et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code, § 3512 et seq.), establishing collective bargaining for State employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code, § 3560 et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968 (Gov. Code, § 3500 et seq.), which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes specified peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include the supervisory employees of the Los Angeles County Metropolitan Transportation Authority. The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) is codified at Public Utilities Code section 99560 et seq.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 (Gov. Code, § 71600 et seq.) and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002 (Gov. Code, § 71800 et seq.).

Since 2001, approximately two-million public-sector employees and their employers are included within the jurisdiction of the seven labor statutes administered by PERB. The approximate number of employees under such statutes is as follows: 675,000 work for California's public education system from pre-kindergarten through and including the community college level; 125,000 work for the State of California; 100,000 work for the University of California, California State University, and the Hastings College of Law; and the remaining public employees work for California's cities, counties, special districts, trial courts, and the Los Angeles County Metropolitan Transportation Authority.

## **PERB's Purpose and Duties**

### **The Board**

The Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to five-year terms, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the seven statutes, the Board acts as an appellate body to hear challenges to proposed decisions that are issued by Board agents. Decisions of the Board itself may be appealed under certain circumstances, and then only to the State appellate courts. The Board, through its actions and those of its agents, is empowered to:

- conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- deal with impasses that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- ensure that the public receives accurate information and has the opportunity to register opinions regarding the subjects of negotiations between public-sector employers and employee organizations;
- interpret and protect the rights and responsibilities of employers, employees, and employee organizations under the Acts;
- bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- conduct research and training programs related to public-sector employer-employee relations; and
- take such other action as the Board deems necessary to effectuate the purposes of the Acts it administers.

A summary of the Board's 2006-07 decisions is included in the Appendices, beginning at page 25.

### **Major PERB Functions**

The major functions of PERB involve: (1) the investigation and resolution of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) the appeals of Board staff determinations to the Board itself; and (4) the legal functions performed by the Office of the General Counsel.

## Unfair Practice Charges

The investigation and resolution of unfair practice charges is the major function performed by PERB. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA. Unfair practice charges can be filed online, as well as by mail, facsimile, or personal delivery.

An unfair practice charge alleges an employer or employee organization engaged in conduct that is unlawful under one of the labor statutes administered by PERB. Examples of unlawful employer conduct are: refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; and promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of the statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the EERA, Dills Act, HEERA, MMBA, TEERA, Trial Court Act, or Court Interpreter Act has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, it is dismissed. The charging party may appeal the dismissal to the Board itself.

If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent may file an answer to the complaint.

Once a complaint has been issued, another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB Administrative Law Judge (ALJ) is scheduled. A hearing usually occurs within 100 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision.

Proposed decisions that are not appealed to the Board itself are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Decisions of the Board itself are both binding on the parties to a particular case and precedential. Most PERB decisions are available on our website (<http://www.perb.ca.gov>), and all decisions will be available soon. Interested parties can also sign-up for electronic notification of new Board decisions.

## **Representation**

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications that have an internal and occupational community of interest. In most situations, if only one petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If two or more employee organizations are competing for representational rights of an appropriate bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent holds a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination. That determination sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB conducts a representation election in cases where the employer has not granted recognition to an employee organization to serve as the exclusive representative. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of “No Representation” appears on the ballot in every representation election.

A summary of PERB’s 2006-07 representation activity is included in the Appendices at page 23.

## **Mediation/Factfinding**

PERB staff also assist parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA and HEERA. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. If impasse occurs, a Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

If settlement is not reached during mediation, either party, under EERA and HEERA, may request the implementation of statutory factfinding procedures. PERB provides lists of neutral factfinders who make findings of fact and advisory recommendations to the parties concerning settlement terms.

## **Appeals Office**

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. It maintains case files, issues decisions rendered, and prepares

administrative records for litigation filed in California's appellate courts. This office is the main contact with parties and their representatives while cases are pending before the Board itself.

### **Office of the General Counsel**

The legal representation function of the Office of the General Counsel includes:

- defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in the State appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order, or ruling, or with a subpoena issued by PERB;
- seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- defending the jurisdiction of the Board, submitting motions, pleadings, and amicus curiae briefs, and appearing in cases in which the Board has a special interest.

A summary of PERB's 2006-07 litigation activity is included in the Appendices, beginning at page 56.

### **Other PERB Functions and Activities**

#### **Information Requests**

As California's expert administrative agency in the area of public-sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations, and formal decisions. Information requests from the Legislature and the general public are also received and processed.

#### **Support Functions and Board Operations**

The Administration Section provides support services to PERB, such as business services, personnel, accounting, information technology, mail, and duplicating. This section also handles budget development and maintains liaison with the Department of Finance and other State agencies.

PERB emphasizes automation as a means of increasing productivity and, therefore, has moved forward with the full development of its website. PERB's website now provides the ability to access PERB decisions, regulations, statutes, and forms online.

### III. LEGISLATION AND RULEMAKING

#### Legislation

There was no major legislation in 2006 that directly affected PERB or its jurisdiction. There were, however, amendments enacted affecting the Dills Act, EERA, HEERA, and the Trial Court Act.

Senate Bill 1852 (Chapter 538, Statutes of 2006) included technical, nonsubstantive changes in various provisions of law, including section 3515.7 of the Dills Act, sections 3543.1 and 3549.1 of the EERA, and section 3572 of the HEERA. These changes effectuate the recommendations made by the Legislative Counsel to the Legislature, pursuant to existing law that directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

Section 71660 of the Trial Court Act was amended by Assembly Bill 1995 (Chapter 187, Statutes of 2006). Assembly Bill 1995 made applicable the existing requirement that each trial court permit an employee to inspect his or her official personnel files that are used, or have been used, to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action to any personnel files.

#### Rulemaking

##### Agency Fee Regulations

PERB first adopted regulations addressing agency fee/fair share fee collection issues in 1989, with the adoption of Subchapter 8, Article 1 of Chapter 1 (sections 32990 through 32997). The Initial Statement of Reasons for the adoption of the new rules read, in part, as follows:

In 1986, the United States Supreme Court issued its decision in *Chicago Teachers Union, Local No. 1 v. Hudson*, 475 US 292. The *Hudson* case imposes certain due process obligations upon the collection of agency (or service) fees. These are: (1) adequate explanation of the basis of the fee as verified by an independent auditor; (2) reasonably prompt opportunity to file and have heard any objections before an independent, impartial adjudicator; and (3) escrow of amounts reasonably in dispute pending adjudication.

*Hudson* followed significant cases, *Abood v. Detroit Board of Education* (1977) 431 US 209 and *Ellis v. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees* (1984) 466 US 435. In *Abood*, the Supreme Court decided that a non-member employee's rights under the First Amendment were not violated by an agency fee provision provided that the fee covered the exclusive

representative's obligation to negotiate and administer the collective bargaining agreement; in essence, the *Abood* court found that a "no free riders" arrangement was constitutional. The Court, however, did not further delineate between permissible and impermissible expenditures. Then, in *Ellis*, the Supreme Court held that specific expenditures by the exclusive representative would be reviewed by the following test:

"...(w)hether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues." *Ellis* at p. 442.

While none of these cases directly involved the three statutes administered by the Public Employment Relations Board (PERB),<sup>1</sup> the cases were decided by the U. S. Supreme Court and must be followed by PERB in regulating agency fees.

Although these regulations were updated as agency fees were authorized under additional statutes and as PERB's jurisdiction was extended to cover additional public-sector collective bargaining statutes, no substantive amendments were adopted. In August 2004, the California Teachers Association (CTA), on its own behalf and on behalf of several other unions that collect agency fees, proposed that PERB revise the agency fee regulations. CTA urged that the regulations be scaled back to address only procedural requirements. The unions argued that subsequent developments in case law made it unnecessary to address substantive issues through the regulations and that maintaining substantive agency fee law in regulation is problematic when new decisions conflict with the existing regulations.

PERB solicited and received comments from other interested parties concerning the proposals submitted by CTA. A workshop discussion was held on March 3, 2005, to allow interested parties to further discuss these issues with PERB and with one another. Additional written comments and information were submitted by parties following the March 2005 workshop.

In April 2006, based on the comments earlier received, PERB staff prepared a draft of possible revisions to the agency fee regulations and circulated that draft to interested parties, along with an invitation to attend a second workshop discussion on May 16, 2006. PERB again received both written and oral comments.

Following consideration of all comments received from August 2004 through the workshop discussion of May 16, 2006, as well as developments in case law since enactment of the agency fee regulations in 1989, PERB initiated the formal rulemaking process in this regard

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<sup>1</sup> In 1989, PERB jurisdiction included only EERA, the Dills Act, and HEERA, but HEERA did not provide for the collection of agency fees at that time.

with publication of a Notice of Proposed Rulemaking on December 1, 2006. The focus of the proposed changes was to provide greater clarity, especially with respect to the distinction between objections to payment of nonchargeable expenses and challenges to the calculation of the chargeable and nonchargeable expenditures. The amendments also were intended to clarify aspects of the notice and escrow requirements, and to eliminate unnecessary regulations while updating the regulations consistent with current case law in this area.

The Board received written comments and conducted a public hearing on the proposed changes on February 8, 2007. Based on the public comments, a Notice of Proposed Modifications was issued on February 26, 2007, and a Second Notice of Proposed Modifications was issued on April 23, 2007. Following consideration of the written comments received on the Second Notice of Proposed Modifications, the Board completed action on the rulemaking at its public meeting of May 24, 2007, by approving the proposed revisions as modified. California's Office of Administrative Law approved the rulemaking on July 23, 2007, and the regulation changes took effect on August 22, 2007.

### Proof of Support

On February 16, 2007, PERB issued a Notice of Proposed Rulemaking that addressed issues including proof of support requirements, revocation of proof of support, and the certification of an exclusive representative under EERA based on card-check recognition. In addition to the substantive changes in the areas described above, this rulemaking package included numerous changes to existing regulations to clarify, conform, or correct the regulation.

The most extensive area of proposed changes involved proof of support. While a number of changes were proposed for consideration, two areas of change received the most attention. First, the proposed changes would have added a requirement for proof of support in cases where a petition may lead to recognition of the petitioner as exclusive representative without an election. In such a case, the proposed text would have added a requirement that the proof of support material include language by which the employee signing a proof of support document acknowledges that an election may not be required.

Second, the Board was asked to consider regulations addressing when and how an employee can revoke an authorization card or petition previously signed by the employee. In early 2006, the Board for the first time recognized a right of employees to revoke authorization cards. (*Antelope Valley Health Care District* (2006) PERB Decision No. 1816-M.) The *Antelope Valley* decision addressed the issue in the context of an unfair practice charge case arising under the Meyers-Milias-Brown Act and did not address when support may be revoked or how it may be revoked. The proposed regulations would have provided both procedural and substantive requirements for revocation of proof of support, including provisions that would make revocation available as an option only in cases that may not require an election.

Another substantive change addressed by this package provided a mechanism for PERB to certify an exclusive representative under EERA where the requirements for card-check recognition are met. A similar provision was adopted earlier for HEERA.

The Board received numerous written comments and extensive testimony at a public hearing held April 12, 2007 on the proposed changes. Based on the comments, the Board approved the issuance of a Notice of Proposed Modifications that deleted from the proposed text the proposed new revocation regulations and the new language requirement for proof of support. The Notice of Proposed Modifications, issued June 12, 2007, also included language revisions to address other concerns raised through the public hearing and to clarify the intent of the proposed amendments. The Board received and considered two written comments in response to the proposed modifications, including one letter objecting to the deletion of earlier proposals. The Board took final action on the proposed rulemaking at its public meeting held on August 16, 2007, approving the proposed text as modified by the Notice of Proposed Modifications.

## IV. CASE DISPOSITIONS

### Unfair Practice Charge Processing

The number of unfair practice charges filed with PERB has increased as a result of the newest public employers and employee organizations under PERB's jurisdiction realizing that PERB can assist in resolving their labor disputes. In 2006-2007, 823 new charges were filed. While this number is slightly lower than the number of charges filed during the prior fiscal year, it nevertheless continues an overall increase in filings since July 2001. The average number of unfair practice charges filed during the 10 years preceding July 1, 2001 was 551 per year. The average number of annual filings since July 1, 2001 is 846, with fiscal year totals ranging from a low of 802 to a high of 1,012.<sup>2</sup>

### Dispute Resolutions and Settlements

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process -- the investigation. During this step of the process, 247 cases (32% of all charge investigations completed) were withdrawn, many through informal resolution by the parties. The General Counsel's staff also conducted 271 days of settlement conferences in cases where a complaint was issued. These efforts resulted in voluntary settlements in 392 cases (76% of those cases in which settlement efforts concluded), compared to only 123 cases subsequently assigned for hearing.<sup>3</sup>

PERB's high success rate in mediating voluntary settlements is, in part, attributable to the tremendous skill and efforts of its staff, but it also requires commitment by the parties involved to look for solutions to problems. As the efforts of PERB's staff demonstrate, voluntary settlements are the most efficient way of resolving disputes, as well as providing an opportunity for the parties to improve their relationship. PERB looks forward to continuing this commitment to voluntary dispute resolution.

### Administrative Adjudication

Complaints that are not resolved through voluntary mediation are sent to the Division of Administrative Law for an evidentiary hearing before an ALJ. During this fiscal year, the workload of the Division remained relatively consistent with the workload and productivity since the effective date of PERB's jurisdiction over the MMBA in July 2001. In 2006-2007,

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<sup>2</sup> The average number (846) is calculated after discounting for the 256 nearly identical charges filed by a single group of employees in 2004-2005 and for a similar set of filings in 2001-2002.

<sup>3</sup> The percentage of cases settled at this stage without the necessity of hearing is inflated by the resolution of a large number of identical charges filed by multiple employees (see preceding footnote), but the percentage of cases settled the prior year was 61% and, historically, more than half of all cases going to complaint have been resolved at this stage.

ALJs issued 41 proposed decisions, averaging 85 days to render a decision. Of these 41 proposed decisions issued, 27 have been appealed to the Board, 13 have become final, and one decision was vacated.

### **Board Decisions**

Proposed decisions issued by the Division of Administrative Law and dismissals of unfair practice charges are subject to review by the Board itself. During the fiscal year, the Board issued 87 decisions and also considered 16 requests for injunctive relief.

### **Litigation**

Fiscal year 2006-07 culminated in court litigation<sup>4</sup> consistent with 2005-06 for PERB, that is a 69% increase in new litigation cases, and included more than 80 litigation-related projects assigned to PERB attorneys. A total of 20 litigation cases, including new and continuing cases, were handled during the 2006-07 fiscal year. (A summary of these cases is included in the Appendices, beginning at page 56.)

### **Representation Activity**

For the fiscal year, 348 new cases were filed, representing a slight decrease from the prior year and four cases below the four-year average.<sup>5</sup> The fiscal year total includes 205 mediation, 25 factfinding requests, 17 compliance cases, 95 representation petitions (recognition, severance, certification, decertification, amendment of certification, unit modification, and Board review), and 6 petitions concerning fair share fees.

Election activity decreased, continuing a general decline from historical averages. There were only five elections conducted by PERB during the fiscal year, including one amendment of certification, one fair share fee reinstatement, one fair share fee rescission, and two representation elections.

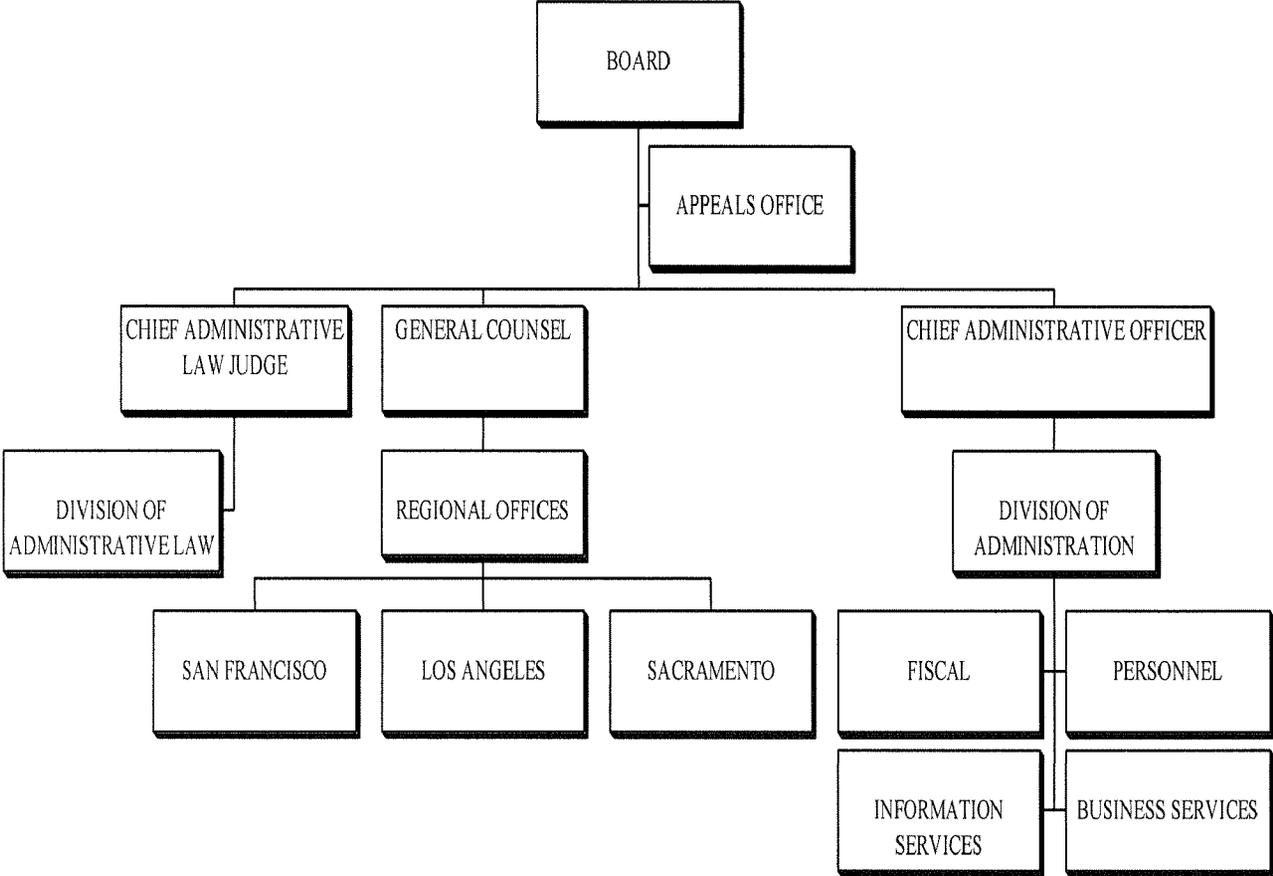
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<sup>4</sup> PERB's court litigation primarily involves: (1) injunctive relief requests to immediately stop unlawful actions at the superior court level; (2) defending decisions of the Board at the appellate level; and (3) defending the Board's jurisdiction in all courts in the State, including the California Supreme Court. Litigation consists of preparing legal memoranda, court motions, points and authorities, briefs, stipulations, judgments, orders, etc., as well as making court appearances.

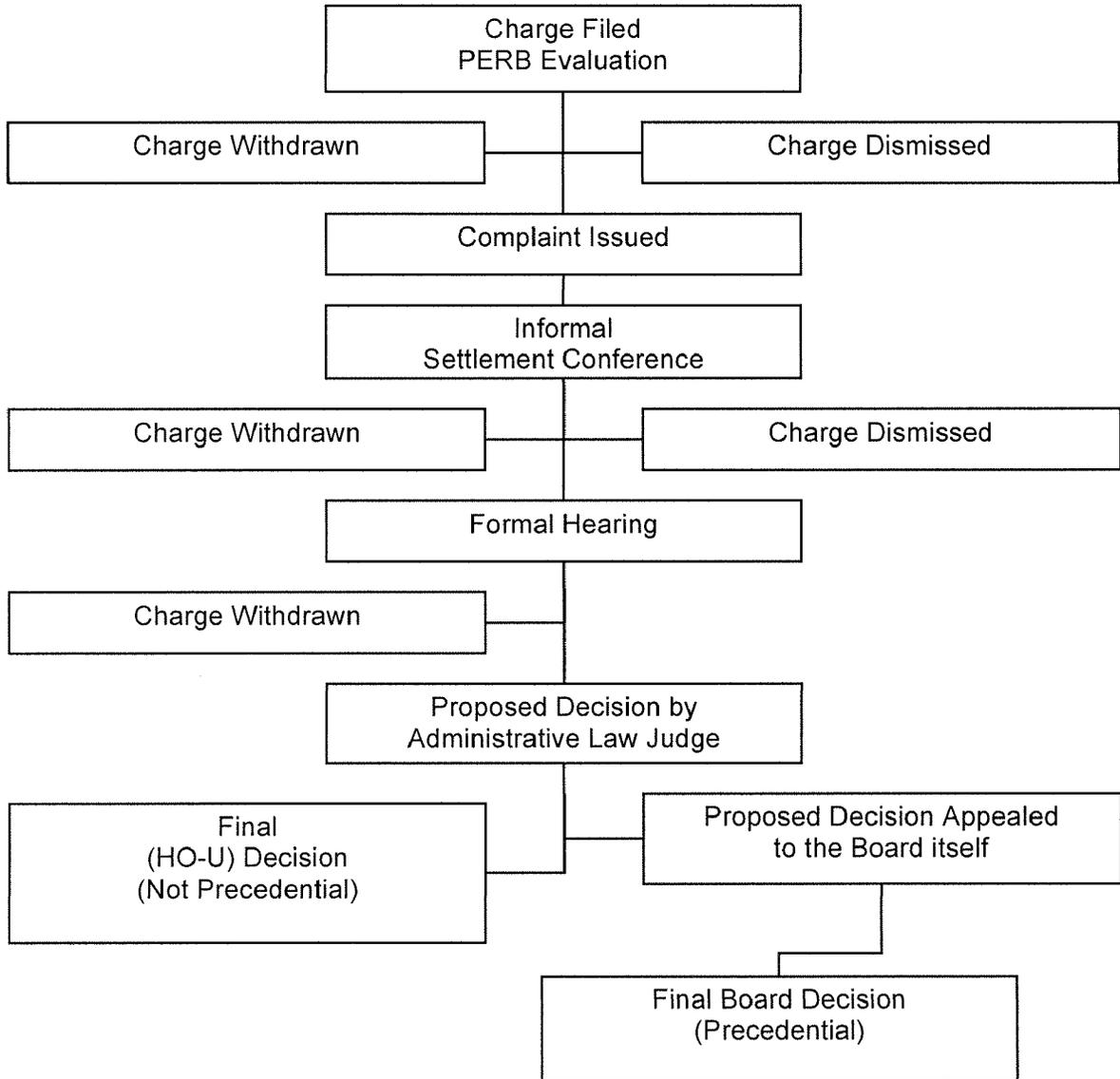
<sup>5</sup> Notably, however, the reduced number of case filings in the "Representation Activity" category may result from changes in PERB regulations that took effect May 11, 2006, eliminating petitions for Board review (under the MMBA) and public notice and financial statement complaints as separate case types, and instead providing for the filing of such disputes as unfair practice charges.

## **V. APPENDICES**

**PUBLIC EMPLOYMENT RELATIONS BOARD**  
**Organizational Chart**



## UNFAIR PRACTICE CHARGE FLOW CHART



## 2006-2007 UNFAIR PRACTICE CHARGE STATISTICS

### I. Unfair Practice Charges Filed by Region

Region	Total
Sacramento	240
San Francisco	231
Los Angeles	352
<b>Total</b>	<b>823</b>

### II. Unfair Practice Charges Filed by Act

Act	Total
Dills Act	71
EERA	343
HEERA	92
MMBA	297
TEERA	0
Trial Court Act	16
Court Interpreter Act	4
Non-Jurisdictional	0
<b>Total</b>	<b>823</b>

### III. Prior Year Workload Comparison: Charges Filed

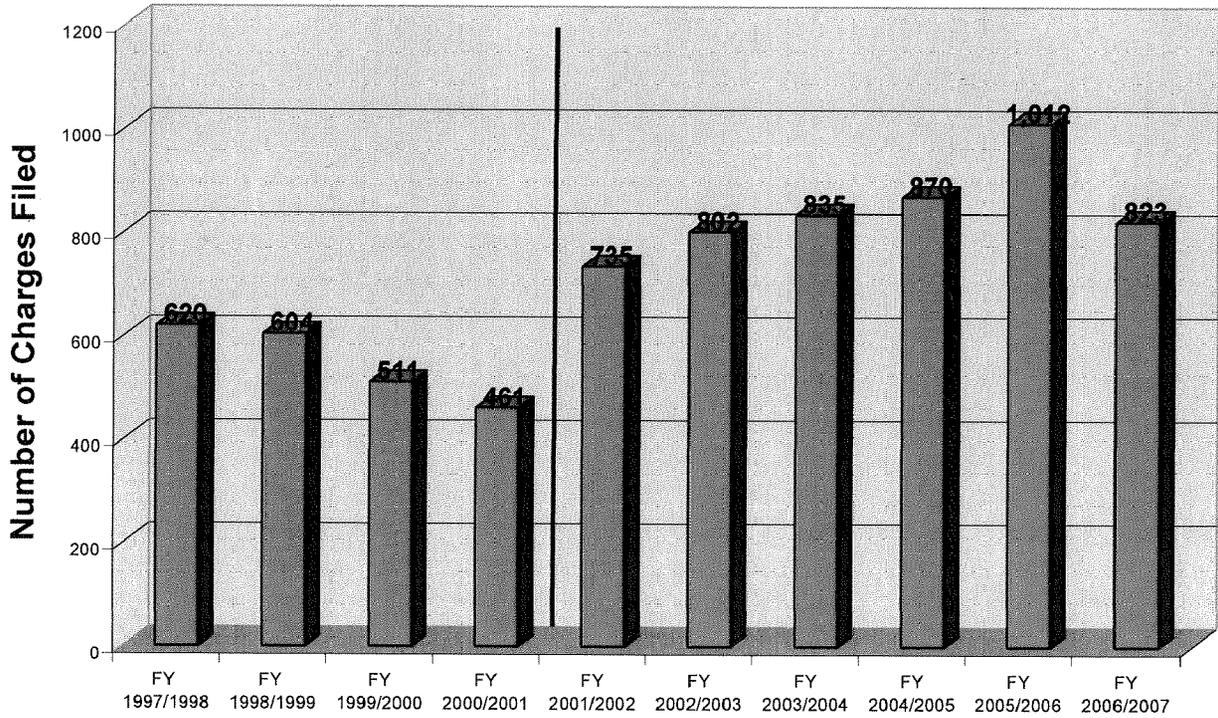
	2003/2004	2004/2005	2005/2006	2006/2007	4-Year Average
<b>Total</b>	835	870 <sup>6</sup>	1012	823	885

### IV. Unfair Practice Charge Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	78	61	100	239
San Francisco	58	84	67	209
Los Angeles	111	97	122	330
<b>Total</b>	<b>247</b>	<b>242</b>	<b>289</b>	<b>778</b>

<sup>6</sup> The number of charges shown for 2004-2005 is adjusted to discount 256 identical charges filed by a single group of employees; the raw number of filings was 1126.

## Unfair Practice Charge Filings



Notes: The vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001). Also, in Fiscal Year 2004-2005, the total number of charges filed (1126) was adjusted to discount 256 nearly identical charges filed by a single group of employees and in Fiscal Year 2001-2002 the total number, 935, was reduced by 200 for a similar set of filings (see p. 16).

## 2006-2007 REPRESENTATION CASE ACTIVITY

### I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Request for Recognition	29	28
Severance	3	0
Petition for Certification	1	0
Decertification	13	10
Amended Certification	6	3
Unit Modification	43	39
Organizational Security	6	3
Petition for Board Review (MMBA)	0	1
Arbitration	0	0
Mediation	205	113
Factfinding	25	22
Compliance	17	13
<b>Totals</b>	<b>348</b>	<b>232</b>

### II. Prior Year Workload Comparison: Cases Filed

	2003-2004	2004-2005	2005-2006	2006-2007	4-Year Average
Fiscal Year	338	361	360	348	352

### III. Elections Conducted

Amendment of Certification	1
Decertification	0
Fair Share Fee Reinstatement	1
Fair Share Fee Rescission	1
Representation	2
Severance	0
Unit Modification	0
<b>Total</b>	<b>5</b>

## Elections Conducted: 7/1/2006 - 6/30/2007

Case No.	Employer	Unit Type	Winner	Unit Size
<i>Amendment of Certification</i>				
SA-AC-00058-M	COUNTY OF SACRAMENTO	1 Firefighters	Yes	29
<i>Subtotal:</i>				
<i>Fair Share Fee Reinstatement</i>				
SF-OS-00196-H	HASTINGS COLLEGE OF LAW	1 Security	Fair share reinstated	7
<i>Subtotal:</i>				
<i>Fair Share Fee Rescission</i>				
SA-OS-00136-E	MADERA USD	1 Certificated Supervisors	Fair share not rescinded	68
<i>Subtotal:</i>				
<i>Representation</i>				
SA-RR-01079-E	MERCED COUNTY OFFICE OF EDUCATION	2 Children's Center/Aides	California School Employees Association	46
SA-RR-01078-E	MERCED COUNTY OFFICE OF EDUCATION	Children's Center	California School Employees Association	46
<b>Total Elections:</b>				<b>5</b>

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1777a	King City High School Teachers Association, CTA/NEA v. King City Joint Union High School District	Joint request by association and school district for reconsideration of the Board's remedy in Dec. No. 1777, because complying with the Board's order would likely bankrupt the District.	The Board granted the joint request and modified its previous order due to extraordinary circumstances.
1817a-H	Kerry Jean Nickols, et al. v. UPTE, CWA Local 9119	Joint request by employees and union to vacate PERB Decision No. 1817-H in view of a settlement reached by the parties.	Request to vacate denied in the absence of unique circumstances. Motion for reconsideration withdrawn as moot.
1818a-H	Mary Margaret Hawley, et al. v. UPTE, CWA Local 9119	Joint request by employees and union to vacate PERB Decision No. 1818-H in view of a settlement reached by the parties.	Request to vacate denied in the absence of unique circumstances. Motion for reconsideration withdrawn as moot.
1819a-H	Olivia Jimenez-Newby v. UPTE, CWA Local 9119	Joint request by employees and union to vacate PERB Decision No. 1819-H in view of a settlement reached by the parties.	Request to vacate denied in the absence of unique circumstances. Motion for reconsideration withdrawn as moot.
1820a-H	Orna Yaron v. UPTE, CWA Local 9119	Joint request by employee and union to vacate PERB Decision No. 1820-H in view of a settlement reached by the parties.	Request to vacate denied in the absence of unique circumstances. Motion for reconsideration withdrawn as moot.
1821a-H	Mark Ball v. UPTE, CWA Local 9119	Joint request by employee and union to vacate PERB Decision No. 1821-H in view of a settlement reached by the parties.	Request to vacate denied in the absence of unique circumstances. Motion for reconsideration withdrawn as moot.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1848-S	California Correctional Peace Officers Association v. State of California (Department of Corrections)	The charge alleged that the State of California (Department of Corrections) violated the Ralph C. Dills Act by engaging in bad faith bargaining, unilaterally changing staffing levels, and refusing to provide requested information.	The Board partially dismissed the charge because staffing levels are not a subject within the scope of representation and there was no evidence that the Union demanded to bargain the effects of the change of staffing levels. Some of the charges were also dismissed as untimely.
1849-M	Health Services Agency Physicians Associations v. County of Santa Cruz	Association alleged that County violated the MMBA by unilaterally changing the terms and conditions of employment of the bargaining unit, denying the Association's requests for information, discriminating against bargaining unit members and contracting out services.	The Board dismissed this portion of the charge. The unilateral change charge was dismissed because: the County provided the information requested in accordance with the collective bargaining agreement; extra help employees are not part of the unit; while the County contemplated making changes to employees' hours, no actual changes were made; and the County met with the Association to discuss layoff alternatives. The right to information charge was dismissed because the seniority list was provided as soon as the information was made available to the County. The discrimination charge was dismissed because the association failed to show that one doctor was dismissed for his protected activity and the charge did not demonstrate that any adverse action was taken against another doctor. The contracting out charge was dismissed because sufficient facts were not alleged to demonstrate that the County actually contracted out bargaining unit work.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1850	Melanie J. Welch v. California Teachers Association and Oakland Education Association	The charge alleged that the California Teachers Association and Oakland Education Association violated EERA by breaching its duty of fair representation.	The Board dismissed all allegations prior to July 27, 2005, as untimely. The Board dismissed the charge alleging duty of fair representation against CTA because CTA was not an exclusive representative and did not owe a duty of fair representation. The Board also dismissed the allegation alleging a duty of fair representation against OEA because Welch failed to show that OEA's conduct was arbitrary, discriminatory or in bad faith and that OEA did not owe a duty in extra-contractual forums.
1851-H	Coalition of University Employees v. Regents of the University of California	The charge alleged that the Regents of the University of California violated HEERA by issuing a counseling memo to a bargaining unit member in response to his appeal of a performance evaluation.	The Board upheld the dismissal because charging party failed to demonstrate the requisite nexus. Additionally, the charge was devoid of any facts demonstrating disparate treatment or failure to follow established procedures.
1852	Paul Pitner v. Contra Costa Community College District	The charge alleged that the Contra Costa Community College District retaliated against Pitner by denying him a full-time faculty position because he engaged in conduct protected by EERA.	The Board affirmed and adopted the ALJ's dismissal of the retaliation allegation, as well as the ALJ's finding that the District interfered with Pitner's EERA-protected rights by unlawfully interrogating him.

**2006-2007 DECISIONS OF THE BOARD**

DISPOSITION

DESCRIPTION

CASE NAME

DECISION NO.

1853-H	California State University Employees Union v. Trustees of the California State University	The Board affirmed the dismissal of an unfair practice charge in which the employee alleged, among other things, that the employee retaliated against the employee for engaging in protected activities, denied him adequate union representation and unilaterally changed the terms and conditions of the employee's employment.	The employee failed to establish a prima facie case of retaliation because he failed to prove a nexus existed between his protected activity and the alleged adverse action. In addition, the employee failed to establish a prima facie case of unlawful denial of union representation because the meetings in question were not investigatory in nature. Last, the employee failed to establish a prima facie case of unilateral change because the university was not obligated to negotiate work assignments reasonably contemplated within the scope of existing duties.
1854-H	Coalition of University Employees, Local 6 v. Regents of the University of California	The charge alleged that the Regents of the University of California violated HEERA by removing union flyers.	The Board upheld the dismissal because the parties bargained over union access rights, including the posting of union notices, and the union placed notices in an area beyond the bargained for area. As such, the University's removal was not unlawful.
1855-H	Mary Higgins v. Coalition of University Employees	Charging party alleged that the Coalition of University Employees (CUE) violated HEERA by removing her as statewide president of CUE.	The Board dismissed the charge because matters concerning internal union affairs are immune from review by PERB, unless they have a substantial impact on the relationship of unit members to their employer so as to give rise to a duty of fair representation. No such substantial impact was found here.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1856-M	Spencer Tacke v. Modesto Irrigation District	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged the District failed to provide sufficient notice for an election regarding an agency shop agreement	The charging party lacked standing because he was not a member of the class of employees allegedly harmed. However, even if the charging party had standing, he failed to prove a prima facie case of interference.
1857-M	Spencer Tacke v. IBEW Local 1245	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged IBEW breached its duty of fair representation and interfered with protected employee rights when it allegedly provided insufficient information for an agency shop agreement election.	The charging party lacked standing because he was not a member of the class of employees allegedly harmed. However, even if the employee had standing, he failed to prove a prima facie case of a breach of the duty of fair representation and interference with employee rights.
1858	Charmaine Elizabeth Bruce v. California School Employees Association & its Chapter 198	Employee charged that the California School Employees Association breached its duty of fair representation by withholding evidence that could have assisted her in retaining her position.	The Board dismissed the charge because the appeal did not meet the requirements of PERB Regulation 32635. The appeal did not state the specific basis for the appeal, raised new allegations without good cause, and failed to meet technical requirements.
1859	Grossmont Union High School District v. Grossmont Education Association	The charge alleged that the Grossmont Education Association (GEA) violated EERA by engaging in a sick out on April 25, 2005, while the parties were undergoing impasse procedures.	The Board upheld the dismissal because the charging party failed to offer sufficient evidence showing that GEA planned, organized, or authorized the sickout.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1860	Calexico Unified School District v. Calexico Teachers Association	The Board granted a request by the District to withdraw its appeal of a dismissal of an unfair practice charge.	The Board may grant a request to withdraw an appeal of a dismissal and the underlying charge based upon the joint resolution of the issues by the parties, provided it is in the best interests of the parties and consistent with the purposes of EERA.
1861	West Hills Community College District v. West Hills Faculty Association	Request by the West Hills Community College District to withdraw the case after the parties reached a settlement over the successor collective bargaining agreement.	The Board granted the request to withdraw the appeal of the partial dismissal of the charge.
1862-S	Jerry Magner v. State of California (Department of Forestry & Fire Protection)	The charge alleged that the State of California (Department of Forestry & Fire Protection) (State) violated the Dills Act by violating the charging party's Weingarten rights.	The Board dismissed the charge because charging party failed to present evidence that an investigatory interview was held at which the employee was denied representation.
1863	El Centro Elementary Teachers Association v. El Centro Elementary School District	The Board affirmed the dismissal of an unfair practice charge in which the District allegedly altered the terms regarding health benefits for retirees in the parties' collective bargaining agreement.	Health care benefits for retirees are a permissive subject of bargaining because retirees are not "employees" subject to the protection of EERA. Further, since an employer does not have a duty to bargain permissive subjects, it is not an unfair practice to unilaterally repudiate a contractual provision containing a permissive subject.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1864-S	International Union of Operating Engineers v. State of California (State Personnel Board)	The complaint alleged that SPB violated the Ralph C. Dills Act by refusing to approve settlement agreements in disciplinary actions for employees in State of California (State) bargaining Units 12 and 13 who participated in collectively bargained board of adjustment procedures.	After establishing that the Board possessed jurisdiction, the Board reversed the proposed decision and dismissed the unfair practice charge and complaint because the Dills Act did not provide the claimed right.
1865-M	Ruben S. Keymolent v. City of Santa Clarita	The charge alleged retaliation by the city and a violation of the charging party's Weingarten rights.	Dismissal upheld as the Board determined that the charging party was not a public employee under the MMBA, but worked for a private contractor.
1866-H	Eric Alan Chemello v. Trustees of the California State University (Humboldt)	The charging party alleged that the university violated HEERA by "misclassifying" his position, "crossing collective bargaining unit lines", threatening him, laying him off for raising concerns regarding labor policy, refusing to meet and confer with him after his layoff and replacing his position with personnel from a different bargaining unit.	Dismissal upheld as the charging party failed to state a prima facie case of an unfair practice and failed to show good cause for new allegations. The charging party either lacked standing, filed allegations which were untimely or failed to provide sufficient information to support a prima facie case.
1867-H	Eric Alan Chemello v. State Employees Trades Council-United	The charging party alleged that his union failed to represent him and discriminated against him during layoff proceedings and did not adequately help him to get re-hired.	Dismissal upheld as all of his allegations related to matters beyond the statute of limitations period.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1868	SEIU Local 660 v. County of Orange	The Board affirmed the dismissal of an untimely unfair practice charge in which SEIU alleged the County's signature require for decertification petitions was unreasonable.	The Board held that the matter was untimely. In order to invoke the continuing violation doctrine, the offending party must commit a new wrongful act and that act must be timely challenged by the charging party. Thus, the mere existence of an allegedly unreasonable signature requirement, standing alone, is insufficient to invoke the doctrine in this case. Because there was no case in controversy before the Board, SEIU essentially sought a declaratory judgment. However, the Board does not render advisory opinions or provide declaratory relief.
1869-H	American Federation of State, County and Municipal Employees, Local 3299 v. Regent of the University of California (San Francisco)	The Board granted a request by the AFSCME to withdraw its appeal of a dismissal of an unfair practice charge.	The Board may grant a request to withdraw an appeal of a dismissal and the underlying charge based upon the joint resolution of the issues by the parties, provided it is in the best interests of the parties and consistent with the purposes of HEERA.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1870-H	Coalition of University Employees, Local 6 v. Regents of the University of California	The charging party sought to amend its charge after the issuance of the dismissal.	The Board affirmed the dismissal, and held that a party may not amend a charge after the issuance of a dismissal letter unless the party shows that there was good cause for the late filing. The Board held that the failure of union staff to obtain an extension during the union representative's vacation was an insufficient reason to excuse the late filing.
1871-H	Statewide University Police Association v. Trustees of the California State University	The charge alleged that two emails from CSU management to every Chief of Police in the CSU system violated the prohibition on "direct dealing" under HEERA.	The Board dismissed the charge because the emails did not communicate new proposals to the employees or otherwise undermine the representative's exclusive authority, and did not contain a "threat of reprisal, force, or promise of benefit."
1872	Manuela G. Pina v. Public Employees Union Local 1	The charging party attempted to introduce new facts on appeal. The original charge was filed without a statement of facts.	The Board dismissed the charge because the charging party failed to demonstrate good cause to include new allegations on appeal.
1873	Angela M. Estacio v. Modesto City School District	The charge was filed outside the six-month statute of limitations under EERA.	The Board dismissed the charge, holding that the statute of limitations was not tolled by the filing of a prior unfair practice charge by the union based upon essentially the same alleged violations.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1874	Angela M. Estacio & Juan A. Martinez v. California School Employees Association & its Chapter 007	The charge alleged that the California School Employees Association and its Chapter 007 failed to comply with the duty of fair representation.	The Board dismissed the unfair practice charge without leave to amend based upon the statute of limitations. The Board also affirmed the Board agent's finding that there is no duty of fair representation in the processing of an unfair practice charge with PERB.
1875	Hesperia Education Association, CTA/NEA v. Hesperia Unified School District	The charge alleged that the district violated EERA by retaliating against certificated teachers because of their activities on behalf of the Hesperia Education Association. The district requested that its appeal of the proposed ALJ decision be withdrawn and that PERB close the case.	The Board granted the district's request to withdraw its exceptions to the proposed decision.
1876-H	California State Employees Association, CSU Division v. Trustees of the California State University	The Board found CSU committed an unfair practice when the it failed to provide requested information. The Board also found CSU committed an unfair practice when it consulted with an advisory group. Last, the Board reversed the ALJ's finding that the university committed an unfair practice when it limited parking in a new structure to student only.	Because parking location was not within scope, the university did not commit an unfair practice when it limited parking in a new structure to student only. With regard to the alleged failure to produce documents, since the documents sought were necessary and relevant, they were presumptively relevant. As such, the Board held the University committed an unfair practice when it failed to provide requested information. Last, because it was not appealed, the Board affirmed the ALJ's conclusion that the university committed an unfair practice when it consulted with the Task Force.

**2006-2007 DECISIONS OF THE BOARD**

DISPOSITION

DESCRIPTION

CASE NAME

DECISION NO.

1877-M	Luella M. Seeley v. County of Santa Clara	The charge alleged that the County of Santa Clara denied the charging party's Weingarten rights.	The Board affirmed the dismissal of the unfair practice charge because the charging party failed to amend the unfair practice charge to allege that the meeting actually occurred. The Board held that the charging party failed to establish good cause for presenting new charge allegations or evidence on appeal.
1878	Riverdale Teachers Association, CTA/NEA v. Riverdale Joint Unified School District	The parties reached an agreement upon the subject of the unfair practice charge, which alleged a unilateral change, and sought to withdraw the district's appeal.	The Board found the withdrawal of the district's appeal to be in the best interests of the parties and to be consistent with the purposes of EERA, and therefore granted the withdrawal of the district's appeal.
1879-M	Teamsters Local 381 v. City of Lompoc	The parties entered into a settlement agreement and sought to withdraw the charge.	The Board granted the request to withdraw the charge.
1880	Oakland Education Association v. Oakland Unified School District	The complaint alleged that the district violated EERA by retaliating against a teacher for engaging in protected activities when it: (1) issued him a notice of non-reelection, and (2) subsequently placed him on paid administrative leave.	The Board found that the district refused to re-elect the probationary teacher because of his protected conduct. PERB reversed the finding of the ALJ that the district placed the teacher on administrative leave due to his protected conduct.

**2006-2007 DECISIONS OF THE BOARD**

DISPOSITION

DESCRIPTION

CASE NAME

DECISION NO.

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1881-H	Trustees of the California State University and Academic Professionals of California and California State Employees Association	An appeal of an administrative law judge's proposed decision finding that a new classification belonged to Unit 4, thereby partially denying a petition that would place the new classification in Unit 7.	The Board remanded the case to the ALJ to conduct a hearing for the purpose of taking additional evidence.
1882	Rickey Jones v. SEIU Local 99	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged SEIU denied his right to fair representation.	SEIU did not deny the charging party his right to fair representation because SEIU's decision to allow the step 4 grievance to go into abeyance was neither devoid of honest judgment nor made without a rational basis.
1883	California School Employees Association & its Chapters 759 & 724 v. San Diego Unified School District	The Board affirmed the dismissal of an unfair practice charges involving two bargaining units and found an unfair practice involving a third bargaining unit in which CSEA alleged the district committed an unlawful unilateral change when it refused to implement a two-tiered leave accrual system for all three bargaining units.	With regard to the Operations Support Services and Paraeducators bargaining units, the district did not commit a unilateral change when it refused to implement a two-tiered leave accrual system because the School Board did not approve the memorandum of understandings (MOU) which would have established such a system. With regard to the Technical and Business Services unit, the district did commit an unlawful unilateral change when it failed to implement the two-tiered system because the School Board approved the MOU that established the system. Rescission of the provision based on a unilateral mistake was not available in this case because the

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
1884	Associated Administrators of Los Angeles v. Los Angeles Unified School District	Exceptions filed by the Los Angeles Unified School District alleged that the district did not improperly refuse to bargain over employees found by the Board to be in the certificated supervisors unit.	The Board failed to exercise ordinary diligence when it negotiated the contract language.  The Board held that the district violated EERA by failing to bargain with employees previously found by the Board to be within the supervisors unit, and not management.
1885	Adrian Pieter Maaskant v. Kern High Faculty Association, CTA/NEA	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged the Faculty Association committed an unfair labor practice when it refused to let the charging party serve on its representative council because he was an agency fee payer.	Noting it had limited jurisdiction over cases involving internal union affairs, the Board held that it lacked jurisdiction over the duty of fair representation charge because it failed to allege the Faculty Association's decision adversely affected the charging party's relationship with his employer.
1886-H	California State University Employees Union v. Trustees of the California State University	Union alleged that the university violated HEERA by unilaterally repudiating a policy of granting release time to employees for the purpose of attending PERB proceedings.	The Board dismissed the charge, finding that no binding past practice existed of allowing release time to attend PERB proceedings.
1887	East Whittier City Elementary School District and East Whittier Administrators and Supervisors Association	An appeal of a Board agent's proposed decision finding that certain units were appropriate for meeting and negotiating. The appealing party requested the Board to allow it to withdraw its exceptions and vacate the proposed decision.	The Board allowed the parties to withdraw the complaint and vacated the Board agent's decision.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1888	Mike C. Okereke v. United Teachers of Los Angeles	The charge alleged that the United Teachers of Los Angeles violated EERA by breaching its duty of fair representation when it failed to file grievances and adequately represent him when he received an "Inadequate Service Report."	The Board upheld the dismissal because charging party failed to establish that the United Teachers of Los Angeles conduct was arbitrary, discriminatory or bad faith.
1889-H	Haroldene F. Wunder v. California Faculty Association	The charging party excepted to the ALJ's conclusion that the California Faculty Association did not breach the duty of fair representation under HEERA when it decided not to advance her grievance to arbitration.	The Board adopted the ALJ's proposed decision, which relied, in part, upon the terms of the collective bargaining agreement.
1890-M	Stationary Engineers Local 39 v. City & County of San Francisco	The charge alleged that Section A8.409-4 of the Charter of the City & County of San Francisco was unreasonable on its face and as applied to the extent that it permitted the city to begin impasse procedures before an impasse had been reached. The charge also alleged that the city engaged in surface bargaining.	The Board affirmed the Board agent's dismissal. The Board found that the impasse provisions in the city charter are not unreasonable under the MMBA. The Board also found that the charge failed to establish a prima facie case of surface bargaining.
1891-M	Teamsters Local 350 v. City of Los Altos	Union alleged that the city's policy of not providing disciplinary information without the express consent of the employee involved was on its face a violation of the MMBA.	Dismissal upheld as the Board found that the union has no such right to the information requested.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.      CASE NAME      DESCRIPTION      DISPOSITION

1892-M	Albert Chan v. SEIU Local 790	The charge alleged that the SEIU Local 790 violated the MMBA by failing to seek arbitration of the charging party's termination from employment.	The Board affirmed the dismissal of the charge.
1893	California School Employees Association and its Lodi Chapter #77 v. Lodi Unified School District	The California School Employees Association and its Lodi Chapter #77 appealed a proposed decision dismissing the complaint and underlying charge.	The Board upheld the dismissal because there was no evidence to support an inference of unlawful motivation.
1894-M	Siskiyou County Employees Association/AFSCME Local 3899 v. County of Siskiyou	Exceptions challenged the ALJ's finding that there was no unilateral change in policy or practice when the County of Siskiyou eliminated a position and laid off an employee.	The Board affirmed the ALJ's dismissal of the complaint, because the layoffs were consistent with the county code, which indicated that the order of layoffs shall be implemented by class and department, rather than on a county-wide basis.
1895	Newark Teachers Association, CTA/NEA v. Newark Unified School District/Newark Unified School District v. Newark Teachers Association, CTA/NEA	This decision involves three consolidated cases with the following allegations by the association: (1) the district negotiated in bad faith when it would not bargain the selection of a health insurance carrier with the association; and (2) the district unilaterally established a pre-paid legal services program for bargaining unit employees. For its part, the district alleged that the association engaged in surface bargaining and insisted to impasse on negotiating non-negotiable subjects.	The Board held that the district violated EERA when it failed to bargain the selection of a health insurance carrier, but dismissed the charge and complaint regarding the district's establishment of a pre-paid legal services program. The Board also found that the association violated EERA when it insisted to impasse on negotiating non-negotiable subjects.

**2006-2007 DECISIONS OF THE BOARD**

DISPOSITION

DESCRIPTION

CASE NAME

DECISION NO.

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1896-M	Turlock Irrigation District Technical Employees Association v. Turlock Irrigation District	The charge alleged that the Turlock Irrigation district unlawfully rejected a unit modification petition without first "offer[ing] to consult" with the union as required under local rules.	The Board held that parties have the right to seek review of local agencies' unit determination decisions under the MMBA by filing unfair practice charges. The Board held that the statement in the Westlands Water District (2004) PERB Decision No. 1622-M decision that "[w]here a party instead seeks review of the unit determination decision itself, a petition for Board review should be filed" (PERB Reg. 60000, et seq.) was moot, because the Board repealed Regulations 60000 through 60070 on February 9, 2006, effective May 11, 2006. However, the Board affirmed the dismissal of this unfair practice charge after finding that the local agency satisfied its obligations under its employee relations ordinance to "offer to consult" with the union.
1897	Le Roy F. Gillead v. United Educators of San Francisco	The charge alleged that the United Educators of San Francisco violated EERA by breaching its duty of fair representation.	The Board upheld the dismissal finding that the association's decision not to pursue an individual grievance but rather a class action grievance did not violate the duty of fair representation.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1898-M	Johnny Lee Buck, Jr. v. Amalgamated Transit Union, Local 1704	The Board affirmed a proposed decision in which the ALJ found the Amalgamated Transit Union, Local 1704 (ATU) violated its duty of fair representation when it failed to timely file a grievance on the charging party's behalf. The Board further affirmed the ALJ's determination that backpay was not appropriate under the facts of this case.	Because ATU possessed the exclusive means by which the charging party could obtain his contractual remedy, ATU owed the charging party a duty of fair representation. However, since the charging party failed to prove he would have won his case if it was properly filed, a backpay award was not appropriate in this instance.
1899	Patricia Gutierrez v. SEIU Local 99	Two separate charges were consolidated in which an employee alleged that her union failed to meet its duty of fair representation and failed to meet and negotiate in good faith.	Dismissal upheld as the allegations either failed to provide a clear and concise statement of the facts or were untimely.
1900-M	Health Care Workers Union Local 250 v. Sutter County In-Home Supportive Services Public Authority	The exceptions challenged the ALJ's finding that the county's failure to negotiate the effects of its decision to implement criminal background checks of in-home supportive services providers violated the MMBA.	The Board affirmed the ALJ's ruling that the decision to implement criminal background checks of in-home supportive services providers was outside the scope of bargaining, based upon the managerial prerogative and statutory authority. The Board also held the details of the policy that primarily relate to public safety, and to the quality and nature of bargaining based upon the managerial prerogative. The Board found, however, that the effects that primarily relate to wages, hours, and terms and conditions of employment, are within the scope of bargaining. The Board held that the employer violated the MMBA by failing to negotiate the negotiable effects.

**2006-2007 DECISIONS OF THE BOARD**

DISPOSITION

DESCRIPTION

CASE NAME

DECISION NO.

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1901-S	Sherry Dinkins v. SEIU Local 1000, CSEA	The charge alleged that SEIU Local 1000, CSEA violated the Dills Act by failing to redirect the charging party's "fair share" dues to a charitable organization.	The Board affirmed the dismissal because a union member does not have a right under Dills Act section 3515.7(c) to have his or her union dues redirected to a charitable organization. Rather, a "religious objector" may have sums equal to a "fair share fee" redirected under that section.
1902	Randle Benton v. Oakland Unified School District	The charge alleged that the Oakland Unified School District engaged in a unilateral change by reducing the charging party's work hours.	The Board affirmed and adopted the dismissal of an unfair practice charge because individual employees do not have standing to allege unilateral change violations. Additionally, the Board affirmed the Board agent's finding that the charge failed to state a claim for discrimination because it did not allege that charging party engaged in any protected activity.
1903	Susan G. Wymen v. California School Employees Association & its Chapter 374	Employee alleged that her union failed to meet its duty of fair representation in handling her grievance.	Dismissal upheld as the allegations failed to demonstrate that the union's conduct was discriminatory, arbitrary or in bad faith.
1904-M	Evagelia Lisa Vorgias v. State Bar of California	The charge alleged that the State Bar of California violated the MMBA by delaying the grievance process and terminating her employment.	The Board upheld the dismissal of the charge based upon the six-month statute of limitations. The Board held that for an unfair practice charge based upon termination of employment, the statute of limitations begins to run on the date of actual termination. The Board held that the filing of a federal lawsuit does not toll the statute of limitations.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1905-M	Operating Engineers Local 3 v. City of Porterville	Exceptions challenged the ALJ's finding that the City of Porterville unlawfully denied site access to a union representative on two occasions.	<p>The Board reversed the ALJ's proposed decision. With regard to the first alleged incident, the Board held that the denial of access was justified because the union representative had not requested consent according to the city's access policy, and had sought access to a work area during work time.</p> <p>With regard to the second alleged incident, the Board held that res judicata barred the addition of a claim (not alleged in the complaint) during the hearing where the same incident formed the basis of a prior unfair practice charge alleging the same cause of action on the same facts, which was dismissed by the Board agent, and the prior dismissal was not appealed.</p>
1906-M	Operating Engineers Local 3 v. Town of Paradise	Exceptions challenged the ALJ's decision that the Town of Paradise violated its duty to bargain in good faith under the MMBA by failing to provide the Operating Engineers Local 3 with requested information on the Town's on-call policy.	The Board affirmed and adopted the ALJ's decision.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1907	California School Employees Association & its Chapter 169 v. Madera Unified School District	The charge alleged that the Madera Unified School District violated EERA by unilaterally changing the district's contribution to health care benefits for current employees and retirees.	The Board held that retirement health care benefits are within the scope of bargaining. However, the Board found that based upon the terms of the relevant collective bargaining agreement, the district did not engage in a unilateral change.
1908	Delano Elementary Teachers Association v. Delano Union Elementary School District	The charge alleged that the Delano Elementary School District violated EERA: (1) by unilaterally changing matters within the scope of bargaining without first giving the association notice and an opportunity to bargain the charges, (2) when the district allegedly discriminated against and imposed reprisals against association officers, and (3) interfered with rights protected by EERA.	The Board adopted the Board agent's dismissal and deferral of the unilateral change allegations and discrimination. The Board, however, remanded the case to the Office of the General Counsel for issuance of a complaint regarding the interference allegation.
1909-M	International Brotherhood of Electrical Workers, Local Union 465 v. San Diego Trolley, Inc.	The union alleged that San Diego Trolley, Inc. violated the MMBA by discriminating and dealing directly with employees represented by the union.	The Board upheld the dismissal of the charge. The Board determined that it did not have jurisdiction of the case because the transit district's labor relations statute was in the Public Utilities Code.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1910-M	Ventura County Professional Peace Officers' Association v. County of Ventura	The union alleged that the county violated the MMBA by implementing a mandatory overtime program without giving the union an opportunity to meet and confer and by refusing to process a union-filed grievance.	The Board dismissed the charge that the county violated the MMBA in implementing a mandatory overtime program, because the plain meaning of the contract allowed the county's decision. The county did, however, violate the MMBA by refusing to process a union-filed grievance.
1911	Santa Clara Unified School District and California Federation of Teachers and United Teachers of Santa Clara, CTA/NEA	The California Federation of Teachers filed a request for recognition with the District seeking to represent a unit of all hourly adult education instructors. The district excepted to the Labor Relations Specialist order to grant recognition of a unit.	The Board upheld the Labor Relations Specialist order because there was no other way for these employees to exercise their right of representation. Specifically, a separate unit may be created where unrepresented employees who were excluded from existing units, but would likely have been included in the unit had the issue been before the Board at that time, file a representation petition and the exclusive representative of that unit chooses not to file a unit modification petition.
1912-H	State Employees Trades Council United v. Regents of the University of California	The charge alleged that the Regents of the University of California violated HEERA by deducting union dues from three skilled crafts unit employees and recognizing International Union of Operating Engineers, Local 39 as the exclusive representative of the skilled crafts at UC Merced.	The Board upheld the dismissal because some of the allegations were untimely, the university allowed representation of the employees choosing at a meeting, and charging party failed to provide facts establishing that a supervisor's statements interfered with rights.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1913-M	Samson Tesfasion v. City of Beverly Hills (Transportation Department)	The charge alleged that the City of Beverly Hills violated the MMBA by denying the charging party his deceased brother's alleged life insurance benefits.	The Board affirmed dismissal of the unfair practice charge. Because the charging party did not submit any evidence that he was the executor of his deceased brother's estate, the Board did not decide whether the charging party had standing to file on behalf of his brother.
1914-S	Michael M. Burnett v. SEIU Local 1000, CSEA	Employee alleged that his union failed to meet its duty of fair representation in handling his grievance.	Dismissal upheld as the allegations failed to demonstrate that the union's conduct was discriminatory, arbitrary or in bad faith.
1915-M	Operating Engineers Local 3 v. County of Sierra	The Board affirmed the dismissal of an unfair practice charge in which Local 3 alleged the county failed to provide information, refused to meet and confer in good faith and unilaterally imposed a new memorandum of understanding (MOU).	When the county provided some of the requested information and requested clarification regarding the rest, the burden shifted to Local 3 to clarify and identify the information requested. Because Local 3 failed to meet this burden, the Board held the county did not breach its duty to provide information. Further, the county did not unilaterally impose a new MOU because the MOU in question was never implemented. Last, the county did not engage in conditional bargaining when it allegedly conditioned the negotiation of economic matters on the resolution of non-economic matters because Local 3 had authority and control over both matters.

**2006-2007 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                      DESCRIPTION                      DISPOSITION

1916-M	Teamsters Local 542 v. County of Imperial / California School Employees Association and its Imperial County Employees Chapter 2004	The Board affirmed the results of three recognition elections despite the fact that a county local rule, which required a majority of eligible employees in a unit to vote in order for the election to be valid, was not satisfied.	The majority participation rule was in conflict with the MMBA and unreasonable. Thus, the county's invalidation of the election results in reliance on the majority participation rule constituted unlawful interference. The Board, however, upheld the election results because there were no allegations raised by the parties regarding irregularities in voting, misconduct in running the election, or conduct that could be considered coercive or otherwise objectionable, and because there was no evidence suggesting the county's application of the majority participation rule interfered with employee choice.
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**2006-2007 DECISIONS OF THE BOARD**  
**ADMINISTRATIVE DETERMINATIONS**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
Ad-355-H	California Faculty Association v. Trustees of the California State University (San Diego)	The Board accepted the California State University's late-filed opposition to California Faculty Association's statement of exceptions.	Because the attorney made a conscientious effort to file his opposition in what he believed was a timely manner and because CFA did not claim prejudice, good cause exists to excuse the late filing.
Ad-356-M	Ricardo Paez v. SEIU Local 790	An appeal from the Appeals Assistant's administrative determination that his request for reconsideration was untimely.	The Board denied the request because it was untimely and charging party failed to state good cause as to why his motion should be considered.
Ad-357	Victor Valley College Faculty Association, CTA/NEA v. Victor Valley Community College District	The parties requested that the proposed decision be vacated.	The Board ordered that the proposed decision be vacated and the complaint dismissed because the parties settled their disputes before the time to file exceptions expired.
Ad-358-H	Trustees of the California State University & California State University Employees Union & State Employees Trades Council-United	The Board granted a request by the California State University Employees Union to withdraw its appeal of a dismissal of an unfair practice charge.	The Board may grant a request to withdraw an appeal of a dismissal and the underlying charge based upon the joint resolution of the issues by the parties, provided it is in the best interests of the parties and consistent with the purposes of HEERA.
Ad-359-S	AFSCME Local 2620 v. State of California (Department of Personnel Administration)	State filed a special request, pursuant to PERB Regulation 32155(d), to appeal the refusal of an administrative law judge to disqualify himself from presiding over an administrative hearing.	The request was denied, as the Board did not find good cause.

**2006-2007 DECISIONS OF THE BOARD**

**ADMINISTRATIVE DETERMINATIONS**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
Ad-360	Le Roy F. Gillead v. San Francisco Unified School District	An appeal from the Appeals Assistant's administrative determination of the filing deadline for charging party's appeal.	The Board denied Gillead's appeal as untimely filed.
Ad-361-M	City of Glendale and International Brotherhood of Electrical Workers, Local 18	An appeal of a Board agent's decision to dismiss International Brotherhood of Electrical Workers, Local 18's petition for board review.	The Board dismissed the petition because the International Brotherhood of Electrical Workers failed to demonstrate that the city's determination was not reasonable.
Ad-362-M	Evagelia Lisa Vorgias v. State Bar of California	The State Bar of California appealed the administrative decision finding that its opposition to the appeal of dismissal was untimely filed.	The Board held that the administrative appeal was moot because the Board had already resolved the related unfair practice charge.
Ad-363-M	Samson Tesfason v. City of Beverly Hills (Transportation Department)	The charging party appealed the administrative determination that his appeal was filed late.	The Board excused the late filing of the charging party's appeal of dismissal of the unfair practice charge where the charging party mailed the appeal well before the deadline, but due to insufficient postage, the appeal was held by the U.S. Postal Service until the Saturday before the due date (a Monday).

**2006-2007 DECISIONS OF THE BOARD**  
**ADMINISTRATIVE DETERMINATIONS**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
Ad-364-M	Operating Engineers Local 3 v. Town of Paradise	The charging party appealed the administrative determination that its opposition to exceptions was filed late.	The Board held that the administrative appeal was moot because the Board already considered and issued its decision in the Town's exceptions to the ALJ's proposed decision in this case.
Ad-365	Grossmont-Cuyamaca Community College District and Grossmont-Cuyamaca Community College District Part-Time Faculty Association and United Faculty of Grossmont-Cuyamaca Community College District	The charging party appealed a Board agent's determination that its severance petition was filed late.	The Board affirmed the dismissal and held that the representation petition was untimely filed, where it was filed after close of business (5:00 p.m.) on the last day of the window period. The Board affirmed the Board agent's finding that a good cause consideration under PERB Regulation 32136 was inappropriate to extend the deadline beyond the end of the window period.

**2006-2007 DECISIONS OF THE BOARD**

**JUDICIAL REVIEW REQUESTS**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
J.R.-24	Burlingame Elementary School District and California School Employees Association	The district requested both that the Board reconsider its decision in PERB Dec. No. 1847 and join in its request for judicial review of the same decision.	The Board denied both requests, finding that the request for reconsideration was not supported by the evidence and the request for judicial review lacked "special importance".

**2006-2007 DECISIONS OF THE BOARD**

**INJUNCTIVE RELIEF REQUESTS**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 508	Alhambra Firefighters Association, Local 1578 v. City of Alhambra	The union sought an injunction which would have required the city to restore the hearing procedures of the Civil Service Commission.	Request Denied.
I.R. 509	Alhambra Firefighters Association, Local 1578 v. City of Alhambra	The union sought an injunction which would have required the city to restore the hearing procedures of the Civil Service Commission.	Request Denied.
I.R. 510	Amalgamated Transit Union Local 1700 v. Omnitrans	The union sought an injunction against the employer for interference with union activity.	Request Denied.
I.R. 511	Sacramento County Aircraft Rescue Firefighters Association v. County of Sacramento	The union requested an injunction to prohibit the county from interfering with contract ratification.	Request Withdrawn.
I.R. 512	Michael Menaster v. State of California (Department of Social Services)	Menaster sought an injunction against the State to cease and desist from initiating and/or continuing charges against Menaster, including, but not limited to, filing complaints against him with the Medical Board of California.	Request Denied.

**2006-2007 DECISIONS OF THE BOARD**

**INJUNCTIVE RELIEF REQUESTS**

**DECISION NO.**                      **CASE NAME**                      **DESCRIPTION**                      **DISPOSITION**

I.R. 513	Fairfield-Suisun Unified Teachers Association v. Fairfield-Suisun Unified School District	The association sought an injunction against the district from hiring or assigning teachers to Cordelia Hills Elementary and Rolling Elementary schools, and opening, re-opening or closing any school sites or programs, without first negotiating with the union.	Request Withdrawn.
I.R. 514	Brenda Weakley v. City of Fresno	Weakley sought an injunction against the city to prevent it from transferring her to another division for engaging in protected activity when such transfer would necessitate an election to hire another union director.	Request Denied.
I.R. 516	Alliance of Orange County Workers v. County of Orange	The Alliance of Orange County Workers sought to enjoin the county from recognizing SEIU Local 721 as the exclusive representative of the operations services and maintenance workers in the county.	Request Denied.
I.R. 517	Municipal Employees Association of the City of Beverly Hills v. City of Beverly Hills	The association sought to enjoin the city from contracting out for water-hydrant testing.	Request Withdrawn.

**2006-2007 DECISIONS OF THE BOARD**

**INJUNCTIVE RELIEF REQUESTS**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
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I.R. 518	Society of Professional Scientists & Engineers v. UC Regents (Lawrence Livermore National Laboratory)	The union sought to enjoin the Regents, Lawrence Livermore National Laboratory, to stop alleged interference with an organizing campaign underway at that location.	Request Granted. (Injunction request not sought by PERB, case settled by parties.)
I.R. 519	Hayward Unified School District v. Hayward Education Association, CTA/NEA	The district sought an injunction to prevent the Hayward Education Association teachers from striking.	Request Withdrawn.
I.R. 520	Hayward Unified School District v. Hayward Education Association, CTA/NEA	The district sought an injunction to prevent the Hayward Education Association teachers from striking.	Request Withdrawn.
I.R. 521	Ira Eisenberg v. State of California (Employment Development Department)	An injunction was requested regarding employee rights to use the State's email system for communicating union activities.	Request Denied.
I.R. 522	Fairfield-Suisun Unified Teachers Association v. Fairfield-Suisun Unified School District	The association sought an injunction to prevent the district from reconstituting its schools.	Request Denied.
I.R. 523	Amalgamated Transit Union Local 1704 v. Omnitrans	The union sought an injunction for the alleged retaliation against its president by terminating him for engaging in protected activity.	Request Denied.

**2006-2007 DECISIONS OF THE BOARD**

**INJUNCTIVE RELIEF REQUESTS**

**DECISION NO.**                      **CASE NAME**                      **DESCRIPTION**                      **DISPOSITION**

I.R. 524	County of Riverside v. SEIU Local 721	The county sought an injunction to enjoin the union from accessing work areas of the county in violation of its local rules.	Request Withdrawn.
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## 2006-2007 LITIGATION CASE ACTIVITY

1. *City and County of San Francisco (CCSF) v. Stationary Engineers Local 39*, Court of Appeal, First Appellate District, Case No. A114815, San Francisco Superior Court, Case No. 506223 (PERB Case No. SF-CO-129-M). Issue: Does PERB have exclusive initial jurisdiction to decide violations of charter provisions pertaining to employer-employee relations? PERB sought and was granted amicus curiae status in February 2007, and filed its briefing with the Court of Appeal. Following oral argument in May 2007, the Court issued a published opinion holding that determination of alleged violations of the city charter falls within PERB's exclusive jurisdiction.
2. *City of San Jose v. International Association of Firefighters Local 230*, Santa Clara County Superior Court, Case No. 06CV075858 (PERB Case No. N/A). Issue: Does PERB have exclusive jurisdiction to decide violations of charter provisions pertaining to employer-employee relations? PERB filed an application for and was granted intervention in May 2007. PERB subsequently filed a motion to dismiss and supporting points and authorities. In June 2007, the court granted PERB's motion to dismiss the matter in its entirety.
3. *Service Employees International Union (SEIU), Local 790, AFL-CIO v. County of San Joaquin*, San Joaquin County Superior Court, Case No. CV026530 (PERB Case No. SA-CE-330-M). Issue: Did County violate the MMBA when it contracted out for services? PERB filed an application for and was granted intervention in September 2005. PERB subsequently filed a motion to dismiss in part and supporting points and authorities. PERB filed its reply to the opposition in December 2005. On December 13, 2005, the court granted PERB's motion to dismiss plaintiff's second cause of action and the remaining allegations were placed in abeyance.
4. *International Association of Firefighters Local 188 (IAF), AFL-CIO v. Public Employment Relations Board, et al.*, Court of Appeal, First Appellate District, Case No. A108875, Contra Costa County Superior Court, Case No. N050232 (PERB Case No. SF-CE-157-M). Issue: Did PERB err in Decision No. 1720-M (adopting a Board agent's dismissal of IAF's charge alleging layoffs are a negotiable subject of bargaining)? The superior court ruled in July 2006 that IAF could not appeal PERB's decision declining to issue a complaint. IAF appealed to the Court of Appeal. Awaiting reporter's transcript/record on appeal to be filed.
5. *Union of American Physicians and Dentists (UAPD) v. State of California, Department of Corrections and Rehabilitation (CDCR)*, Sacramento County Superior Court, Case No. 05CS00555 (PERB Case No. SF-CE-228-S). Issue: Did CDCR violate the Dills Act by attempting to change the minimum qualifications for its Physician job classification when it required doctors to pass an exam before employment? PERB filed an application for intervention in the action brought by UAPD. The case subsequently was removed from superior court and transferred to the U.S. District Court, Northern District, in September 2005.

6. *King City Joint Union High School District v. Public Employment Relations Board, et al.*, Court of Appeal, Sixth Appellate District, Case No. H029420 (PERB Case No. SF-CE-2272-E). Issue: Did PERB err in Decision No. 1777 (holding District violated EERA when it unilaterally changed policies relating to calculations under the negotiated salary formula)? PERB filed its opposition brief in January 2006. In February, the Court of Appeal granted PERB limited jurisdiction to modify its decision to allow settlement implementation by the parties to the underlying dispute. Upon receipt of an executed settlement agreement and consistent with the Court's order, the Board issued a decision dated February 16, 2007, granting the parties' joint request for reconsideration.

7. *Schiavone, et al. v. Rio Linda Elverta Community Water District*, Sacramento County Superior Court, Case No. 05CS01507 (PERB Case No. SA-CE-358-M). Issue: Did District violate the MMBA by failing to meet and confer under its local rules before resolving issues regarding employees' health-care benefits? PERB filed an application for intervention in the action brought by Schiavone. In January 2006, the court stayed its decision pending conclusion of PERB's administrative process with respect to the PERB case. PERB held a formal hearing in March 2006.

8. *DiQuisto, et al. v. County of Santa Clara, et al.*, Santa Clara County Superior Court, Case No. 104CV020671 (PERB Case Nos. SF-CE-226, 228, 229-M). Issue: Does PERB have jurisdiction over the conduct alleged in the court complaint? PERB filed an application for and was granted intervention in the action brought by DiQuisto. PERB subsequently filed a motion for judgment on the pleadings. The motion was denied and PERB's complaint in intervention was dismissed in September 2006.

9. *Leadership Public Schools and California Federation of Teachers*, National Labor Relations Board, Region 32, Case No. 32-RM-800 (PERB Case No. SF-RR-882-E). Issue: Does the NLRB have jurisdiction over charter schools? On March 9, 2006, PERB sought intervention and dismissal with respect to the petition filed with the NLRB by the Leadership Public Schools. The NLRB conducted a hearing on the issue of its jurisdiction over charter schools on March 27 and 29, 2006. The NLRB Regional Director issued a decision and order in May 2006 denying the schools' petition. In June 2006, a petition for review was filed with the NLRB in Washington D.C., and PERB subsequently filed its opposition to the petition. The NLRB denied review in July 2006.

10. *Oakland Education For Change and East Oakland Community Charter Teachers Association*, National Labor Relations Board, Region 32, Case No. 32-RM-801 (PERB Case No. SF-RR-881-E). Issue: Does the NLRB have jurisdiction over charter schools? Oakland Education for Change filed a petition with the NLRB on February 14, 2006 and PERB intervened seeking dismissal of the petition. The NLRB Regional Director issued a decision and order in May 2006 denying the petition. In June 2006, the charter school filed a petition for review with the NLRB in Washington, D.C., and PERB subsequently filed its opposition to the petition. The NLRB denied review in July 2006.

11. *The Board of Trustees of the California State University (CSU) v. Public Employment Relations Board, et al.*, Court of Appeal, Second Appellate District, Case No. B189869 (PERB Case No. LA-CE-784-H). Issue: Did PERB err in decision number 1823-H (pertaining to an arbitrator's authority to decide tenure for university faculty)? The case was fully briefed as of December 2006.
12. *City of San Jose v. Operating Engineers Local Union No.3*, Court of Appeal, Sixth Appellate District, Case No. H030272 (PERB Case No. SF-CO-132-M). Issue: Does PERB have jurisdiction over whether essential employees can strike? PERB sought and was granted amicus curiae status, and filed its briefing with the Court of Appeal. The case was fully briefed as of February 2007.
13. *County of Contra Costa v. Public Employees Union Local One, et al.*  
*County of Contra Costa v. California Nurses Association, et al.*,\* Court of Appeal, First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court, Case Nos. MSC0601228, MSC0601227 (PERB Case Nos. SF-LT-5-M, SF-LT-6-M). Issue: Does PERB have jurisdiction over whether essential employees can strike? The case was fully briefed as of May 2007.
14. *County of Sacramento v. AFSCME Local 146, et al.*  
*County of Sacramento v. AFSCME Local 146, et al.*,\* Court of Appeal, Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court, Case Nos. 06AS03704, 06AS03790 (PERB Case Nos. SA-LT-2-M, SA-LT-3-M). Issue: Does PERB have jurisdiction over whether essential employees can strike? PERB filed its opening brief in June 2007.
15. *County of Santa Clara v. SEIU Local 535 and Local 715*, Court of Appeal, Sixth Appellate District, Case No. H030937, Santa Clara County Superior Court, Case No. CV072226 (PERB Case No. SF-LT-4-M). Issue: Does PERB have jurisdiction over whether essential employees can strike? The case was fully briefed as of June 2007.
16. *County of Mendocino v. Mendocino County Public Attorneys Association (MCPAA), et al.*, Mendocino County Superior Court, Case No. SCUKCVG0798700 (PERB Case No. SF-LT-7-M). Issue: Does PERB have jurisdiction over whether essential employees can strike? PERB filed an application for and was granted intervention in March 2007. Simultaneously, the court denied County's request for a temporary restraining order and dismissed County's complaint, ruling that the matter falls within PERB's jurisdiction.
17. *Siskiyou County Employees Association, Local 3899 of the American Federation of State, County and Municipal Employees v. County of Siskiyou*, Siskiyou County Superior Court, Case No. SVCVPT050050 (PERB Case No. SA-CE-314-M). Issue: Does PERB have jurisdiction over the issues raised by the court case? In July 2005, the court granted PERB's application to intervene in the action brought by the Association, and stayed the action pending litigation of the PERB case at PERB. In August 2006, the court dismissed the matter.

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\* The Court of Appeal consolidated these cases.

18. *California Faculty Association v. Public Employment Relations Board, et al.*, Court of Appeal, Third Appellate District, Case No. C054725 (PERB Case No. SA-CE-194-H). Issue: Did PERB err in Decision No. 1876-H (holding that parking location, as opposed to parking fees, is outside the scope of representation)? The case was filed in January 2007. PERB subsequently submitted the administrative record and a briefing schedule was set.

19. *Board of Trustees of Los Angeles Unified School District v. Public Employment Relations Board, et al.*, Court of Appeal, Second Appellate District, Case No. B197043 (PERB Case No. LA-CE-4819-E). Issue: Did PERB err in Decision No. 1884 (finding that LAUSD violated EERA by refusing to bargain in good faith) and Decision No. 1665 (the Board's underlying unit-determination finding)? The case was filed in February 2007. PERB subsequently submitted the administrative record and a briefing schedule was set.

20. *Magner v. Public Employment Relations Board, et al.*, Sacramento County Superior Court, Case No. 07CS00173 (PERB Case No. SA-CE-1547-S). Issue: Did PERB err in Decision No. 1862-S (adopting a Board agent's dismissal of Magner's charge alleging the State violated his Weingarten rights)? PERB filed its opposition points and authorities in March 2007.