# PUBLIC EMPLOYMENT RELATIONS BOARD

## 2008-2009 ANNUAL REPORT

## October 15, 2009

## ARNOLD SCHWARZENEGGER, GOVERNOR

## STATE OF CALIFORNIA

# PUBLIC EMPLOYMENT RELATIONS BOARD

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**Board Members**

ALICE DOWDIN CALVILLO
TIFFANY RYSTROM
KAREN L. NEUWALD
SALLY M. MCKEAG
ROBIN W. WESLEY

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# PUBLIC EMPLOYMENT RELATIONS BOARD

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October 12, 2009

Dear Members of the State Legislature and fellow Californians:

On behalf of the Public Employment Relations Board (PERB), I am pleased to present this annual report summarizing PERB's activities during the Fiscal Year (FY) 2008-2009. This report is prepared pursuant to Government Code section 3541.3, subdivision (f).

PERB was established 33 years ago with its jurisdiction initially comprised of the Educational Employment Relations Act establishing collective bargaining in California's public schools and community colleges. Since then, PERB's jurisdiction has expanded to encompass seven collective bargaining statutes, approximately 7,000 public-sector employers, and more than two million public-sector employees. PERB is responsible for administering and enforcing these respective collective bargaining laws in an expert, fair, and consistent manner.

Like past years, times remain busy at PERB. The number of cases reviewed each year by PERB has grown significantly with the addition of the newest public employers and employee organizations to PERB's jurisdiction. This is particularly true since cities, counties, and special districts under the Meyers-Milias-Brown Act were added to PERB's jurisdiction. This past fiscal year resulted in 868 unfair practice charges filed with PERB; compared to 461 charges in FY 2000-2001.

The majority of PERB's unfair labor practice complaints are resolved through voluntary settlement efforts, an important step among the resolution processes offered by PERB. In FY 2008-2009, the rate of settlement during or as a result of PERB's informal settlement conference process was nearly 50 percent. In cases where mediation is not successful, the parties are provided the opportunity to litigate their disputes efficiently.

One of PERB's critical jobs is to provide guidance to the parties through clear and concise decisions. In FY 2008-2009, PERB's Administrative Law Judges issued 52 proposed decisions; 26 of which were appealed to the full PERB Board and 26 of which became final. The PERB Board itself issued 89 decisions in FY 2008-2009.

Last fiscal year culminated in court litigation consistent with the last few fiscal years for PERB. Unlike other State agencies, litigation work is absorbed exclusively by in-house attorneys at PERB. While some of this activity involves defending Board decisions in California's Courts of

Appeal, PERB's litigation work is partly attributable to efforts to defend the agency's exclusive initial jurisdiction over the statutes it administers. PERB also considered 19 requests for injunctive relief in FY 2008-2009. Only one request for injunctive relief was granted in FY 2008-2009, reflecting the high standard of proof the affected party must meet when seeking this course of action.

Providing exceptional service to the people of California and swiftly resolving labor-relations disputes remains the Board's top priority. We likewise remain committed to enhancing offerings to PERB constituents. In addition to recent website improvements, PERB when possible, fosters viable training opportunities for PERB practitioners statewide. For example, during FY 2008-2009, PERB co-sponsored the Center for Collaborative Solutions' 20th annual Labor-Management Conference in Southern California. PERB's Advisory Committee, composed of key members of public-sector labor and management communities, also plays a valuable role in developing recommendations in such areas relevant to PERB's mission of promoting harmonious public-sector employer-employee relations in California.

Thank you for the opportunity to submit this report, we hope that you find it informative.

Respectfully submitted,

Alice Dowdin Calvillo
Acting Chair

# Introduction of Board Members and Administrators

## Board Members

**Alice Dowdin Calvillo** was appointed to the Board by Governor Arnold Schwarzenegger in January 2008, confirmed by the Senate in January 2009, and designated Acting Chair in May 2009. With more than 20 years of experience working in State and local government, Ms. Dowdin Calvillo is the newest member of the Board. Since 2005, Ms. Dowdin Calvillo served in several senior level advisory positions to Governor Schwarzenegger, including as Chief Deputy Cabinet Secretary and Chief Deputy Appointments Secretary. Before joining the Governor's Office, she was Governor Schwarzenegger's Legislative Director for the California Department of Toxic Substances Control.

Governor Pete Wilson appointed Ms. Dowdin Calvillo as a Chief Advisor to the California Integrated Waste Management Board in early 1998 and prior to that she was his appointment as Deputy Director of Legislation and Operations for the Managed Health Care Improvement Task Force. Ms. Dowdin Calvillo also served as the Chief Consultant to the California State Assembly Consumer Protection, Governmental Efficiency and Economic Development Committee in the mid 1990s. Before joining the Assembly staff, Ms. Dowdin Calvillo served in a variety of senior analytical positions within State service.

Ms. Dowdin Calvillo served two terms on the Auburn City Council from 1998-2005 and was Mayor in 2001 and 2005. During her tenure on the City Council, Ms. Dowdin Calvillo served on several commissions and committees, including the Placer County Economic Development Board (where she also served as Chair), Board of Directors for the Sacramento Area Council of Governments, Regional Wastewater Treatment and Storage Facility Joint Powers Authority, and Local Agency Formation Commission for Placer County. In addition, she was a member of the Sacramento Region Advisory Board for the Great Valley Center.

The Placer County Board of Supervisors appointed Ms. Dowdin Calvillo as the District 3 representative on the Placer County Parks Commission in 1997, where she served as its Chair in 1999 and 2000.

Ms. Dowdin Calvillo obtained her Bachelor of Arts in Political Science-Public Service and in German from the University of California, Davis. She is married to Captain Frank Calvillo, ret. United States Marine Corps, and the couple are the proud parents of a vivacious two-year-old daughter.

**Tiffany Rystrom** was appointed to the Board in August 2007, and reappointed and designated Chair in February 2009. Prior to her appointment, and since 2001, she was 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 was a member of the California State Bar. Ms. Rystrom passed away in June 2009 after a heroic battle with ovarian cancer.

**Karen L. Neuwald** was appointed to the Board July 2005, serving as the Chair from August 2007 to February 2009. 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 27-year career in state government service. Ms. Neuwald is a graduate of the University of Oklahoma where she received two bachelor degrees, one in social work and the other in recreation, and the University of Texas, where she received a master's degree in public affairs. Her term expires on December 31, 2009.

**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.

**Robin W. Wesley** was appointed to the Board in July 2007. Ms. Wesley first came to PERB in January 1991 as a legal adviser to a Board member. She served as a legal adviser to five different Board members before joining the General Counsel's office as a regional attorney. In July 2006, Ms. Wesley was tapped to serve as the acting General Counsel. Thereafter, she served briefly as an administrative law judge before her appointment to the Board.

From 1983 to 1991, Ms. Wesley served as deputy director for local government affairs in Governor Deukmejian's Office of Planning and Research. From 1978 to 1983, she served as the District representative for Assemblyman Dave Kelley.

Ms. Wesley is a graduate of Westmont College and McGeorge School of Law. She is a member of the California State Bar. Her term expires on December 31, 2010.

**Legal Advisers**

**Gregory T. Lyall** was appointed as Legal Advisor 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.

**Heather Glick** was appointed as Legal Advisor to Member Karen L. Neuwald in September 2005. Ms. Glick began her career in labor and employment law in law school when she clerked for the 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. Ms. Glick left PERB in August 2009.

**Erich Shiners** was appointed as legal advisor to Acting Chair Alice Dowdin Calvillo on March 20, 2008. Since 2006, Mr. Shiners served as an attorney at Renne Sloan Holtzman Sakai, representing public sector and non-profit employers in labor and employment litigation, arbitration and negotiations. He has served as an adjunct instructor of Appellate Advocacy for McGeorge School of Law since 2004. In 2006, Mr. Shiners was a law clerk for Weinberg, Roger & Rosenfeld and in 2005 was a judicial extern for the Honorable M. Kathleen Butz at the Third District Court of Appeal. Mr. Shiners has also been a law clerk at the National Labor Relations Board in Washington, D.C. and the Agricultural Labor Relations Board in Sacramento. He earned a Juris Doctorate degree from the University of the Pacific, McGeorge

School of Law and a Bachelor of Arts in history from the California State University, Sacramento.

**Linda M. Kelly** was appointed as Legal Advisor to Member Robin Wesley in November 2008. Previously, Ms. Kelly served as a Labor Relations Counsel III at the California Department of Personnel Administration from 2006 to 2008. Before entering state service, Ms. Kelly served the California Union of Safety Employees, now known as California Statewide Law Enforcement Association, as Senior Staff Counsel from 2005 to 2006, and Staff Counsel from 1997 to 2005. Ms. Kelly also worked as a Hearing Representative for the California Correctional Peace Officers Association from 1996 to 1997. Ms. Kelly earned her B.A. degree in Psychology from the University of California, Los Angeles, and her Juris Doctorate from the University of the Pacific, McGeorge School of Law.

**Dorothy Bacskai Egel** was appointed as Legal Advisor to Board Chair Tiffany Rystrom in May 2009. In August 2009, Ms. Egel became Legal Advisor to Member Karen L. Neuwald. Previously, Ms. Egel served as Staff Counsel IV to the California State Personnel Board, where she worked from 1995 to 2009. Prior to entering state service, Ms. Egel practiced labor and employment law with the firm of Cook, Brown, Rediger and Prager from 1987 to 1995. Ms. Egel received her Juris Doctor degree from Boalt Hall School of Law, University of California, Berkeley. She also holds a Master's of Public Policy from the Graduate School of Public Policy and a Bachelor of Arts degree in Political Economy of Industrial Societies, both from the University of California, Berkeley.

**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.

Mr. 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, an ad hoc hearing officer for the Sacramento County Civil Service Commission, and as the 1999 Chair of the Sacramento County Bar Labor and Employment Law section.

A 1984 graduate of the University of the Pacific's McGeorge School of Law, Mr. 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.

**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.

**Wendi L. Ross** joined PERB as Deputy General Counsel in April 2007 and has more than 20 years of experience practicing labor and employment law. Ms. Ross was employed for over 10 years 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.

**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.

**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.

# II. 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 collective bargaining statutory schemes administered by PERB. The approximate number of employees under these 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 statutory schemes, 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. 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 2008-2009 decisions is included in the Appendices, beginning at page 16.

### 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 statutory schemes 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 an applicable 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 is 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. All Board decisions are available on our website (http://www.perb.ca.gov) or by contacting PERB. On the PERB website, 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 may conduct a representation election, unless the applicable statute and the facts of the case require the employer to grant recognition to an employee organization 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 2008-2009 representation activity is included in the Appendices at page 22.

**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 2008-2009 litigation activity is included in the Appendices, beginning at page 69.

## 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

In 2008, there were amendments enacted affecting the MMBA, Dills Act, EERA, and Trial Court Act.

Senate Bill 1182 (Chapter 56, Statutes of 2008) was the California Law Revision Commission's fourth in a series of technical bills to amend or delete statutes made obsolete by trial court restructuring. This legislation included the repeal of Trial Court Act section 71617.

Senate Bill 1498 (Chapter 179, Statutes of 2008) included technical, non-substantive changes in various provisions of law. Among the sections amended were Government Code sections 3502.5 (MMBA), 3517.8 (Dills Act), and 3543 (EERA). 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.

Assembly Bill 1949 (Chapter 218, Statutes of 2008) included, among other changes to various statutes, amendments to Trial Court Act section 71601 to delete "judge pro tempore" from the definition of "subordinate judicial officer" in subsection (i) and to specifically exclude "temporary judges" from the definition of "trial court employee" found in subsection (m).

Senate Bill 1296 (Chapter 712, Statutes of 2008) amended MMBA section 3509, adding a new subsection (e). This legislative change modified PERB's jurisdiction and expressly provides that "superior courts shall have exclusive jurisdiction over actions involving interest arbitration, as governed by Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, when the action involves an employee organization that represents firefighters, as defined in Section 3251."

## Rulemaking

The Board did not consider any rulemaking proposals in the 2008-2009 fiscal year.

# IV. CASE DISPOSITIONS

## Unfair Practice Charge Processing

The number of unfair practice charges filed with PERB continues to increase partially 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 2008-2009, 868 new charges were filed, compared to 817 in the prior year.

## 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, 291 cases (35% of all charge investigations completed) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 223 days of settlement conferences in cases where a complaint was issued. These efforts resulted in voluntary settlements in 134 cases (nearly 50% of those cases in which settlement efforts concluded).

PERB's high success rate in mediating voluntary settlements is, in part, attributable to the tremendous skill and efforts of its staff, but 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 relationships. 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 administrative law judge. During this fiscal year, the number of new formal hearings assignments to ALJs grew significantly. In 2008-2009, ALJs issued 52 proposed decisions, averaging 94 days to render a decision. Of the 52 proposed decisions, 26 were appealed to the Board, and 26 became final.

## Board Decisions

Proposed decisions issued by PERB's administrative law judges and Board agent dismissals of unfair practice charges may be appealed to the Board itself. During the fiscal year, the Board issued 89 final decisions and also considered 19 requests for injunctive relief. (A summary of injunctive relief requests filed compared to prior years is included in the Appendices at page 21.)

**Litigation**

Fiscal year 2008-2009 culminated in court litigation[1] consistent with 2007-2008 for PERB. Specifically, more than 75 litigation-related assignments were completed by PERB attorneys, and a total of 23 litigation cases, including new and continuing cases, were handled during the 2008-2009 fiscal year. (A summary of these cases is included in the Appendices, beginning at page 69.)

**Representation Activity**

For the fiscal year, 124 new representation petitions were filed, a decrease of only 6 cases when compared to the prior year. The fiscal year total includes 33 recognition petitions, 13 severance requests, 7 petitions for certification, 30 decertification petitions, 2 requests for amendment of certification, 38 unit modification petitions, and 1 fair share fee rescission petition.

Election activity increased (21 elections conducted compared to 15 in the prior year). The 21 elections conducted by PERB during the fiscal year included 18 decertification elections, 1 representation election, 1 severance election, and 1 fair share fee rescission election. More than 5000 employees were eligible to participate in these elections.

**Mediation/Factfinding/Arbitration**

During the fiscal year, PERB also received 95 mediation requests and 27 factfinding requests. The number of mediation requests filed with PERB continued to decline (125 such requests were filed the prior year, and 205 the year before that). However, the number of factfinding requests remained constant (26 requests were filed in 2007-2008, and 25 requests were filed in 2006-2007). There were also two requests for a list of arbitrators submitted to PERB this year, compared to one the prior year, and none two years prior.

**Compliance**

PERB staff also commenced compliance proceedings regarding 29 unfair practice cases where a final decision resulted in a finding of a violation of the applicable statute, nearly double the number (15) commenced in the prior year.

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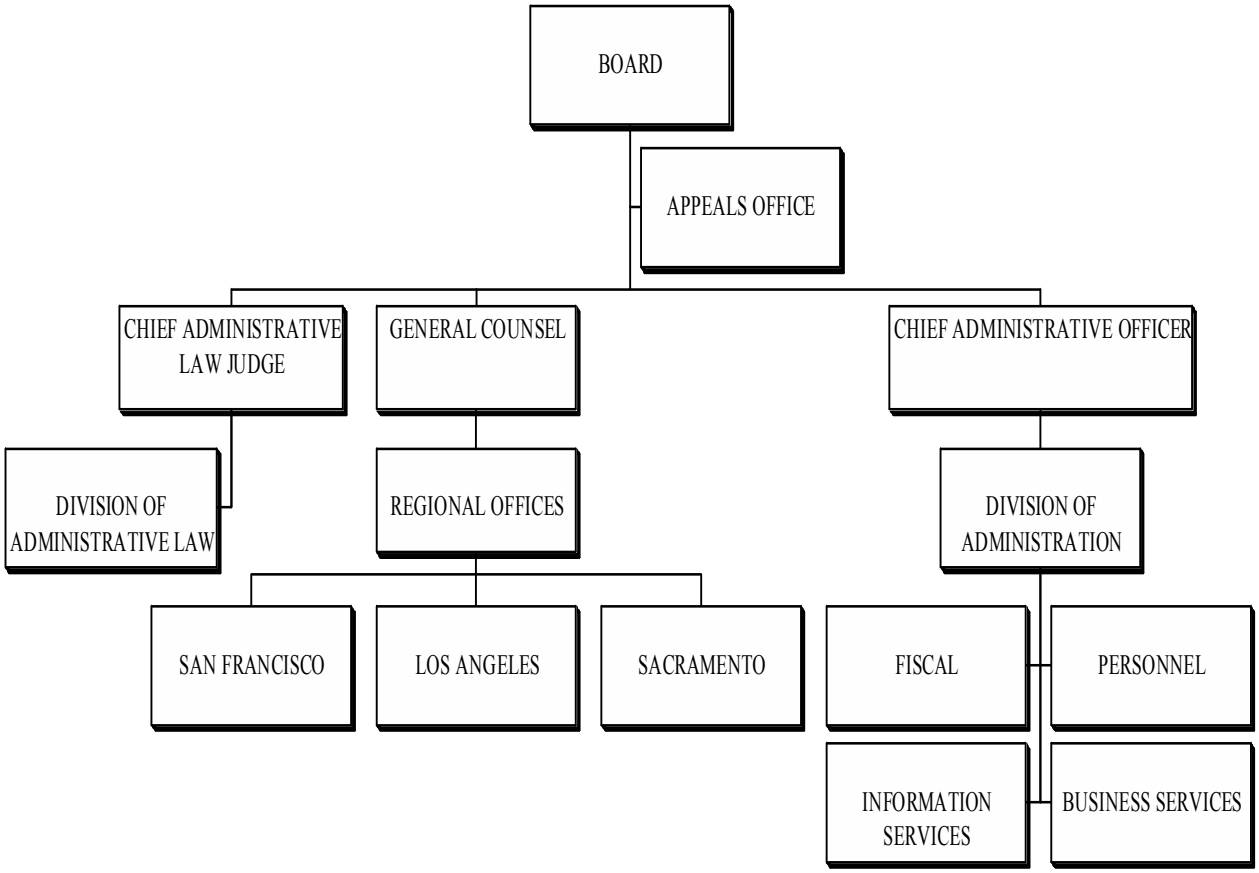
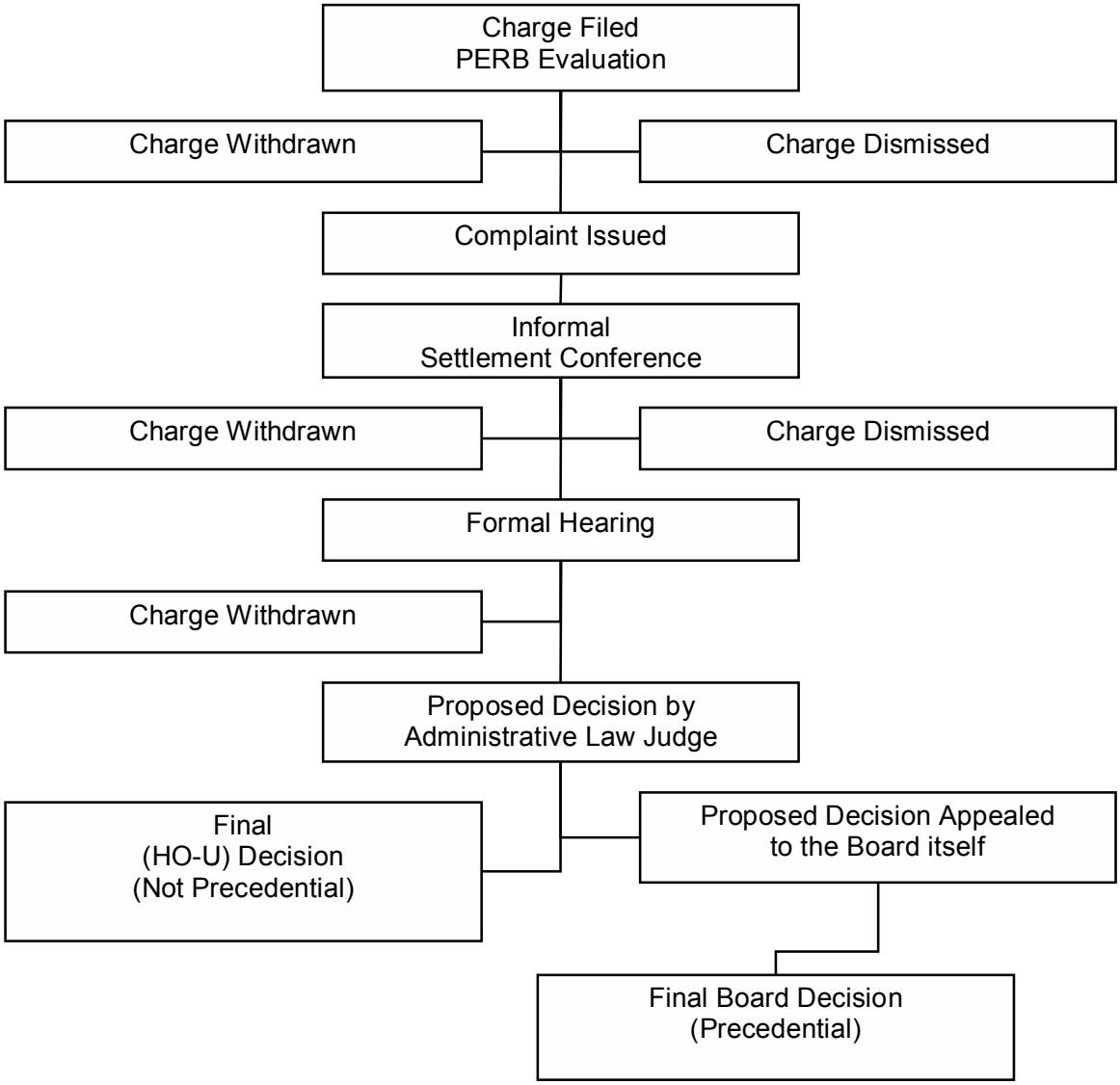
[1] PERB's court litigation primarily involves: (1) injunctive relief requests to immediately stop unlawful actions at the superior court level; (2) defending decisions of the Board at the appellate level; and (3) defending the Board's jurisdiction in all courts in the State, including the California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

# V. APPENDICES

# PUBLIC EMPLOYMENT RELATIONS BOARD
## Organizational Chart



**UNFAIR PRACTICE CHARGE**
**FLOW CHART**



# 2008-2009 UNFAIR PRACTICE CHARGE STATISTICS

## I. Unfair Practice Charges Filed by Region

| Region | Total |
|---|---|
| Sacramento | 278 |
| San Francisco | 259 |
| Los Angeles | 331 |
| **Total** | 868 |

## II. Unfair Practice Charges Filed by Act

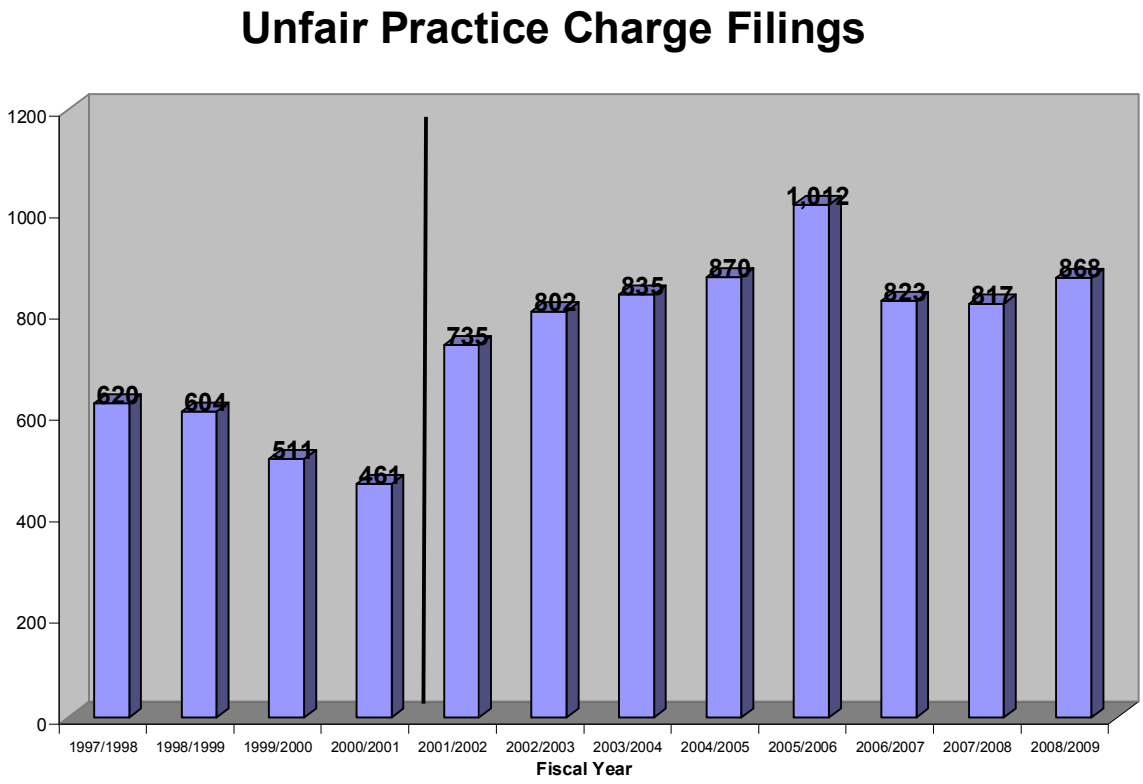
| Act | Total |
|---|---|
| Dills Act | 167 |
| EERA | 303 |
| HEERA | 72 |
| MMBA | 310 |
| TEERA | 1 |
| Trial Court Act | 14 |
| Court Interpreter Act | 1 |
| Non-Jurisdictional | 0 |
| **Total** | 868 |

## III. Prior Year Workload Comparison: Charges Filed

| | 2005/2006 | 2006/2007 | 2007/2008 | 2008/2009 | 4-Year Average |
|---|---|---|---|---|---|
| **Total** | 1012 | 823 | 817 | 868 | 880 |

## IV. Unfair Practice Charge Dispositions by Region

| | Charge Withdrawal | Charge Dismissed | Complaint Issued | Total |
|---|---|---|---|---|
| Sacramento | 89 | 82 | 99 | 270 |
| San Francisco | 75 | 64 | 63 | 202 |
| Los Angeles | 127 | 108 | 113 | 348 |
| **Total** | 291 | 254 | 275 | 820 |




Notes: The vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001). (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.)

## 2008-2009 REQUESTS FOR INJUNCTIVE RELIEF (IR)

### I. Prior Year Workload Comparison: IR Requests Filed

| | 2004/2005 | 2005/2006 | 2006/2007 | 2007/2008 | 2008/2009 | 4-Year Average |
|---|---|---|---|---|---|---|
| **Total** | 12 | 23 | 16 | 28 | 19 | 21.5 |

# 2008-2009 REPRESENTATION CASE ACTIVITY

## I. Case Filings and Disposition Summary

| Case Type | Filed | Closed |
|---|---|---|
| Request for Recognition | 33 | 34 |
| Severance | 13 | 12 |
| Petition for Certification | 7 | 6 |
| Decertification | 30 | 19 |
| Amended Certification | 2 | 0 |
| Unit Modification | 38 | 44 |
| Organizational Security | 1 | 1 |
| Arbitration | 1 | 1 |
| Mediation | 95 | 74 |
| Factfinding | 27 | 25 |
| Compliance | 29 | 18 |
| **Totals** | 276 | 234 |

## II. Prior Year Workload Comparison: Cases Filed

| | 2005-2006 | 2006-2007 | 2007-2008 | 2008-2009 | 4-Year Average |
|---|---|---|---|---|---|
| Fiscal Year | 360 | 348 | 297 | 276 | 320 |

## III. Elections Conducted

| | |
|---|---|
| Amendment of Certification | 0 |
| Decertification | 18 |
| Fair Share Fee Reinstatement | 0 |
| Fair Share Fee Rescission | 1 |
| Representation | 1 |
| Severance | 1 |
| Unit Modification | 0 |
| **Total** | 21 |

# *Elections Conducted: 7/1/2008 to 6/30/2009*

| *Case No.* | *Employer* | *Unit Type* | *Winner* | *Unit Size* |
|---|---|---|---|---|
| *Decertification* | *Subtotal:* | *18* | | |
| SF-DP-00274-M | MARINA COAST WATER DISTRICT | Management & Confidential | Runoff needed | 9 |
| SF-DP-00274-M | MARINA COAST WATER DISTRICT | Management & Confidential | Teamsters Local 890 | 8 |
| SF-DP-00276-E | SOUTHSIDE ESD | Wall Certificated | No Representation | 10 |
| SA-DP-00227-E | EMPIRE UnSD | Operations, Support Services | CSEA Empire Chapter 850 | 52 |
| LA-DP-00366-E | SAN DIEGO COMMUNITY COLLEGE DISTRICT | Operations, Support Services | AFT Local 1931 | 199 |
| LA-DP-00367-E | CHULA VISTA ESD | Wall Classified | Chula Vista Classified Employees Organization | 980 |
| SF-DP-00277-E | FOOTHILL-DE ANZA CCD | All Classified Less Other Group | Foothill-De Anza Classified Professional Association | 532 |
| SA-DP-00228-M | CITY OF CLOVIS | General Clerical & Related | No Representation | 146 |
| SA-DP-00230-M | BUTTE COUNTY MOSQUITO & VECTOR CONTROL | General | None - rerun required | 15 |
| SA-DP-00229-S | STATE OF CALIFORNIA | Education Consultants, Library & Maritime | SEIU Local 1000 | 650 |
| SF-DP-00282-H | UNIVERSITY OF CALIFORNIA | UC Irvine Skilled Crafts | State Employees Trades Council (SETC) - UNITED | 149 |
| SA-DP-00230-M | BUTTE COUNTY MOSQUITO & VECTOR CONTROL | General | No Representation | 14 |
| SF-DP-00281-M | WEST CONTRA COSTA HEALTHCARE DISTRICT | Technical, Service & Maintenance | National Union of Healthcare Workers[2] | 291 |
| LA-DP-00369-E | GROSSMONT-CUYAMACA CCD | Wall Certificated | AFT Guild 1931 | 1406 |
| SF-DP-00287-M | SAN BENITO HEALTH CARE DISTRICT | General | SEIU UHW-West[3] | 160 |
| LA-DP-00371-M | MIDWAY CITY SANITARY DISTRICT | General | AFSCME Local 1734 | 19 |
| LA-DP-00372-E | SAN LUIS COASTAL USD | Operations, Support Services | SEIU Local 620 | 134 |
| SA-DP-00231-M | NORTHSTAR COMMUNITY SERVICES DISTRICT | Firefighters | Northstar Professional Firefighter's Association | 14 |

[2] At the time this report was prepared, election objections were pending in this matter.

[3] At the time this report was prepared, election objections were pending in this matter.

| Case No. | Employer | | Unit Type | Winner | Unit Size |
|---|---|---|---|---|---|
| *Fair Share Fee Rescission* | | *Subtotal:* | *1* | | |
| LA-OS-00218-M | COUNTY OF SAN DIEGO | | Trades & Crafts | Agency fee rescinded | 221 |
| *Representation* | | *Subtotal:* | *1* | | |
| SF-RR-00919-E | PORTOLA VALLEY ESD | | Wall Classified | Classified Employee Association of Portola Valley | 42 |
| *Severance* | | *Subtotal:* | *1* | | |
| LA-SV-00156-E | SAN BERNARDINO CITY USD | | Security | San Bernardino School POA | 19 |

***Total Elections:*** 21

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1876a-H | California State Employees Association, CSU Division v. Trustees of the California State University/California Faculty Association v. Trustees of the California State University | The Board, on remand by the Second District Court of Appeal, upheld the dismissal of an unfair practice charge in which the Charging Party alleged the employer breached its duty to bargain when it prohibited faculty from parking in the newly built parking structures. | The Board held that parking location is not within the scope of representation. Therefore, the Board concluded the employer did not violate its duty to bargain in good faith when it prohibited faculty from parking in the newly built parking structures. |
| 1945a | California Teachers Association v. Journey Charter School | This case is before the Board on remand from the Court of Appeal. The court directed PERB to issue a decision consistent with its determination. | The Board reversed Decision No. 1945 and issued an order to remedy the discrimination of three teachers. |
| 1969-E | Beverly Hills Education Association v. Beverly Hills Unified School District | The Association alleged that the District breached its duty to bargain in good faith by: (1) not negotiating over the effects of a test release policy on teachers' work hours before implementing the policy and (2) refusing to meet and confer over the effects of the policy after implementation. | The Board affirmed the partial dismissal of the charge. The charge failed to state a prima facie case of unilateral change because it contained no facts establishing an actual change in teachers' workday or duty-free time. The charge failed to state a prima facie case of refusal to bargain because Charging Party's bargaining demand did not identify any negotiable subjects or effects. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1970-H | California State Employees Association v. Trustees of the California State University | CSEA alleged that CSU retaliated against an employee for filing grievances and an unfair practice charge by failing to interview him for a permanent position which he had held as a temporary appointee for the preceding three years | The Board adopted the ALJ's conclusion that Respondent retaliated against the employee for engaging in protected activity. The Board also held that no adverse inference is to be drawn when a party fails to a call favorable witness to testify if the other party could also have called the witness. |
| 1971-M | American Federation of State, County and Municipal Employees, Local 1117 v. City of Torrance<br><br>City of Torrance v. American Federation of State, County and Municipal Employees, Local 1117 | Consolidated Cases<br>AFSCME alleged that the City retaliated against its president by demanding reimbursement and threatening discipline for alleged unauthorized use of release time because AFSCME had campaigned against the successful mayoral candidate.<br>The City alleged that AFSCME breached its duty to meet and confer in good faith by refusing to bargain over the City's presidential release time proposal. | The Board affirmed the ALJ's conclusion that the City's conduct constituted both retaliation against the union president and interference with the president's and AFSCME's protected rights under MMBA. The Board also affirmed the ALJ's conclusion that AFSCME breached its duty to meet and confer in good faith by refusing to bargain over the City's release time proposal. |
| 1972-E | Temple City Educators Association, CTA/NEA v. Temple City Unified School District | The charge alleged the District engaged in surface bargaining when it: (1) adopted a modified tentative agreement; (2) refused to implement a salary increase; and (3) reneged on a one-time salary payment. | The Board dismissed the charge finding:<br>(1) the adopted tentative agreement was a counter proposal; (2) the District complied with the contract language that required further negotiations over a salary increase; (3) the District did not renege on an offer, rather, it rejected a counter offer for an off-schedule payment. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1973-E | Peter Nelson Grove v. Los Angeles City & County School Employees Union, Local 99 | The Charging Party alleged that the Union violated EERA and violated his constitutional right to resign from Union membership by failing to honor his request to cease deducting full dues following his resignation of union membership. | The Board dismissed the charge as untimely. The six-month statute of limitations was not extended under the continuing violation doctrine each time the Charging Party's Union dues were deducted from his paycheck. The Board also found that it lacked jurisdiction to consider the employee's claim that the Union's failure to immediately reduce his dues upon resignation from union membership violated his constitutional right to resign from Union membership. |
| 1974-H | Vivian Owens v. American Federation of State, County and Municipal Employees | Charging Party alleged that AFSCME violated HEERA by breaching its duty of fair representation. | The Board affirmed the ALJ's dismissal because the unfair practice charge was not timely. |
| 1975-M | American Federation of State, County and Municipal Employees, Local 2703 v. County of Merced | AFSCME alleged that the County retaliated against an employee for using union representation in a dispute over proposed discipline by denying him an extension of medical leave, providing him with a notice of termination and notice to vacate his County-owned residence, terminating him and changing the locks to the park where the residence was located. | The Board adopted the Board agent's warning and dismissal letters finding that the charge failed to allege facts establishing a nexus between the employee's protected activity and the County's adverse actions against him. The Board also found no good cause to consider allegations raised for the first time on appeal. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1976-E | Berkeley Federation of Teachers v. Berkeley Unified School District | The Federation alleged that the formula for funding the District's state-mandated reserve for economic uncertainties contained in the parties' collective bargaining agreement was the product of a mutual mistake of fact and therefore the District had a duty to re-open negotiations over the formula. | The Board affirmed the dismissal of the charge. The charge failed to state a prima facie case of refusal to bargain as a matter of law because the parties' ability to rescind a contract provision based on mutual mistake of fact does not create a duty to bargain over a replacement provision. |
| 1977-M | Cosme Montoya v. City of Long Beach | Montoya alleged that the City violated MOU mileage reimbursement provision and also retaliated against him for filing a grievance and an EEOC complaint by issuing him a counseling memo. Montoya raised new allegations and evidence on appeal and failed to properly serve City with filings. | The Board affirmed the dismissal of the charge. The employee had no standing as an individual to allege a unilateral change and that the charge provided no evidence of a nexus between the employee's grievance and the counseling memo. The Board found no good cause to consider new allegations and evidence raised on appeal, except for two documents that did not exist at the time the charge was dismissed. The Board also excused the employee's failure to comply with PERB's service requirements because the City had notice of the filings and was not prejudiced by late service. |
| 1978-S | AFSCME Local 2620 v. State of California (Department of Personnel Administration) | The charge alleged the State violated the Dills Act by unilaterally changing employee benefits when the State approved and implemented SB 1105. | The Board dismissed the charge finding the State did not have an obligation to bargain. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1979-C | American Federation of State, County and Municipal Employees, Local 575 v. Los Angeles County Superior Court | AFSCME alleged that the Court discriminated against employee/union president by suspending her for sending union business e-mails and reserving a courtroom for a union meeting. | The Board reversed the ALJ's proposed decision and dismissed the charge. The courtroom reservation and one of the e-mails were protected activities. The remaining three e-mails were unprotected because they violated the Court's e-mail use policy. AFSCME established a prima facie case of discrimination because the Court disciplined the employee for protected activity. However, the Board concluded that the Court would have imposed the same discipline based on the three unprotected e-mails regardless of the employee's protected activity. |
| 1980-E | Johnny Collins v. San Mateo County Community College District | Collins alleged that the District retaliated against him for using union representation in disputes with the employer by placing him on involuntary administrative leave, sending him to a fitness for duty evaluation, and canceling a teaching assignment. | The Board affirmed the dismissal of the charge. The charge failed to allege facts establishing a nexus between the employee's protected activity and the District's adverse actions. The Board also found no good cause to consider supporting evidence and allegations raised for the first time on appeal. |
| 1981-H | Coalition of University Employees v. Regents of the University of California | The Board granted the Coalition's request to withdraw its appeal of the partial dismissal. | The Board held that the withdrawal of the appeal of the partial dismissal was in the best interests of the parties and consistent with the purposes of HEERA. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1982-E | Kenneth Meredith v. Service Employees International Union, Local 221 | Meredith alleged that SEIU violated CBA union access provisions, breached duty of fair representation by not providing him with representation regarding his rejection on probation, and caused or attempted to cause his employer to discriminate against him. | The Board remanded for issuance of a complaint on the duty of fair representation allegation. The charge alleged a pattern of conduct by SEIU that showed an arbitrary failure to represent the employee regarding his rejection on probation. The Board affirmed the dismissal of the CBA violation allegation because PERB has no jurisdiction over an isolated contract breach and the employee did not have standing to allege a unilateral change. The Board affirmed the dismissal of the remaining allegation because the charge did not allege facts establishing that SEIU affirmatively acted to cause or attempt to cause the employer to violate EERA. |
| 1982a-E | Kenneth Meredith v. Service Employees International Union, Local 221 | SEIU sought reconsideration of PERB Decision No. 1982, alleging the decision contained prejudicial errors of fact. | The Board denied the request for reconsideration. The Board found Decision No. 1982 did not contain prejudicial errors of fact because the decision remanded the charge for issuance of a complaint and SEIU would have the opportunity to present and rebut evidence at the hearing on the complaint. |
| 1983-M | San Mateo County Firefighters Local 2400 v. Menlo Park Fire Protection District | The Board affirmed the dismissal of an unfair practice charge in which the Charging Party alleged the District retaliated against an employee for engaging in protected conduct. | The Board held the dismissal was appropriate because the Charging Party failed to establish a nexus between the alleged adverse action and the employee's protected conducted. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1984-S | Laurenda George v. SEIU Local 1000 | The Board affirmed the dismissal of an unfair practice charge that alleged the Union breached its duty of fair representation by failing to attend a meeting between Charging Party and her supervisor; failing or refusing to file a grievance regarding Charging Party's vacation request; and by failing to adequately represent Charging Party in a matter before the SPB. | The Board held that certain allegations were untimely filed. The remainder of the allegations failed to demonstrate that the Union breached its duty of fair representation. |
| 1985-S | California Correctional Peace Officers Association v. State of California (Department of Personnel Administration) | Charging Party alleged that the State of California (Department of Personnel Administration) violated the Dills Act by instructing the State Controller's Office to stop collecting fair share fees of nonmembers of State Bargaining Unit 6 after implementing its last, best, and final offer. | The Board upheld the Board agent's dismissal because, pursuant to Dills Act sections 3515.7 and 3517.8, the State was not required to collect fair share fees after implementing the last, best and final offer. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1986-E | Rio Teachers Association v. Rio School District | The Association alleged that the District engaged in bad faith bargaining, failed to participate in impasse procedures in good faith, and retaliated against Association president, and interfered with her and Association's rights, by reprimanding her for failing to provide requested information relevant to accusations she made that district administrators were improperly evaluating teachers. | The Board affirmed the partial dismissal of the charge. The charge failed to establish that the District bargained in bad faith or participated in impasse procedures in bad faith because the District's declaration of impasse was not a per se violation of the duty to bargain and the totality of the District's conduct showed it intended to move negotiations forward by invoking and participating in EERA impasse procedures. The charge also failed to establish a nexus between the Association president's protected activity and the reprimand. Finally, the charge failed to establish a prima facie case of interference because discipline for disobeying a direct order would not tend to chill the president's right to speak on issues of employer-employee relations. |
| 1987-I | California Federation of Interpreters/TNG/ CWA v. Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside | The Charging Party alleged that the superior court violated the Trial Court Interpreter Act by refusing to offer employment to an independent contractor, refusing to provide requested information to the labor organization, and refusing to arbitrate. | The Board dismissed the charge, finding that the Charging Party lacked standing to file a charge with PERB on behalf of an independent contractor and, therefore, PERB lacked jurisdiction over the charge. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1988-M | Burbank City Employees Association v. City of Burbank | The Association alleged that the City violated its duty to bargain in good faith by failing to timely provide the Association with requested information relevant to an employee's pending disciplinary arbitration. | **JUDICIAL APPEAL PENDING**<br>The Board affirmed the ALJ's conclusion that the City's failure to provide the requested information in a timely manner violated MMBA section 3505. Section 3505 requires an employer to provide an exclusive representative with requested information necessary and relevant to its representation of a bargaining unit member in a contractual disciplinary arbitration. The California Arbitration Act does not eliminate or limit a party's right to information under MMBA and the absence of an arbitration discovery provision in the parties' MOU does not waive the Association's right to information relevant to contractual arbitration proceedings. The Board found the requested information presumptively relevant to the pending arbitration and that the City failed to establish an affirmative defense to production of the information. The Board also found that the City failed to provide the information in a timely manner because it produced some of the information three months after the request and the rest on the day of the arbitration hearing. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1989-M | Ron Montgomery Reed Kroopkin v. County of San Diego | Charging Party requested to withdraw the unfair practice charge and his appeal of the partial dismissal where he alleged that the County of San Diego violated the MMBA when it retaliated against him by removing a report he prepared and posted on the Service Employees International Union, Local 535's bulletin board, and issuing him a letter of warning. | The Board granted the request for withdrawal finding it in the best interests of the parties. |
| 1990-E | Annette M. Deglow v. Los Rios College Federation of Teachers, Local 2279 | The Board affirmed the dismissal of two unfair practice charges by an ALJ for lack of prosecution. | The Board held the unfair practice charges were properly dismissed for lack of prosecution and adopted the proposed decision by the ALJ as a decision of the Board itself. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1991-E | Hugo Arteaga v. SEIU Local 99 | Arteaga alleged that SEIU breached its duty of fair representation by not filing a grievance over his termination, improperly calculated/ deducted his agency fees, and retaliated against him for trying to decertify SEIU. | The Board adopted the Board agent's warning and dismissal letters without further discussion. The charge did not establish a breach of the duty of fair representation because the applicable collective bargaining agreement allowed Arteaga to file a grievance on his own behalf. PERB had no jurisdiction over the agency fee allegation because the charge did not establish that Arteaga had exhausted SEIU's agency fee appeal procedure or that the procedure was insufficient on its face. The charge failed to establish a prima facie case of retaliation because it did not show that SEIU had knowledge of Arteaga's attempts to decertify SEIU. |
| 1992-H | California Alliance of Academic Student Employees/UAW v. Trustees of the California State University | The charge alleged that the University unilaterally modified the bargaining unit without first exhausting unit modification procedures. | The Board granted the parties' joint request to withdraw the appeal after they settled the underlying dispute. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1993-E | Baker Valley Teachers Association v. Baker Valley Unified School District | The Association alleged that the District retaliated against two teachers for their activities on behalf of the Association by seeking one teacher's resignation in lieu of termination and deciding to nonrenew the other teacher. | The Board affirmed the ALJ's conclusion that the District retaliated against one teacher but dismissed the allegation of retaliation against the other teacher. The Board found a nexus between the teacher's service on the Association's bargaining team and as its grievance chair and the decision to nonrenew him. The decision was made within weeks of PERB declaring the Association and District were at impasse and two months after the teacher filed the Association's first grievances during the current superintendent's tenure, and the District gave a vague or ambiguous reason for the nonrenewal decision. The District failed to prove it would have nonrenewed the teacher absent his protected activity because there was no documentation of performance problems in the teacher's personnel file and the District superintendent's testimony that he had spoken with the teacher about performance problems was not credible. The Board found no nexus between the other teacher's service as union president and the District's decision to seek his resignation in lieu of termination. Finally, the Board held that Education Code sections 44948.5 and 44949 do not supersede EERA because there is no conflict between the Education Code's procedure for determining cause for nonrenewal and PERB's inquiry into whether a teacher was nonrenewed because of protected activity. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1994-M | Modesto City Employees Association v. City of Modesto | The Association alleged that the City retaliated against an employee for appealing a proposed suspension by increasing the suspension from two days to five days. | The Board affirmed the ALJ's dismissal of the complaint. The department head who imposed the final five-day suspension had no knowledge of the employee's appeal. Further, although two employees who prepared the final notice of suspension knew of the appeal, neither knew that the notice of proposed suspension had purported to impose a two-day suspension, with three days held in abeyance. |
| 1995-H | Coalition of University Employees v. Regents of the University of California (Los Angeles) | The Charging Party alleged that the University laid off an employee in retaliation for his union activities. | The Board affirmed the dismissal of the charge, finding that, while the decision maker had knowledge of the employee's union activities, union animus held by the employee's supervisors was not imputed to decision maker, and the layoff decision was not so economically indefensible that it must have been the product of unlawful motivation. |
| 1996-M | Amalgamated Transit Union, Local 1704 v. Omnitrans | The Charging Party alleged that the employer retaliated against two union officers for engaging in protected activity and unilaterally changed the parties' established union leave policy. | **JUDICIAL APPEAL PENDING**<br>The Board found that the employer retaliated against one employee but not the other. The Board also found that the employer did not unilaterally change its policies when it directed that union paid leave could only be used for union business related to the employer. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 1997-S | State of California (Departments of Veterans Affairs & Personnel Administration) v. Service Employees International Union, Local 1000, CSEA | Charging Party alleged that the Service Employees International Union, Local 1000 (SEIU), CSEA unilaterally changed the no-strike provision of the parties' expired memorandum of understanding (MOU) by: (1) "condoning" a sick-out held by certified nurse assistants (CNA) in the skilled nursing unit of the Chula Vista Veterans Home; (2) failing to provide notice to union staff of the no-strike provisions of the MOU; and (3) failing to encourage the CNAs return to work. | The Board affirmed the ALJ's dismissal finding that although it is arguable that SEIU condoned the sick-out in this case and engaged in a one-time breach of the MOU, the record failed to show that SEIU made a unilateral change in policy. |
| 1998-M | Nelson A. Estival v. Service Employees International Union, Local 1021 | Charging Party alleged that the Service Employees International Union, Local 1021 violated the MMBA by breaching its duty of fair representation when it failed to file a grievance or challenge Charging Party's release from employment. | The Board upheld the Board agent's dismissal because Charging Party failed to demonstrate a prima facie case. |
| 1999-E | Kern Community College District v. California School Employees Association & its Chapters 246, 336, & 617 | Charging Party requested to withdraw the unfair practice charge and appeal where it alleged that the California School Employee's Association and its Chapters 246, 336 and 617 violated EERA by refusing to bargain in good faith. | The Board granted the request of withdrawal finding it in the best interests of the parties. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2000-E | James Hsiong v. San Francisco Unified School District | The Charging Party alleged that the District violated EERA by refusing to apply retroactive salary increases to certain former employees of the District. | The Board affirmed the Board agent's dismissal of the charge finding that the Charging Party lacked standing to file an unfair practice charge under EERA because he was not an employee at the time of the alleged unlawful act. |
| 2001-M | Amalgamated Transit Union Local 1704 v. Omnitrans | The Board dismissed an unfair practice charge in which the Charging Party alleged Omnitrans breached its duty to meet and confer in good faith when it unilaterally implemented an updated employee rulebook. | The Board held that the Charging Party failed to state a prima facie case under the MMBA because it failed to plead sufficient facts to establish it was denied notice and an adequate opportunity to bargain over the changes to the updated employee rulebook. |
| 2002-E | Long Beach Council of Classified Employees v. Long Beach Community College District | The charge alleged that the District unilaterally changed the employee workday to ten hours per day/four days per week for the summer to address the energy crisis. | The Board found the District unlawfully changed the workday without providing notice and an opportunity to bargain. The Board also held that equitable tolling applied to find the charge timely filed. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2003-E | Leon J. Waszak v. Glendale Guild/AFT Local 2276 | Charging Party alleged that the Guild breached its duty of fair representation. | The Board affirmed the dismissal because the charge failed to allege facts showing that the Guild acted "arbitrarily, discriminatorily, or in bad faith" by not filing a grievance over Charging Party's late performance evaluation because the Guild's executive committee discussed the merits of the grievance before deciding not to pursue it. |
| 2004-M | American Federation of State, County and Municipal Employees, Local 1117 v. City of Torrance | AFSCME alleged that the City failed to provide notice and an opportunity to request negotiations before changing the vehicle usage policy for employees of the City's water operations division. | The Board affirmed the ALJ's denial of the City's motion to strike the testimony of a witness who testified by phone over the City's objection. Section 11440.30(b) of the Administrative Procedure Act is not binding on PERB and therefore the ALJ did not err in admitting the telephonic testimony. The City failed to specifically except to the ALJ's ruling on the merits of the unilateral change allegation and thereby waived any exceptions to that ruling. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2005-M | Ron Montgomery Reed Kroopkin v. County of San Diego | Charging Party alleged that the County violated the MMBA when it: (1) removed material he posted on his union's bulletin board; (2) denied his request for release time; (3) placed him on administrative leave; (4) issued him a letter of warning; (5) disbanded the Foster Care Worksite Issues Committee; (6) refused to process a grievance filed by him regarding the County's decision to disband the Foster Care Worksite Issues Committee; (7) issued him a disciplinary memorandum; (8) advised the president of Services Employees International Union, Local 221, that the County was suspending Employment and Eligibility Labor/Management Meetings because of Charging Party's conduct at last meeting; and (9) denied a grievance filed by Charging Party regarding the County's decision to suspend the Labor/Management Meetings. | The Board affirmed the Board agent's dismissal of Kroopkin's unfair practice charge. The Board held that the letter was not an adverse action because its alleged future adverse impact on Kroopkin's employment conditions was speculative. As a result, the charge failed to establish a prima facie case of retaliation. The Board also held that the charge did not state a prima facie case of interference. Because Kroopkin had no individual right under the MMBA to attend labor/management meetings, the County's decision to bar him from labor/management meetings and refusal to process his grievances over being barred from the meetings did not interfere with Kroopkin's rights under the MMBA. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2006-M | Ron Montgomery Reed Kroopkin v. Service Employees International Union, Local 221 | Charging Party alleged that the Service Employees International Union, Local 221 (SEIU) violated the MMBA by retaliating against Charging Party for engaging in protected conduct. | The Board affirmed the Board agent's dismissal of Kroopkin's unfair practice charge. The Board held this was an internal union matter not subject to PERB review because the charge failed to show that SEIU's circulation of the letter had any substantial impact on Kroopkin's employment relationship with the County. The Board also held that SEIU's decision that Kroopkin would no longer represent it at labor/management meetings was not subject to PERB review because the decision did not have a substantial impact on Kroopkin's employment relationship with the County. |
| 2007-E | Lisa A. Menges v. Torrance Unified School District | Menges alleged that the District violated EERA by: (1) releasing her from a probationary position without providing the written notice required by the District's Personnel Commission Rules; (2) creating a hostile work environment; and (3) discriminating against her based on race. | The Board adopted the Board agent's warning and dismissal letters without further discussion. The charge failed to state a prima facie case of discrimination or retaliation because it did not allege that Menges engaged in any activity protected by EERA. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2008-E | Christine L. Felicijan & Wayne Hetman v. Santa Ana Educators Association | Charging parties alleged Association breached its duty of fair representation in dispute with school district over inappropriate materials in their personnel files. ALJ held Charging Parties were not "employees" under EERA and therefore the Association owed them no duty of fair representation. | The Board reversed the ALJ's proposed decision and remanded for further hearing on the merits. Individuals on a 39-month reemployment list pursuant to Education Code section 44978.1 are "employees" as defined in EERA section 3540.1(j). Therefore, the Association owed Charging Parties a duty of fair representation during the period they were on the reemployment list. |
| 2009-M | California United Homecare Workers Union v. Kings In-Home Supportive Services Public Authority | The Charging Party alleged that the employer failed to bargain in good faith because it prematurely declared impasse and did not participate in the impasse procedures contained in local rules. | The Board found that the Charging Party alleged a prima facie case of failure to bargain in good faith by prematurely declaring impasse. The Board also found the charge failed to allege a prima facie case that the employer failed to participate in good faith in the scheduling of an impasse meeting, where the union failed to timely respond to the employer's proposed dates for an impasse meeting and only proposed a date that was a public holiday. The Board reversed the Board agent's dismissal of the charge and remanded the case to the General Counsel's office for the issuance of a complaint. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2010-M | Amalgamated Transit Union, Local 1704 v. Omnitrans | The Charging Party alleged that the employer unlawfully denied the union the right to represent its employees and unlawfully interfered with employee rights when it refused to process grievances filed by the union in its own name. | The Board adopted the ALJ's decision holding that the employer's refusal to process grievances filed by a union in its own name unlawfully denied the union the right to represent its employees and also unlawfully interfered with employee rights. |
| 2011-E | John W. Adams v. Los Angeles Unified School District | The charge alleged that the District engaged in multiple acts of retaliation for protected activity against Charging Party, going back to April 2006, and alleged other acts of misconduct by the District that were deemed outside PERB jurisdiction. | The Board affirmed the Board agent's partial dismissal, finding that the District's actions prior to the six (6) month statute of limitations were untimely and not subject to the continuing violation doctrine. Additional allegations failed to state a prima facie violation of EERA. |
| 2012-E | John W. Adams v. United Teachers of Los Angeles | Charging Party alleged that United Teachers of Los Angeles violated the duty of fair representation by refusing to pursue, or inadequately pursuing several issues Charging Party raised against the District. | The Board affirmed the Board agent's dismissal, finding that the Charging Party failed to present a prima facie case that UTLA's actions were arbitrary, discriminatory or in bad faith. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2013-S | California Correctional Peace Officers Association v. State of California (Department of Personnel Administration) | CCPOA alleged that DPA violated its duty to bargain by refusing to provide information relevant to ongoing negotiations for a successor memorandum of understanding. | The Board adopted the Board agent's warning and dismissal letters supplemented by a discussion of CCPOA's appeal. The charge failed to state a prima facie case of refusal to provide information because it did not allege any admissible evidence showing that CCPOA reasserted its information request after receiving DPA's response. The charge was untimely because it was filed more than six months after CCPOA received DPA's response. The statute of limitations was not equitably tolled while the parties participated in mandatory impasse mediation pursuant to Dills Act section 3518. |
| 2014-M | Andrew Christian Coelho v. San Bernardino Public Employees Association | Coelho alleged that the Association failed to fairly represent him regarding the termination of his employment. | The Board dismissed the appeal for failure to comply with PERB Regulation 32635(a), which requires an appeal to state the specific issues appealed and the grounds for each issue. |
| 2015-E | Tony Hicks et al. v. Compton Unified School District | The charge alleged the District refused to meet with charging parties and retaliated against them when it revised their seniority status. | The Board affirmed the charge dismissal as untimely filed. |
| 2016-E | Tony Lynn Hicks v. Compton Unified School District | The charge alleged the District retaliated against Charging Party when it revised his seniority status. | The Board affirmed the charge dismissal as untimely filed. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2017-S | California Peace Officers Association v. State of California (Department of Personnel Administration) | The charge alleged the employer failed to provide information, engaged in surface bargaining when it implemented its last, best and final offer, and retaliated against union officers and unit members. | The Board affirmed the partial dismissal finding some allegations where untimely filed and other allegations failed to state a prima facie case. |
| 2018-S | California Correctional Peace Officers Association v. State of California (Department of Personnel Administration) | The Board dismissed an unfair practice charge in which the Charging Party alleged that the employer violated the Dills Act by refusing to increase the business-related automobile travel reimbursement rate for employees in State Bargaining Unit 6 following an increase to the Federal Standard Mileage Rate (FSMR). | The Board held that increases to the reimbursement rate constitute an expenditure of funds and, therefore, such rates may not be increased until approved by the Legislature. Since the Legislature had not approved such a rate increase, the employer did not violate the Dills Act when it refused to harmonize the State reimbursement rate with the FSMR. |
| 2019-E | California School Employees Association & its Chapter 150 v. Escondido Union Elementary School District | The Charging Party alleged that the District retaliated against an employee for filing a government tort claim and PERB charge by issuing disciplinary memoranda and suspending the employee. | The Board found that the memoranda and suspension were issued in retaliation for engaging in protected activity. The Board further found that the District did not retaliate by reprimanding the employee for insubordination for comments made during a staff meeting regarding his PERB charge and other matters and for wasting time by moving a co-worker's tools, where the union failed to establish that the criticisms were exaggerated or embellished. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2020-M | Victoria Ann Gilley-Mosier v. County of Yolo | The Charging Party alleged she was involuntarily reassigned in retaliation for having engaged in protected activity, resulting in a loss of an alternative work schedule. | The Board affirmed the ALJ's dismissal of the complaint, finding no nexus between the employee's protected activity and the reassignment. Even if a nexus existed, the County would have taken the action regardless of the protected activity. |
| 2021-E | John Bussman v. Alvord Unified School District | Charging Party, a teacher, alleged that by changing his class assignments and failing to provide him with the teacher's edition textbook for his new class, the District engaged in reprisal for protected activity, in violation of EERA, and interference with the rights of employees. | Board affirmed the Board agent's dismissal, finding that the charge failed to state a prima facie case for retaliation because it failed to provide evidence that the class schedule change and/or failure to provide educational resources, constituted an adverse impact on Charging Party's employment. The charge also failed to provide evidence of employer knowledge, or nexus. Evidence regarding the presence of a District supervisor at meetings where Charging Party engaged in protected activity, was not sufficient to establish employer knowledge, where the supervisor was present in her capacity as a representative for the union, and the charge failed to provide evidence to establish that the individual was an agent or representative of the District. Additionally, the charge failed to provide evidence that any employer action caused harm to employee rights, constituting interference. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2022-M | Modesto City Employees' Association v. City of Modesto | The Charging Party alleged that the City violated the MMBA by refusing a union member's request for representation during two required meetings with his supervisors and by discriminating against him for requesting representation at a third meeting by failing to complete an investigation of a complaint filed by him. | The Board held that the City did not unlawfully deny the right to representation during an interview to discuss a complaint filed by the employee and during two coaching sessions to discuss the employee's work performance, where the employee did not reasonably believe that the meetings would result in discipline against him. The Board also found that the City did not discriminate against the employee by failing to complete its investigation of the complaint after he requested representation, where the employee refused to discuss or provide information without representation.<br><br>The Board also held that the ALJ did not improperly deny the union's request to amend the complaint near the end of the hearing to allege an additional act of discrimination. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2023-M | Debra A. Roeleveld v. County of San Bernardino (County Library) | Charging Party alleged that the county violated the MMBA by engaging in unfair hiring practices and violating the county's local rules The Board agent's warning letter stated that the charge failed to state a cause of action. Charging Party mailed her amended charge with a postmark on the last day for filing. The Board agent did not consider the late filed amended charge and dismissed the charge based on the reasons set forth in the warning letter. | Board found good cause to excuse late filing of amended charge holding that Charging Party made a conscientious attempt to timely file amended charge, the amended charge was postmarked on the date due for filing as a result of honest error based on "misunderstood communications" and there was no evidence of prejudice resulting from the brief delay. The Board remanded that case to the General Counsel's office for consideration of the amended charge. The Board did not make a finding on the merits of the Board agent's dismissal. |
| 2024-S | California Correctional Peace Officers Association v. State of California (Department of Corrections and Rehabilitation) | The Board affirmed the dismissal of an unfair practice charge in which the Charging Party alleged the employer violated the Dills Act when a manager distributed a document via e-mail to all the youth correctional officers at the Ventura Youth Correctional Facility. The Charging Party claimed this conduct constituted retaliation and interference in violation of the Dills Act. | The Board held that the Charging Party failed to state a prima facie case of retaliation under the Dills Act because it failed to plead sufficient facts to establish both an adverse action and a nexus between the adverse action and the protected conduct. The Board also held that the Charging Party failed to state a prima facie case of interference under the Dills Act because it failed to plead sufficient facts to establish that the issuance of the e-mail tended to or did result in some harm to employees' rights under the Dills Act. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2025-M | Rafael R. Rivera v. SEIU, United Healthcare Workers, West | Rivera alleged that SEIU-UHW failed to fairly represent him regarding the termination of his employment. | The Board affirmed the Board agent's dismissal of the charge. The charge was untimely because Rivera knew more than six months before the charge was filed that SEIU-UHW would provide no further representation regarding his termination. |
| 2026-E | Cottonwood Teachers Association v. Cottonwood Union Elementary School District | Charging Party requested to withdraw the exceptions to the proposed decision of an ALJ where the charge alleged that the District violated EERA by: (1) failing to bargain in good faith and making a unilateral change by reneging on implementation of a negotiated salary formula; (2) repudiating the negotiated grievance procedure in refusing to process a grievance; and (3) failing to bargain in good faith and bypassing the exclusive representative by sending a grievance response to all bargaining unit employees. | The Board granted the withdrawal because it effectuated the purposes of EERA. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2027-M | Service Employees International Union, Local 1997 v. City of Riverside | SEIU alleged that the City violated its duty to bargain in good faith by changing the promotion criteria for mini-bus drivers without providing SEIU with notice or an opportunity to request to meet and confer over the change. | The Board affirmed the ALJ's conclusion that the City made an unlawful unilateral change. The Board found the promotion criteria for mini-bus drivers was set forth in a written grievance settlement that was not superseded by a later MOU. Thus, the City was obligated to provide SEIU with an opportunity to meet and confer before changing the promotion criteria. The Board also found rescission of the promotions of innocent employees would not serve the remedial purpose of the MMBA and instead ordered the City to reinstate the prior promotion criteria and pay employees wages and benefits they would have received had they been promoted according to the prior criteria. |
| 2028-E | Royce P. Dunn v. California School Employees Association & Its Chapter 379 | Dunn alleged CSEA breached its duty of fair representation by withdrawing his grievance one week before a scheduled arbitration hearing. | The Board affirmed the Board agent's dismissal of the charge. The charge failed to state a prima facie case of breach of the duty of fair representation because CSEA's decision to withdraw the grievance, based on newly discovered evidence indicating the grievance lacked merit, was not arbitrary, discriminatory or in bad faith, nor did CSEA's negligent conduct in handling the grievance extinguish Dunn's right under the CBA to take his grievance to arbitration. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2029-E | Lorenia Payne v. California School Employees Association & its Chapter 410 | Charging Party alleged that the union violated EERA by breaching its duty of fair representation when it failed to file a grievance over Charging Party working outside her classification. | The Board upheld the Board agent's dismissal because some of the allegations were untimely, and the Charging Party failed to establish that the union's decisions were arbitrary, discriminatory, or made in bad faith. |
| 2030-M | Amalgamated Transit Union, Local 1704 v. Omnitrans | The Charging Party alleged that Omnitrans: (1) interfered with protected access rights by having a union officer arrested for refusing to leave the drivers' assembly room where he was speaking with individual drivers about union matters; and (2) made an unlawful unilateral change by requiring prior permission for union officers to speak with drivers in the assembly room without providing the union with notice or an opportunity to request to meet and confer over the change. | **JUDICIAL APPEAL PENDING**<br>The Board held that the employer's rule requiring prior permission interfered with the union's access rights because it regulated union activity in a non-work area during non-working time, and that the employer failed to establish a legitimate business reason for applying the rule in this case. The Board also found that the employer's prior permission rule constituted a breach of past practice and its implementation of the rule without providing the union an opportunity to meet and confer over the change constituted an unlawful unilateral change. To make the union officer whole, the Board ordered Omnitrans to pay attorney's fees incurred by the officer in defending against the criminal trespass charge that resulted from Omnitrans' enforcement of its unlawful union access policy and to join the officer in petitioning the appropriate court to expunge evidence of the officer's arrest and prosecution from his record. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2031-M | California School Employees Association & its Chapter 2001 v. Coachella Valley Mosquito & Vector Control District | Charging Party alleged that the District violated the MMBA by: (1) retaliating against employees for filing a unit modification petition when it laid off Red Imported Fire Ant (RIFA) services employees prior to the California School Employees Association & its Chapter 2001 (CSEA) election; (2) interfering with the rights of RIFA employees by threatening them with layoff prior to the CSEA election; and (3) failing to meet and confer in good faith with CSEA by refusing to negotiate employee access to its e-mail system. | The Board found that, after employees filed a unit modification petition, the employer engaged in unlawful interference and discrimination under MMBA when it told employees there would be layoffs if they went with the union. The Board did not reach the merits of the third allegation finding that it was an unalleged violation. |
| 2032-H | Sak Onkvisit v. Trustees of the California State University (San Jose) | Charging Party alleged that the Trustees of the California State University (San Jose) violated HEERA by retaliating against him for his failure to follow a directive. | The Board affirmed the Board agent's dismissal because the charge was untimely, even applying the doctrine of equitable tolling. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2033-M | Service Employees International Union, Local 715 v. El Camino Hospital District | The Board upheld an unfair practice charge in which the Charging Party alleged the El Camino Hospital, an entity closely affiliated with the District, violated the MMBA when it refused to participate in an agency shop election on the ground that the Hospital was not a "public agency" within the meaning of the MMBA. | The Board held that the Hospital is a public agency, subject to the provisions of the MMBA. In the alternative, the Board also held that the District and the Hospital were a single employer for collective bargaining purposes. Accordingly, the Hospital, like the District, was subject to the provisions of the MMBA. |
| 2034-S | Ira Eisenberg v. Civil Service Division, California State Employees' Association | Charging Party alleged that the Civil Services Division, California State Employees' Association, violated the Dills Act by creating a website which interfered with Charging Party's ability to pursue his decertification efforts. | The Board upheld the Board agent's dismissal finding that Charging Party failed to demonstrate a prima facie case. |
| 2035-M | Franz Hinek v. Solano County Fair Association | The Charging Party alleged that the fair association terminated him in retaliation for engaging in protected activity. | The Board affirmed the Board agent's dismissal of the unfair practice charge because it was untimely filed. While finding that the doctrine of equitable tolling as set forth in *Long Beach Community College District* (2009) PERB Decision No. 2002 applies to cases filed under the MMBA, the requirements for equitable tolling were not met, where the Charging Party failed to allege facts showing that his grievance was being pursued under a bilaterally agreed upon dispute resolution procedure, and instead alleged that the parties had no such procedure. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2036-M | Alhambra Firefighters Association, Local 1578 v. City of Alhambra | Charging Party alleged that the City violated the MMBA by unilaterally changing its policy regarding firefighter duties and driver's license requirements without giving the Association prior notice or opportunity to bargain. | The Board upheld the Board agent's dismissal. The Board found that equitable tolling principles did not apply to participation in non-contractual disciplinary proceedings under *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, which are not bilaterally agreed upon dispute resolution procedures. The Board did not award attorney's fees finding that the Union's pursuit of an untimely unfair practice charge was without arguable merit and not in bad faith. |
| 2037-M | Alhambra Firefighters Association, Local 1578 v. City of Alhambra | Charging Party alleged that the City violated the MMBA by unilaterally changing its policy regarding the location of personnel records without giving the Association prior notice or opportunity to bargain. | The Board adopted the ALJ's proposed decision dismissing the unfair practice charge because the charge was not timely filed. Further, the Board ordered Charging Party to pay reasonable attorneys' fees and costs to the City. |
| 2038-H | VaLinda Kyrias v. Trustees of the California State University | Kyrias alleged that CSU retaliated against her for serving as a union steward by taking various adverse actions, including threatening a reassignment, withdrawing a reclassified position, and denying her request to work full-time hours. | The Board affirmed the Board agent's dismissal of the charge. Many of the allegations in the charge were untimely. The timely allegations failed to state a prima facie case of retaliation. Of the three timely allegations, only CSU's threat to reassign Kyrias to a position with less complex duties constituted an adverse action. The charge failed to allege facts establishing a nexus between Kyrias's protected activity and the threatened reassignment. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2039-M | SEIU Local 1021 v. Calaveras County Water District | The Charging Party alleged the employer retaliated against a probationary employee for engaging in protected activity when it terminated her employment. | The Board affirmed the partial charge dismissal finding the charge failed to demonstrate the nexus element of a prima facie case of retaliation. |
| 2040-E | United Educators of San Francisco v. San Francisco Unified School District | UESF alleged that the District violated the Education Code and made an unlawful unilateral change by failing to classify certain teachers as probationary employees. | The Board affirmed the Board agent's dismissal of the charge. The Board had no jurisdiction to consider the alleged Education Code violation. The subject of teacher classification is governed by mandatory provisions of the Education Code and thus is not within the scope of representation under EERA. Accordingly, the District's alleged breach of an agreement to classify certain teachers as probationary employees was not an unlawful unilateral change. |
| 2041-M | City & County of San Francisco v. Stationary Engineers Local 39 | The Board affirmed a proposed decision by an ALJ finding the exclusive representative violated the MMBA when it refused to name a representative to an interest arbitration panel and when it refused to participate in the impasse resolution procedures set forth in the City's Charter. | The Board held the charges were timely filed and not moot. With regard to the merits, the Board held that the exclusive representative violated the MMBA when it refused to name a representative to an interest arbitration panel and when it refused to participate in the impasse resolution procedures set forth in the City's Charter. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2042-M | Ernest Marcos Saenz v. County of San Diego (Health & Human Services) | The Board affirmed the dismissal of an unfair practice charge in which the Charging Party alleged the employer violated the MMBA by discriminating against him for engaging in protected conduct. | The Board held the unfair practice charge was properly dismissed as untimely and adopted the proposed decision by the administrative law judge as a decision of the Board itself. |
| 2043-M | Sacramento County Attorneys Association v. County of Sacramento/ Sacramento County Professional Accountants Association v. County of Sacramento/American Federation of State, County and Municipal Employees, AFL-CIO, Local 146 v. County of Sacramento/Chauffeurs, Teamsters & Helpers, Local 150 v. County of Sacramento | Charging parties alleged that the County unilaterally changed the eligibility criteria for current employees-future retirees' participation in the Retiree Health Insurance Program/Retiree Medical and Dental Insurance Program by discontinuing subsidies for medical and dental insurance for employees retiring after June 1, 2007, in violation of the MMBA. | The Board adopted the proposed decision of the ALJ which found that the County breached its duty to meet and confer in good faith and ordered the County to rescind the unilateral change and return to the status quo. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2044-M | United Public Employees, Local 1 v. County of Sacramento | Charging Party alleged that the County unilaterally changed the eligibility criteria for current employees-future retirees' participation in the Retiree Health Insurance Program/Retiree Medical and Dental Insurance Program by discontinuing subsidies for medical and dental insurance for employees retiring after June 1, 2007, in violation of the MMBA. | The Board adopted the proposed decision of the ALJ which found that the County breached its duty to meet and confer in good faith and ordered the County to rescind the unilateral change and return to the status quo. |
| 2045-M | Service Employees International Union, Local 1021 v. County of Sacramento | Charging Party alleged that the County unilaterally changed the eligibility criteria for current employees-future retirees' participation in the Retiree Health Insurance Program/Retiree Medical and Dental Insurance Program by discontinuing subsidies for medical and dental insurance for employees retiring after June 1, 2007, in violation of the MMBA. | The Board adopted the proposed decision of the ALJ which found that the County breached its duty to meet and confer in good faith and ordered the County to rescind the unilateral change and return to the status quo. |
| 2046-E | John Bussman v. Alvord Educator's Association | Charging Party alleged a violation of the duty of fair representation by failing to properly represent him in a challenge to the legality of certain contract provisions, and by failing to represent him regarding a change in teaching assignments. | The Board adopted the Board agent's dismissal, finding a portion of the charge untimely and finding the allegation regarding the change in teaching assignments did not state a prima facie case. |

## 2008-2009 DECISIONS OF THE BOARD

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| 2047-E | John Bussman v. California Teachers Association | Charging Party alleged that CTA violated the duty of fair representation by failing to represent him in a challenge to the legality of certain pay provisions negotiated in the contract between the exclusive representative and the District. | The Board affirmed the Board agent's dismissal, finding that since CTA was not the designated exclusive representative of the District's certificated employees, no duty of fair representation is owed to bargaining unit members. |
| 2048-E | United Educators of San Francisco v. San Francisco Unified School District | UESF alleged that the District made an unlawful unilateral change by changing the location to which special education aides reported for duty each day. | The Board affirmed the Board agent's dismissal of the charge. Employees' reporting location is not within the scope of representation. The charge failed to allege facts showing the change in reporting location had any actual impact on employees' workday or wages. The Board also found good cause to accept the District's late filed response to the appeal because the delay resulted from a clerical error and did not prejudice UESF. |

## 2008-2009 DECISIONS OF THE BOARD

## ADMINSTRATIVE DETERMINATIONS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| Ad-375-S | Marion W. Isom v. Service Employees International Union Local 1000 | An appeal from the administrative determination rejecting Charging Party's late-filed request for an extension of time. | The Board denied the appeal finding the Charging Party did not demonstrate good cause to excuse the late filing. |
| Ad-376-M | John Brewington v. County of Riverside | Respondent appealed the Appeals Assistant's administrative dismissal of the filing deadlines for the County's request for argument. | The Board denied the appeal as untimely. |
| Ad-377-S | Michael M. Burnett v. SEIU Local 1000/Michael M. Burnett v. State of California (Department of General Services)/Michael M. Burnett v. State of California (Department of General Services and Department of Housing and Community Development)/Michael M. Burnett v. SEIU Local 1000 | In two separate appeals involving a total of four unfair practice charges, the Charging Party alleged that Board agents improperly failed to disqualify themselves. | The Board dismissed the first appeal as to all four charges based upon the failure of the Charging Party to comply with PERB's regulations delineating the proper steps a party must take to disqualify a Board agent, specifically, the failure to submit, under oath, a written request for disqualification. The Board dismissed the second appeal as untimely as to two of the charges and as to the other two charges for failure to submit, under oath, a written request for disqualification. |

## 2008-2009 DECISIONS OF THE BOARD

## ADMINSTRATIVE DETERMINATIONS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| Ad-378-E | Grossmont-Cuyamaca Community College District and Grossmont-Cuyamaca Community College District Faculty Association and United Faculty of Grossmont-Cuyamaca Community College District | The Board denied a request for a stay of representation election pending the Board's decision on a appeal of a dismissal of a decertification petition. | The Board denied the request for stay and ordered the ballots cast in the election be impounded pending the Board's decision on the merits of the appeal. |
| Ad-379-E | Long Beach Community College District Police Officers Association v. Long Beach Community College District | The Association appealed an ALJ's interlocutory order concerning the meaning of the Board's Order in *Long Beach Community College District* (2008) PERB Decision No. 1941 with regard to when the District's monetary obligation to the laid off employees was to begin and whether the District was ordered to pay traditional back pay. | The Board adopted the ALJ's finding that the Board did not order a traditional back pay remedy but rather ordered a limited *Transmarine Navigation Corporation* (1968) 170 NLRB 389, enf'd NLRB v. *Transmarine Navigation Corporation* (9th Cir. 1967) 380 F.2d 933 style remedy, requiring the payment of wages and benefits, at pre-layoff rates starting on March 10, 2008, and continuing until one of its stated conditions was met. |

## 2008-2009 DECISIONS OF THE BOARD

## ADMINSTRATIVE DETERMINATIONS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| Ad-380-E | Grossmont-Cuyamaca Community College District and Grossmont-Cuyamaca Community College District Faculty Association and United Faculty of Grossmont-Cuyamaca Community College District | The Board affirmed an administrative determination in which the Board agent dismissed a decertification petition for insufficient proof of support. | The Board held the Charging Party failed to allege facts sufficient to support the reversal of the administrative determination. |

## 2008-2009 DECISIONS OF THE BOARD

## JUDICIAL REVIEW REQUESTS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| There were no Requests for Judicial Review that were considered by the Board this fiscal year. | | | |

## 2008-2009 DECISIONS OF THE BOARD

## INJUNCTIVE RELIEF REQUESTS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| I.R. 553 | Regents of the University of California v. AFSCME Local 3299 | The University sought to enjoin the Union's planned strike-related activities. Essentially, the request sought to prohibit members of the Service Employee Unit from engaging in a five-day strike and the members of the Patient Care Technical Unit – specifically essential medical personnel—from "honoring" the Service Unit's picket line by refusing to report for work when the strike is underway. | Request granted on two limited grounds: (1) the Union's failure to give the university the exact dates for the Service Unit strike is an unlawful pressure tactic and should be enjoined; and (2) specifically identified "essential employees" from the Patient Care Technical Unit should be enjoined from "honoring" the Service Unit strike during their working hours. |
| I.R. 554 | California Correctional Peace Officers Association v. State of California (Department of Personnel Administration) | The Union's request sought solely to enjoin the county to maintain the prior status quo and not unilaterally impose terms and conditions of employment that did not include the continuation of paid union leave, which would have prevented members from attending an upcoming union convention as in past years. | Request denied. |
| I.R. 555 | Clyde A. Livingston v. City & County of San Francisco (Juvenile Probation Department) | Mr. Livingston sought to enjoin the City from unilaterally changing the process of assigning work shifts to employees. | Request denied. |

## 2008-2009 DECISIONS OF THE BOARD

## INJUNCTIVE RELIEF REQUESTS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| I.R. 556 | Grossmont-Cuyamaca Community College District v. California School Employees Association & its Chapter 707 | The District filed a request for injunctive relief to compel the Union to return to the bargaining table outside of the statutory impasse process. | Request denied. |
| I.R. 557 | County of Riverside v. SEIU Local 721 | The County filed a request for injunctive relief to: (1) enjoin the Union from accessing hospital areas to solicit new membership or distribute flyers; restrict the Union's access rights in the workplace; and (3) permit the County to rescind the Union's access rights entirely, at its discretion, based upon demonstrative evidence of interference with patient care. | Request denied. |
| I.R. 558 | San Leandro Teachers Association v. San Leandro Unified School District | The Union filed a request for injunctive relief to: (1) compel the district to permit the Union to invite Union-endorsed candidates for the District's governing board to speak at the Union's meetings on district property; and (2) enjoin the District from requiring that, if such meetings were held, all candidates for the governing board must be invited. | Request denied. |

## 2008-2009 DECISIONS OF THE BOARD

## INJUNCTIVE RELIEF REQUESTS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| I.R. 559 | Sonoma County Law Enforcement Association (SCLEA) v. County of Sonoma | The Union filed a request for injunctive relief to enjoin the County from implementing a last, best, and final offer before a determination is made by the Court of Appeal in a related matter involving the constitutionality of provisions of California Code of Civil Procedure section 1299 et seq. | Request denied. |
| I.R. 560 | Siskiyou County Employees Association/AFSCME v. County of Siskiyou | The Union filed a request for injunctive relief to compel the county to provide requested information to the Union. | Request denied. |
| I.R. 561 | Sonoma County Law Enforcement Association v. County of Sonoma | The Union filed a request for injunctive relief to prevent the County from implementing a last, best, and final offer before a determination is made by the Court of Appeal in a related matter involving the constitutionality of provisions of California Code of Civil Procedure section 1299 et seq. | Request denied. |
| I.R. 562 | Siskiyou County Employees Association/AFSCME v. County of Siskiyou | The Union filed a request for injunctive relief to compel the county to provide certain documents to the Union for an upcoming PERB hearing. | Request withdrawn. |

## 2008-2009 DECISIONS OF THE BOARD

## INJUNCTIVE RELIEF REQUESTS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| I.R. 563 | IUOE, Unit 12 v. State of California (Department of Personnel Administration) | The Union filed a request for injunctive relief to prevent implementation of the State's furlough plan. | Request denied. |
| I.R. 564 | International Association of Firefighters, Local 689 v. City of Alameda | The Union filed a request for injunctive relief to prohibit "brown outs" implemented by the City. | Request denied. |
| I.R. 565 | SEIU United Long Term Care Workers Union, Local 6434 v. San Bernardino In-Home Supportive Services Public Authority | The request for injunctive relief and its underlying unfair practice charge were withdrawn by the Union. | Request withdrawn. |
| I.R. 566 | Siskiyou County Employees' Association v. SCEA/AFSCME Local 3899 | The Union filed a request for injunctive relief to prohibit and compel actions relative to a disaffiliation dispute. | Request denied. |
| I.R. 567 | Siskiyou County Employees' Association v. County of Siskiyou | The Union filed a request for injunctive relief to prohibit and compel actions relative to a disaffiliation dispute. | Request denied. |
| I.R. 568 | Stationary Engineers Local 39, International Union of Operating Engineers v. State of California (Department of Personnel Administration) | The Union filed a request for injunctive relief to prohibit the State from implementing an enacted statutory change regarding overtime calculations. | Request denied. |

## 2008-2009 DECISIONS OF THE BOARD

## INJUNCTIVE RELIEF REQUESTS

| DECISION NO. | CASE NAME | DESCRIPTION | DISPOSITION |
|---|---|---|---|
| I.R. 569 | SEIU Local 521 v. County of Monterey | The Union filed a request for injunctive relief to prohibit the County from processing certain petitions for decertification. | Request denied. |
| I.R. 570 | Los Angeles Unified School District v. United Teachers of Los Angeles, CTA, CFT, NEA, AFT/AFL-CIO | The District filed a request for injunctive relief to prohibit the Union from causing/encouraging/condoning a planned work stoppage. | Request denied. |
| I.R. 571 | Jenai L. Solano v. San Bernardino City Unified School District | Solano filed a request for injunctive relief to prohibit the District from including certain materials in a personnel file. | Request denied. |

## 2008-2009 LITIGATION CASE ACTIVITY

1. *City of San Jose v. International Association of Firefighters Local 230*, California Court of Appeal, Sixth Appellate District, Case No. H032097, 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? The superior court dismissed the case; City appealed to the Court of Appeal where briefing concluded in May 2009. In June 2009, the appellate court sought supplemental briefing from the parties regarding the enactment last year of SB 1296 [which amended section 3509 of the MMBA to provide that superior courts shall have exclusive jurisdiction over actions involving interest arbitration when the action involves an employee organization that represents firefighters].

2. *International Association of Firefighters Local 188 (IAF), AFL-CIO v. PERB, et al.*, California Supreme Court Case No. S172377, California 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 dismissed the case, ruling that IAF could not appeal PERB's decision declining to issue a complaint; IAF appealed to the Court of Appeal where briefing concluded in February 2008 and oral argument occurred in early 2009. In March 2009, the appellate court issued a published opinion concluding that "a decision to lay off firefighters is not subject to collective bargaining" and "an aggrieved party may seek a writ of mandate on certain narrow grounds described in this opinion to challenge a PERB decision not to issue an unfair labor practices complaint." In May 2009, a depublication request as well as respective petitions for review were filed with the California Supreme Court.

3. *California Faculty Association v. PERB, et al.*, California Court of Appeal, Third Appellate District, Case No. C054725 (PERB Case Nos. SA-CE-194-H, SA-CE-191-H). Issue: Did PERB err in Decision No. 1876-H (holding that parking location at California State University is outside the scope of representation)? The case was filed in January 2007. In April 2009, following a published opinion by the appellate court remanding PERB Decision No. 1876-H, the Board issued PERB Decision No. 1876a-H.

4. *California Faculty Association v. PERB, et al.*, California Court of Appeal, Third Appellate District, Case No. C061905 (PERB Case Nos. SA-CE-194-H, SA-CE-191-H). Issue: Did PERB err in Decision No. 1876a-H (holding that parking location at California State University is outside the scope of representation)? The case was filed in May 2009. In June 2009, after the administrative record was filed, the case was summarily denied.

5. *Magner v. PERB, 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 of California (Department of

Forestry and Fire Protection) violated his Weingarten rights)? The case was filed in February 2007; briefing concluded in March 2007.

6. *Sacramento County Deputy Sheriffs' Association (SCDSA) v. PERB*, California Court of Appeal, Third Appellate District, Case No. C057877, Sacramento County Superior Court Case No. 07AS03998 (PERB Case No. SA-CE-485-M). Issue: Does PERB have jurisdiction over unfair practice charges involving a bargaining unit that includes peace officers, pursuant to Penal Code section 830.1, and non-peace officers (i.e., a "mixed" bargaining unit); and does PERB's denial of SCDSA's application for joinder cause irreparable harm? The superior court issued a temporary restraining order and a preliminary injunction prohibiting PERB from holding the formal hearing scheduled in SA-CE-485-M; PERB appealed to the Court of Appeal where briefing commenced in May 2008. In October 2008, the case was withdrawn and dismissed.

7. *Sacramento County Deputy Sheriffs' Association (SCDSA) v. PERB*, Sacramento County Superior Court Case No. 34-2008-00010058 (PERB Case No. SA-CE-485-M). Issue: May or must PERB take any action in SA-CE-485-M? The case was filed in May 2008; briefing commenced in June 2008. In October 2008, the case was dismissed.

8. *Doherty, et al. v. PERB, et al.*, California Supreme Court Case No. 169780, California Court of Appeal, Sixth Appellate District, Case No. H032365 (PERB Case Nos. SF-CE-2312-E, SF-CE-2313-E). Issue: Did PERB err in Decision No. 1928 (reversing an ALJ's proposed decision [which imputed liability to San Jose/Evergreen Community College District under a joint-employer theory and found a retaliation violation under the EERA] and dismissing the case)? The case was filed in December 2007, and briefing concluded in April 2008; case summarily denied in January 2009. In February 2009, Doherty, et al. was denied review by the California Supreme Court.

9 . *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO (Local 21) v. PERB, et al.*, California Court of Appeal, First Appellate District, Case No. A121202 (PERB Case No. SF-CE-2282-E). Issue: Did PERB err in Decision No. 1948 (affirming an ALJ's dismissal of charge and finding that (1) the EERA preempts the provisions of the city charter requiring the San Francisco Unified School District (SFUSD) to set wages for classified employees represented by Local 21 at levels determined through interest-arbitration proceedings for the same classifications and (2) SFUSD's refusal to provide pay parity did not violate the EERA in this matter)? The case was filed in April 2008; briefing concluded in December 2008.

10. *International Union of Operating Engineers, Stationary Engineers, Local 39 (Local 39) v. Sacramento Police Officers Association, City of Sacramento, PERB*, Sacramento County Superior Court Case No. 34-2008-00001129 (PERB Case No. SA-SV-164-M). Issue: Is PERB bound by the Arbitrator's decision/award? Local 39 filed a petition with the superior court to correct or, in the alternative, vacate an arbitrator's decision/award severing a particular job classification from a bargaining unit. PERB filed its response and points and authorities in February 2008. In March 2008, a hearing on the matter occurred and the superior court (1) ruled that the arbitrator exceeded his authority (and essentially vacated the arbitrator's

decision) and (2) declined to rule on whether PERB is a proper party to the action. Later in March 2008, the parties stipulated to dismiss PERB from the action; awaiting superior court's order as of June 30, 2009.

11. *California Teachers Association (CTA) v. PERB, et al.*, California Court of Appeal, Fourth Appellate District, Case No. G040106 (PERB Case No. LA-CE-4808-E). Issue: Did PERB err in Decision No. 1945 (reversing in part an ALJ's proposed decision [which found that Journey Charter School violated the EERA by refusing to renew the contracts of three teachers in retaliation for their protected activity] and dismissing the case)? The case was filed in March 2008, and briefing and oral argument concluded in October 2008. In June 2009, following a published opinion by the appellate court remanding PERB Decision No. 1945, PERB issued Decision No. 1945a.

12. *Hicks v. PERB; Compton Unified School District*, Los Angeles County Superior Court Case No. BS120977. Issue: Unknown. In June 2009, Hicks filed a "Notice of Appeal" with the superior court.

13. *PERB; Regents of the University of California (UC) v. AFSCME Local 3299*, San Francisco County Superior Court Case No. CGC08477392 (PERB Case No. SF-CO-168-H (IR Request No. 553)). Issue: Should AFSCME's failure to provide UC the exact dates of the planned Service Unit strike be enjoined, and should identified "essential employees" in the Patient Care Technical Unit be enjoined from honoring the Service Unit strike during working hours? The superior court answered yes to the above questions and granted PERB's application for a temporary restraining order, enjoining the planned five-day strike; preliminary injunction subsequently denied because the planned five-day strike had concluded. In August 2008, a case-management conference occurred with the court and parties.

14. *Rio Teachers Association, CTA v. PERB; Rio School District*, California Court of Appeal, Second Appellate District, Case No. B212815 (PERB Case No. LA-CE-5090-E). Issue: Did PERB err in Decision No. 1986 (affirming a Board Agent's partial dismissal of Association's allegations that District engaged in bad-faith bargaining and retaliation in violation of the EERA)? This case was filed in December 2008; case dismissed in January 2009.

15. *Deglow v. PERB; Los Rios College Federation of Teachers, Local 2279*, California Court of Appeal, Third Appellate District, Case No. C060717 (PERB Case Nos. SA-CO-424-E and SA-CO-426-E). Issue: Did PERB err in Decision No. 1990 (affirming an ALJ's dismissal of Deglow's charges for failure to prosecute)? This case was filed in December 2008; briefing commenced in April 2009 and concluded in June 2009. In June 2009, the case was summarily denied.

16. *AFSCME Local 575 v. PERB; Los Angeles County Superior Court*, California Court of Appeal, Second Appellate District, Case No. B211910 (PERB Case No. LA-CE-2-C). Issue: Did PERB err in Decision No. 1979-C (reversing an ALJ's proposed decision [which found Court engaged in unlawful interference and discrimination under the Trial Court Act by disciplining employee/Local 575 president for violating email-use and courtroom-reservation

policies] and dismissing the case)? This case was filed in November 2008; briefing concluded in May 2009. In June 2009, the case was summarily denied.

17. *California Correctional Peace Officers' Association (CCPOA) v. PERB*, Sacramento County Superior Court Case No. 34200980000187 (PERB Case No. SA-CE-1621-S). Issue: Should the Board be ordered to decide the appeal pending in SA-CE-1621-S? This case was filed in March 2009; case dismissed in April 2009.

18. *County of Sacramento v. AFSCME Local 146, et al.*

*County of Sacramento v. AFSCME Local 146, et al.* (consolidated cases), California Supreme Court Case No. S166591, California Court of Appeal, Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790 (PERB Case Nos. N/A). Issue: Does PERB have exclusive initial jurisdiction over whether essential employees may strike in cases implicating the MMBA, or does such jurisdiction rest with the superior courts? This case was filed in October 2006; briefing concluded in July 2007 and oral argument occurred in July 2008. In July 2008, the appellate court issued a published opinion concluding that PERB—not the superior courts—has exclusive initial jurisdiction in such cases. County appealed to the California Supreme Court. In October 2008, the Supreme Court granted review and deferred further action pending consideration/disposition of the lead case involving this issue (*City of San Jose v. Operating Engineers Local Union 3 et al.*, California Supreme Court Case No. S162647; see also *County of Contra Costa v. Public Employees Union Local One et al* (consolidated actions), California Supreme Court Case No. S164640).

19. *Omnitrans v. PERB; Amalgamated Transit Union Local 1704*, California Court of Appeal, Fourth Appellate District, Case No. E048660 (PERB Case No. LA-CE-323-M). Issue: Did PERB err in Decision No. 2030-M (affirming an ALJ's finding that Omnitrans violated the MMBA by (1) denying Local 1704 representatives access to employees in the drivers' assembly rooms at its facilities and (2) adopting a new union-access policy without providing Local 1704 with notice and an opportunity to meet and confer over the change)? This case was filed in June 2009; briefing not yet commenced as of June 30, 2009.

20. *Amalgamated Transit Union Local 1704 v. PERB; Omnitrans*, California Court of Appeal, Fourth Appellate District, Case No. E047450 (PERB Case No. LA-CE-216-M). Issue: Did PERB err in Decision No. 1996-M (reversing in part an ALJ's proposed decision [which found that Omnitrans retaliated against an employee/Local 1704 officer and committed a unilateral change in violation of the MMBA])? This case was filed in January 2009; briefing not yet commenced as of June 30, 2009.

21. *City of Burbank v. PERB; Burbank Employees Association*, California Court of Appeal, Second Appellate District, Case No. B212945 (PERB Case No. LA-CE-326-M). Issue: Did PERB err in Decision No. 1988-M (affirming an ALJ's finding that City violated the MMBA by failing to provide Association with requested information necessary and relevant to Association's representation of one of its members in a disciplinary arbitration)? This case was filed in December 2008; briefing underway as of June 30, 2009.

22. *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 superior court action brought by Schiavone. In January 2006, the court stayed its decision pending conclusion of PERB's administrative process in PERB Case No. SA-CE-358-M. PERB completed its processes and closed SA-CE-358-M in October 2007 when an ALJ's proposed decision in the matter became final. PERB submitted the final decision to the superior court.

23. *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 superior court action brought by UAPD in 2005; case subsequently removed from superior court and transferred to the U.S. District Court, Northern District.