



PUBLIC EMPLOYMENT RELATIONS BOARD

2009-2010 ANNUAL REPORT

October 15, 2010



ARNOLD SCHWARZENEGGER, GOVERNOR

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

2009-2010 ANNUAL REPORT

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Board Members

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

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PUBLIC EMPLOYMENT RELATIONS BOARD

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October 12, 2010

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) 2009-2010. This report is prepared pursuant to Government Code section 3541.3, subdivision (f).

PERB was established 34 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 802 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 2009-2010, the rate of settlement during or as a result of PERB's informal settlement conference process was more than 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 2009-2010, PERB's Administrative Law Judges issued 57 proposed decisions; 29 of which were appealed to the full PERB Board and 28 of which became final. The PERB Board itself issued 79 decisions in FY 2009-2010.

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

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Appeal as well as the California Supreme Court, 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 13 requests for injunctive relief in FY 2009-2010. Only two requests for injunctive relief were granted in FY 2009-2010, reflecting the high standard of proof the affected party must meet when seeking this course of action.

Like most State agencies, PERB has had to do more with less given the significant economic downturn in the State resulting in the decrease of available general fund monies. Despite this hardship, providing exceptional service to the people of California and swiftly resolving labor-relations disputes remains the Board's top priority.

Thank you for the opportunity to submit this report. I hope you find it informative.

Respectfully submitted,

A handwritten signature in cursive script that reads "Alice Dowdin Calvillo". The signature is written in black ink and is positioned above the typed name.

Alice Dowdin Calvillo
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. The Governor designated Ms. Dowdin Calvillo Chair of the Board in April 2010. 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 three-year-old daughter.

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 expired 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 advisor to a Board member. She served as a legal advisor 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. Her term expires on December 31, 2010.

Legal Advisors

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 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 Bacsikai 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 served as the Chief Administrative Law Judge for PERB since December 31, 2006, and served as staff to PERB since 1988. Prior to his appointment as an administrative law judge (ALJ) in 2004, he served as a Regional Attorney and Senior Regional Attorney in the Office of the General Counsel, and in temporary ALJ assignments since 1995.

Mr. McMonigle 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 the 1999 Chair of the Sacramento County Bar, Labor and Employment Law section.

A 1984 graduate of the University of the Pacific 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. Mr. McMonigle passed away September 4, 2010, after a short battle with a major illness.

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; 237,000 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 comprised of five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to five-year terms, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the seven statutes, the Board acts as an appellate body to hear challenges to proposed decisions that are issued by Board agents. Decisions of the Board itself may be appealed under certain circumstances, and then only to the State appellate courts. The Board, through its actions and those of its agents, is empowered to:

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

A summary of the Board's 2009-2010 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 2009-2010 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 2009-2010 litigation activity is included in the Appendices, beginning at page 61.

Other PERB Functions and Activities

Information Requests

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

Support Functions and Board Operations

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

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

III. LEGISLATION AND RULEMAKING

Legislation

There were no bills enacted in 2010 affecting the statutes enforced by PERB.

Rulemaking

The Board did not consider any rulemaking proposals in the 2009-2010 fiscal year.

IV. CASE DISPOSITIONS

Unfair Practice Charge Processing

The number of unfair practice charges filed with PERB generally has increased as a result of the changes in PERB's jurisdiction since 2001. In 2009-2010, 802 new charges were filed.

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, 222 cases (28% of all charge investigations completed) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 217 days of settlement conferences in cases where a complaint was issued. These efforts resulted in voluntary settlements in 123 cases (over 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 (ALJ). During this fiscal year, the number of new formal hearings assignments to ALJs grew significantly. In 2009-2010, 6 ALJs issued 57 proposed decisions, averaging 86 days to render a decision. Of the 57 proposed decisions, 29 were appealed to the Board, and 28 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 2009-2010 fiscal year, the Board issued 79 final decisions and also considered 13 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 2009-2010 culminated in increased court litigation¹ for PERB. Specifically, more than 90 litigation-related assignments were completed by PERB attorneys (compared to approximately 75 last fiscal year), and a total of 24 litigation cases, including new and continuing cases, were handled during the 2009-2010 fiscal year (compared to 23 last fiscal year). (A summary of these cases is included in the Appendices, beginning at page 61.)

Representation Activity

For the fiscal year, 99 new representation petitions were filed, a decrease of 25 cases when compared to the prior year. The fiscal year total includes 23 recognition petitions, 10 severance requests, 10 petitions for certification, 8 decertification petitions, 2 requests for amendment of certification, 44 unit modification petitions, and 4 fair share fee (agency shop) rescission petitions.

Election activity decreased (10 elections conducted compared to 21 in the prior year). The 10 elections conducted by PERB during the fiscal year included 7 decertification elections, 1 representation election, 1 severance election, and 1 unit modification election. Nearly 2,300 employees were eligible to participate in these elections, in bargaining units ranging in size from 2 to more than 1,200.

Mediation/Factfinding/Arbitration

During the fiscal year, PERB also received 173 mediation requests and 33 factfinding requests. The number of mediation requests filed with PERB increased over prior years (only 95 such requests were filed the prior year, and 125 the year before that). The number of factfinding requests also increased (27 requests were filed the prior year, 26 requests were filed in 2007-2008, and 25 requests were filed in 2006-2007).

Compliance

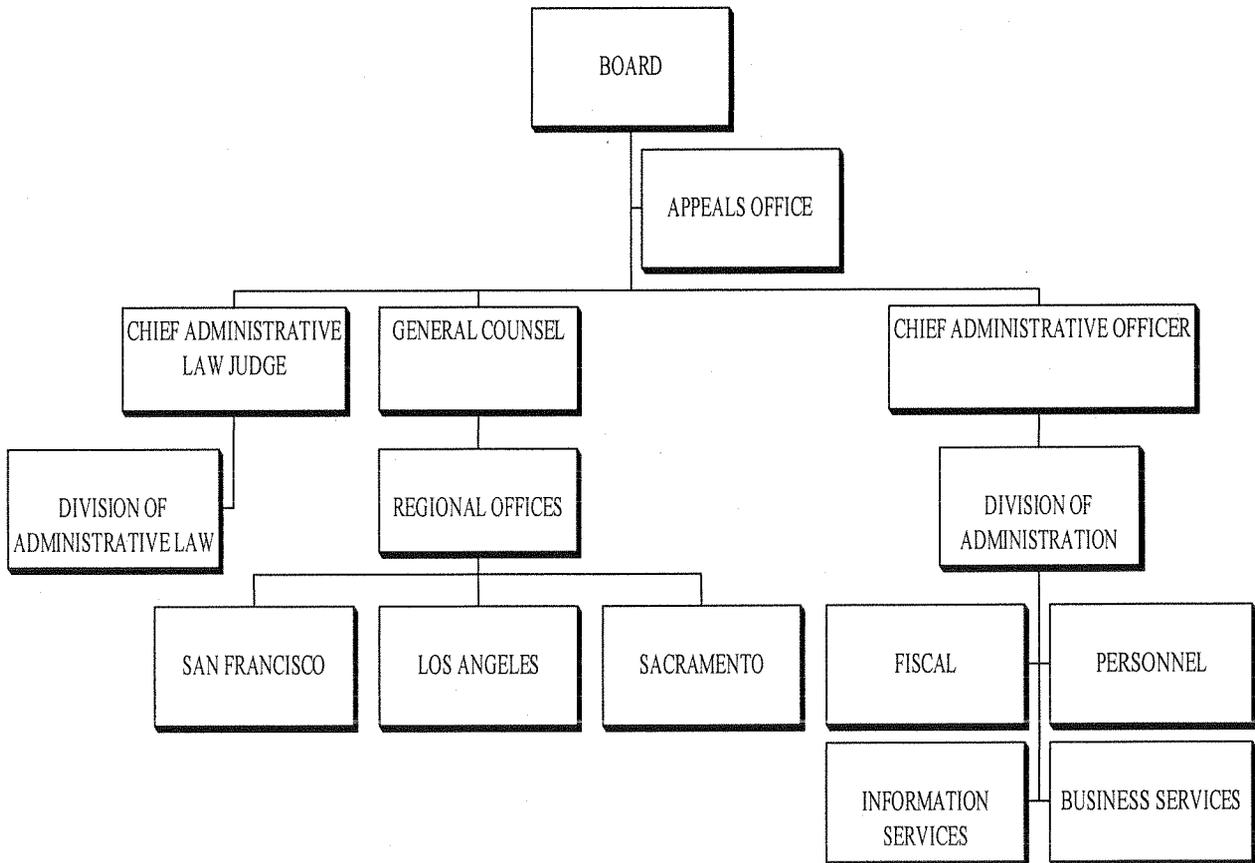
PERB staff also commenced compliance proceedings regarding 14 unfair practice cases where a final decision resulted in a finding of a violation of the applicable statute.

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.

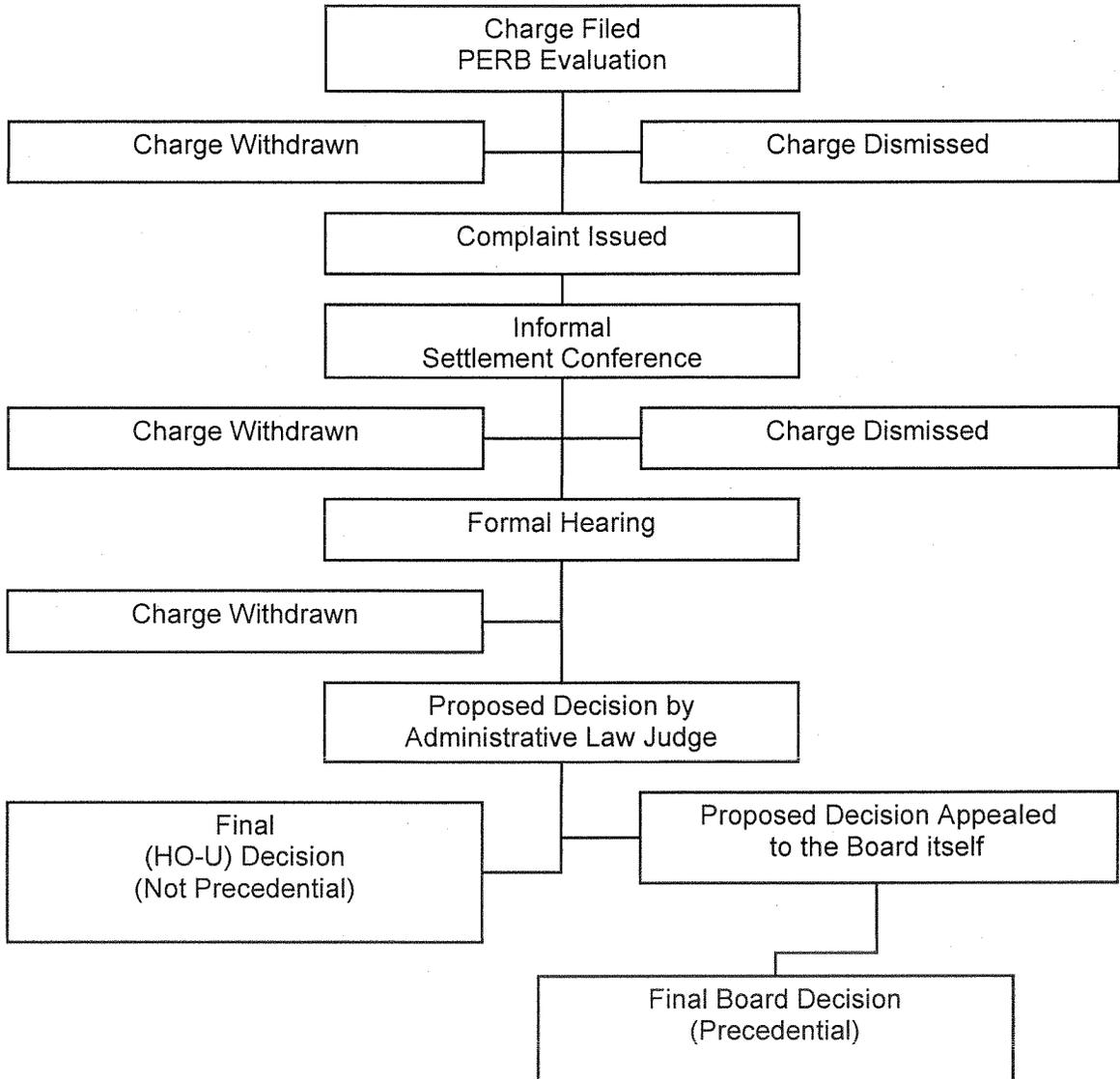
V. APPENDICES

PUBLIC EMPLOYMENT RELATIONS BOARD

Organizational Chart



UNFAIR PRACTICE CHARGE FLOW CHART



2009-2010 UNFAIR PRACTICE CHARGE STATISTICS

I. Unfair Practice Charges Filed by Region

Region	Total
Sacramento	201
San Francisco	263
Los Angeles	338
Total	802

II. Unfair Practice Charges Filed by Act

Act	Total
Dills Act	82
EERA	308
HEERA	117
MMBA	267
TEERA	1
Trial Court Act	23
Court Interpreter Act	1
Non-Jurisdictional	3
Total	802

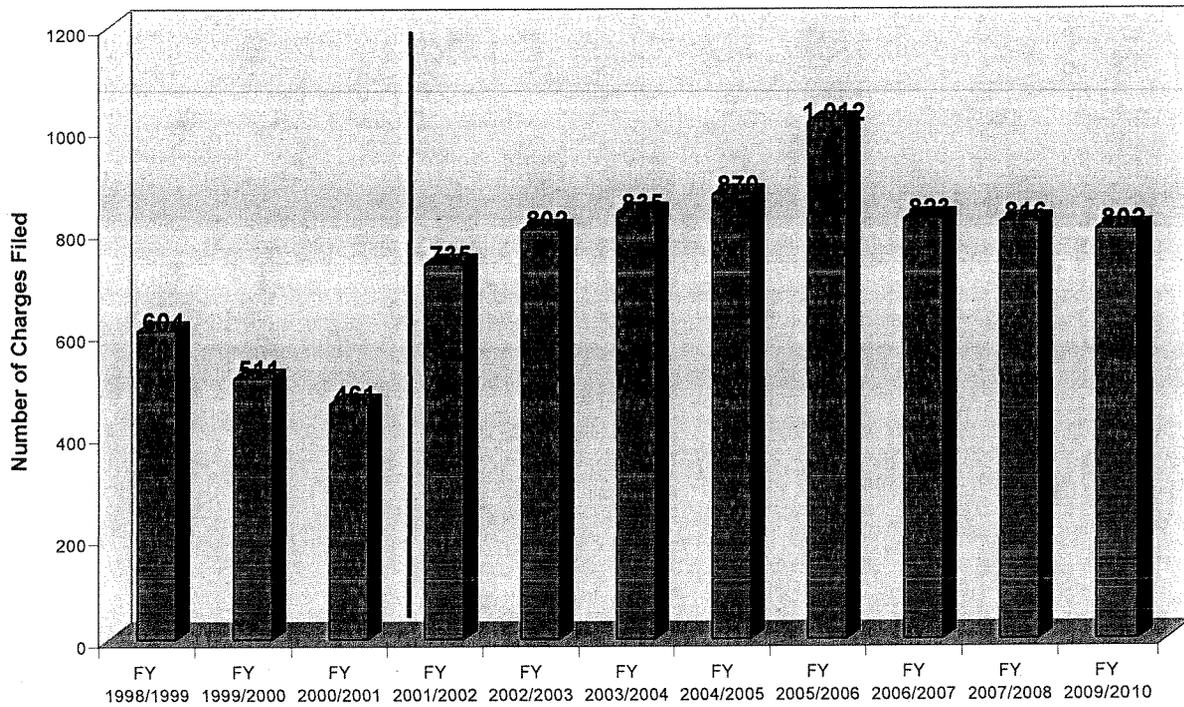
III. Prior Year Workload Comparison: Charges Filed

	2006/2007	2007/2008	2008/2009	2009/2010	4-Year Average
Total	823	816	869	802	828

IV. Unfair Practice Charge Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	66	48	78	192
San Francisco	70	58	87	215
Los Angeles	86	88	75	249
Total	222	194	240	656

Unfair Practice Charge Filings



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.)

2009-2010 REQUESTS FOR INJUNCTIVE RELIEF (IR)

I. Prior Year Workload Comparison: IR Requests Filed

	2006/2007	2007/2008	2008/2009	2009/2010	4-Year Average
Total	16	28	19	13	19

2009-2010 REPRESENTATION CASE ACTIVITY

I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Request for Recognition	23	26
Severance	10	4
Petition for Certification	10	6
Decertification	8	18
Amended Certification	2	0
Unit Modification	44	40
Organizational Security	4	2
Arbitration	0	0
Mediation	173	180
Factfinding	35	33
Compliance	14	18
Totals	323	327

II. Prior Year Workload Comparison: Cases Filed

	2006-2007	2007-2008	2008-2009	2009-2010	4-Year Average
Fiscal Year	348	297	276	323	311

III. Elections Conducted

Amendment of Certification	0
Decertification	7
Fair Share Fee Reinstatement	0
Fair Share Fee Rescission	0
Representation	1
Severance	1
Unit Modification	1
Total	10

Elections Conducted: 7/1/2009 to 6/30/2010

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Winner</i>	<i>Unit Size</i>
<i>Decertification</i>		<i>Subtotal:</i>	7	
LA-DP-00374-E	MOUNT SAN JACINTO CCD	Security	CSEA Chapter #767	2
SF-DP-00291-M	COMMUNITY DEVELOPMENT COMMISSION OF MENDOCINO	General Supervisory	No Representation	7
SF-DP-00293-M	COMMUNITY DEVELOPMENT COMMISSION OF MENDOCINO	Miscellaneous	Rerun required	9
SF-DP-00294-M	SALINAS VALLEY MEMORIAL HOSP DIST	Technical, Service & Maintenance, and Clerical	NUHW	850
SF-DP-00293-M	COMMUNITY DEVELOPMENT COMMISSION OF MENDOCINO	Miscellaneous	No Representation	9
SA-DP-00232-M	CITY OF CLOVIS	Maintenance & Operations	Clovis Public Works Employee Affiliation	123
LA-DP-00375-E	POWAY USD	Aides/Office Technical/Miscellaneous	Poway School Employees Association ²	1256
<i>Representation</i>		<i>Subtotal:</i>	1	
SA-RR-01106-E	YUBA CCD	Certificated Supervisors	Teamsters Local 150	15
<i>Severance</i>		<i>Subtotal:</i>	1	
LA-SV-00160-E	SANTA MONICA CCD	Security	Santa Monica Police Officers Assn.	11
<i>Unit Modification</i>		<i>Subtotal:</i>	1	
SF-UM-00686-M	ALAMEDA HOSPITAL	Radiology Technicians	ILWU Local 6	5
		<i>Total Elections:</i>	10	

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

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2049-E	Alex Hernandez v. SEIU Local 1000	The charge alleged that the union unreasonably applied its disciplinary policies when it suspended a union officer for his involvement in a decertification campaign against his own union.	The Board affirmed the Board agent's dismissal finding no evidence that the suspension caused a substantial impact on the employer-employee relationship or that the disciplinary policies were unreasonably applied.
2050-M	Gregory Hagans & Ed Toole v. SEIU Local 721	Hagans and Toole alleged that SEIU failed to provide Toole with fair representation, retaliated against Toole, and negotiated in bad faith with the City of Riverside.	The Board affirmed the Board agent's dismissal of the charge. The Board found the charge untimely because all of the alleged unfair practices occurred more than six months before the charge was filed.
2051-M	Gregory Hagans & Ed Toole v. SEIU Local 721	Hagans and Toole alleged that SEIU failed to provide Toole with fair representation in a PERB proceeding and negotiated in bad faith with the City of Riverside.	The Board affirmed the Board agent's dismissal of the charge. The Board found the charge untimely because all of the alleged unfair practices occurred more than six months before the charge was filed.
2052-M	American Federation of State County and Municipal Employees Local 146, AFL-CIO v. Nevada Irrigation District	The charge alleged that the Nevada Irrigation District violated the Meyers-Milias-Brown Act by refusing to process or arbitrate a grievance concerning the termination of an employee.	The Board upheld the dismissal of the charge on the ground that it was not timely filed. The Board found the doctrine of equitable tolling applied to the facts of this case and denied the District's request for attorneys' fees.
2053-M	Amalgamated Transit Union, Local 1277 and Dale Moore v. Riverside Transit Agency	ATU alleged that the Agency refused to hire Moore as a bus operator because of his union activity.	The Board granted the parties' request to withdraw the appeal.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2054-E	United Association of Conejo Teachers v. Conejo Valley Unified School District	The charge alleged that the Conejo Valley Unified School District violated the Educational Employment Relations Act (EERA) by prohibiting the use of District mailboxes to distribute information regarding the union's political endorsements.	The Board upheld the dismissal of the charge, finding that the Education Code supersedes EERA and prohibits the use of school facilities to distribute newsletters containing political endorsements.
2055-M	Metropolitan Water District Supervisors' Association v. Metropolitan Water District of Southern California	The Association alleged that the District refused to bargain over implementation of a new long-term vehicle assignment policy.	The Board affirmed the Board agent's dismissal of the charge. The Board found the Association had waived its right to bargain by not requesting to meet and confer over the decision to adopt the new policy or its effects during the five months between the Association's receipt of notice of the policy and the District governing board's adoption of the policy.
2056-M	Franz Hinek v. Teamsters Locals 78 & 853	Charging party alleged that the Teamsters Locals 58 and 853 violated MMBA by breaching the duty of fair representation.	The Board affirmed the dismissal of the unfair practice charge because it was not timely filed.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2057-E	United Educators of San Francisco v. San Francisco Unified School District	Charging party alleged that the San Francisco Unified School District violated EERA by unilaterally changing the working conditions of teachers and by retaliating against a union representative for protesting those changes.	The Board affirmed the dismissal of the unfair practice charge because the charge did not state a prima facie case of retaliation or unilateral change.
2058-M	Wanda R. Shelton v. San Bernardino County Public Defender	The Board upheld the dismissal of an unfair practice charge in which the charging party claimed the County violated the MMBA by denying her the right to union representation and retaliated against her by placing her on administrative leave.	The Board held that the charging party failed to establish that she was either wrongfully denied union representation or that she was retaliated against for her protected conduct.
2058a-M	Wanda R. Shelton v. San Bernardino County Public Defender	The Board denied the charging party's request for reconsideration.	The Board held that the request failed to meet the requirements for reconsideration set forth in PERB Regulation 32410.
2059-E	Carmen Baprawski v. Los Angeles Community College District	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged the District engaged in unlawful retaliation.	The Board held the charge was not timely filed.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2060-S	Nimal Susantha Diunugala v. SEIU Local 1000	Charging party alleged that SEIU Local 1000 violated the Ralph C. Dills Act by breaching its duty of fair representation by delaying the processing of charging party's grievance and denying the charging party's request for arbitration.	The Board upheld the dismissal of the charge for failure to state a prima facie case, finding that the charge failed to establish that the union's delay in processing and ultimate denial of the employee's request for arbitration was arbitrary, discriminatory or in bad faith.
2061-E	Sharika Gregory v. Oakland Unified School District	The charging party alleged that the district unlawfully terminated her employment because she consulted with the union.	The Board dismissed the charge finding that the district would have terminated charging party's employment notwithstanding her protected activity because she stopped reporting for work.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2062-S	Service Employees International Union Local 1000 v. State of California (Department of Developmental Services & Office of Protective Services)	The complaint alleged that the State of California (Department of Developmental Services & Office of Protective Services) violated the Dills Act by: (1) replacing a security tower with a security booth, and (2) dismantling other security towers and replacing them with surveillance cameras, without prior notice and an opportunity to meet and confer over the effects of these changes.	The Board upheld the dismissal of the complaint, on the ground that the union failed to timely request bargaining over the negotiable effects of its decisions.
2063-E	Charles E. Ulmschneider v. Los Banos Unified School District	The charge alleged that the Los Banos Unified School District retaliated against an employee for engaging in protected activity.	The Board affirmed the dismissal of the charge, where most of the allegations were untimely and the charging party failed to establish a causal connection between his protected activity and the employer's decision to terminate his employment. The Board also found no good cause to consider new evidence on appeal.
2064-M	Stationary Engineers Local 39 v. City & County of San Francisco	The charge alleged that the City engaged in bad faith bargaining when it submitted an alleged regressive bargaining proposal, and notified the union of its obligations pursuant to the City Charter to select a panel member for appointment to an impasse arbitration panel.	The Board affirmed the Board agent's dismissal finding that merely informing a union of its obligations under a local city charter is not a factor indicative of surface bargaining, and that even if the City's bargaining proposal was a regressive proposal, one indicia of bad faith bargaining is insufficient to establish unlawful conduct.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2065-M	Shirley Jackson v. County of Riverside	Jackson alleged that the County reclassified her position to a lower classification because she filed a grievance seeking additional pay for out of class work.	The Board affirmed the Board agent's dismissal of the charge. The Board found the charge failed to establish the reclassification was an adverse action because Jackson's job duties and salary remained the same after the reclassification. The Board also found Jackson lacked standing to allege that the County failed to meet and confer with her exclusive representative over the reclassification.
2066-M	Lollett Jones-Boyce v. Metropolitan Water District of Southern California	Jones-Boyce alleged that the District placed her on paid administrative leave and later terminated her employment and health benefits because she exercised rights under the MMBA.	The Board affirmed the Board agent's dismissal of the charge. The Board found the charge failed to establish the placement on paid administrative leave was an adverse action because Jones-Boyce was on unpaid leave at the time of the placement. The Board further found that termination of Jones-Boyce's employment and health benefits were not adverse because the actions resulted from a signed settlement agreement between Jones-Boyce and the District. The Board also found no indication of unlawful motive because the alleged adverse actions were taken before Jones-Boyce's protected conduct.
2066a-M	Lollett Jones-Boyce v. Metropolitan Water District of Southern California	Jones-Boyce requested reconsideration of the Board's decision in <i>Metropolitan Water District of Southern California</i> (2009) PERB Decision No. 2066-M.	The Board denied Jones-Boyce's request for reconsideration because it did not establish either of the grounds for reconsideration set forth in PERB Regulation 32410(a).

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2067-M	Union of American Physicians & Dentists v. County of Ventura	Charging Party alleged that the County of Ventura violated the Meyers-Milias-Brown Act by refusing to process UAPD's request for recognition under the County's local employer/employee relations rules and refusing to process its appeal of the County's denial to the Civil Service Commission. The County argued that since the clinic physicians were employed via employment agreements with private corporations that operated the clinics pursuant to contracts with the Ventura County Medical Center, the County was not the employer of the clinic physicians.	The Board found that the County retained and exercised control over the manner and method in which the work was performed by the physicians in outpatient clinics affiliated with the County hospital, such that the County remained a joint employer of the clinic physicians, and must process Charging Party union's request for recognition as the exclusive representative pursuant to local rules. The Board denied the Charging Party's request that the County be ordered to immediately recognize the Charging Party or move directly to a representation election, holding that such a remedy was premature.
2068-E	Demetria DeLarge v. SEIU Local 1021	The charge alleged the Union breached its duty of fair representation when it refused to hire outside counsel for charging party and represent her at a hearing before the personnel commission.	The Board affirmed the dismissal because the Union did not owe a duty of fair representation in matters outside the collective bargaining agreement.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2069-H	Steve Dayacap Ventura, et al v. State Employees Trades Council United	The charge alleged that the State Employees Trades Council United (SETC) violated the Higher Education Employment Relations Act by: (1) refusing to produce a financial report; (2) retaliating against Charging Parties for not participating in a sympathy strike; (3) breaching the duty of fair representation by supporting a reduction in Charging Parties' salaries; and (4) violating the memorandum of understanding (MOU).	The Board affirmed in part and reversed in part the dismissal of the charge. While finding no retaliation, breach of the duty of fair representation, or violation of the MOU, the Board found that SETC violated HEERA by failing to comply with Charging Parties' request for a financial report and remanded the case to the General Counsel's Office for processing in accordance with its decision.
2070-H	California State University Employees Union v. Trustees of the California State University (San Marcos)	CSUEU alleged that CSU: (1) unilaterally transferred bargaining unit work to nonunit employees and (2) retaliated against employee Rafael Lopez for using union representation by searching his personal vehicle.	The Board affirmed the Board agent's dismissal of the unilateral transfer of work allegation. The charge failed to establish that work was removed from bargaining unit members or that nonunit employees began performing work previously performed exclusively by unit members. The charge also failed to establish that any reallocation of bargaining unit work had a negotiable effect on unit members' terms and conditions of employment. The Board reversed the dismissal of the retaliation allegation, finding that the charge stated a prima facie case based on the timing of the search, CSU's failure to give Lopez a reason for the search, and department management's anti-union statements.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2071-M	Debra A. Roeleveld v. County of San Bernardino (County Library)	Roeleveld alleged that the County violated its personnel rules and retaliated against her for using union representation by refusing to provide her with a written rejection or examination results.	The Board affirmed the Board agent's dismissal of the charge. The Board held PERB had no authority to process an alleged violation of the County's personnel rules as an unfair practice charge because the rules were not adopted pursuant to section 3507(a) of the Meyers-Milias-Brown Act. The Board found the charge did not establish that the County's failure to provide a written rejection or examination results was an adverse action because it failed to show that Roeleveld could not appeal the rejection without the documents. The Board also found no indication of unlawful motive because the County's failure to provide the documents pre-dated Roeleveld's use of union representation.
2072-S	Michael Menaster v. State of California (Department of Social Services)	The complaint alleged that the State of California (Department of Social Services) violated the Dills Act by (1) denying an employee the right to be represented by his employee organization at a meeting to discuss his behavior; and (2) retaliating against the employee for engaging in protected activity by issuing him memoranda, placing him on administrative leave as part of the process to reject him on probation, and failing to reinstate him following his separation from employment.	The Board upheld the dismissal of the complaint, finding no retaliation. The Board also found that the employee's right to representation was not violated when the employer ceased its questioning as soon as the employee requested representation.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2073-E	Ronald Willard Weightman v. Los Angeles Unified School District	Weightman alleged that the District failed to comply with contractual grievance timelines, and interfered with his ability to receive a reasonable settlement offer and take his grievance to arbitration.	The Board affirmed the Board agent's dismissal of the charge. The Board held Weightman lacked standing to allege employer's failure to comply with contractual grievance procedures constituted unilateral change. The Board also found the charge failed to state a prima facie case of interference because it did not allege that the District's conduct interfered with any employee rights granted under EERA.
2074-M	Operating Engineers Local 3 v. City of Clovis	The Complaint alleged that the City violated its duty to bargain in good faith by failing to implement its last, best, and final offer.	The Board reversed the ALJ's finding that the Union had tendered a post-impasse acceptance of the City's last, best and final offer – instead finding insufficient evidence in the record of a valid acceptance. The Board also found no evidence that an agreement had been reduced to writing and ratified by the City as required by the MMBA. Furthermore, although the City is permitted to implement its last, best and final offer upon properly reaching impasse, it is not required to do so. Finally, the Board refused to make findings on the issue of whether or not changed circumstances existed that reinstated the City's bargaining obligations, as this issue was an unalleged violation and the criteria for consideration of an unalleged violation had not been met.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2075-M	Alfred Lam v. City & County of San Francisco	Lam alleged that the City: (1) colluded with the exclusive representative of Lam's bargaining unit, SEIU Local 1021, to close his grievances; (2) failed to inform him or local SEIU officers of the closure; and (3) retaliated against him for filing grievances.	The Board affirmed the Board agent's dismissal of the charge. The Board found the charge failed to show that the City colluded with SEIU to close Lam's grievances or that the City owed a statutory duty to directly inform Lam of the closure. The Board also found the charge failed to state a prima facie case of retaliation because it did not allege facts showing that the City's closure of Lam's grievances was unlawfully motivated.
2076-M	Alfred Lam v. SEIU Local 1021	Lam alleged that SEIU breached its duty of fair representation by colluding with Lam's employer, the City & County of San Francisco, to close his grievances and failing to inform him or local SEIU officers of the closure.	The Board affirmed the Board agent's dismissal of the charge. The Board held the charge failed to show that SEIU's participation in the closure of Lam's grievances and its failure to inform Lam directly of the closure were arbitrary, discriminatory or in bad faith. The Board also found the charge timely because it was filed exactly six months after Lam discovered his grievances had been closed.
2077-M	Eric E. Maxey v. IFPTE, Local 21, AFL-CIO	The Board upheld the dismissal of an unfair practice charge in which the charging party alleged that IFPTE violated the MMBA when it failed to adequately represent him in connection with a grievance filed in response to his termination.	The Board held that the charging party failed to establish that IFPTE acted arbitrarily, discriminatorily, or otherwise in bad faith.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2078-S	Stationary Engineers Local 39, IUOE, AFL-CIO v. State of California (Department of Personnel Administration)	Local 39 alleged that the State bargained in bad faith by: (1) failing to make or respond to economic proposals; (2) using negotiators who lacked authority to negotiate economic proposals; and (3) bypassing Local 39 to deal directly with employees over terms and conditions of employment.	The Board affirmed the Board agent's dismissal of the charge. The Board held the charge failed to establish bad faith bargaining because the State was not required to negotiate economic proposals when the state budget was not final and State negotiators' claimed lack of authority to negotiate economic proposals did not thwart the bargaining process. The Board also held there was no direct dealing by the State because the Governor's memorandum to state employees listed proposals the Governor intended to make to the Legislature to close the budget gap and the letter explicitly stated the proposals were subject to change as the result of negotiations with state employee unions.
2079-M	David Flowers v. IBEW Local 1245	The Board reversed a dismissal of an unfair practice charge in which the charging party alleged IBEW violated the MMBA when it failed to adequately pursue a grievance filed on his behalf.	The Board held that IBEW breached its duty of fair representation when it completely failed to investigate the facts underlying the charging party's grievance. In addition, the Board held that IBEW breached its duty of fair representation when it failed to provide the charging party with an explanation regarding its decision to not elevate his grievance to arbitration.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2080-M	Barbara Schmidt v. Service Employees International Union, Local 1021	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged SEIU breached its duty of fair representation by failing to file grievances on her behalf, abandoning grievances filed on her behalf and generally failing to take satisfactory action to protect her from numerous acts of alleged wrongdoing perpetrated by her employer.	The Board held the charging party failed to plead sufficient facts to demonstrate SEIU's action or inaction was without a rational basis or devoid of honest judgment. Accordingly, the charge was dismissed for failure to establish a prima facie case.
2081-S	California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)	The charge alleged that the State of California (Department of Personnel Administration) violated the Ralph C. Dills Act by insisting to impasse on non-mandatory subjects of bargaining that would require a waiver of employees' statutory rights.	The Board upheld the dismissal of the charge, finding that the State did not unlawfully insist to impasse on a proposal that would require employees to waive their statutory rights, where the union failed to clearly communicate its opposition to further discussion of the proposal.

2009-2010 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2082-E	Ventura County Community College District v. Ventura County Federation of College Teachers, AFT Local 1828	The Board agent dismissed the charge filed by the District, against the Federation, that sought a repugnancy review of an arbitration decision rendered in favor of the Federation.	The Board adopted the Board agent's dismissal finding that the District's charge did not allege conduct by the Federation that violated EERA and therefore did not establish a prima facie case. The Board held that EERA does not provide an independent appeal process from a third party arbitrator's decision.
2083-M	Derrick J. Coffman v. City of Brea	Coffman alleged that the City of Brea discriminatorily refused to hire him.	The Board dismissed the appeal for failure to comply with PERB Regulation 32635(a).

2009-2010 DECISIONS OF THE BOARD

2084-H	State Employees Trades Council United v. Regents of the University of California (Los Angeles)	The Board affirmed the dismissal of an unfair practice charge in which the charging party alleged the University violated HEERA by failing to meet and discuss changes to health benefits for employees represented by SETC.	The Board held that the charge was not timely filed and therefore time-barred by operation of the six-month statute of limitations set forth in HEERA section 3563.2(a). Alternatively, with regard to the merits, the Board held that SETC failed to plead sufficient facts to demonstrate the University failed to meet its duty to meet and discuss changes to health benefits for employees represented by SETC.
2085-S	Stationary Engineers Local 39, International Union of Operating Engineers v. State of California (Department of Personnel Administration)	Local 39 alleged that the State violated the Dills Act by: (1) implementing a change in the method of calculating overtime compensation; and (2) failing to offer Local 39 an exemption from the implementation as negotiated with another union.	The Board affirmed the Board agent's dismissal of the charge. The Board held that the State did not make an unlawful unilateral change by enacting and implementing legislation that changed the method of calculating overtime compensation for state employees. The Board also held DPA's failure to offer an exemption to the new method did not violate the Dills Act because DPA is not required to offer a benefit to every bargaining unit and Local 39 never requested to negotiate over an exemption.
2086-E	Renate Deruiter v. Garden Grove Unified School District	The charge alleged that the Garden Grove Unified School District retaliated against an employee for having engaged in protected activities.	The Board upheld the dismissal of the charge, finding that the charge failed to establish a prima facie case of retaliation.

2009-2010 DECISIONS OF THE BOARD

<p>2087-E</p>	<p>Patricia O’Neil, Ernest Salgado and Emil Barham v. Santa Ana Educators Association</p>	<p>The charge alleged that the Santa Ana Educators Association violated the Educational Employment Relations Act by denying charging parties the opportunity to participate in union activities and by failing to meet its duty of fair representation.</p>	<p>The Board affirmed the dismissal of the charge, finding that the charge failed to plead facts to establish that the union made material misrepresentations of fact to secure contract ratification, deprived union members of the opportunity to communicate their views to other members prior to voting, or that alleged failure to comply with internal union procedures had a substantial impact on employment relationship.</p>
<p>2088-S</p>	<p>Scott Lipscomb Edelen v. California Statewide Law Enforcement Association/Chris Lewis v. California Statewide Law Enforcement Association</p>	<p>The complaint alleged that the California Statewide Law Enforcement Association (CSLEA) interfered with employee rights guaranteed by the Ralph C. Dills Act by refusing to honor the requests of two members to withdraw from union membership after the expiration of a collective bargaining agreement containing a “maintenance of membership” clause.</p>	<p>The Board held that CSLEA violated the Dills Act by refusing to honor valid requests by State employees to withdraw from union membership, and ordered CSLEA to make the members whole and rescind their dismissals from membership.</p>

2009-2010 DECISIONS OF THE BOARD

2089-S	Savannah D. Morgan v. California Statewide Law Enforcement Association	The complaint alleged that the California Statewide Law Enforcement Association (CSLEA) interfered with employee rights guaranteed by the Ralph C. Dills Act by refusing to honor the request of a member to withdraw from union membership after the expiration of a collective bargaining agreement containing a "maintenance of membership" clause.	The Board held that CSLEA violated the Dills Act by refusing to honor a valid request by a State employee to withdraw from union membership, and ordered CSLEA to make the member whole.
2090-M *	John Brewington v. County of Riverside	The complaint alleged that the County of Riverside violated the Meyers-Milias-Brown Act by disciplining the charging party in retaliation for having engaged in protected activity.	The Board found that the County of Riverside disciplined the charging party in retaliation for having engaged in protected activity.
2091-E	Don E. Stott v. San Joaquin Delta Community College District	The charge alleged that the San Joaquin Delta Community College District unlawfully discriminated against charging party for engaging in protected activity, specifically, by reducing his class load from three classes to one class, canceling his one class, and offering him a class at a different location.	The Board affirmed the dismissal of the charge, finding that the charge failed to establish that the charging party engaged in any protected activity.

2009-2010 DECISIONS OF THE BOARD

2092-E	California School Employees Association & its Chapter 106 v. Desert Sands Unified School District	The Board considered an unfair practice charge in which the charging party alleged the District breached its duty to bargain on numerous occasions in violation of EERA section 3543.5.	The Board held the District violated EERA section 3543.5(c) when it unilaterally transferred work from the health technician classification without first affording the charging party adequate notice or an opportunity to bargain over the change. The Board further held the District violated Section 3543.5(c) when it changed the manner in which field-trip buses were assigned, and when it unilaterally stopped paying bus drivers for behind-the-wheel training. Last, the Board held the District did not violate its duty to bargain when it assigned individual buses to the mechanics with the expectation that each mechanic would repair and maintain his/her assigned bus.
2093-H	Patrick Pelonero v. Trustees of the California State University (San Marcos)	Charging party alleged the employer interfered with his right to file grievances.	The Board held the statute of limitations was equitably tolled, finding the charge timely filed. The Board affirmed the ALJ's decision, based on credibility findings, that charging party did not prove the employer interfered with protected rights.

2009-2010 DECISIONS OF THE BOARD

<p>2094-H *</p>	<p>California Nurses Association v. Regents of the University of California/Regents of the University of California v. California Nurses Association</p>	<p>CNA alleged that UC bargained in bad faith by: (1) refusing to bargain over nurse-to-patient staffing ratios and (2) refusing to provide relevant information on how shift staffing ratios were determined. UC alleged that CNA bargained in bad faith by threatening a one-day strike prior to bargaining impasse.</p>	<p>The Board reversed the ALJ's proposed decision and remanded for further hearing on damages. The Board found that staffing ratios are within the scope of representation and that UC engaged in "hard bargaining" over CNA's staffing ratio proposal. The Board further found that the information requested by CNA was relevant and that UC complied with its obligation to provide the information by asking the third party software vendors if it could disclose the proprietary information to CNA. The Board held that CNA's threatened one-day strike was unlawful because it occurred before impasse and was not provoked by UC's unfair practices. The Board remanded to the ALJ for determination of compensable damages.</p>
<p>2095-H</p>	<p>Sharda A. Hall v. Coalition of University Employees</p>	<p>Hall alleged that CUE breached its duty of fair representation by opposing her reclassification to a position outside of the bargaining unit.</p>	<p>The Board affirmed the Board agent's dismissal of the charge. The Board found that CUE's opposition was not without a rational basis because a union has an interest in ensuring bargaining unit work is not removed from the unit.</p>
<p>2096-E</p>	<p>Elizabeth Tsai v. California Teachers Association, Solano Community College Chapter, CTA/NEA</p>	<p>Charging party alleged the union breached its duty of fair representation and discriminated against her when it refused to take her grievance to arbitration.</p>	<p>The Board upheld the Board agent's dismissal finding that the union did not breach its duty of fair representation after investigating and concluding the grievance had no merit. The reprisal allegation was also dismissed because there was no showing of nexus.</p>

2009-2010 DECISIONS OF THE BOARD

2097-M	Laborers International Union of North America, Local 777 v. County of Riverside	The charge alleged the County failed to meet and confer in good faith when it unilaterally discontinued part of the Performance and Competency Pay Plan, without providing the union with notice and an opportunity to bargain.	<p>The Board held that Local 777 failed to establish that it made an adequate demand to bargain the effects of the decision, and therefore failed to establish that the County violated the MMBA.</p> <p>The Board rejected the County's argument that the ALJ's restatement of the issue at hearing amounted to an improper consideration of an unalleged violation. The Board held that the issue as stated by the ALJ reflected the actual issue litigated by the parties more accurately than the issue stated in the complaint, and that the criteria for consideration of an unalleged violation had been met.</p>
2098-M	Jon Richard May v. Stationary Engineers Local 39	Charging party alleged the union breached its duty of fair representation when it failed to provide information regarding bargaining proposals, internal union grievances and election procedures, and negotiate for furloughs over layoffs.	The Board affirmed the dismissal of the charge finding the union's internal affairs did not have a substantial impact on employee-employer relations.

2009-2010 DECISIONS OF THE BOARD

<p>2099-I</p>	<p>California Federation of Interpreters-TNG/CWA v. Region 2 Court Interpreter Employment Relations Committee, et al.</p>	<p>The Board reversed a partial dismissal of an unfair practice charge in which the charging party alleged a violation of the Trial Court Interpreter Employment and Labor Relations Act when the employer provided more favorable terms and conditions of employment to independent contractors than it did to court employees.</p>	<p>The Board held that charging parties alleged sufficient facts to establish both elements of the prima facie violation of the Court Interpreter Act section 71802(c)(3).</p>
<p>2100-M</p>	<p>Sonoma County Law Enforcement Association v. County of Sonoma</p>	<p>The complaint alleged that the County violated the Meyers-Milias-Brown Act (MMBA) by: (1) unilaterally implementing its last, best and final offer prior to the completion of impasse procedures; (2) unilaterally implementing terms and conditions of employment not reasonably contemplated within the parties' pre-impasse negotiations; and (3) unilaterally imposing a waiver of charging party's right to negotiate health benefit changes for the upcoming year.</p>	<p>The Board found that the County did not violate MMBA by refusing to submit to statutory interest arbitration, in light of a final appellate court decision holding the governing statute unconstitutional. The Board further found that the County did not violate the MMBA by unilaterally implementing terms and conditions of employment that were reasonably contemplated within its pre-impasse proposal.</p>

2009-2010 DECISIONS OF THE BOARD

2101-H	Coalition of University Employees v. Regents of the University of California (Davis)	The Board considered unfair practice charges in five consolidated cases. The Board affirmed unilateral change allegations in three of the cases, affirmed a failure to provide information allegation in one case and dismissed unilateral change allegations in two of the cases.	The Board held that the unilateral change allegations in one of the consolidated cases was time-barred by operation of PERB's six-month statute of limitations and that a unilateral change violation in another consolidated case was properly dismissed for failure to establish a prima facie case. The Board further held that the University's narrow interpretation of Article 2.E of the parties' MOU was erroneous. Accordingly, the subsequent application of that interpretation supported a finding that the unilateral change allegations in three of the consolidated cases were meritorious. Last, the Board held that the University unlawfully failed to provide information requested by the union.
2102-S *	California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)	CCPOA alleged that DPA bargained in bad faith by not returning to bargaining after: (1) the Governor declared a fiscal emergency; (2) the Legislature failed to fund the State's last, best and final offer (LBFO); and (3) the State withdrew its second and third year economic proposals from the implementation plan for the LBFO.	The Board adopted the ALJ's proposed decision. The Board held that none of the events constituted a change in circumstances that would break impasse and revive the parties' bargaining obligations.

2009-2010 DECISIONS OF THE BOARD

<p>2103-M</p>	<p>San Diego Firefighters, Local 145, I.A.F.F, v. City of San Diego (Office of the City Attorney)</p>	<p>The charge alleged that the city bypassed the union, and made an illegal unilateral change, by soliciting city employees to rescind retirement service credit purchases made pursuant to the collective bargaining agreement between the parties.</p>	<p>The Board affirmed that part of the ALJ's proposed decision finding a bypass violation, but reversed the ALJ's finding that the city's "attempt" to change the policy was an illegal unilateral change.</p>
<p>2104-M *</p>	<p>Mendocino County Public Attorney's Association v. County of Mendocino</p>	<p>Charging party alleged that the County of Mendocino violated the Meyers- Miliias-Brown Act when it unilaterally ceased a policy of granting a 1 percent COLA that was issued to employees by mistake.</p>	<p>The Board adopted the ALJ's dismissal, finding no violation. Employee classifications that moved to a new bargaining unit were no longer covered by the MOUs of the units they migrated from, and were not entitled to the 1 percent increase provided for therein. After a clerical error resulted in the classifications receiving the 1 percent increase, employer correction of the error does not amount to a change in policy where the classifications were not entitled to the increase, and where the employer continued to bargain in good faith over a new MOU covering the new bargaining unit.</p>

2009-2010 DECISIONS OF THE BOARD

2105-H	Regents of the University of California v. AFSCME, Local 3299	Charging party alleged that AFSCME unilaterally changed the access policy by leafleting in prohibited areas at the university medical centers on the Los Angeles and San Francisco campuses.	The Board affirmed the Board agent's dismissal finding that where university alleged the union violated the campus access policy by leafleting in prohibited areas, but no facts are alleged to demonstrate more than an isolated breach of the CBA, the charge failed to establish a prima facie case for a unilateral change violation.
2106-S *	California Correctional Peace Officers' Association v. State of California (Department of Personnel Administration)	Without providing notice, CCPOA stopped providing non-union member employees with union provided dental benefits. After the State allowed non-union members to join the state dental plan, the union alleged that the State discriminated against and interfered with the rights of union members.	The Board affirmed the dismissal of the discrimination allegation because there was no adverse action taken against union members. The Board held the charge stated a prima facie case of interference, finding that the determination that the State's actions were justified due to circumstances beyond its control would have to wait for a hearing.
2107-H	Regents of the University of California and UPTE, CWA Local 9119	UPTE petitioned to add case managers to the residual health care professionals bargaining unit.	The Board affirmed the ALJ's grant of the petition based on case managers' community of interest with other classifications in the unit. The Board also held that PERB has no discretion to require proof of support when a petition seeks to add positions that total less than 10 percent of the existing unit.

2009-2010 DECISIONS OF THE BOARD

2108-S	California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation)	The Board affirmed the dismissal of an unfair practice charge in which CCPOA claimed the State of California (CDCR) violated the Dills Acts by engaging in surface bargaining in connection with bargaining over changes to a protective vest policy.	The Board held CCPOA failed to plead sufficient facts to establish a prima facie case of surface bargaining.
2109-H	AFSCME Local 3299 v. Regents of the University of California	Charging party alleged that the University unilaterally changed the sick leave and vacation policies when it announced that during a declared strike period, sick leave would not be approved absent medical certification, and approval for vacation leave might be denied or rescinded based on operational needs.	The Board affirmed the Board agent's dismissal finding that the charge failed to establish that the University violated past practice regarding sick leave verification and approval for vacation leave where no facts were alleged to demonstrate the past practice alleged to have been violated.
2110-S	Union of American Physicians & Dentists v. State of California (Department of Veterans Affairs)	UAPD alleged that the State failed to bargain over closure of the acute care facility at the Yountville Veterans Home.	The Board affirmed the Board agent's dismissal of the charge. The Board held that the decision to close the unit was not within the scope of representation and UAPD never made a valid request to bargain the effects of the decision.

2009-2010 DECISIONS OF THE BOARD

2111-S	California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation, Avenal State Prison)	Charging Party alleged the State unilaterally implemented a change to the release time policy and engaged in surface bargaining over inmate access to medical care.	The Board affirmed the Board agent's dismissal for failure to state facts establishing a prima facie case of an unlawful unilateral change and surface bargaining.
2112-I	California Federation of Interpreters, Local 39521 v. Los Angeles Superior Court	Charging Party alleged that the Los Angeles Superior Court (Court) violated the Trial Court Interpreters Act by making unilateral changes in policy and practice regarding filling assignments, reducing staffing, failing to give employees priority for assignments, and imposing limitations on work hours for part-time and as-needed employees. Additionally, Charging Party alleged that the Court failed to provide CFI with requested information that is necessary and relevant to the representation of its members, and that the alleged changes were made in retaliation for protected activity.	The Board affirmed the Board agent's partial dismissal finding that the Trial Court Interpreters Act specifically provides that the "delivery of court services" is outside the scope of representation, and that the Board has previously held that the determination of staff or service levels is not within the scope of representation. Furthermore, the Board agent appropriately harmonized relevant MOU provisions to determine that no unlawful unilateral change had occurred. Finally, the charge failed to make a prima facie case for refusal to provide information where the employer complied with the request and the charge does not allege that the union reasserted its request or otherwise communicated its dissatisfaction, and where the charge fails to include facts to establish that certain requested documents actually existed and were in the possession of the employer.

2009-2010 DECISIONS OF THE BOARD

<p>2113-M</p>	<p>County of Siskiyou and Siskiyou County Employees' Association and Siskiyou County Employees' Association/AFSCME / Siskiyou County Superior Court and Siskiyou County Employees' Association and Siskiyou County Employees' Association/AFSCME</p>	<p>SCEA petitioned to amend its certification to reflect a purported disaffiliation from AFSCME.</p>	<p>The Board affirmed the ALJ's dismissal of the petitions. The Board held it had jurisdiction over the petitions because the County's and Court's local rules did not contain provisions for amendment of certification. The Board dismissed the petitions because at the time of hearing SCEA lacked substantial continuity of identity with the pre-disaffiliation local.</p>
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2009-2010 DECISIONS OF THE BOARD

<p>2114-M *</p>	<p>Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara</p>	<p>The Board upheld in part and reversed in part a proposed decision by an administrative law judge that found that the County of Santa Clara violated the MMBA when it placed two ballot measures on a November 2004 ballot without satisfying its duty to meet and confer in good faith.</p>	<p>The Board held the first ballot measure, an interest arbitration measure, was not a mandatory subject of bargaining, and therefore, the County did not breach its duty to bargain in good faith when it placed the measure on the ballot. The Board further held the second ballot measure, a prevailing wage measure, was within the scope of representation and the County improperly placed the measure on the ballot prior to the completion of bargaining. Last, the Board held that out-of-pocket expenses are recoverable only if they are a direct consequence of the violation. Therefore, since the charging party failed to demonstrate its political expenditures were a direct consequence of the County's conduct, out-of-pocket expenses were not warranted in this case.</p>
<p>2115-S</p>	<p>California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation, Department of Personnel Administration)</p>	<p>CCPOA alleged that the State bargained in bad faith by: (1) implementing its decision to close two facilities before completion of effects bargaining; and (2) failing to compromise over area of layoff during negotiations.</p>	<p>The Board affirmed the Board agent's dismissal of the charge. The Board held that implementation before completion of effects bargaining was not unlawful because the implementation date was compelled by the Legislature's elimination of funding for facilities and meaningful effects bargaining could continue after implementation. The Board also found that the charge did not establish that the State engaged in surface bargaining over the area of layoff.</p>

2009-2010 DECISIONS OF THE BOARD

<p>2116-H</p>	<p>Melanie Stallings Williams v. California Faculty Association</p>	<p>Charging Party alleged that the California Faculty Association violated the Higher Education Employer-Employee Relations Act by refusing to allow non-union members to cast a vote to determine support for a proposed two-day-a-month furlough program.</p>	<p>The Board adopted a Board agent's dismissal finding that the union was allowed to exclude non-members from voting on the proposed furlough program where the union provided sufficient opportunity for non-members to communicate their views on the matter. Additionally, PERB will not interfere with matters of internal union affairs where there was no showing of a substantial impact on the employer-employee relationship so as to give rise to the duty of fair representation.</p>
<p>2117-H</p>	<p>Demosthenes Andrew Halcoussis v. California Faculty Association</p>	<p>Charging Party alleged that the California Faculty Association violated the Higher Education Employer-Employee Relations Act by refusing to allow non-union members to cast a vote to determine support for a proposed two-day-a-month furlough program.</p>	<p>The Board adopted a Board agent's dismissal finding that the union was allowed to exclude non-members from voting on the proposed furlough program where the union provided sufficient opportunity for non-members to communicate their views on the matter. Additionally, PERB will not interfere with matters of internal union affairs where there was no showing of a substantial impact on the employer-employee relationship so as to give rise to the duty of fair representation.</p>

2009-2010 DECISIONS OF THE BOARD

2118-S	California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation)	The Board upheld a dismissal of an unfair practice charge that alleged the State of California (CDCR) retaliated against the charging party when it issued him a negative evaluation, and also interfered with the charging party's rights under the Dills Act when the State gave him an employee assistance program (EAP) referral.	With regard to the retaliation charge, the Board held the charging party failed to plead facts sufficient to establish a prima facie case. With regard to the interference charge, the Board held the charging party failed to demonstrate how the referral to EAP interfered with the charging party's rights. Therefore, the charging party failed to satisfy the burden of proof for both allegations.
2119-M *	SEIU Local 721 v. County of Riverside	SEIU alleged that the County: (1) unlawfully denied SEIU's petition to represent employees in the County's temporary assignment program (TAP); and (2) threatened to end TAP if SEIU continued its organizing efforts.	The Board affirmed the ALJ's rulings on both issues. The Board held that the County reasonably applied the community of interest criterion in its local representation rules to deny SEIU's petition. The Board further held that County officials and supervisors interfered with employees' and SEIU's rights by threatening to eliminate TAP in response to SEIU's continuing efforts to organize TAP employees.

2009-2010 DECISIONS OF THE BOARD

<p>2120-M *</p>	<p>Santa Clara County Registered Nurses Professional Association v. County of Santa Clara</p>	<p>The Board upheld in part and reversed in part a proposed decision by an administrative law judge that found the County of Santa Clara violated the MMBA when it placed two ballot measures on a November 2004 ballot without satisfying its duty to meet and confer in good faith.</p>	<p>The Board held the first ballot measure, an interest arbitration measure, was not a mandatory subject of bargaining, and therefore, the County did not breach its duty to bargain in good faith when it placed the measure on the ballot. The Board held the second ballot measure, a prevailing wage measure, was within the scope of representation and the County improperly placed the measure on the ballot prior to the completion of bargaining.</p>
<p>2121-M *</p>	<p>Amalgamated Transit Union Local 1704 v. Omnitrans</p>	<p>ATU alleged that Omnitrans terminated the employment of the local president in retaliation for his union activity.</p>	<p>The Board reversed the ALJ's proposed decision and held that Omnitrans did not terminate the ATU president because of his engagement in protected activity. The Board found a prima facie case of retaliation because Omnitrans fired the president in part for absences on days when he conducted union business. Nonetheless, the Board found that Omnitrans would have fired the president even if he had not engaged in protected activity because the president had accumulated more than enough unexcused absences to support termination under the MOU's attendance policy.</p>

2009-2010 DECISIONS OF THE BOARD

<p>2122-M</p>	<p>Carmen Feger v. County of Tehama</p>	<p>The Board affirmed the dismissal by an administrative law judge of a charge alleging the County of Tehama discriminated against the charging party for testifying on behalf of a co-worker at an arbitration hearing and by failing to provide information.</p>	<p>With regard to the discrimination claim, the Board held the charging party failed to establish a prima facie case of discrimination. Additionally, even if a prima facie case was established, the Board found the County demonstrated legitimate non-discriminatory reasons that it would have taken the same action in the absence of protected conduct. With regard to the failure to provide information claim, the Board found that the charging party failed to use the pre-hearing discovery procedures set forth in PERB regulations and, therefore, was not entitled to the information requested.</p>
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*Judicial review of Board decision pending.

2009-2010 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-381-E	Brenda Pratt v. United Teachers of Los Angeles	Pratt requested the Board excuse her late filed appeal of the dismissal of her unfair practice charge.	The Board found no good cause to excuse the late filed appeal because Pratt failed to explain how medical reasons and a personal emergency out of state precluded timely filing. The Board also found that Pratt's request for an extension of time to file an appeal did not constitute an appeal under PERB regulations.
Ad-382-S	Patricia L. Woods v. State of California (Department of Corrections and Rehabilitation)	Woods appealed the Appeals Assistant's rejection of an exhibit attached to her exceptions.	The Board affirmed the rejection of the exhibit because it was not served on the respondent and PERB regulations do not provide for service of documents under seal to the Board.
Ad-383-E	Santa Ana Unified School District and Communications Workers of America, AFL-CIO	The Communications Workers of America, AFL-CIO (CWA) filed a request for recognition with the Santa Ana Unified School District seeking to represent a unit of substitute teachers employed by the District. The RA granted the request for recognition.	The Board adopted the administrative determination that granted recognition to a stand-alone unit of substitute teachers.

2009-2010 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.			

2009-2010 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 572	California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment (CASE) v. State of California (Unemployment Insurance Appeals Board)	The Union filed a request for injunctive relief to prohibit the State from eliminating alternate work schedules.	Request withdrawn.
I.R. 573	Travis Unified Teachers Association v. Travis Unified School District	The Union filed a request for injunctive relief to prohibit the District from implementing changes in class size and class-preparation time.	Request denied.
I.R. 574	Teamsters Local 856 v. County of Alameda	The Union filed a request for injunctive relief to prohibit the County from implementing planned layoffs.	Request denied.
I.R. 575	Oceanside Firefighters Association, IAFF Local 3736 v. City of Oceanside	The Union filed a request for injunctive relief to prohibit the City from eliminating several bargaining-unit positions.	Request denied.
I.R. 576	City of Palo Alto v. SEIU Local 521	The City filed a request for injunctive relief to prohibit a threatened strike by employees in the City's General Unit.	Request granted.

2009-2010 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

I.R. 577	Government Lawyers Association of Workers v. County of Tulare	The Union filed a request for injunctive relief to prohibit the County from implementing various economic items including furloughs and salary reductions.	Request denied.
I.R. 578	Coalition of University Employees v. Regents of the University of California (Riverside)	The Union filed a request for injunctive relief primarily to prohibit the University's imposition of furloughs, layoffs, and campus closures.	Request denied.
I.R. 579	Communication Workers of America v. County of Butte	The Union filed a request for injunctive relief primarily to prohibit the County from proceeding with a petition, filed by the Butte County Employees Association, and conducting an election to decertify the Union as the exclusive representative of the County's Social Services Workers Unit.	Request withdrawn.
I.R. 580	Riverside Sheriffs' Association v. County of Riverside	The Union filed a request for injunctive relief to prohibit the County's implementation of terms and conditions relative to various probation officers.	Request denied.

2009-2010 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

I.R. 581	AFSCME Local 512 v. County of Contra Costa (Department of Employment & Human Services)	The Union filed a request for injunctive relief to prohibit the County from hiring temporary workers in the County's Department of Employment and Human Services.	Request denied.
I.R. 582	SEIU Local 1000 v. State of California (Department of Developmental Services)	The Union filed a request for injunctive relief to prohibit the State from installing and using surveillance cameras at the Porterville Developmental Center.	Request denied.
I.R. 583	Regents of the University of California v. California Nurses Association	PERB sought and was granted a temporary restraining order and a preliminary injunction to prohibit the Union's planned strike activity, involving the Registered Nurse bargaining unit, at the University's medical centers, facilities, and locations.	Request granted.
I.R. 584	SEIU United Healthcare Workers West v. Fresno County In-Home Supportive Services Public Authority	The Union filed a request for injunctive relief to prohibit the County's implementation, via its last, best, and final offer, of wage reductions.	Request denied.

2009-2010 LITIGATION CASE ACTIVITY

1. *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 case was granted review by the California Supreme Court in July 2009; briefing concluded in November 2009. Case pending.
2. *California Nurses Association (CNA) v. PERB; Regents of the University of California (UC)*, California Court of Appeal, First Appellate District, Case No. A127766 (PERB Case Nos. SF-CE-762-H, SF-CO-124-H). Issue: Did PERB err in Decision No. 2094-H (reversing an ALJ and ruling that CNA's conduct of threatening a one-day strike and engaging in preparations for that strike before completing statutory impasse procedures constituted an unfair practice because CNA failed to show that UC committed any unfair practice provoking the strike; remanding UC's charge against CNA to the ALJ to take evidence on the issue of UC's damages and make recommended findings of fact and conclusions of law solely on the issue of damages; and dismissing CNA's charge against UC)? The case was filed in March 2010; briefing not yet commenced as of June 30, 2010. Case pending.
3. *California Correctional Peace Officers Association (CCPOA) v. PERB; State of California (Department of Personnel Administration)*, California Court of Appeal, Third Appellate District, Case No. C064817 (PERB Case No. SA-CE-1665-S). Issue: Did PERB err in Decision No. 2102-S (adopting an ALJ's dismissal of charge and complaint [which alleged State violated the Dills Act by failing/refusing to bargain despite "changed circumstances" after the parties reached impasse and State's last, best, and final offer was implemented in 2007])? The case was filed in April 2010; briefing not yet commenced as of June 30, 2010. Case pending.
4. *California Correctional Peace Officers' Association (CCPOA) v. PERB*, Alameda County Superior Court Case No. RG10517528 (PERB Case No. SA-CE-1636-S). Did PERB err in Decision No. 2106-S (affirming a Board Agent's dismissal of allegation that State discriminated against CCPOA members in Bargaining Unit 6 by offering/providing dental benefits at a lower cost to BU 6 employees who are not CCPOA members than those offered/provided to BU 6 employees who are CCPOA members)? The case was filed in May 2010; briefing not yet commenced as of June 30, 2010. Case pending.
5. *Coalition of University Employees, Teamsters Local 2010, IBT (CUE) v. PERB; Regents of the University of California (UC)*, Sacramento County Superior Court Case No. 2010-80000574 (PERB Case No. SF-CE-905-H). Issue: Should PERB be ordered to (1) make a determination in SF-CE-905-H, (2) increase the pay and duration involved in a fact-finding case between CUE and UC, and (3) stay any further fact-finding proceedings pending resolution of this case. The case was filed in June 2010; briefing not yet commenced as of June 30, 2010. Case pending.

6. *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO 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; case concluded in November 2009, when the court issued an unpublished opinion affirming PERB Decision No. 1948. Case closed/completed.

7. *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 appellate case was filed in September 2007; case concluded in October 2009, when the court issued a published opinion finding that, in light of a recent statutory change to MMBA section 3509 (i.e., Senate Bill 1296 [providing that superior courts, rather than PERB, shall have exclusive jurisdiction over actions involving interest arbitration when the action involves an employee organization that represents firefighters]), PERB no longer retained jurisdiction in this matter. Case closed/completed.

8. *County of Sacramento v. PERB; Sacramento County Attorneys Association et al.*, California Court of Appeal, Third Appellate District, Case No. C062483 (PERB Case No. SA-CE-484-M). Issue: Did PERB err in Decision No. 2043-M (affirming an ALJ's finding that County violated the MMBA by unilaterally changing the retirement medical and dental insurance program for current employees retiring after June 1, 2007)? The case was filed in July 2009; briefing concluded in February 2010; case dismissed in March 2010. Case closed/completed.

9. *County of Sacramento v. PERB; United Public Employees, Local 1*, California Court of Appeal, Third Appellate District, Case No. C062484 (PERB Case No. SA-CE-477-M). Issue: Did PERB err in Decision No. 2044-M (affirming an ALJ's finding that County violated the MMBA by unilaterally changing the retirement medical and dental insurance program for current employees retiring after June 1, 2007)? The case was filed in July 2009; briefing concluded in February 2010; case dismissed in March 2010. Case closed/completed.

10. *County of Sacramento v. PERB; SEIU Local 1021*, California Court of Appeal, Third Appellate District, Case No. C062482 (PERB Case No. SA-CE-505-M). Issue: Did PERB err in Decision No. 2045-M (affirming an ALJ's finding that County violated the MMBA by unilaterally changing the retirement medical and dental insurance program for current employees retiring after June 1, 2007)? The case was filed in July 2009; briefing concluded in February 2010; case dismissed in March 2010. Case closed/completed.

11. *International Union of Operating Engineers, Stationary Engineers, 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? The case was filed in January 2008. (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.) The 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. The parties later stipulated to dismiss PERB from the action; awaiting court's order as of June 30, 2010. Case pending.

12. *Hicks v. PERB; Compton Unified School District*, California Court of Appeal, Second Appellate District, Case No. B220583, Los Angeles County Superior Court Case No. BS120977 (PERB Case No. LA-CE-4900-E). Issue: Did PERB err in Decision No. 2015 (affirming a Board Agent's dismissal based on untimely filing of charge)? The superior court case was filed in June 2009; case dismissed in September 2009. The appellate case was filed in November 2009; case dismissed in December 2009. Case closed/completed.

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 case was filed in July 2008. The superior court granted the temporary restraining order—enjoining AFSCME-represented employees in the Service Unit and identified essential employees in the Patient Care Technical Unit from striking—and subsequently denied a preliminary injunction. Case pending.

14. *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 and briefing concluded in April 2010; case dismissed in June 2010. Case closed/completed.

15. *Amalgamated Transit Union Local 1704 v. PERB; Omnitrans*, California Supreme Court Case No. S180201, 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 concluded in November 2009; case dismissed in February 2010 (subsequent petition for review denied by California Supreme Court). Case closed/completed.

16. *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 concluded in October 2009; case dismissed in October 2009. Case closed/completed.

17. *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 2005; case subsequently stayed 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. Case pending.

18. *PERB v. SEIU Local 521*, California Court of Appeal, Sixth Appellate District, Case No. H035006, Santa Clara County Superior Court Case No. 109CV153088 (PERB Case No. SF-CO-210-M (IR Request No. 576)). Issue: Should employees represented by Local 521 in the City of Palo Alto's General Unit be enjoined from participating in a threatened strike? The superior court case was filed in September 2009. The court granted the temporary restraining order—enjoining identified essential employees in the City's General Unit from participating during their working hours in the planned work action—and subsequently issued a preliminary injunction. The appellate case was filed in November 2009; briefing underway as of June 30, 2010. Case pending.

19. *Baprawski v. PERB*, California Court of Appeal, Case No. B223729, Los Angeles County Superior Court Case No. BS123046 (PERB Case No. LA-CE-4883-E). Issue: Should PERB Decision No. 2059 (upholding ALJ's determination that charge was untimely and dismissing the charge and complaint against Los Angeles Community College) be set aside and PERB be required to hold a hearing on the merits in LA-CE-4883-E? The superior court case was filed in October 2009; case dismissed in April 2010. The appellate case was filed in April 2010; case dismissed in May 2010. Case closed/completed.

20. *County of Riverside v. PERB; Brewington*, California Court of Appeal, Fourth Appellate District, Case No. E050056 (PERB Case No. LA-CE-261-M). Issue: Did PERB err in Decision No. 2090-M (affirming in large part an ALJ's finding and concluding that County violated the MMBA by retaliating against Brewington for protected activity and ordering the County to rescind Brewington's termination, offer him reinstatement plus restoration of benefits, and make him whole for financial losses suffered as a result of his termination)? The case was filed in January 2010; briefing underway as of June 30, 2010. Case pending.

21. *Mendocino County Public Attorneys Association (MCPAA) v. PERB; County of Mendocino*, California Court of Appeal, First Appellate District, Case No. A128540 (PERB Case No. SF-CE-432-M). Issue: Did PERB err in Decision No. 2104-M (adopting an ALJ's dismissal of charge and complaint [which alleged County unilaterally ceased policy of granting a one-percent COLA and simultaneously sought to recoup related overpayments to employees in violation of the MMBA])? The case was filed in May 2010; briefing not yet commenced as of June 30, 2010. Case pending.
22. *PERB; Regents of the University of California (UC) v. California Nurses Association (CNA)*, San Francisco County Superior Court Case No. CGC-10-500513 (PERB Case No. SA-CO-114-H (IR Request No. 583)). Issue: Should registered nurses represented by CNA in UC's Registered Nurse Bargaining Unit be enjoined from participating in a threatened one-day strike at UC's medical centers, facilities, and locations? The case was filed in June 2010. The court granted the temporary restraining order—enjoining CNA-represented nurses in UC's Registered Nurse Bargaining Unit from striking during their working hours at UC's medical centers, facilities, and locations—and subsequently issued a preliminary injunction. Case pending.
23. *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) interfered with his rights under the Dills Act)? The case was filed in February 2007; briefing concluded in March 2007. Case pending.
24. *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? 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. Case inactive.