



**PERB**  
California Public Employment  
Relations Board

# PUBLIC EMPLOYMENT RELATIONS BOARD

## 2020 – 2021 Annual Report

October 15, 2021



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# LETTER FROM THE CHAIR

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October 15, 2021

Dear Members of the State Legislature and fellow Californians:

We are pleased to submit the 2020 – 2021 Public Employment Relations Board (PERB) Annual Report. The 2020 – 2021 fiscal year saw a continued focus on improved effectiveness through implementation of [Case Processing Efficiency Initiative](#) recommendations, as PERB staff worked diligently to deliver services to our constituents during the COVID-19 crisis. While smoothly transitioning to a remote work environment, we launched ePERB, our [online public filing portal](#), allowing PERB to productively focus on administering the state’s public sector employer-employee relations acts.

The Board issued 51 decisions in the 2020 – 2021 fiscal year. The [Board’s docket](#) at the conclusion of the fiscal year reflected 17 cases awaiting decision, the lowest number in recent memory. Other highlights from the 2020 – 2021 fiscal year include:

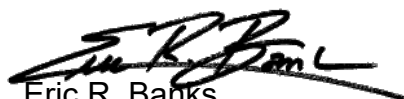
- 542 unfair practice charges filed
- 91 representation petitions filed
- 67 requests for mediation
- 26 factfinding requests
- 365 days of informal settlement conferences
- 77 formal hearings completed by administrative law judges
- 43 proposed decisions issued by administrative law judges
- 387 cases filed with State Mediation and Conciliation Service

This year saw continued expansion of the Board’s jurisdiction as Assembly Bill 2850 (Chapter 293, Statutes of 2020) gave PERB jurisdiction over disputes relating to employer-employee relations at the San Francisco Bay Area Rapid Transit District (BART).

PERB is committed to conducting agency activities with transparency and accountability, and this report describes PERB activities, case dispositions, and other achievements for the Board’s divisions in the past fiscal year. The report also describes PERB’s statutory authority, jurisdiction, purpose, and duties. We invite you to explore the Report for more detailed information about PERB’s 2020 – 2021 activities and case dispositions, including a summary of all Board decisions issued in the last fiscal year.

Please visit our website at <https://perb.ca.gov/> or contact PERB at (916) 323-8000 for any further information.

Respectfully submitted,



Eric R. Banks  
Chair

## 2020 – 2021 Highlights

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### COVID-19 Response

- After a brief initial slowdown due to COVID related closures, all levels of PERB were able to remain productive despite challenges.
- The Division of Administration quickly ensured PERB staff had the equipment, resources, and support necessary to navigate the hybrid work environment, helping PERB remain productive during COVID-19.

### ePERB

- PERB launched the new electronic filing and case management system, ePERB - a system that proved critical during COVID-19.
- ePERB users can initiate new cases, file and access documents in existing cases, and can check the status of matters pending before PERB.
- There are 1800 registered ePERB users.

### The Board

- Governor Newsom designated Board Member Eric Banks as Chair of the Board in January of 2021, becoming the first openly gay chair.
- Governor Newsom reappointed Board Member Krantz to a second term - he now has the distinction of being appointed by two separate administrations.
- The Board held a rare oral argument in four cases involving Government Code Section 3500. The argument took place virtually, with parties participating via video conference and was live streamed to the public.

### Division Highlights

- The Office of General Counsel reduced the number of cases in active investigation from 369 to 265.
- The Division of Administrative Law closed 169 cases and completed 77 hearings, an increase over the prior five-year averages.
- SMCS helped public employers and public employees navigate sticky return-to-work issues, averting potential work stoppages.

### Constituent Engagement

- Virtual board meetings and hearings allow for greater constituent and public participation.
- A quarterly constituent survey launched in June.
- PERB joined Twitter (@PERBCalifornia) in May.

## STATUTORY AUTHORITY AND JURISDICTION

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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 several collective bargaining statutes, ensures their consistent implementation and application, and adjudicates labor relations disputes between parties.

In fiscal year 2020 – 2021, more than 2.5 million public sector employees and over 5,000 public employers fell under the jurisdiction of PERB. The approximate number of employees under these statutes is as follows: 700,000 work for the public education system from pre-kindergarten through and including the community college level; 250,000 work for the State; 430,000 work for the University of California, California State University, and Hastings College of Law; and 1,300,000 work for cities, counties, special districts, and In-Home Support Service agencies, with the remainder working in the trial courts, Judicial Council, and certain transit districts. In addition, PERB has jurisdiction over approximately 40,000 child care providers who participate in a state-funded early care and education program.

PERB administers the following statutes under its jurisdiction:

- (1) [Educational Employment Relations Act](#) (EERA) (Government Code § 3540 et seq.)— public schools (K-12) and community colleges
- (2) [State Employer-Employee Relations Act](#) (Dills Act) (Government Code § 3512 et seq.)—state employees
- (3) [Higher Education Employer-Employee Relations Act](#) (HEERA) (Government Code § 3560 et seq.)—CSU and UC systems and Hastings College of Law
- (4) [Meyers-Milias-Brown Act](#) (MMBA) (Government Code § 3500 et seq.)— city, county, and local special districts (excludes specified peace officers, and City and County of Los Angeles)
- (5) [Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act](#) (TEERA) (Public Utilities Code § 99560 et seq.)—supervisory employees of the Los Angeles County Metropolitan Transportation Authority
- (6) [Trial Court Employment Protection and Governance Act](#) (Trial Court Act) (Government Code § 71600 et seq.)—nonjudicial employees of California’s trial courts
- (7) [Trial Court Interpreter Employment and Labor Relations Act](#) (Court Interpreter Act) (Government Code § 71800 et seq.)—court interpreters employed by California’s trial courts
- (8) [Judicial Council Employer-Employee Relations Act](#) (JCEERA) (Gov. Code, § 3524.50 et seq.)—nonjudicial employees of the Judicial Council
- (9) [Public Employee Communications Chapter](#) (PECC) (Government Code § 3555 et seq.)

(10) [Prohibition on Public Employers Deterring or Discouraging Union Membership](#) (PEDD) (Government Code § 3550 et seq.)

(11) [Building a Better Early Care and Education System Act](#) (Welfare and Institutions Code § 10420 et seq.) - family child care providers

(12) [Orange County Transportation District Act \(OCTDA\)](#) (Public Utilities Code § 40122.1) – for unfair practice charges at the Orange County Transportation Authority

(13) [San Francisco Bay Area Rapid Transit District \(BART\)](#) (Public Utilities Code § 28848 et. seq.)

\* PERB's State Mediation and Conciliation Service also resolves representation and unit composition issues at other public transit employers and mediates disputes outside of the aforementioned statutes.

## **HISTORY OF PERB'S STATUTORY AUTHORITY AND JURISDICTION**

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Authored by State Senator Albert S. Rodda, EERA of 1976 established collective bargaining in California's public schools (K-12) and community colleges. In 1978 the State Employer-Employee Relations Act, known as the Ralph C. Dills Act, established collective bargaining for State employees; and HEERA, authored by Assemblyman Howard Berman, extended the same coverage to the California State University and University of California systems and Hastings College of Law.

Over twenty years later, in 2001, PERB acquired jurisdiction over the MMBA of 1968, which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes individual peace officers, management employees, and the City and County of Los Angeles. This expansion effectively doubled the number of public sector employees under PERB's jurisdiction.

In 2004, PERB's jurisdiction was again expanded to include TEERA, establishing collective bargaining for supervisory employees of the Los Angeles County Metropolitan Transportation Authority as well as jurisdiction over the Trial Court Act of 2000 and the Court Interpreter Act of 2002.

PERB's jurisdiction and responsibilities were changed in late June 2012 by the passage of Senate Bill 1036, which enacted the In-Home Supportive Service Employer-Employee Relations Act (IHSSEERA) under PERB's jurisdiction. The IHSSEERA initially covered only eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, Santa Clara, San Diego, and San Mateo. On July 1, 2015, the Counties of San Bernardino, Riverside, San Diego, and Los Angeles transitioned to the Statewide Authority under the IHSSEERA. The transition brought Los Angeles County under PERB's jurisdiction for the first time, while the other three counties were formerly subject to PERB's jurisdiction under the MMBA. In June of 2017, Senate Bill 90 repealed the IHSSEERA, returning the IHSS providers to coverage under the MMBA.

The Governor's Reorganization Plan 2 placed PERB under the California Labor and Workforce Development Agency, a change that became effective on July 3, 2012, pursuant to Government Code section 12080.5. That month Senate Bill 1038 moved the State Mediation and Conciliation Service (SMCS) from the Department of Industrial Relations and placed SMCS within PERB. SMCS was formed in 1947 after the federal enactment of the Taft-Hartley Act.

The passage of Assembly Bill 119 in 2017 enacted the Public Employee Communication Chapter (PECC), a law designed to provide meaningful and effective communication between public employees and their exclusive representatives. The Legislature placed enforcement of the PECC under the Board's exclusive jurisdiction.

In 2018, pursuant to Assembly Bill 83 (Chapter 835, Statutes of 2017), the Judicial Council Employer-Employee Relations Act (JCEERA) established collective bargaining for employees of the Judicial Council and added approximately 500 employees to PERB's jurisdiction.

As a result of Senate Bill 866 (Chapter 53, Statutes of 2018), PERB is responsible for the administration and enforcement of the Prohibition on Public Employers Detering or Discouraging Union Membership (PEDD), which is codified at Chapter 11 of Title 1 of the Government Code, section 3550 et seq.

The 2019 legislative session saw another significant expansion of PERB's jurisdiction. First, the Building a Better Early Care and Education System Act, Assembly Bill 378 (Chapter 385, Statutes of 2019), expanded PERB's jurisdiction beyond public sector employees by giving PERB jurisdiction over the collective bargaining relationship between approximately 40,000 family childcare providers, their provider organization, and the state. Then Assembly Bill 355 (Chapter 713, Statutes of 2019) added sections 40122.1 and 40122.2 to the Public Utilities Code giving PERB jurisdiction over unfair practice charges for the Orange County Transportation Authority.

In 2020, Governor Newsom signed AB 2850, giving PERB jurisdiction over disputes relating to employer-employee relations between the San Francisco Bay Area Rapid Transit District (BART) and its employees.

# PURPOSE AND FUNCTIONS

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## The Board

By statute, the Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to a term of up to five years, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the thirteen statutory schemes, the Board acts as an appellate body to decide challenges to decisions issued by Board agents. Decisions of the Board itself may be appealed, under certain circumstances, to the State appellate and superior 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;
- Remedy unfair practices, whether committed by employers or employee organizations;
- Investigate impasse requests 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 statutory schemes;
- Bring legal actions 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 statutory schemes it administers.



## **Board Members Who Served in Fiscal Year 2020 – 2021**

**Eric R. Banks** was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, February 2015, and February 2017. In January 2021, Governor Gavin Newsom designated Mr. Banks as Chairperson of the Board. Prior to his appointment, Mr. Banks was a partner at Ten Page Memo, LLC, providing organizational consulting services.

From 2001 to 2013, he worked for Service Employees International Union, Local 221, representing public employees in San Diego and Imperial Counties. There, he was the first openly gay person to be elected President. He also served as Advisor to the President and Director of Government and Community Relations. Before moving to California, he was dedicated to advancing education, service delivery, and public policy for people living with HIV/AIDS. He served as Policy Associate for State Government Affairs at the New York AIDS Coalition in Albany, NY, from 2000 to 2001 and worked for the Southern Tier AIDS Program in Upstate New York from 1993 to 2000 as Case Manager, Assistant Director of Client Services, and Director of Client Services. He earned a Bachelor's degree from Binghamton University in 1993. Mr. Banks' term expires December 2021.

**Erich W. Shiners** was appointed to the Board by Governor Edmund G. Brown Jr. on February 27, 2018. Prior to his appointment, Mr. Shiners represented and advised public agency and non-profit employers in labor and employment matters, including many cases before PERB. Most recently he was Senior Counsel at Liebert Cassidy Whitmore, and before that he was a partner at Renne Sloan Holtzman Sakai.

Mr. Shiners served as Legal Advisor to PERB Chair Alice Dowdin Calvillo from 2008 to 2011. During law school he held internships at the National Labor Relations Board in Washington D.C. and the Agricultural Labor Relations Board in Sacramento and served as a judicial extern for Justice M. Kathleen Butz of the California Court of Appeal, Third District. Mr. Shiners is a member of the Executive Committee of the Labor and Employment Law Section of the California Lawyers Association, and, with fellow Board member Arthur Krantz, a co-editor-in-chief of the Section's publication, California Public Sector Labor Relations. He holds a Bachelor of Arts degree in History from Sacramento State University, and a Juris Doctor degree from University of the Pacific, McGeorge School of Law. Mr. Shiners' term expires December 2022.

**Arthur A. Krantz** was appointed to the Board by Governor Edmund G. Brown Jr. on February 27, 2018. He was reappointed by Governor Gavin Newsom in January 2021 for another five-year term. For more than 20 years prior to his appointment, Mr. Krantz represented unions, employees, and nonprofits in litigation, arbitration, and administrative cases, and he worked on law reform, organizing, negotiation, and strategic campaigns to effect social change. He did this work as an associate and partner at Leonard Carder, LLP. With fellow Board member Erich Shiners, Mr. Krantz serves as co-editor-in-chief of California Public Sector Labor Relations, a LexisNexis legal treatise. He has also served as a pro bono asylum attorney, a lecturer and practitioner-advisor at UC Berkeley School of Law, and an Executive Committee Member of the California Lawyers Association Labor and Employment Law Section. Mr. Krantz received his Bachelor of Arts from Yale University and his Juris Doctor from NYU School of Law, where he was a Root Tilden Public Interest Scholar. After law school, he served as a judicial law clerk for the Honorable Ellen Bree Burns at the United States District Court, District of Connecticut. Mr. Krantz's term expires December 2025.

**Lou Paulson** was appointed to the Board by Governor Gavin Newsom on February 6, 2019. Prior to his appointment Mr. Paulson served as the President of the California Professional Firefighters and as Vice President of the California Labor Federation. He also had a 34-year career in the Fire Service, 26 of those with the Contra Costa County Fire Protection District. Mr. Paulson has participated on many Local and National Boards and Commissions including the UC Berkeley Labor Center Advisory Board and the National Fire Protection Board of Directors. Mr. Paulson has lectured and taught nationally and internationally on labor relations and leadership. He received a Bachelor of Science degree from San Francisco State University. Mr. Paulson's term expires December 2023.

## MAJOR FUNCTIONS

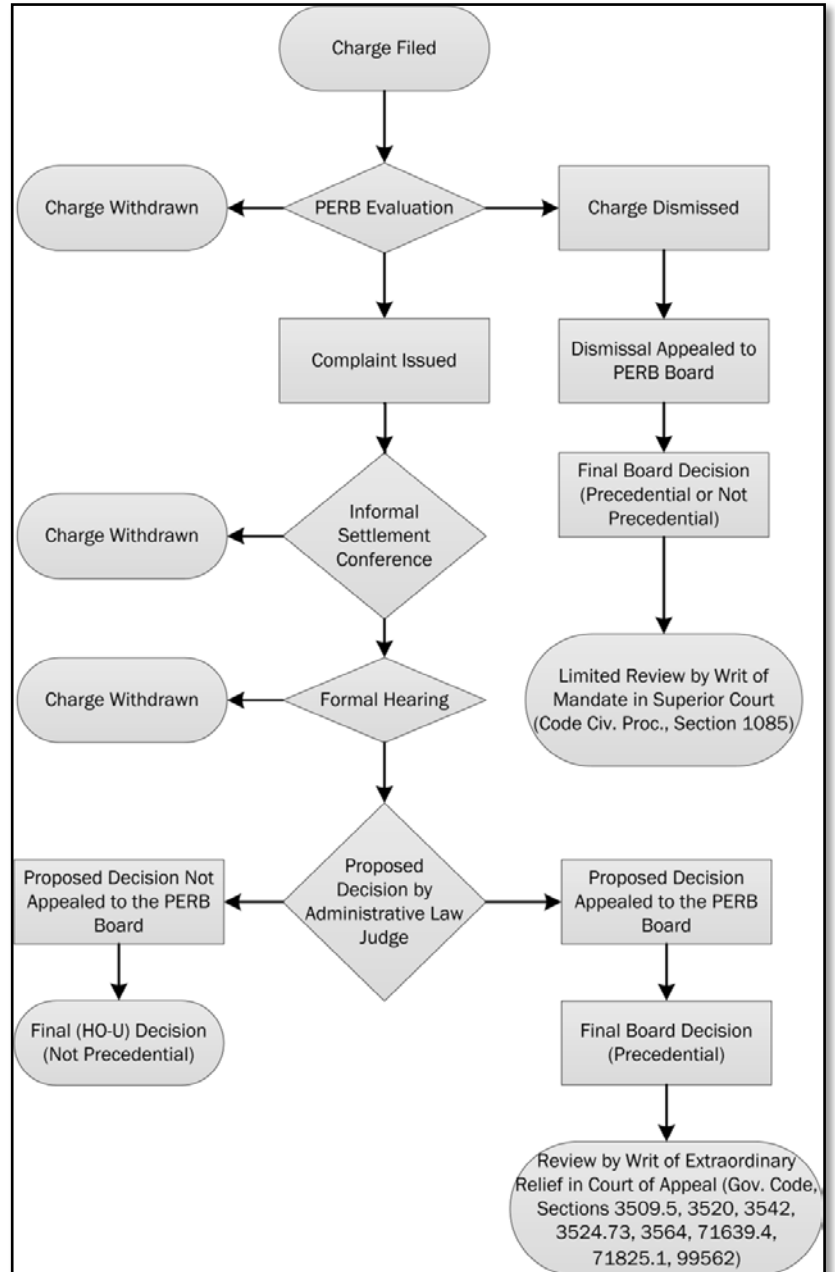
The major functions of PERB include: (1) the investigation and adjudication of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) adjudication of appeals of Board agent determinations to the Board itself; (4) the legal functions performed by the Office of the General Counsel (OGC); and (5) the mediation services provided to the public and some private constituents by the State Mediation and Conciliation Service (SMCS).

### Unfair Practice Charges

The investigation and resolution of unfair practice charges (UPC) is the major function performed by PERB's Office of the General Counsel. UPCs may be filed 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. UPCs can be filed online, as well as by mail, or personal delivery.

A UPC 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 include: 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 include: threatening employees if they refuse to join the union; disciplining a member for filing a UPC against the union; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

A UPC 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 applicable statute 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, the Board agent must dismiss it. 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, usually another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 60 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 generally occurs within 90 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 are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Final decisions of the Board are both binding on the parties to a particular case and precedential in other cases, unless designated as non-precedential by a majority of the Board members pursuant to PERB Regulation 32320, subdivision (d). Text and headnotes for all but non-precedential Board decisions are available on our website (<https://perb.ca.gov>) or by contacting PERB. On the website, interested parties can also [sign-up for electronic notification of new Board decisions](#).

## **Representation**

The representation process 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 the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent may hold an informal settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled, a Board agent conducts a formal investigation, and in some cases a hearing, and issues an administrative determination or a proposed decision. That determination or decision sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law.

Once a 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.

PERB staff also assists 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, HEERA, and the MMBA. If the parties are unable to reach an agreement during negotiations under EERA, HEERA, or the Dills Act, either party may declare an impasse and request the appointment of a mediator. 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, an SMCS mediator assists the parties in reaching an agreement. If settlement is not reached during mediation under EERA or HEERA, either party may request the initiation of statutory factfinding procedures. PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

If the parties reach impasse during negotiations under the MMBA, and a settlement is not achieved through impasse dispute resolution procedures authorized by applicable local rules, the employee organization may request the initiation of statutory factfinding procedures under the MMBA. If factfinding is requested, PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes 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. The office maintains case files, issues decisions rendered, and assists in the preparation of administrative records for litigation filed in California's appellate courts. The Appeals 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, as well as overseeing the preparation of the administrative record for litigation filed in California's appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order, or ruling, or to 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 superior court 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.

## **State Mediation and Conciliation Service**

SMCS' role within PERB is non-adjudicatory, except as provided in statute, and works to support PERB's mission through mediation, a form of alternative dispute resolution.

SMCS was created in 1947 and mediates under the provisions of all of the California public and quasi-public sector employment statutes, as well as the National Labor Relations Act. While SMCS has the ability to mediate in the private sector, it now only does so under certain exceptional circumstances, including statutory provisions at the state or local level, collective bargaining and local rules' language, and representation processes not performed by the Federal Mediation and Conciliation Service (FMCS). SMCS and the FMCS have informally agreed to divide the work between the public and private sectors for more than two decades, as the work has become more complex, requiring specialization, and resources in both agencies have been an issue.

The mediation and representation services provided by the SMCS division of PERB are not to be confused with those provided by PERB's Office of the General Counsel. SMCS' work is performed strictly on the basis of mutual consent, except as required by statute, such as the Public Utilities Code. Mediation is confidential and non-adjudicatory, with emphases on compromise and collaboration toward settlement. SMCS welcomes opportunities to speak with labor and management organizations and communities to provide information about the benefits of harmony in labor/management relationships through the effective use of mediation in their disputes.

Core functions involve work that is performed at no charge to the parties, including:

- Mediation to end strikes and other severe job actions;
- Mediation of initial and successor collective bargaining agreement disputes;
- Mediation of grievances arising from alleged violations of collective bargaining agreements and other local rules;
- Mediation of discipline appeals;
- Supervision of elections for representation, whether for bargaining units that are unrepresented, or for the decertification/certification of labor organizations, and others.

Other services are also available. These include:

- Training and facilitation in interest-based bargaining, implementing effective joint labor-management committees, and resolving conflict in the workplace;
- Specialized training as requested by the parties or ordered by settlement, in various aspects of public sector collective bargaining; and
- Assistance with internal union/employee organization elections or processes, or similar activities for labor or management that are not joint endeavors.

SMCS also administers a panel of independent arbitrators who are screened for qualifications and experience before being accepted to the panel. Lists of arbitrators can be provided for a fee, with no restrictions on whether or not the dispute is in the public or private sectors.

## **Administrative Operations**

The Division of Administration provides services to support PERB operations and its employees. This includes strategic policy development, administration, and communication with the State's control agencies to ensure operations are compliant with State and Federal requirements. A full range of services are provided for both annual planning/reporting cycles and ongoing operations in fiscal, human resources, technology, facility, procurement, audits, security, and business services areas.

## **Other Functions**

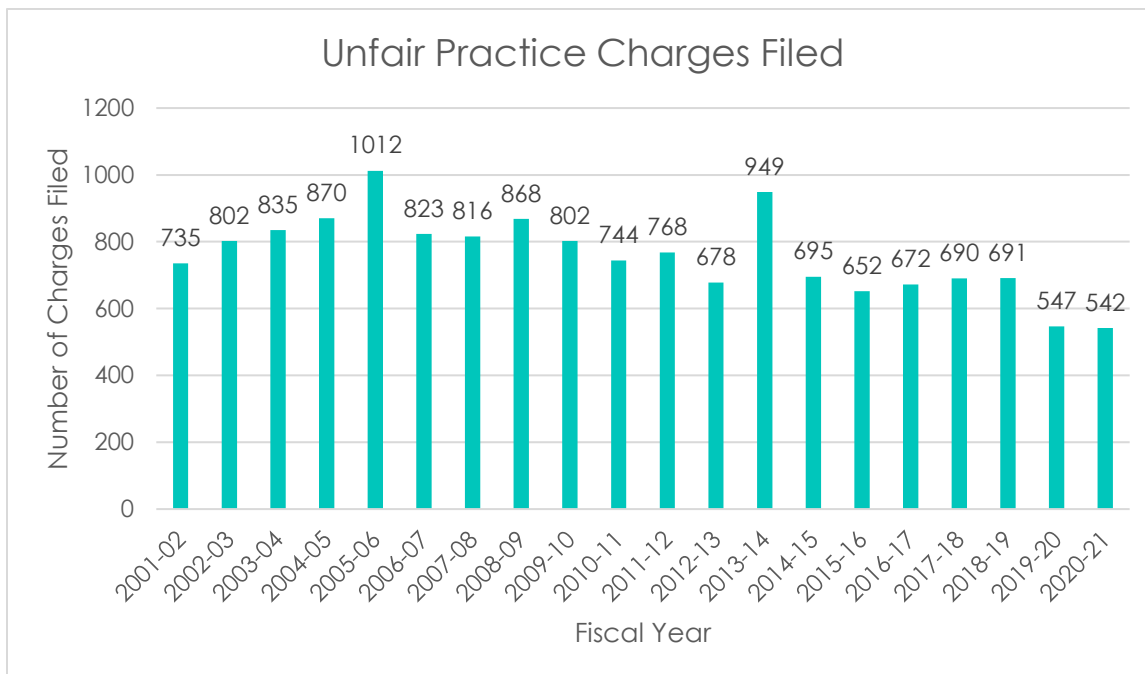
As California's expert administrative agency in the area of public sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations, and formal decisions. Additionally, PERB continuously reviews proposed legislation and promulgates regulations to effectively adapt to changing statutory and environmental impacts. Information requests from the Legislature and the general public are also received and processed.



# CASE DISPOSITIONS

## Unfair Practice Charge Filings

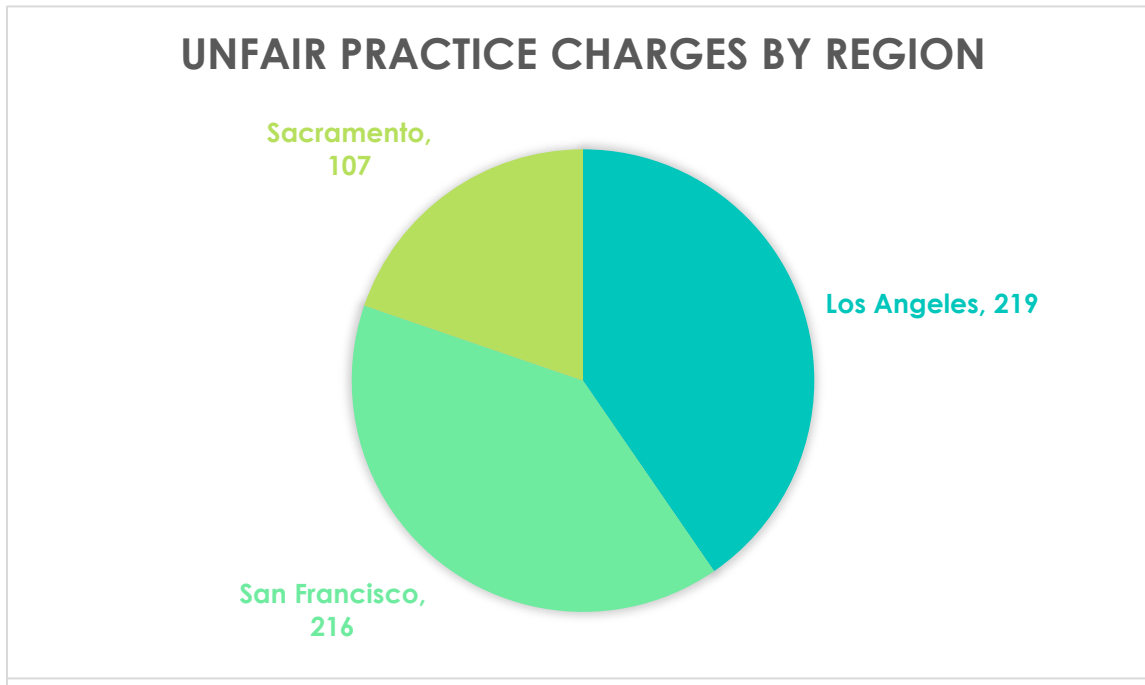
The number of unfair practice charges (UPC) filed with PERB has stabilized over the past four years; however, the workload remains sizeable as a result of various statutory expansions to PERB’s jurisdiction over the last two decades. In Fiscal Year 2020-2021, parties filed 542 new charges with PERB. UPC filings over the past 20 years are shown below, which includes the following adjustments: in Fiscal Year 2001-02, 935 UPC filings were reduced by 200 due to a similar set of filings; and, in Fiscal Year 2004-05, 1,126 filings were reduced by 256 due to similar charges filed by one group of employees. The spike in Fiscal Year 2013-14 was due to 173 filings by the same individual on behalf of himself and/or other employees.



Over the past five years, there have been an average of 628 charges filed annually. This represents a drop of 132 charges from the 20-year annual average of 760 charges, largely affected by the reduction of the last two fiscal years resulting from COVID-19.

Of the 542 UPC filings in Fiscal Year 2020-2021, wide variation existed in the numbers filed under the various statutory acts and violations of the PECC. EERA and the MMBA continued to see the most charges filed, as can be seen in the Unfair Practice Charges by Act table below.

Regionally, of the 542 UPC filings for Fiscal Year 2020-2021, the Los Angeles Regional Office received the most charges (219), the San Francisco Regional Office followed closely behind (216), and the Sacramento Regional Office again received roughly one in every five charges (107).



### Unfair Practice Charge Statistics

#### 1. 2020 – 2021 Unfair Practice Charges by Region

Region	Total UPCs
Sacramento	107
San Francisco	216
Los Angeles	219
<b>Total</b>	<b>542</b>

#### 2. 2020 – 2021 Unfair Practice Charges by Act

Act	Total UPCs
Dills Act	43
EERA	200
HEERA	66
MMBA	202
TEERA	3
Trial Court Act	9
Court Interpreter Act	7
Childcare Act	0
Judicial Council Act	0
OCTDA	0
BART	0
Non-Jurisdictional	12
<b>Total</b>	<b>542</b>

### 3. Five Year Workload Comparison: Charges Filed by Fiscal Year

2016 – 2017	2017 – 2018	2018 - 2019	2019 – 2020	2020-2021	5 Year Average
672	690	691	547	542	628

### 4. Dispositions by Region

	Withdrawal	Dismissal	Complaint	Complaint/ Partial Dismissal	Complaint/ Partial Withdrawal	Total
<b>Sacramento</b>	41	17	69	3	5	<b>135</b>
<b>San Francisco</b>	74	48	123	6	9	<b>260</b>
<b>Los Angeles</b>	60	40	113	6	17	<b>236</b>
<b>Total</b>	<b>175</b>	<b>105</b>	<b>305</b>	<b>15</b>	<b>31</b>	<b>631</b>

## 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 the investigative step in Fiscal Year 2020 – 2021, the parties withdrew 175 cases entirely and 31 partially (about 59 percent of 349 complaints issued), many through a PERB Informal Settlement Conference.

PERB’s continued success in mediating voluntary settlements is attributable, in part, to the tremendous skill and efforts of its Regional Attorneys. It also requires commitment by the parties to look for solutions to often complex problems. As the efforts by PERB staff demonstrate, voluntary settlements are the most efficient and timely way of resolving disputes, as well as an opportunity for the parties to improve their collective bargaining relationships. PERB looks forward to continuing its commitment to voluntary dispute resolution.

Overall, of the 631 charge dispositions in Fiscal Year 2020 – 2021, 303 had complaints issued, 175 had charges withdrawn, and 105 were dismissed. In addition, 15 had complaints issued with a partial dismissal and 31 had complaints issued with a partial withdrawal.

The Dispositions by Region table above provides regional data for the 631 UPC dispositions in Fiscal Year 2020 – 2021. The San Francisco Regional Office was responsible for about 42 percent of case dispositions; the Los Angeles Regional Office was responsible for about 37 percent of case dispositions; and the Sacramento Regional Office for about 21 percent case dispositions.

## Administrative Adjudication

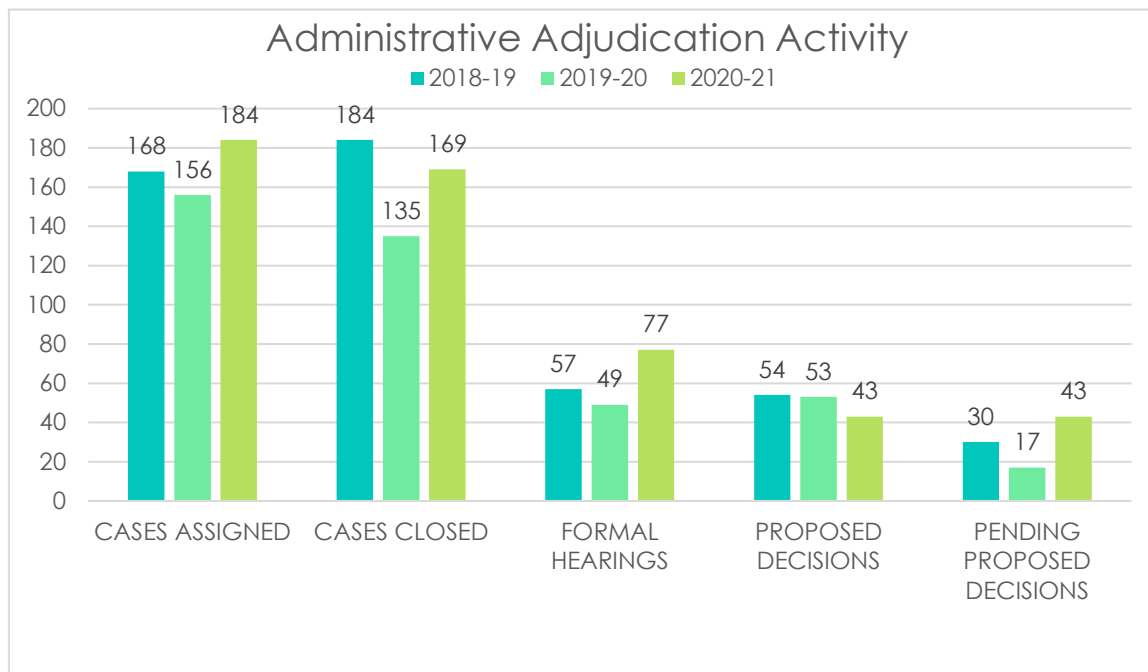
Complaints that are not resolved through mediation are sent to the Division of Administrative Law for an evidentiary hearing (formal hearing) before an Administrative Law Judge (ALJ).

In Fiscal Year 2020 – 2021, the Division had between 9.5 and 10.5 ALJs conducting formal hearings and writing proposed decisions. The ALJs' production of proposed decisions issued in Fiscal Year 2020 – 2021 (43 proposed decisions) was slightly down from the prior year (54 proposed decisions). The average time it took to issue a proposed decision rose slightly from 117 days in 2019 – 2020 to 141 days in 2020 – 2021.

The number of formal hearings completed increased this year to 77, up from 49 the year prior. The increase in the number of formal hearings completed was driven by the use of virtual formal hearings, allowing for a dramatic increase in the number of hearings held despite COVID-19 related challenges. In Fiscal Year 2020 – 2021, the Division ended with 43 pending proposed decisions to write, compared to 17 pending at the end of Fiscal Year 2019 – 2020.

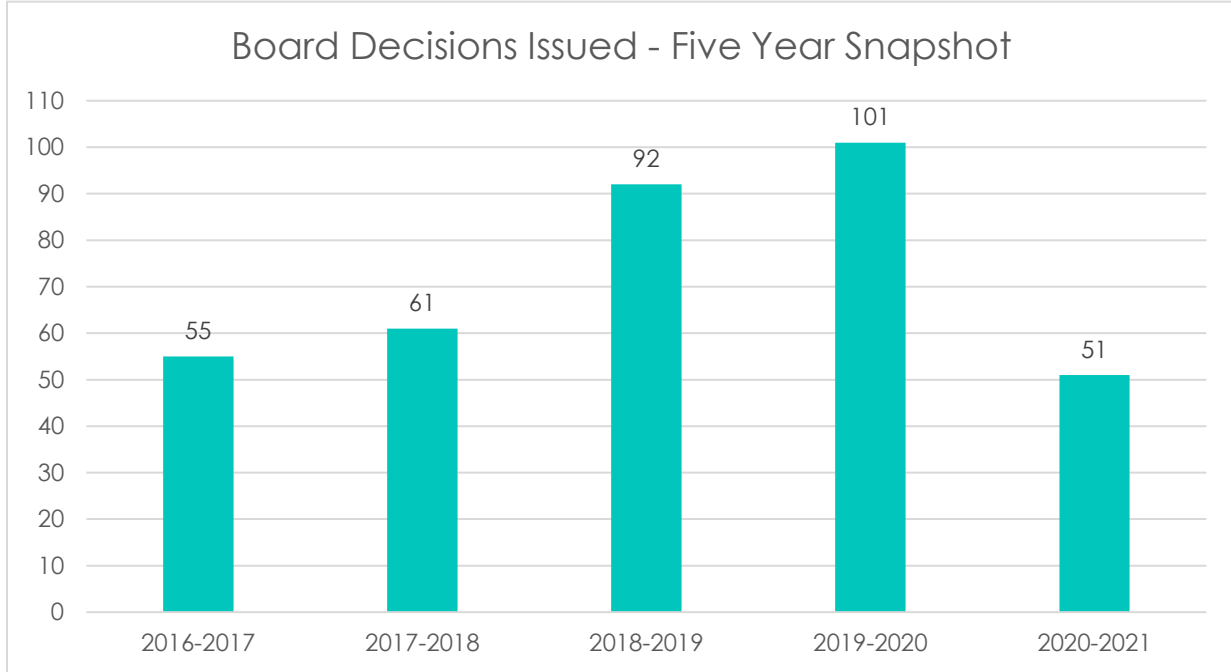
The total number of cases assigned in Fiscal Year 2020 – 2021 was 184 cases, while the ALJs closed 169 cases, compared to 156 cases assigned and 135 closed in Fiscal Year 2019 – 2020.

Regionally speaking, the Oakland Office in 2020-2021 had the highest percentage of formal hearings completed, a departure from previous years, when the Glendale Office had the highest percentage of hearing activity. In Fiscal Year 2020 – 2021, Oakland conducted 39 percent of PERB's completed formal hearings, with Glendale at 32 percent and Sacramento at 29 percent.

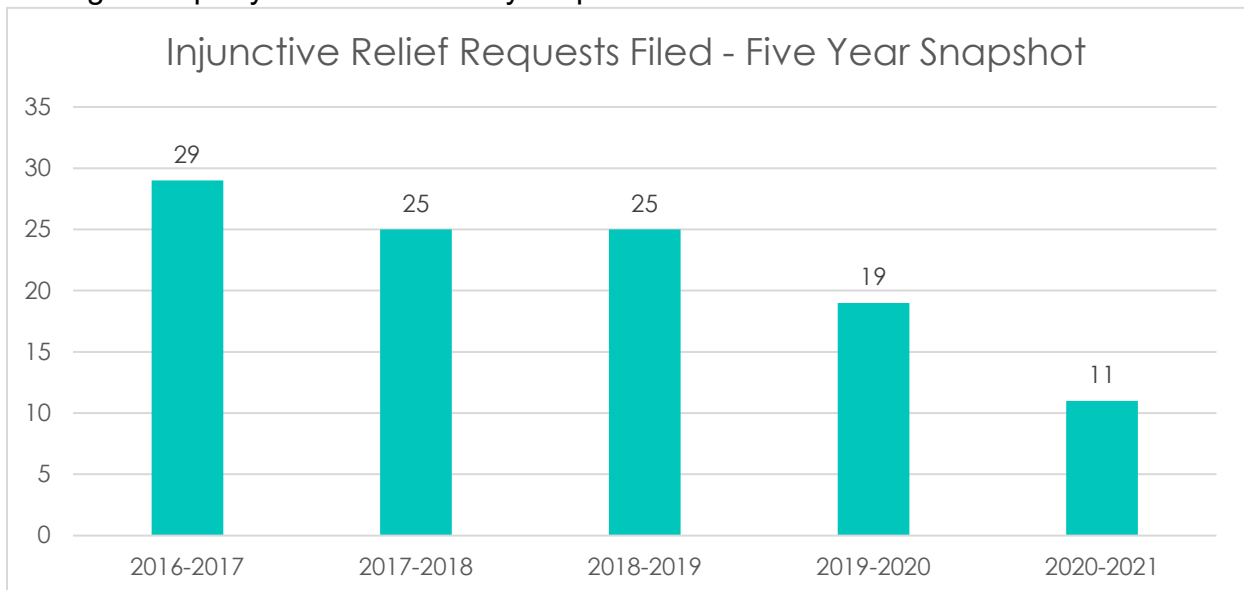


## Board Decisions

Proposed decisions, charge dismissals, and administrative determinations issued by Board agents may be appealed to the Board itself. During Fiscal Year 2020 – 2021, the Board issued 51 decisions as compared to 101 during Fiscal Year 2019 – 2020 and an average of 72 over the past five years.

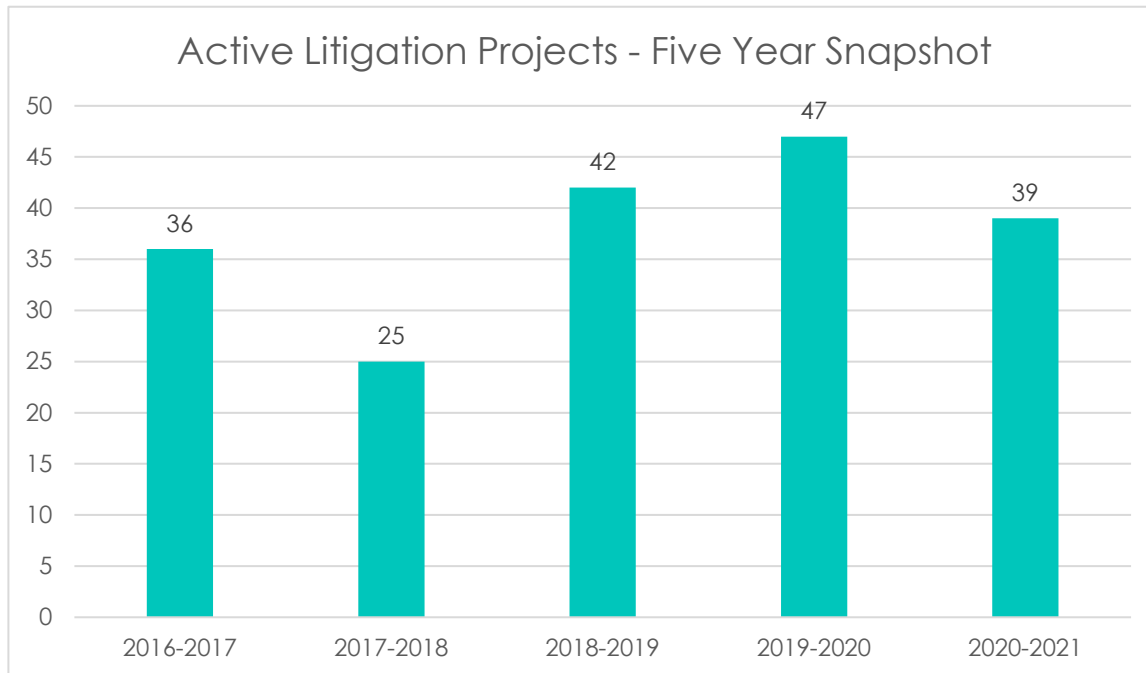


The Board also considered 11 requests for injunctive relief in Fiscal Year 2020 – 2021, compared to 19 in Fiscal Year 2019 – 2020. Injunctive relief requests filed over the past five fiscal years and investigated by the General Counsel are shown below and averaged 22 per year over the five-year period.



## Litigation

PERB's litigation projects<sup>1</sup> decreased slightly in Fiscal Year 2020 – 2021. PERB's Regional Attorneys completed 132 litigation-related projects (compared to 141 litigation projects last fiscal year). The number of active litigation cases in Fiscal Year 2020 – 2021 also decreased slightly. A total of 42 litigation cases, including new and continuing matters, were handled during the 2020 – 2021 Fiscal Year (compared to 47 last year, and 42 the year before). A listing of these cases is included in the Appendices, beginning on page 33.



## Representation Activity

PERB received 91 new representation petitions in Fiscal Year 2020 - 2021, compared to 71 in the prior Fiscal Year. As shown below, the total number of petitions for Fiscal Year 2020 - 2021 includes: 43 unit modification petitions, 29 recognition petitions, 11 decertification petitions, 4 requests for amendment of certification, 1 petition for certification, and 3 severance requests.

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

Election activity decreased slightly, with 2 elections conducted by PERB in Fiscal Year 2020 – 2021, and 3 elections in the prior Fiscal Year. Both elections in Fiscal Year 2020 – 2021 were for decertification petitions. Nearly 516 employees were eligible to participate in these elections, with 275 employees in the largest bargaining unit and 241 in the smallest.

### Representation Case Filing Activity

1. Representation Related Case Filings (This table differs from prior years due to the removal of case types unrelated to representation.)

Case Type	Number Filed
Request for Recognition	29
Severance Petition	3
Petition for Certification	1
Decertification	11
Amended Certification	4
Unit Modification	43
<b>Totals</b>	<b>91</b>

2. Representation Related Cases Filed by Fiscal Year (this table has been updated to reflect the changes referenced above and prior year totals have also been adjusted to reflect this change).

2016 – 2017	2017 – 2018	2018 – 2019	2019 – 2020	2020 – 2021	5 Year Average
120	110	89	71	91	<b>96</b>

3. Elections Conducted in Fiscal Year 2020 – 2021 by Type

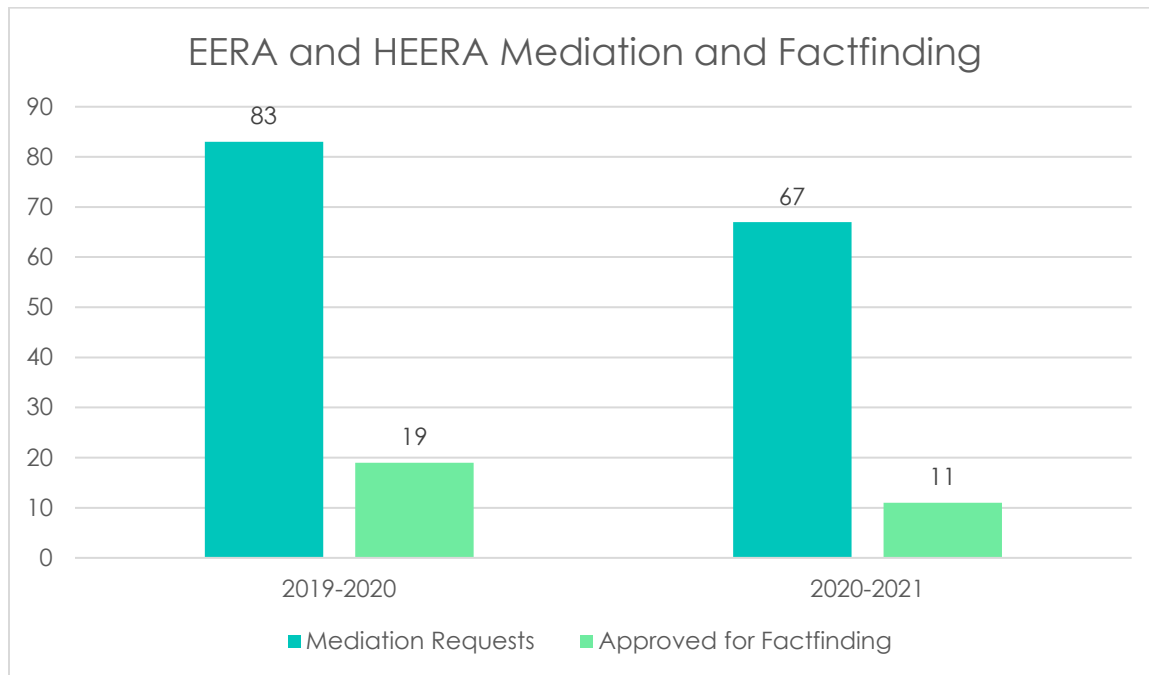
Election Type	Number Conducted
Amendment of Certification	0
Decertification	2
Representation	0
Severance	0
Unit Modification	0

4. Decertification Elections in Fiscal Year 2020 – 2021

Case Number	Employer	Unit Type	Winner	Unit Size
SF-DP-342-M	Alameda Health System	Management and Confidential	Alameda County Management Employees Association	275
SA-DP-276-E	Sierra Joint Community College District	Wall Classified	United Public Employees of California, Local 792	241

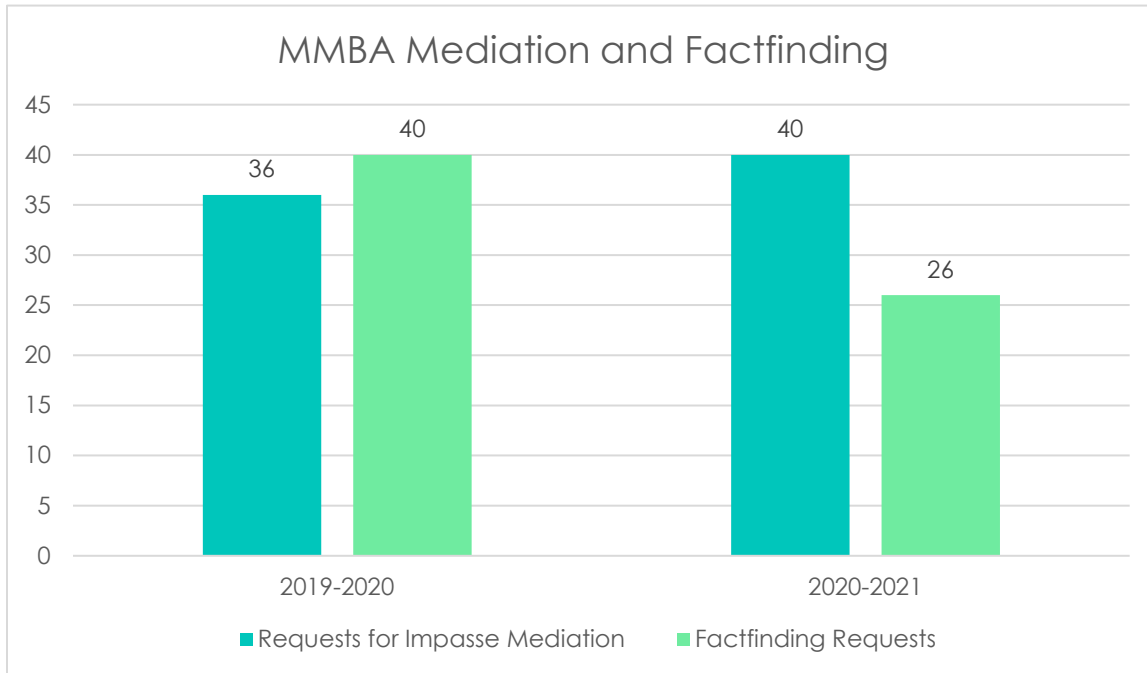
**Mediation/Factfinding/Arbitration**

During Fiscal Year 2020 – 2021, PERB received 67 impasse mediation requests under EERA and HEERA. The number of mediation requests under EERA and HEERA decreased from the prior year (83 such requests were filed in Fiscal Year 2019 – 2020). Subsequently, 55 of those requests were approved for mediation, and 11 of those impasse cases (20 percent) were approved for factfinding.



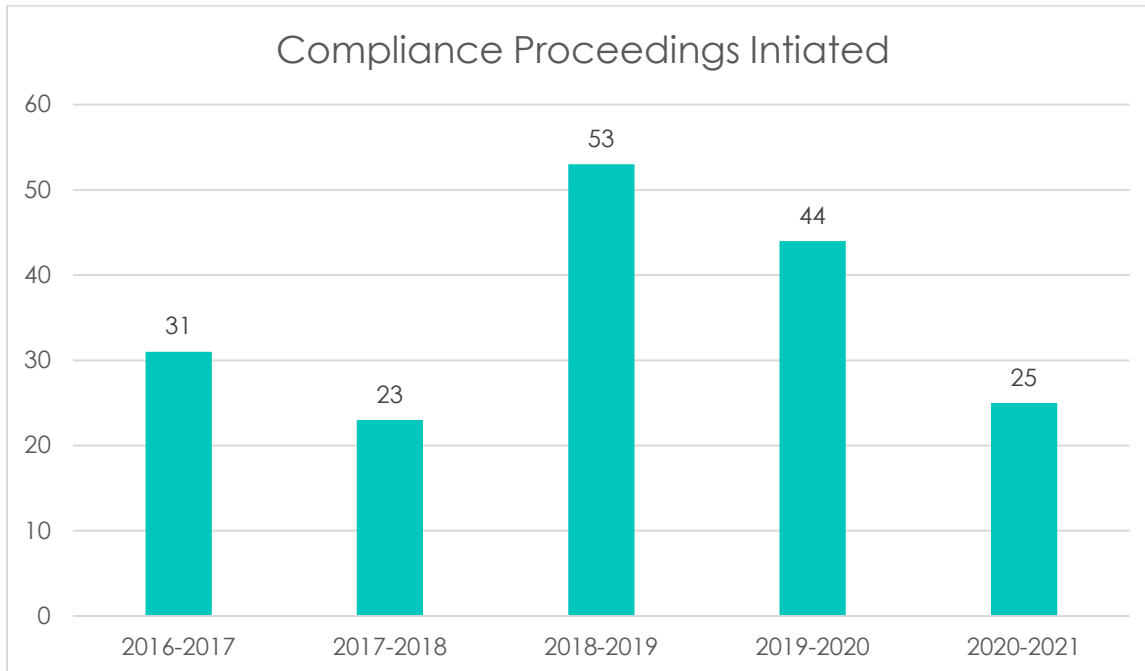


During this same period, 26 factfinding requests and 40 requests for impasse mediation were filed under the MMBA. MMBA impasse mediation requests are filed directly with SMCS and do not require certification prior to mediation. Mediation is not usually a required step in the MMBA impasse process, so many cases proceed directly to factfinding. MMBA impasses not resolved in mediation may go to factfinding pursuant to the provisions set forth in the statute and are at the discretion of the employee organization.



## COMPLIANCE

In Fiscal Year 2020 – 2021, PERB initiated compliance proceedings in 25 unfair practice cases in which a final decision resulted in a finding of a violation of the applicable statute. This is a decrease in compliance activity over the prior year (44 compliance proceedings were initiated in Fiscal Year 2019 – 2020) and below the five-year average of 35.



## State Mediation and Conciliation Service Case Dispositions

The Division of State Mediation and Conciliation Service (SMCS) received a total of 387 new cases in Fiscal Year 2020 – 2021 and closed 384. The tables below provide information on SMCS’s activities in Fiscal Year 2020 – 2021:

<b>Contract Impasses and Other Contract Mediations</b>	
EERA and HEERA	70
MMBA	40
Transit	2
State Trial Courts	6
State of California	0
Los Angeles City and County	0

<b>Grievances and Disciplinary Appeals</b>	
EERA and HEERA	122
MMBA	56
Transit	1
State Trial Courts	1
Los Angeles City and County	3
Private Sector (PUC, Other SMCS Specified)	25

<b>Other</b>	
Representation and Election Cases	23
Workplace Conflict or Training and Facilitation Assignments	25
Miscellaneous Cases Related to Education, Outreach, and Internal Mediation or Program Administration Projects	13
Requests for Lists of Arbitrators from Panel of Independent Arbitrators	291

## LEGISLATION

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PERB monitors legislation concerning labor relations statutes under PERB's jurisdiction. In Fiscal Year 2020-2021, one bill made it through the legislative process and was signed into law by Governor Newsom.

### ***Assembly Bill 2850 (Chapter 293, Statutes of 2020)***

On September 29, 2020, Governor Newsom signed Assembly Bill 2850. AB 2850 amended and added to the Public Utilities Code sections governing the San Francisco Bay Area Rapid Transit District (BART). The bill gave PERB jurisdiction over disputes relating to employer-employee relations between BART and its employees.

## RULEMAKING

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PERB initiated and continued work on several rulemaking packages in Fiscal Year 2020 – 2021, some of which will become final in Fiscal Year 2021 – 2022. The Board initiates the rulemaking packages in response to legislative changes, judicial decisions, PERB’s Case Processing Efficiencies Initiative, or the need to update obsolete rules. Listed below are the various rulemaking packages the Board authorized the Office of the General Counsel to develop:

**Judicial Council Employer-Employee Relations Act (JCEERA).** PERB initiated rulemaking to fully implement JCEERA, which authorizes specified employees of the Judicial Council to unionize. JCEERA was enacted through Assembly Bill 83 (Chapter 835, Statutes of 2017). This rulemaking package is expected to be completed in the 2021 - 2022 fiscal year.

**ePERB and General Filing Requirements.** PERB completed rulemaking to address PERB’s new e-file system (ePERB) and to revise existing regulations that govern filings in general. These regulations went into effect in February of 2021.

**Continuances, Exceptions, Recusals, Subpoenas, SMCS.** As part of implementing Case Processing Efficiency Initiative recommendations, PERB continued work on a combined rulemaking package to update the Board’s rules that govern the circumstances requiring Board members and PERB employees to recuse themselves from proceedings, the filing of exceptions to Proposed Decisions, the use of subpoenas and motions in formal hearings, standards for obtaining continuances of a formal hearing, and more. Work on this rulemaking package is expected to be complete in 2021.

**Transit Regulations.** PERB initiated rulemaking to revise and update existing regulations covering transit jurisdictions. Work on this rulemaking package is expected to continue in 2021-2022.

## APPENDICES

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### Administrative Leadership

**Joshua Golka** was appointed Executive Director by the Board in October 2018. Prior to joining PERB, Mr. Golka was previously the California Legislative Affairs Manager for the American Federation of State, County, and Municipal Employees, where he led the organization's state legislative and budgetary strategy. He brings over fifteen years of experience providing political, legislative, and budgetary analysis and representation before the California legislature, state departments, boards and commissions, coalition groups and the media. He is a graduate of University of Pacific, McGeorge School of Law and holds a Master of Business Administration from Indiana University, Kelley School of Business, as well as a Master of Global Management from Thunderbird School of Global Management.

**J. Felix De La Torre** was appointed General Counsel in February 2015. Prior to his appointment, Mr. De La Torre served as Chief Counsel for Service Employees International Union, Local 1000, where he worked from 2008 to 2015. From 2000 to 2008, Mr. De La Torre was a partner and shareholder at [Van Bourg], Weinberg, Roger and Rosenfeld, where he represented both public and private sector employees in a wide range of labor and employment matters, including federal and state court litigation, labor arbitrations, collective bargaining, union elections, unfair labor practices, and administrative hearings. Mr. De La Torre also served as a member of the Board of Directors for the AFL-CIO Lawyers Coordinating Committee and the Sacramento Center for Workers Rights. In addition, Mr. De La Torre was a Staff Attorney and Program Director at the California Rural Legal Assistance Foundation (CRLAF) and, before that, the State Policy Analyst for the Mexican American Legal Defense and Educational Fund (MALDEF). Mr. De La Torre was also an Instructor at the UC Davis Extension in the Labor Management Certificate Program. Mr. De La Torre is a 1999 graduate of UC Davis' King Hall School of Law.

**Wendi L. Ross**, Deputy General Counsel [Acting General Counsel (May 2014 – February 2015); Interim General Counsel (December 2010 – April 2011)], joined PERB in April 2007 and has more than 30 years of experience practicing labor and employment law. Ms. Ross was previously employed by the State of California, Department of Human Resources as a Labor Relations Counsel. Prior to that position, she was employed as an Associate Attorney with the law firms of Pinnell & Kingsley and Thierman, Cook, Brown & Prager. Ms. Ross received her Bachelor of Arts degree in Political Science-Public Service from U.C. Davis and her law degree from UOP, McGeorge School of Law. She has served as the Chair of the Sacramento County Bar

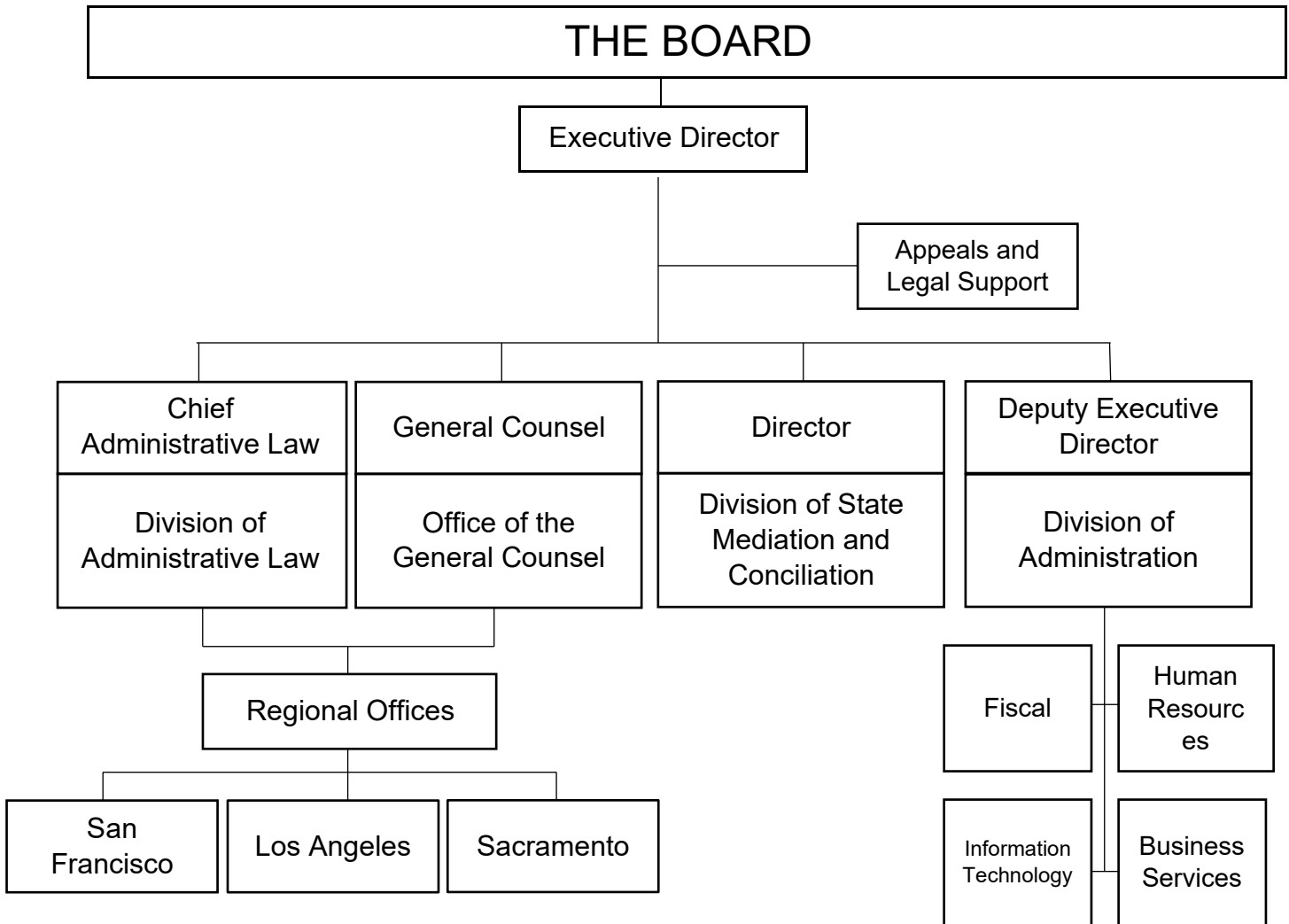
Association, Labor and Employment Law Section and previously taught an arbitration course through the UC Davis Extension.

**Shawn P. Cloughesy** is the Chief Administrative Law Judge for PERB. He has over 25 years' experience as an Administrative Law Judge with two state agencies (PERB and the State Personnel Board) conducting hundreds of hearings involving public sector labor and employment matters. Prior to being employed as an administrative law judge, Mr. Cloughesy was a Supervising Attorney for the California Correctional Peace Officers Association, practicing and supervising attorneys who practiced before PERB and other agencies.

**Gerald Fecher** is the Director of the State Mediation and Conciliation Service Division. Mr. Fecher joined SMCS in 2009 when it was a part of the Department of Industrial Relations. He served as a Presiding Mediator for SMCS from 2013 to 2020 before becoming Interim Director in 2020. Prior to SMCS, he was a business representative with the International Brotherhood of Electrical Workers, Local 465, in San Diego from 1997 to 2009. Fecher holds a Juris Doctor degree from Temple University Beasley School of Law, and during his law school tenure, interned at the National Labor Relations Board Region 21 Resident Office, in San Diego. He has served twice as President of the San Diego Chapter of the Labor and Employment Relations Association (LERA).

**Susan Davey** was hired as the Deputy Executive Director in March 2020. Previously, Ms. Davey was a Labor Relations Manager II at the State Compensation Insurance Fund and, before that, she worked at the California Department of Public Health as a Labor Relations Manager I. She has worked in state civil service since 2005 serving in various administrative roles for the Department of State Hospitals, including as the Hospital Administrative Resident and Accounting Administrator. Ms. Davey earned her law degree from San Joaquin College of Law in 2014 and holds Masters Degrees in Business Leadership Studies and Peacemaking and Conflict Studies. She has a certificate in Labor-Management Relations from the U.C. Davis Extension, as well as a certificate in Workplace Mediation from Fresno Pacific University.

# Organizational Chart





## 2020 – 2021 Litigation Activity

1. *PERB v. Alliance College-Ready Public Charter Schools, et al.; United Teachers Los Angeles*, Filed: October 23, 2015, Los Angeles Sup. Ct. Case No. BC 598881; IR Request No. 686 [PERB Case Nos. LA-CE-6025-E, LA-CE-6027-E, LA-CE-6061-E, LA-CE-6073-E] Issue: Whether Alliance should be enjoined from engaging in activity that may ultimately be considered unlawful interference with UTLA's organizing efforts. (Injunction dissolved 8/30/2020.)
2. *PERB v. Bellflower Unified School District; California School Employees Association, Chapter 32*, Filed: March 6, 2018, California Court of Appeal, Second Appellate District, Division 3, Case No. B288594, PERB Decision Nos. 2385 & 2455 [PERB Case Nos. LA-CE-5508-E and LA-CE-5784-E] Issue: PERB instituted a court action to enforce orders issued by the Board in PERB Decision Nos. 2385 and 2455. (Enforcement achieved 4/5/2021.)
3. *PERB v. County of Riverside; SEIU Local 721*, Filed: May 18, 2018, Riverside County Superior Court, Case No. RIC1809250; IR Request No. 749 [PERB Case No. LA-CE-1306-M] Issue: Whether the test set forth in *Public Employment Relations Board v. Modesto City School District* (1982) 136 Cal.App.3d 88, which governs applications by PERB for injunctive relief, has been met in this case. (Dismissed as moot 8/11/2020.)
4. *State of California, Department of State Hospitals v. PERB; California Association of Psychiatric Technicians*, Filed: July 12, 2018, California Court of Appeal, 5th Appellate District, Case No. F077764; PERB Decision No. 2568-S [PERB Case No. SA-CE-2056-S] Issue: Whether PERB's decision that DSH violated the Dills Act by failing to provide the union with a requested list of employees who had received particular types of discipline was clearly erroneous, and whether PERB's order requiring DSH to provide such information constituted an abuse of discretion. (Board Decision affirmed 8/24/2021.)
5. *Public Employment Relations Board v. County of Riverside; SEIU Local 721*, Filed September 4, 2018, California Court of Appeal, Fourth Appellate District, Case No. D075941, Riverside County Superior Court, Case No. RIC 1809250, [PERB Case No. LA-CE-1306-M]. Issue: Whether the trial court erred when it granted the Preliminary Injunction against the County in Riverside, which enjoined the County from implementing its last, best, and final offer. (Dismissed as moot 8/11/2020.)
6. *California Virtual Academies v. PERB; California Teachers Association*, Filed: October 19, 2018, California Supreme Court, Case No. S262186; California Court of Appeal, Second Appellate District, Division 6, Case No. B293331; PERB Decision No. 2584 [PERB Case No. LA-CE-5974-E] Issue: Whether the Board abused its discretion, or otherwise committed reversible error, in its determination that California Virtual Academies unlawfully terminated employee Stacey Preach in retaliation for her protected activity. (Board Decision affirmed 1/11/2020.)

7. *State of CA, Department of Corrections and Rehabilitation v. Public Employment Relations Board; CA Association of Psychiatric Technicians*, Filed: December 26, 2018, California Court of Appeal, Third Appellate District, Case No. C088562; PERB Decision No. 2598-S [PERB Case No. SA-CE-2047-S]. Issue: Whether PERB Decision No. 2598-S, in which the Board held that an employee was entitled to union representation during an invasive physical search and other related issues, was issued in error. (active case.)
8. *Oroville Union High School District v. PERB; Oroville Secondary Teachers Association, CTA/NEA*, Filed: March 22, 2019, California Court of Appeal, Third Appellate District, Case No. C089108; PERB Decision No. 2627 [PERB Case No. SA-CE-2843-E]. Issue: Whether the Board erred when it concluded that the District violated EERA by using a categorical approach to union release time for collective bargaining, found that the District made an unlawful unilateral change when it designated the two bargaining team members' absences as Personal Necessity Leave. (Board Decision affirmed as modified by the court 8/20/2021.)
9. *Contra Costa County Fire Protection District v. PERB; United Chief Officers Association*, Filed: April 5, 2019, California Court of Appeal, First Appellate District, Division 2, Case No. A156897; PERB Decision No. 2632-M [PERB Case No. SF-CE-693-M]) Issue: Whether the Board erred when it concluded the District violated the MMBA by discriminating against the union and interfering with employee/union rights by refusing to provide represented employees with the same longevity benefit that it provided to unrepresented employees. (Board Decision affirmed 1/27/2021.)
10. *Regents of the University of California v. PERB; Union of Professional and Technical Employees-CWA, Local 9119*, Filed: June 28, 2019, California Court of Appeal, First Appellate District, Division 1, Case No. A157597; PERB Decision No. 2646-H, PERB Order No. Ad-453-H [PERB Case Nos. SF-CE-1211-H, SF-UM- 779-H) Issue: Whether the Board erred when it issued Order No. Ad-453-H, allowing UPTe to add non-represented employees to its existing bargaining unit without requiring proof of majority support, and whether the University's "technical refusal to bargain" in order to challenge the Order was an unfair practice. (Board Decision affirmed 6/25/2020.)
11. *County of Kern v. Public Employment Relations Board*, Filed: September 9, 2019, California Court of Appeal, Fifth Appellate District, Case No. F079908; PERB Decision No. 2659-M [PERB Case No. LA-CE-1084-M]). Issue: Whether the Board erred in holding that County of Kern & Kern County Hospital Authority unilaterally subcontracted bargaining unit work at clinics located in Suites 100 and 300 at 9300 Stockdale Highway, Bakersfield, California. Whether the Board erred and exceeded its jurisdiction by ordering a make whole remedy. (active.)
12. *State of California, Office of the Inspector General v. PERB; California Correctional Peace Officers Association*, Filed: September 12, 2019, California Court of Appeal, Third Appellate District, Case No. C090346; PERB Decision No. 2660-S [PERB Case No. SA-CE-2074-S]) Issue: Whether the Board committed clear error where it found that

OIG violated the Dills Act by failing to allow union representation during its employee investigatory interviews. (Board Decision affirmed 12/1/2020.)

13. *California Nurses Association v. PERB; County of Santa Clara, et al.*, Filed: October 18, 2019, California Court of Appeal, Sixth Appellate District, Case No. H047434; PERB Decision No. 2670-M [PERB Case No. SF-CE-1648-M] Issue: Whether the Board erred in concluding the County of Santa Clara did not violate the MMBA when it accreted nurses into its existing bargaining unit from two private hospitals it had acquired. (Board Decision affirmed 12/2/2020.)
14. *Rebecca Wu v. PERB; Twin Rivers United Educators*, Filed: December 30, 2019, Sacramento County Superior Court, Case No. 43-2019-80003289, [PERB Case No. SA-CO-618-E] Issue: Wu challenged the Board's decision sustaining the Regional Attorney's refusal to issue a complaint in her underlying unfair practice charge, which alleged that Twin River United Educators violated EERA by not representing her with respect to a misclassification issue. (active.)
15. *Salinas Valley Memorial Hospital District v. PERB: International Federation of Professional and Technical Engineers, Local 20 (Engineers & Scientists of California)(ESC)*, Filed: February 10, 2020, California Court of Appeal, Sixth Appellate District, Case No. H047857; PERB Decision No. 2689-M [PERB Case No. SF-CE-1620-M] Issue: Whether PERB's decision, ordering the Hospital to recognize ESC as the exclusive representative of a unit of Hospital employees, was clearly erroneous or not supported by substantial evidence. (Board Decision affirmed 6/10/2021.)
16. *Christopher B. Halvorson v. PERB; City of Santa Monica*, Filed: February 17, 2020, California Court of Appeal, Second Appellate District, Case No. B304299; PERB Decision No. 2635a-M [PERB Case No. LA-CE-925-M]) Issue: Whether the Board erred when it held that the City of Santa Monica's refusal to promote Halvorson was not retaliatory. (Board Decision affirmed 4/14/2021.)
17. *City & County of San Francisco v. PERB; Service Employees International Union Local 1021*, February 18, 2020, California Court of Appeal, First Appellate District, Case No. A159596; PERB Decision No. 2691-M [PERB Case No. SF-CE-1154-M]). Issue: Whether the Board erred by finding that the City and County of San Francisco unreasonably applied the provisions of its Charter relating to deadlines for submitting bargaining disputes to interest arbitration. (active.)
18. *Jeffrey I. Barke, et al. v. Banks, et al.*, Filed: February 21, 2020, US District Court, Central District of California, Case No. 8:20-cv-00358, Issue: Whether Government Code section 3550, prohibiting public agencies from deterring or discouraging public employees from becoming or remaining members of an employee organization, is unconstitutional as applied to plaintiffs, who are elected members of the governing boards of various public agencies. (active.)
19. *City of South Pasadena v. PERB; Owen Cliff Snider*, Filed: February 28, 2020, California Court of Appeal, Second Appellate District, Division 1, Case No. B304596;

PERB Decision No. 2692-M [PERB Case No. LA-CE-1180-M]) Issue: Whether the Board erred in holding the City of South Pasadena retaliated against employee Owen Cliff Snider by terminating him for engaging in protected conduct, which included serving as the union president and filing an unfair practice charge against the City. (Board Decision affirmed 6/16/2021.)

20. *Division 2 Court Interpreter Employment Relations Committee & California Superior Courts of Region 2 v. PERB; California Federation of Interpreters, Local 39000, The Newspaper Guild – Communication Workers of America*, Filed: April 14, 2020, California Court of Appeal, First Appellate District, Division 3, Case No. A159985; PERB Decision No. 2701-I [PERB Case No. SF-CE-11-I]). Issue: Whether the Board erred in finding that Region 2 had violated the Trial Court Interpreter Employment and Labor Relations Act by refusing to meet and confer regionally over the impact of changes by local trial courts to employee pension contributions, unilaterally changing employee pension contribution rates, refusing in successor contract negotiations to bargain over CFI’s proposals related to employee pension contribution increases, and repudiating collectively bargained grievance procedures. (active.)
21. *City of Glendale v. PERB; International Brotherhood of Electrical Workers, Local 18*, Filed: March 4, 2020, California Court of Appeal, Second Appellate District, Division Seven, Case No. B304702, PERB Decision No. 2694-M [PERB Case No. LA-CE-805-M] Issue: The City’s petition raises several questions concerning a party’s obligation to bargain post-impasse where changed circumstances may be present. (Board Decision affirmed 9/15/2021.)
22. *County of San Joaquin v. Service Employees International Union, Local 1021; PERB*, Filed: March 6, 2020, San Joaquin County Superior Court, Case No. STK-CV-UCC-2020-3081 [PERB Case No. SA-CO-154-M] Issue: Whether SEIU Local 1021 violated the MMBA by refusing to provide advance notice of a strike that includes essential employees? (withdrawn 11/20/2020)
23. *Regents of the University of California v. PERB; Manuel Saldivar and Victor Flores*, Filed: May 14, 2020, California Court of Appeal, Second Appellate District, Division 8, Case No. B305934; PERB Decision No. 2704-H [PERB Case Nos. LA-CE-1291-H and LA-CE-1292-H]). Issue: Did the Board err in PERB Decision No. 2704, wherein the Board held that UC violated HEERA when it engaged in retaliation by terminating employees Manuel Saldivar and Victor Flores. (Board Decision affirmed 8/18/2021.)
24. *California Virtual Academies v. PERB; California Teachers Association*, Filed: May 15, 2020, California Supreme Court Case No. S262186; California Court of Appeal, Second Appellate District Division 6, Case No. B293331; PERB Decision No. 2584 [PERB Case No. LA-CE-5974-E]) Issue: Whether the Board’s finding that sufficiently close timing existed to support the inference that CAVA had an unlawful motive for investigating and terminating employee Preach, and excluding evidence gathered in a retaliatory investigation from being used to rebut a prima facie retaliation case, warrants review in order to secure uniformity of decision or settle an important question of law. (Board

Decision affirmed 1/11/2021.)

25. *Latanja Chambers v. PERB; Berkeley USD*, California Court of Appeal, Filed: May 18, 2020, First Appellate District, Division 1, Case No. A160159; PERB Decision No. 2710 [PERB Case No. SF-CE-3141-E]). Issue: Whether the Board erred in holding that the Berkeley Unified School District (District) did not retaliate against Latanja Chambers by terminating her because the District established its affirmative defense that it would have taken the same actions even absent protected activity. (active.)
26. *Brian Crowell v. PERB; Berkeley Federation of Teachers, Local 1078*, Filed: May 29, 2020, California Court of Appeal, First Appellate District, Division 2, Case No. A160211; PERB Decision No. 2720 [PERB Case No. SF-CO-828-E]) Issue: Whether the Board erred when it found the school district did not retaliate against Crowell for his exercise of protected activities. (Board Decision affirmed 2/16/2021.)
27. *Alliance College Ready Public Schools, et al. v. PERB; UTLA*, Filed: June 17, 2020, California Court of Appeal, Second Appellate District, Division 4, Case No. B306330; PERB Decision No. 2716 [PERB Case Nos. LA-CE-6061-E and LA-CE-6073-E]). Issue: Whether the Board erred when it found Alliance violated EERA when (1) its charter management organization, acting as an agent of the respondent schools, failed to meet and discuss a neutrality agreement with UTLA; and (2) one of the charter schools interfered with employees' protected rights and unlawfully polled employees when it hosted an anti-union petition on its website. (active.)
28. *Alliance Environmental Science and Technology High School, et al. v. PERB; UTLA*, Filed: June 17, 2020, California Court of Appeal, Second Appellate District, Division 4, Case No. B306332; PERB Decision No. 2717 [PERB Case Nos. LA-CE-6204-E and LA-CE-6165-E]). Issue: Whether the Board erred when it found Alliance violated EERA and interfered with protected rights by 1) summoning law enforcement to eject an employee and union organizer from distributing union literature on a school campus; 2) failing to meet and discuss a new teacher evaluation program with UTLA; 3) indirectly threatening employees with job losses if they unionize; and 4) directing an employee and a UTLA organizer who were engaged in protected activities to leave a school site. (active.)
29. *Lodi Unified School District v. PERB: CSEA, Ch. 77*, Filed: June 24, 2020, California Court of Appeal, Third Appellate District, Case No. C092106; PERB Decision No. 2723 [PERB Case No. SA-CE-2852-E]) Issue: Whether the Board erred when it interpreted the parties' collective bargaining agreement to prevent the District from forcing employees to take vacation in order to avoid cashing out excess vacation hours. (Petition withdrawn 10/16/2020.)
30. *Linnette Robinson v. PERB; Berkeley Unified School District*, Filed: August 27, 2020, California Court of Appeal, First Appellate District, Division Three, Case No. A160807, PERB Decision No. 2711 and 2711(a) [PERB Case No. SF-CE-3192-E] Issue: Whether there is substantial evidence to support the Board's affirmed dismissal of the complaint alleging the Berkeley Unified School District violated EERA by issuing

Robinson a letter of reprimand for her allegedly protected activity. (Board decision affirmed 12/16/2020.)

31. *Rebecca Wu v. PERB; Twin Rivers United Educators*, Filed: September 11, 2020, California Court of Appeal, Third Appellate District, Case No. C092640, [PERB Case No. SA-CO-618-E] Issue: Whether the Superior Court properly sustained Twin Rivers United Educator's demurrer. (active)
32. *California Virtual Academies v. PERB; California Teachers Association*, Filed: September 22, 2020, US Supreme Court, Case No. 20-617; PERB Decision No. 2584 [PERB Case No. LA-CE-5974-E] Issue: Whether PERB's legal standard for a prima facie retaliation case under EERA and the burden-shifting framework where an employer's justification for taking adverse action is considered as an affirmative defense, contradicts US Supreme Court precedent set forth in *Wright Line, A Div. of Wright Line, Inc.* (1980) 251 NLRB 1083, interpreting the NLRB at 29 U.S.C. 158(a)(3). Whether PERB's application of this legal standard violates CAVA's right to due process of the law. (Board decision affirmed 1/11/2021)
33. *Patricia L. Woods v. PERB, et al.*, Filed: October 14, 2020, US Supreme Court, Case No. 20-484; PERB Decision No. 2136 [PERB Case No. SA-CE-1640-S] Issues: Whether the Ninth Circuit erred when it denied Woods' appeal of a decision by California's Eastern District dismissing her civil rights lawsuit against PERB and two of its employees. (Dismissed.)
34. *Jeffrey I. Barke, et al. v. Banks, et al.*, Filed: October 16, 2020, US Court of Appeals for the Ninth Circuit, Case No. 20-56075, Issue: Whether the district court erred by dismissing without leave to amend a complaint alleging that Government Code section 3550 violates the free speech rights of local agency governing board members. (active.)
35. *Contra Costa County Fire Protection District v. PERB; United Chief Officers Association*, Filed: November 19, 2020, California Supreme Court, Case No. S265657, PERB Decision No. 2632-M [PERB Case No. SF-CE-693-M] Issue: Whether the Board's finding that the District discriminated against and interfered with represented bargaining unit members by its actions of reserving a retirement benefit exclusively for non-represented employees warrants: (1) review in order to settle an important question of law or (2) the case to be transferred back to the Court of Appeal, First Appellate District for further proceedings. (Board Decision affirmed 1/27/2021.)
36. *State of California (Office of the Inspector General) v. PERB; California Correctional Peace Officers Association*, Filed: November 25, 2020, California Supreme Court, Case No. S265801; PERB Decision No. 2660-S [PERB Case No. SA-CE-2074-S]) Issue: Whether OIG established ground for relief from default, where it seeks to file a Petition for Review 13 days after the filing deadline passed. (Board Decision affirmed 12/1/2020.)
37. *City of San Gabriel v. Public Employment Relations Board; San Gabriel Fire Fighters Association*, Filed: January 12, 2021, California Court of Appeal, Second Appellate

District, Division Eight, Case No. B309843, PERB Decision No. 2751-M [PERB Case No. LA-CE-1297-M] Issue: Whether the Board erred by: (1) finding that the City of San Gabriel violated the MMBA by failing to bargain in good faith over a successor memorandum of understanding; and (2) issuing an order for the City to reinstate a previously withdrawn bargaining proposal. (active.)

38. *Christopher B. Halvorson v. PERB; City of Santa Monica*, Filed: March 8, 2021, California Supreme Court, Case No. S267500; PERB Decision No. 2635a-M [PERB Case No. LA-CE-925-M] Issue: Petition for review challenging Court of Appeal's summary dismissal of writ on claims PERB's decision conflicts with judicial decisions upholding civil service merit rules and that the Board's findings are not supported by substantial evidence. (Board Decision affirmed 4/14/2021.)
39. *United Teachers Los Angeles v. Superior Court of California, County of Los Angeles; Keshara Shaw, et al.*, Filed: March 23, 2021, California Court of Appeal, Second Appellate District, Division 4, Case No. B311231, [PERB Case No. LA-LT-5-E] Issue: Whether UTLA and LAUSD should be required to produce internal, confidential bargaining communications to plaintiffs in the underlying class action lawsuit. (court granted PERB's amicus curiae brief)
40. *City of South Pasadena v. PERB; Owen Cliff Snider*, Filed: April 7, 2021, California Supreme Court, Case No. S268086, PERB Decision No. 2692-M [PERB Case No. LA-CE-1180-M] Issue: Whether the California Supreme Court should grant review to determine important issues of law concerning: (1) PERB's retaliation standard under *Novato*; (2) PERB's remedial order in retaliation cases; and (3) the obligations of public employers under the MMBA in relation to the procedural due process rights of public employees. (Board Decision affirmed 6/16/2021.)
41. *County of San Joaquin v. Public Employment Relations Board; California Nurses Association*, Filed: May 12, 2021, California Court of Appeal, Third Appellate District, Case No. C094069, PERB Decision No. 2761-M [PERB Case No. SA-CE-1141-M] Issue: Whether the Board erred by concluding that the County violated the MMBA when it barred nurses from returning to work after a strike, based on a minimum-shift guarantee in a contract with a strike-replacement company. (active.)
42. *State of California, Correctional Health Care Services v. PERB; Kevin M. Healy*, Filed: May 12, 2021, California Court of Appeal, First Appellate District, Division Five, Case No. A162617; PERB Decision No. 2760-S [PERB Case No. SF-CE-290-S] Issue: Whether the Board erred in holding that the California Correctional Health Care Service (CCHCS) retaliated against employee Kevin Healy by refusing to promote him for engaging in protected conduct, which included serving as a union steward. (active.)

## 2020 – 2021 Decisions<sup>1</sup> of the Board

### Decisions of the Board

**Decision No.** [2692a-M](#)

**Caption:** *Owen Cliff Snider v. City of South Pasadena*  
**Precedential**

**Description:** On grant of employer’s writ for extraordinary relief, the Court of Appeal invalidated portions of the remedial order in *City of South Pasadena* (2020) PERB Decision No. 2692-M, which found that the City had terminated Snider in violation of the Meyers-Milias Brown Act (MMBA). The Court of Appeal issued a remittitur to PERB.

**Disposition:** Pursuant to the Court of Appeal’s order, the Board vacated in part the remedial order in *City of South Pasadena* (2020) PERB Decision No. 2692-M and issued a modified remedial order.

**Decision No.** [2719a-E](#)

**Caption:** *Alliance Judy Ivie Burton Technology Academy High School, et al. v. United Teachers Los Angeles*  
**Precedential**

**Description:** Board granted in part and denied in part employers’ request to reconsider its decision certifying union at three charter schools. The Board concluded that the majority of the request was improper because it sought to relitigate legal questions that had already been decided. However the Board amended the certification at one school because it included a classification that was not listed in the petition. The Board also denied the union’s request for attorney fees.

**Disposition:** Board issued an amended certification and otherwise denied the request for reconsideration.

**Decision No.** [2727a-E](#)

**Caption:** *Victor Thrash v. Service Employees International Union Local 99*  
**Non-precedential**

**Description:** Charging Party Victor Thrash sought reconsideration of the Board’s decision in *Service Employees International Union Local 99 (Thrash)* (2020) PERB Decision No. 2727. That decision affirmed the Office of the General Counsel’s dismissal of Thrash’s unfair practice charge against *Service Employees International Union Local 99*.

**Disposition:** The Board denied the request for reconsideration, as that procedure is only available to a party challenging a Board decision arising out of exceptions to a proposed decision after hearing.

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<sup>1</sup> Dispositions are current as of publication of the annual report – Pending judicial appeals may impact the dispositions of some decisions. Please visit [PERB.ca.gov](http://PERB.ca.gov) for up to date information.



## Decisions of the Board

**Decision No.** [2737-M](#)

**Caption:** *Amalgamated Transit Union Local 1277 v. Long Beach Public Transportation Company*

**Non-precedential**

**Description:** Charging Party appealed the dismissal of its unfair practice charge by the Office of the General Counsel for failure to state a prima facie case.

**Disposition:** PERB reversed the dismissal and remanded this case to OGC to permit Charging Party to amend its charge.

**Decision No.** [2738-H](#)

**Caption:** *California State University Employees Union v. Trustees of the California State University (San Marcos)*

**Precedential**

**Description:** Charging Party excepted to a proposed decision dismissing claims that CSU San Marcos unilaterally changed procedures governing employee-requested salary increases.

**Disposition:** The Board affirmed the dismissal of the unfair practice charge, finding that the unilateral change allegations were untimely.

**Decision No.** [2739-S](#)

**Caption:** *Nicoluis E. Wilson v. Service Employees International Union Local 1000*

**Non-precedential**

**Description:** Nicoluis Wilson alleged that her union, Service Employees International Union Local 1000, retaliated against her for protected conduct in violation of the Dills Act and committed statutory fraud while defending a lawsuit Wilson brought against SEIU. PERB's Office of the General Counsel dismissed the charge, finding that PERB lacked jurisdiction over those allegations that do not arise under the Dills Act, while the remaining allegations were untimely and failed to state a prima facie case. Wilson timely appealed.

**Disposition:** In a nonprecedential decision, the Board affirmed the dismissal on the basis that Wilson's charge neither alleged facts indicating that her claims were timely filed nor alleged facts stating a prima facie case that SEIU violated the Dills Act.

## Decisions of the Board

**Decision No.** [2740-M](#)

**Caption:** *Teamsters Local 856 v. County of Merced*  
**Precedential**

**Description:** The County of Merced excepted to a decision of an administrative law judge finding that the County changed its mandatory overtime policy for correctional officers without providing the employees' union, Teamsters Local 856, advance notice and an opportunity to meet and confer over the decision and/or the negotiable effects thereof. The County timely filed exceptions.

**Disposition:** The Board affirmed and adopted the proposed decision as the decision of the Board itself, while supplementing the proposed decision in several respects. The Board found that the Union established a change in policy three separate ways—a change in past practice, a new means of applying and enforcing an existing policy, and creation of a new policy. The With respect to the County's contractual waiver defense, the Board clarified that it is the employer's burden to establish waiver by clear and unambiguous contract language as an affirmative defense, rather than the union's burden to establish that the contract language was *not* clear and unambiguous. In this case, the Board found the MOU was ambiguous. Moreover, the Union did not waive its right to bargain where the County came to a firm decision before providing the Union notice of a proposed change. Further, the County failed to complete negotiations to impasse or agreement.

**Decision No.** [2741-M](#)

**Caption:** *Engineering Technicians & Technical Inspectors v. County of Sacramento*  
**Non-precedential**

**Description:** Engineering Technicians and Technical Inspectors (ETTI) alleged that the County of Sacramento: (1) unilaterally adopted a new policy, (2) dealt directly with ETTI-represented employees by requiring them to acknowledge the new policy, and (3) failed to meet and confer in good faith during a second round of bargaining concerning the policy. PERB's Office of the General Counsel dismissed the charge, concluding that the allegations failed to state a prima facie case and that certain allegations were also untimely. ETTI timely appealed.

**Disposition:** In a nonprecedential decision, the Board affirmed the dismissal on the basis that the charge did not allege facts stating a prima facie case that the County violated the MMBA.

## Decisions of the Board

**Decision No. 2742-E**

**Caption:** *Dorion Keith Hilliard v. Pasadena Area Community College District*

**Non-precedential**

**Description:** Charging party Dorion Keith Hilliard appealed an order granting the Pasadena Area Community College District's motion to dismiss. The complaint alleged that the District violated the Educational Employment Relations Act (EERA) when it instructed Hilliard to provide proof of his job qualifications for the first time in four years of his employment with the District, and that in doing so the District interfered with Hilliard's protected rights. Prior to the scheduled formal hearing, the District filed with the administrative law judge (ALJ) a Motion to Dismiss and Motion for Sanctions that included additional factual allegations beyond those that the Office of the General Counsel considered prior to issuing the complaint. Hilliard thereafter filed a response to the Motions, but he did not dispute any of the District's factual allegations. The ALJ concluded that neither the underlying charge nor the complaint stated a prima facie case of interference, and that even if they did, the District established based on the undisputed facts that it had a legitimate business reason for asking Hilliard to provide proof of his qualifications. Accordingly, the ALJ issued an order granting the Motion to Dismiss and denying the Motion for Sanctions.

**Disposition:** The Board denied the appeal and affirmed the ALJ's order.

**Decision No. 2743-H**

**Caption:** *Sunantha Prime v. Trustees of the California State University (Fresno)*

**Non-precedential**

**Description:** Charging party Sunantha Teyarachakul Prime appealed the Office of the General Counsel's (OGC) dismissal of her amended unfair practice charge against Trustees of the California State University (Fresno). Her charge alleged that CSU Fresno violated the Higher Education Employer-Employee Relations Act when it denied her right to union representation and subsequently retaliated against her because she invoked her right to union representation. OGC dismissed the charge as untimely, and Prime filed an appeal. While Prime's appeal was pending before the Board, the parties settled their dispute. Following the settlement, Prime filed a written request to withdraw her appeal and underlying unfair practice charge with prejudice. CSU Fresno agreed to Prime's request.

**Disposition:** The Board granted the request for withdrawal and dismissed the unfair practice charge with prejudice. The Board further directed the matter closed and that no further action be taken in the case.

## Decisions of the Board

**Decision No.** [2744-E](#)

**Caption:** *Philip Crawford, et al v. San Jose/Evergreen Federation of Teachers, American Federation of Teachers Local 6157*

**Precedential**

**Description:** Philip Crawford and Dennis Meakin alleged in an amended charge that San Jose/Evergreen Federation of Teachers, AFT Local 6157 and its parent union, American Federation of Teachers, retaliated against them in violation of EERA. Crawford and Meakin sat on the Local 6157 Executive Board, and this case arose from a severe schism between two board factions. PERB's Office of the General Counsel dismissed the charge, and Crawford and Meakin timely appealed.

**Disposition:** The Board affirmed OGC's dismissal. The Board found several allegations in the amended charge related back to allegations in the initial charge, while other new allegations were untimely. Analyzing the timely-filed allegations, the Board found that even if proven true, they would not establish that an agent of either respondent took any adverse, retaliatory action that impacted either of charging parties' employment relationships.

**Decision No.** [2745-M](#)

**Caption:** *United Public Employees, Inc. v. County of Sacramento*

**Precedential**

**Description:** County excepted to a proposed decision finding that it unilaterally implemented new training and certification requirements. It argued that the ALJ should have applied the test for surface bargaining and, under that theory, it did not violate its duty to bargain in good faith.

**Disposition:** PERB found that the ALJ should not have applied a unilateral change theory; nevertheless, the County engaged in unlawful surface bargaining.

**Decision No.** [2746-E](#)

**Caption:** *Dorian Hilliard v. Pasadena Area Community College District*

**Non-precedential**

**Description:** The complaint in this matter alleged that the District retaliated against Charging Party Dorian Hilliard when it issued him two letters of reprimand. Hilliard excepted to the decision of an administrative law judge finding that he did not establish retaliation. Hilliard excepted to the proposed decision but did not do so within the time limit set forth in PERB Regulation 32300 because he first received notice of the proposed decision after the exceptions deadline had expired. PERB's Appeals Office rejected Hilliard's ostensibly untimely exceptions. Hilliard appealed that administrative determination and asked the Board itself to rule on his exceptions.

**Disposition:** In light of the unique circumstances of this case, the Board granted Hilliard's appeal and proceeded to rule on his exceptions. However, the Board found that Hilliard's exceptions were without merit, and accordingly affirmed the ALJ's proposed decision.

## Decisions of the Board

**Decision No.** [2747-M](#)

**Caption:** *California Public, Professional & Medical Employees, Teamsters Local 911 v. City of San Diego*

**Precedential**

**Description:** Charging Party claimed the City of San Diego: (1) bargained in bad faith while engaging in negotiations required under a grievance settlement; (2) retaliated against the Union and employees it represents for their protected activities; and (3) sent three e-mails that constituted unlawful interference with MMBA rights. After an administrative law judge held an evidentiary hearing, the Board directed that the record and the parties' post-hearing briefs be submitted directly to it for decision pursuant to PERB Regulation 32215.

**Disposition:** The Board determined that the Union established that two of the three challenged e-mails interfered with protected rights, but the Union established neither its bad faith bargaining claim nor its retaliation claim.

**Decision No.** [2748-E](#)

**Caption:** *Laureen Thompson v. Stockton Unified School District*

**Non-precedential**

**Description:** Charging Party excepted to and Respondent filed cross-exceptions to a proposed decision concluding that Respondent interfered with Charging Party's right to present grievances pursuant to the collectively bargaining grievance procedure.

**Disposition:** The Board affirmed the conclusions of law and the proposed remedy.

**Decision No.** [2749-E](#)

**Caption:** *Sacramento City Teachers Association v. Sacramento City Unified School District*

**Precedential**

**Description:** The complaint alleged that the Sacramento City Unified School District (1) unilaterally changed the parties' contractual grievance arbitration policy by refusing to arbitrate a grievance; and (2) failed to provide Sacramento City Teachers Association (SCTA) with relevant and necessary information in a timely fashion. After an evidentiary hearing, an ALJ found the District liable for both alleged violations. The ALJ's proposed remedy directed the District to reimburse SCTA for legal expenses incurred while obtaining a court order directing the District to abide by the contractual arbitration provision. The District excepted to the ALJ's unilateral change findings and associated remedy.

**Disposition:** The Board affirmed the ALJ's unilateral change findings and associated remedy. The Board found the District deviated from the status quo, changed established past practice, and/or enforced existing policy in a new way because it asserted a non-existent legal right to decide for itself whether disputes were arbitrable. In affirming the proposed remedy, the Board noted that its litigation sanction standard does not apply when a party seeks to be made whole for legal expenses it reasonably incurred in a separate proceeding to remedy, lessen, or stave off the impacts of the other party's unfair practice. The Board provided guidance for compliance proceedings in which the proper amount of such damages is to be determined.

## Decisions of the Board

**Decision No.** [2750-E](#)

**Caption:** *Joel Dyes v. Los Angeles Unified School District*

**Non-precedential**

**Description:** Joel Dyes alleged that her former employer, Los Angeles Unified School District, violated the Educational Employment Relations Act by taking numerous adverse actions against Dyes because she engaged in EERA-protected activities and by taking other actions that interfered with her right to engage in such activities. The ALJ dismissed the complaints, finding that the District's actions were neither retaliatory nor interfered with Dyes' right to engage in protected activities. Dyes timely appealed.

**Disposition:** In a nonprecedential decision, the Board affirmed the dismissal of the retaliation allegation and two of the interference allegations. Contrary to the ALJ, the Board concluded that the District's no-contact order interfered with Dyes' right to communicate with her coworkers about working conditions.

**Decision No.** [2751-M](#)

**Caption:** *San Gabriel Fire Fighters Association v. City of San Gabriel*

**Precedential**

**Description:** Respondent City of San Gabriel (City) excepted and Charging Party San Gabriel Fire Fighters Association (Association) cross-excepted to a proposed decision finding that the City failed to meet and confer in good faith with the Association over a successor memorandum of understanding and interfered with employee and organizational rights in violation of the Meyers-Milias-Brown Act.

**Disposition:** The Board adopted the proposed decision as the decision of the Board itself.

**Decision No.** [2752-M](#)

**Caption:** *Oakdale Police Officers Association v. City of Oakdale*

**Non-precedential**

**Description:** Respondent City of Oakdale excepted to the proposed decision of an administrative law judge finding that the City's directive to employees regarding a disciplinary investigation violated the Meyers-Milias-Brown Act. While the matter was pending before the Board on the City's exceptions, the parties notified PERB that they had reached a settlement in this matter. Consequently, the parties requested to withdraw the underlying unfair practice charge with prejudice, dismiss the corresponding complaint, and close the administrative case.

**Disposition:** The Board granted the parties' joint request to withdraw the unfair practice charge, dismissed the complaint and underlying unfair practice charge with prejudice, and vacated the proposed decision.

## Decisions of the Board

**Decision No. 2753-E**

**Caption:** *Joel Dyes & Anonymous Employees v. Los Angeles Unified School District*  
**Non-precedential**

**Description:** Charging Parties appealed the dismissal of their unfair practice charge alleging that Respondent interfered with Dyes' protected rights and retaliated against her by giving a negative reference about Dyes' tenure at the school district to a prospective employer. The Office of the General Counsel dismissed the charge, as amended, for failure to state a prima facie case.

**Disposition:** The Board dismissed the amended unfair practice charge without leave to amend.

**Decision No. 2754-M**

**Caption:** *Association of Orange County Deputy Sheriffs v. Orange County Employees Association*  
**Non-precedential**

**Description:** Association of Orange County Deputy Sheriffs (AOCDS) filed a charge against Orange County Employees Association (OCEA), alleging that OCEA violated the MMBA by filing and pursuing a civil lawsuit against a former OCEA employee. The Office of the General Counsel dismissed the amended charge, concluding that the allegations failed to state a prima facie case of any unfair practice. AOCDS timely appealed the dismissal.

**Disposition:** While AOCDS's appeal was pending before the Board, the parties notified PERB that they had settled this matter. The parties submitted a joint request to withdraw and dismiss the matter with prejudice. The Board granted the joint request, finding the request to be consistent with the purposes of the MMBA to promote harmonious labor relations. Based on the dismissal of the underlying unfair practice charge, the pending appeal was moot.

**Decision No. 2755-H**

**Caption:** *American Federation of State, County & Municipal Employees Local 3299 v. Regents of the University of California University Professional and Technical Employees - CWA Local 9119 v. Regents of the University of California Teamsters Local 2010 v. Regents of the University of California*  
**Precedential**

**Description:** These consolidated cases came before the Board on exceptions and cross-exceptions, essentially seeking to establish what it means to "deter or discourage" under the recently enacted PEDD section 3550. At the parties' request, the Board conducted Oral Argument on these matters.

The PEDD provides that "[a] public employer shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization." The Board found, drawing from existing court and Board precedent, "deter or discourage" means to tend to influence an employee's free choice regarding whether or not to authorize representation, become or remain

## Decisions of the Board

a union member, or commence or continue paying union dues or fees. The test for “tends to influence” is objective; it is a charging party’s prima facie burden to show that the challenged conduct or communication is reasonably likely to deter or discourage employee free choice, not that the conduct actually did deter or discourage. When conducting this prima facie analysis, the Board treats section 3550 even-handedly, as prohibiting public employer conduct which tends to influence employee choices as to *whether or not* to authorize representation, become or remain a union member, or commence or continue paying dues or fees. Section 3550 thus does not merely duplicate the existing interference standard; it creates a new and more robust protection that is not subject to the free speech safe harbor of HEERA section 3571.3.

Upon finding a prima facie section 3550 violation, the Board will analyze an employer’s business necessity argument as an affirmative defense that the employer has the burden to plead and prove. The Board will resolve such an asserted defense by weighing the tendency to deter or discourage against the employer’s asserted business necessity. Finally, where a charging party proves that the employer violated section 3553 by failing to meet and confer in good faith with the charging party before issuing a mass communication concerning public employees’ rights to join or support, or to refrain from joining or supporting, an employee organization, a rebuttable presumption arises that the communication also violates section 3550. The employer may rebut the presumption by proving that the communication does not deter or discourage employee decisions protected by section 3550.

After articulating this standard, the Board applied it to the facts presented by these consolidated cases, which included the University’s distribution of a letter and FAQ regarding the impact of the United States Supreme Court’s decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31* (2018) 585 U.S. \_\_\_, 138 S.Ct. 2448 (*Janus*). The Board found the University failed to rebut the presumption of a section 3550 violation created by its unchallenged violation of section 3553, and further, that even if the University had not presumptively violated section 3550, Charging Parties established a prima facie case that the University’s communications tended to influence employee free choice. Balancing all relevant factors, the Board found the University failed to establish an affirmative defense that its business need to communicate regarding *Janus* in the manner it did outweighed the communications’ tendency to influence employee free choice.

**Disposition:** The Board affirmed in part and reversed in part the conclusions of the proposed decision, and established the standard used in evaluating violations of PEDD section 3550.



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**Decision No.** [2756-H](#)

**Caption:** *Teamsters Local 2010 v. Regents of the University of California*  
**Precedential**

**Description:** This case came before the Board on Teamsters Local 2010's appeal of the Office of the General Counsel's (OGC) dismissal of Teamsters' unfair practice charge, which alleged that the University violated the PEDD when, in response to a Teamsters organizing flyer, it posted a document on its website which compared salary increases between represented and unrepresented staff, and then made a series of claims about the University's efforts to compensate, protect, and support unrepresented employees.

OGC dismissed the charge for failing to identify any statements in the University's communication that did not fall within the protection of the safe harbor for non-coercive speech set by HEERA section 3571.3). The Board applied the standard articulated in *Regents of the University of California* (2021) PERB Decision No. 2755-H to the facts, and found that Teamsters' unfair practice charge stated a prima facie case that the University's posting tends to influence employee free choice.

**Disposition:** The Board reversed the dismissal of the unfair practice charge, and remanded to the Office of the General Counsel to issue a complaint alleging that the Regents of the University of California's November 26, 2018 posting deterred or discouraged public employees from authorizing union representation and/or becoming union members in violation of PEDD section 3550.

**Decision No.** [2757-M](#)

**Caption:** *Alfonso Garcia v. City & County of San Francisco*  
**Precedential**

**Description:** Respondent excepted to the proposed decision finding no good cause to excuse a four month late filed answer, concluding Respondent waived its right to a hearing, deeming all allegations in the complaint and underlying unfair practice charge to be true, and issuing a proposed remedial order requiring Respondent to return Charging Party to his prior position and make him whole for any financial losses.

**Disposition:** The Board affirmed the proposed decision and issued a modified remedial order. The Board affirmed the remedial order related to the notice posting, and the cease and desist order. The Board affirmed the make whole order but modified it to include any monetary damages due to Charging Party's placement on administrative leave.

## Decisions of the Board

**Decision No. 2758-M**

**Caption:** *Criminal Justice Attorneys Association of Ventura County v. County of Ventura Precedential*

**Description:** Respondent County of Ventura excepted to a proposed decision finding that it violated its duty to meet and confer in good faith by: (1) implementing its decision to withhold taxes based upon accrued paid leave without affording the Criminal Justice Attorneys Association of Ventura County adequate notice and a meaningful opportunity to bargain over the negotiable effects of that decision; and (2) bargaining in bad faith over amending the parties' leave redemption plan. The administrative law judge (ALJ) dismissed the remainder of the Association's allegations.

**Disposition:** The Board affirmed the proposed decision. The Board also clarified the ALJ's remedial order to tailor it more closely to the harms caused by the County's violations.

**Decision No. 2759-H**

**Caption:** *American Federation of State, County and Municipal Employees Local 3299 v. Regents of the University of California University Professional and Technical Employees - CWA Local 9119 v. Regents of the University of California*

**Non-precedential**

**Description:** American Federation of State, County and Municipal Employees Local 3299 (AFSCME) and University Professional & Technical Employees, Communication Workers of America, Local 9119 (UPTA) (collectively Unions) excepted to a proposed decision of an administrative law judge. The Unions alleged that the Regents of the University of California violated the Public Employee Communication Chapter (PECC) and the Higher Education Employer-Employee Relations Act (HEERA) by failing to provide them with required employee contact information and specific work location information for bargaining unit members, and unilaterally changing terms and conditions of employment without notice and an opportunity to meet and confer. The ALJ concluded that the University violated PECC section 3558 and HEERA section 3571, subdivision (a), by failing to provide AFSCME and UPTA with employee contact information as required by the PECC; violated section 3571, subdivisions (a) and (c) by unilaterally implementing a new policy regarding employees' exercise of privacy rights as to personal contact information for members of UPTA's bargaining units; and violated section 3571, subdivision (a) by interfering with the rights of employees in AFSCME's bargaining units to have their personal contact information shared with the union. The ALJ dismissed all other allegations.

**Disposition:** The Board affirmed the proposed decision.

## Decisions of the Board

**Decision No.** 2760-S

**Caption:** *Kevin Healy v. State of CA (Correctional Health Care Services)*

**Precedential**

**Description:** The complaint alleged that California Correctional Health Care Services (CCHCS) discriminated against Kevin Healy by refusing to promote him due to his activities as a union shop steward. The ALJ ruled in Healy's favor and ordered CCHCS to offer Healy the next available SSA/AGPA position at San Quentin and to make Healy whole. CCHCS excepted to the ALJ's liability findings and associated remedy.

**Disposition:** The Board adopted the ALJ's proposed decision, as supplemented by discussion of CCHCS's exceptions. Healy established that unlawful animus substantially motivated his employer's decision not to promote him, shifting the burden to CCHCS to establish that it would have refused to promote Healy even if he had not engaged in protected activity. Circumstantial and direct evidence of anti-union animus, and the employer's shifting, pretextual rationales, prevented CCHCS from meeting this burden. The Board adjusted the ALJ's remedial order, directing CCHCS to reclassify Healy retroactively to the AGPA classification, assign him appropriate duties at San Quentin until the position he was denied next becomes vacant, and place Healy in the position if he is still an active State employee at that time.

## Decisions of the Board

**Decision No.** [2761-M](#)

**Caption:** *California Nurses Association v. County of San Joaquin*  
**Precedential**

**Description:** California Nurses Association called a two-day nurses strike at San Joaquin County. Five months earlier, the County had signed a staffing agency contract guaranteeing strike replacements five days' work. As a result, the County barred most striking nurses from work for the three days after the strike, prohibited them from using accrued leave during these three days, and filled out nurses' timecards with a payroll code that could potentially lead to adverse consequences. The complaint alleged that the County's conduct amounted to discrimination against and interference with protected conduct, as well as a unilateral change in employment terms without notice and an opportunity to meet and confer.

**Disposition:** The Board held that a public health care employer that prohibits bargaining unit employees from work after a strike, due to a minimum shift guarantee for strike replacements, can typically establish an affirmative defense to an interference claim and avoid a finding of discrimination only if it can prove that: (1) it made a good faith effort in the marketplace to negotiate a strike replacement contract that would eliminate any minimum shift guarantee or shorten it to the greatest degree possible, but it ultimately needed to agree to the minimum shift guarantee in order to maintain critical health care services; (2) it barred employees from work only because such a contractual commitment temporarily reduced available work opportunities, and it filled all remaining opportunities without discriminating against employees based on whether they worked during the strike or engaged in any other actual or perceived protected activity; and (3) it provided the employees' union with timely notice regarding any decision to guarantee replacement workers a minimum work period or to modify the terms of such a guarantee, and, if requested, bargained in good faith over the potential effects on bargaining unit employees. Applying this holding, the Board found the County discriminated against and interfered with protected conduct. Finally, while the Board clarified an employer's notice and effects bargaining obligations when it guarantees strike replacements a minimum work period, the Board dismissed the unilateral change claim presented in the complaint.

**Decision No.** [2762-M](#)

**Caption:** *Judieth Sullivan-Ojuola v. Communications Officers Association*  
**Non-precedential**

**Description:** Judieth Sullivan-Ojuola, a former employee of the City of Sunnyvale, alleged that the Communications Officers Association breached the duty of fair representation by failing to assist her in addressing her training concerns and not representing her in a meeting with management and later with respect to her rejection on probation. PERB's Office of the General Counsel (OGC) dismissed the charge for failing to state a prima facie case, and Sullivan-Ojuola appealed.

**Disposition:** In a non-precedential decision, the Board concurred with OGC that Sullivan-Ojuola's charge did not allege facts stating a prima facie case. The Board affirmed OGC's dismissal of the unfair practice charge without leave to amend.

## Decisions of the Board

**Decision No.** 2763-H

**Caption:** *Rini Valdespino v. American Federation of State, County & Municipal Employees Local 3299*

**Non-precedential**

**Description:** Rini Valdespino excepted to a proposed decision dismissing her complaint which alleged that the American Federation of State, County & Municipal Employees Local 3299 (AFSCME) breached its duty of fair representation by failing to respond to Valdespino's request to arbitrate four grievances, by not appealing those four grievances to arbitration, by not completing the arbitration process for the grievances, and by not explaining to Valdespino its reasons for these omissions. The ALJ dismissed the complaint and charge, concluding that Valdespino failed to prove AFSCME's handling of her grievances or lack of communication regarding their status breached its duty of fair representation.

**Disposition:** The Board affirmed the proposed decision.

**Decision No.** 2764-E

**Caption:** *Carolyn Escalante v. San Francisco Community College District*

**Non-precedential**

**Description:** Carolyn Escalante alleged that the San Francisco Community College District retaliated against her for protected activity and interfered with her exercise of protected rights. PERB's Office of the General Counsel (OGC) issued a complaint as to some of Escalante's allegations but dismissed other claims on the grounds that they did not state a prima facie case and fell outside the statute of limitations. Escalante filed a timely appeal.

**Disposition:** While the matter was pending before the Board on Escalante's appeal of the partial dismissal, the parties notified PERB that they had settled the matter. The Board found that it was in the best interest of the parties, and consistent with the purposes of EERA, to grant Escalante's request to withdraw her appeal from the partial dismissal of her second amended charge, and to dismiss with prejudice the underlying unfair practice charge and complaint.

## Decisions of the Board

**Decision No.** [2765-E](#)

**Caption:** *San Diego Education Association, CTA/NEA v. Gompers Preparatory Academy*  
**Precedential**

**Description:** Respondent Gompers Preparatory Academy (GPA) filed exceptions to a proposed decision issued by an administrative law judge. After PERB's Office of the General Counsel (OGC) issued a complaint, GPA failed to file its answer by the 20-day deadline in PERB Regulation 32644, subdivision (a). The ALJ assigned to the case issued an Order to Show Cause ordering GPA to show why its failure to timely file an answer to the complaint did not constitute an admission of the truth of the material facts alleged and a waiver of GPA's affirmative defenses and right to a hearing. On the same day, GPA filed its response to the OSC and a motion for leave to file a late answer, together with a supporting declaration from GPA's attorney and a copy of the proposed answer. GPA's failure to timely file its answer was due to the law firm's sudden shift to telework because of the COVID-19 pandemic. This resulted in the deadline to file the answer not being calendared and the answer not being filed. The ALJ denied GPA's motion, finding no good cause to excuse the late filing, and deemed GPA to have admitted the material factual allegations, and to have waived any affirmative defenses and its right to a hearing. GPA sought leave to file an interlocutory appeal with the Board itself, but the ALJ declined to certify the appeal. After the parties briefed the limited legal issues that remained following GPA's deemed admissions and waiver, the ALJ issued a proposed decision finding that GPA violated EERA and the PEDD.

**Disposition:** On appeal the Board found that the reasons GPA's attorney provided for the late-filed answer were sufficient to constitute good cause due to the COVID-19 pandemic and recently enacted emergency shelter-in-place order. The law firm had mistakenly failed to calendar the deadline for the answer and did not realize that the answer was not filed until it received the OSC. The Board further found that the 10-day delay in filing the answer, with months until the hearing, would not cause prejudice. Based on these criteria, the late-filed answer should have been accepted. The Board further found that certifying the interlocutory appeal would have been appropriate because the determination of good cause involved the application of a legal standard, declining to file the answer was sufficiently controlling, and an immediate appeal would have materially advanced the resolution of the case by avoiding potential duplicative briefing. The proposed decision was vacated, and the matter was remanded to the Division of Administrative Law.

**Decision No.** [2766-M](#)

**Caption:** *Tatyana Orozco v. Service Employees International Union Local 1021*  
**Non-precedential**

**Description:** Charging Party Tatyana Orozco appealed the dismissal issued by PERB's Office of the General Counsel of Orozco's second amended unfair practice charge. The Office of the General Counsel dismissed the second amended charge for failing to state a prima facie case.

**Disposition:** Dismissal affirmed.

## Decisions of the Board

**Decision No. 2767-E**

**Caption:** *Junnie Verceles v. Los Angeles Unified School District*

**Non-precedential**

**Description:** Charging Party Junnie Verceles appealed a partial dismissal issued by PERB's Office of the General Counsel of Verceles's third amended unfair practice charge. The Office of the General Counsel dismissed the allegations that the District had engaged in retaliatory and discriminatory conduct for failure to state a prima facie case, untimeliness, and lack of jurisdiction.

**Disposition:** Dismissal affirmed.

**Decision No. 2768-E**

**Caption:** *Mohamed A. Bashamak v. Twin Rivers Unified School District*

**Non-precedential**

**Description:** Mohamed A. Bashamak alleged that his employer, Twin Rivers Unified School District, violated the Educational Employment Relations Act by taking numerous adverse actions against him because he engaged in EERA-protected activities. The ALJ found that the District's actions were retaliatory and interfered with Bashamak's right to engage in protected activities. The District timely appealed.

**Disposition:** After discussion of two of the District's exceptions, the Board affirmed the ALJ's factual and legal conclusions and the proposed remedy.

**Decision No. 2769-M**

**Caption:** *American Federation of State, County & Municipal Employees Local 3745 v. City of Bellflower*

**Non-precedential**

**Description:** The complaint alleged that the City of Bellflower violated its local rules, the MMBA, and PERB Regulations while processing a decertification petition filed by Bellflower City Employees Association (BCEA). The Office of the General Counsel stayed decertification proceedings pending a final determination. The ALJ dismissed the charge, and AFSCME excepted.

**Disposition:** In a non-precedential decision, the Board partially reversed the proposed decision and found that the City unreasonably applied its local rules by processing a noncompliant decertification petition and sending it to all bargaining unit employees without requiring BCEA to correct misleading language that would impact employee free choice. The Board affirmed the proposed decision's finding that BCEA's authorization language which demonstrated that the petitioning employees designated BCEA to represent them in their employee relations with the City, was sufficient proof of support for a combined decertification-recognition petition. The Board ordered the City to cease processing BCEA's flawed Petition, and, if BCEA submits a petition that complies with the City's local rules, to process it lawfully.

## Decisions of the Board

**Decision No.** [2770-M](#)

**Caption:** *Bellflower City Employees Association v. City of Bellflower*  
**Precedential**

**Description:** The complaint alleged that the City of Bellflower violated the MMBA and PERB Regulations by: (1) failing to comply with timelines in its local rules while processing a decertification petition that Bellflower City Employees Association (BCEA) filed in an effort to decertify and replace AFSCME Local 3745 as the exclusive representative of three City bargaining units; and (2) maintaining local rules that did not treat employee proof of support documents as confidential and providing AFSCME with unredacted copies the proof of support documents BCEA submitted with its Petition. The ALJ found the City liable for both alleged violations. The proposed decision ordered the City to process the Petition consistent with the timelines in its local rules and to demand that AFSCME return the BCEA authorization forms that it received. The proposed decision also ordered AFSCME, a joined party, to comply with the demand. The City filed exceptions.

**Disposition:** The Board dismissed as moot the allegation that the City failed to comply with its local rule timelines, given the Board's conclusion in a companion case, *City of Bellflower* (2021) PERB Decision No. 2769-M, in which the Board held that the City cannot process BCEA's Petition as presently written and the Board directed the City to follow the local rules as to any new or revised representation petition BCEA may file in the future. The Board agreed with the ALJ that the City unlawfully failed to treat BCEA's authorization forms as confidential when it provided AFSCME with unredacted copies thereof. The Board also agreed with the ALJ's proposed order regarding the authorization forms.



## Decisions of the Board

**Decision No.** 2771-M

**Caption:** *Long Beach Supervisors Employees Association v. City of Long Beach*  
**Precedential**

**Description:** Joined party International Brotherhood of Electrical Workers, Local 47 (IBEW) filed a petition under the City of Long Beach local rules, seeking to decertify and replace Long Beach Supervisors Employees Association (LBSEA) as the exclusive representative of a supervisors' unit. LBSEA filed an unfair practice charge regarding the City's processing of the Petition. The ALJ concluded that the City violated the City's local rules, the MMBA, and PERB Regulations by: (1) applying a rule concerning revocation of proof of support that was not contained in its local rules, and (2) disclosing to IBEW the identity of two employees who had sought to revoke their support for the Petition. The ALJ dismissed all other claims. LBSEA filed exceptions regarding certain claims the ALJ dismissed, and LBSEA asked the Board to permanently bar the City from processing the Petition.

**Disposition:** The Board affirmed the proposed decision, finding that the City: reasonably approved IBEW's Petition even if it arguably contained immaterial omissions; properly interpreted the contract bar provision in its local rules; and properly accepted proof of support which authorized petitioner to represent the signatories in their employment relations with the City without mentioning decertification of the incumbent representative. PERB also agreed with the ALJ that the violations LBSEA established were so limited that they would not tend to prevent a fair election from going forward, and accordingly dissolved the stay of future election proceedings.

## Decisions of the Board

**Decision No.** [2772-M](#)

**Caption:** *Sonoma County Deputy Sheriffs' Association v. County of Sonoma Sonoma County Law Enforcement Association v. County of Sonoma*

**Precedential**

**Description:** The County of Sonoma Board of Supervisors placed on the ballot for the November 2020 election a measure that expanded the authority of the County's police review agency. Among other things, the ballot measure authorized the police review agency to independently investigate Sheriff's Office employees and make recommendations for their discipline, directly access sources of evidence obtained as part of internal affairs investigations, receive and review confidential peace officer personnel files, and post body worn camera video online. The complaint alleged that the Board of Supervisors placed the measure on the ballot without satisfying its obligation to meet and confer with the Associations representing County peace officers over particular aspects of the measure.

**Disposition:** The Board found that the ballot measure's amendments related to investigation and discipline of employees were subject to decision bargaining. The Board also found that some other amendments were subject to effects bargaining, while still other amendments were not subject to bargaining at all. Because the County did not provide the Associations notice or opportunity to meet and confer over the amendments subject to decision or effects bargaining before placing the ballot measure on the ballot, the County violated its obligation under the MMBA to meet and confer in good faith. The Board further found that the unlawfully adopted amendments were severable from the remainder of the ballot measure, and accordingly declared only those amendments void and unenforceable as to employees the Associations represent.

**Decision No.** [2773-M](#)

**Caption:** *International Brotherhood of Electrical Workers, Local 18 v. City of Glendale*

**Precedential**

**Description:** Charging Party International Brotherhood of Electrical Workers, Local 18 (IBEW) and Respondent City of Glendale excepted and cross-expected, respectively, to a proposed decision of an administrative law judge. The complaint alleged that the City violated its Employee Relations Ordinance, the Meyers-Milias-Brown Act, and PERB Regulations by: failing to recuse the City Manager from consideration of IBEW's severance petition despite his personal bias against IBEW; denying IBEW's severance petition; and requiring IBEW to demonstrate that its proposed unit of employees was "more appropriate" than the existing unit representing those employees. The City's conduct was also alleged to have interfered with the right of bargaining unit employees to be represented by IBEW and the right of IBEW to represent these employees. Following a formal hearing, the ALJ dismissed the complaint and underlying unfair practice charge.

**Disposition:** The Board affirmed the proposed decision.

## Decisions of the Board

**Decision No.** 2774-E

**Caption:** *Carolyn Escalante v. Service Employees International Union Local 1021, City College Chapter*

**Non-precedential**

**Description:** Carolyn Escalante alleged that Service Employees International Union Local 1021, City College Chapter, violated the Educational Employment Relations Act by breaching its duty of fair representation when it: (1) failed to assist Escalante with pursuing a salary step increase and a desk audit from Escalante's employer, San Francisco Community College District; (2) ignored her request for representation during a disciplinary meeting in November 2017; (3) failed to properly process an internal union grievance; and (4) deducted union dues from her pay under threat of termination of employment. The Office of General Counsel dismissed the amended charge for failing to state a prima facie case, and Escalante timely appealed.

**Disposition:** In a non-precedential decision, the Board affirmed the dismissal of the duty of fair representation allegation.

**Decision No.** 2775-M

**Caption:** *Service Employees International Union Local 1021v. County of San Joaquin*

**Precedential**

**Description:** Charging Party Service Employees International Union Local 1021 filed exceptions to an ALJ's proposed decision finding that the County had not violated the Meyers-Milias-Brown Act (MMBA). SEIU alleged that the County denied SEIU reasonable access to conduct health and safety walk-throughs in employee work areas and by denying an SEIU representative access to the site of a large HVAC pipe spill at the main County Human Services Agency (HSA) building, in violation of the MMBA

**Disposition:** The Board found that the County violated the MMBA by denying SEIU reasonable access to work areas in the HSA building. The County's initial denial of the union's request to access the HVAC spill area was reasonable because the spill's hazards were not yet known, and the County offered a walkthrough the next day. However, while on the walkthrough, the County's denial of the union's request to directly access the HVAC spill area was not reasonable since employees and contractors were allowed to enter the area that day. The County's repeated denial of SEIU's requests to have a non-employee union representative conduct health and safety walkthroughs of work areas was unreasonable. The County's justification for its denial (the need to follow mandatory contract provisions maintaining the privacy of clients' Personally Identifiable Information (PII) in work areas) did not preclude escorted visitors, nor did the County raise its privacy concern to SEIU in its denials. The County allowed other non-employee contractors to access work areas, demonstrating its ability to secure PII from non-employee contractors and the ability to take similar precautions for the union. The County's discriminatory application of its access restriction to SEIU's access requests was an additional ground for finding the restrictions unreasonable.

**2020 – 2021 DECISIONS OF THE BOARD  
ADMINISTRATIVE DETERMINATIONS\***

**Administrative Determinations**

**Decision No.** [Ad-479-E](#)

**Caption:** *Laureen Thompson v. Stockton Unified School District*

**Precedential**

**Description:** Charging Party filed a motion to disqualify all presently-serving Board members from participating in her case against her employer due to their participation in prior decisions dismissing unfair practice charges she filed against her employer and union representative.

**Disposition:** The Board denied Charging Party’s motion because it failed to establish any basis for disqualification.

**Decision No.** [Ad-480-M](#)

**Caption:** *American Federation of State, County and Municipal Employees, Local 3745 v. City of Bellflower; Bellflower City Employees Association*

**Precedential**

**Description:** Bellflower City Employees Association’s (BCEA) appealed an order by PERB’s Office of the General Counsel (OGC) granting a request to stay a representation proceeding before the State Mediation and Conciliation Service (SMCS), pending resolution of a related unfair practice charge filed by American Federation of State, County, and Municipal Employees, Local 3745 2 (AFSCME). AFSCME’s charges alleges the City unreasonably applied its local rules when it processed BCEA’s petition to represent City employees in three bargaining units that AFSCME currently represents. AFSCME’s unfair practice charge was styled as a blocking charge and requested a stay of the related election. OGC issued an administrative determination granting AFSCME’s request to stay the representation proceedings.

The Board reiterated that in a case concerning a stay of a decertification election, “the inquiry on appeal is whether the OGC abused his or her discretion.” (*Imagine Schools at Imperial Valley* (2016) PERB Order No. Ad-431, p. 6.) In evaluating AFSCME’s request to stay the election at issue in this case, OGC applied PERB Regulation 33002, subdivision (a), which governs requests to stay SMCS-conducted elections. Because PERB Regulation 33002 contains nearly identical language and reflects the same underlying policy considerations as PERB Regulation 32752, the Board found OGC appropriately applied the same analysis. In *Children of Promise*, the Board articulated the standard to apply in interpreting Regulation 32752: “The question presented is whether the alleged unfair practices by the Academy, if true, are likely to affect the vote of the employees, and thus, the outcome of the election. In other words, would the alleged unlawful conduct described in the blocking charge, if true, ‘so affect the election process as to prevent the employees from exercising free choice.’ . . . [T]he question is

### Administrative Determinations

resolved by applying the blocking charge rule to the facts alleged in the blocking charge and not by a mechanical or rote application of the rule.” (*Children of Promise* (2018) PERB Order No. Ad-428, adopting administrative determination at p. 18, [internal citations omitted].)

The Board held that the standard applied in *Children of Promise* also applies to a request for stay evaluated under PERB Regulation 33002, irrespective of whether the underlying blocking charge relates to an employer’s local rules or relates to other allegedly unlawful conduct. The Board thus found OGC properly framed the inquiry of the administrative determination, viz., whether the unfair practices the City allegedly committed (violating or unreasonably applying its local rules in processing BCEA’s petition) would so affect the election process as to prevent the employees from freely selecting an exclusive representative of their choice.

**Disposition:** The Board denied BCEA’s administrative appeal of OGC’s June 22, 2020 order.

**Decision No.** [Ad-481-E](#)

**Caption:** *Gompers Preparatory Academy and Kristie Chiscano and a Group of Employees and San Diego Education Association, CTA/NEA*

**Precedential**

**Description:** Employees who petitioned for a decertification election appealed the Office of General Counsel’s decision to stay the election pending resolution of San Diego Education Association’s unfair practice charge alleging that Gompers Preparatory Academy bargained in bad faith, retaliated against a union bargaining team member, and interfered with protected rights.

**Disposition:** The Board affirmed the stay decision, concluding that the employer’s alleged unfair practices, if true, likely would affect employee free choice if an election was held.

## Administrative Determinations

**Decision No.** [Ad-482-M](#)

**Caption:** *Service Employees International Union Local 521 v. County of Santa Clara*  
**Precedential**

**Description:** A Board agent deferred SEIU's unfair practice charge to arbitration and placed the charge in abeyance pending the completion of arbitration proceedings. SEIU appealed the Board agent's decision to the Board. The Appeals Office rejected the appeal for failure to comply with PERB Regulation 32200, which allows the Board to accept an appeal of an interlocutory order only when the Board agent joins in the appeal request.

**Disposition:** The Board held that a Board agent's decision to defer a charge to arbitration and place it in abeyance pending completion of arbitration proceedings is not an interlocutory order, and therefore PERB Regulation 32200 does not apply in such circumstances. Rather, the abeyance letter is an administrative decision that may be appealed directly to the Board pursuant to PERB Regulation 32360.

**Decision No.** [Ad-483-M](#)

**Caption:** *County of Santa Clara and Santa Clara-San Benito Counties Building and Construction Trades Council*  
**Precedential**

**Description:** Employer appealed an administrative determination by PERB's Office of the General Counsel to approve a request by the Santa Clara-San Benito Counties Building and Construction Trades Council pursuant to the MMBA that the parties' bargaining differences be submitted to a factfinding panel.

**Disposition:** The Board affirmed the determination.

**Decision No.** [Ad-484-M](#)

**Caption:** *Estella R. DuBose v. City of Compton*  
**Non-precedential**

**Description:** Charging Party DuBose appealed an Administrative Law Judge's (ALJ) order denying her request that he disqualify himself from hearing this case. The Board found it would not effectuate the purposes of the MMBA to grant interlocutory review under the circumstances, and that DuBose would instead be free to reassert her arguments concerning disqualification along with any exceptions to the ALJ's proposed decision.

**Disposition:** Appeal of the order of the ALJ denying DuBose's motion for disqualification denied.

## Administrative Determinations

**Decision No.** [Ad-485-M](#)

**Caption:** *Service Employees International Union Local 521 v. County of Santa Clara*  
**Precedential**

**Description:** A Board agent deferred SEIU's unfair practice charge to arbitration and placed the charge in abeyance pending the completion of arbitration proceedings. SEIU appealed the Board agent's decision to the Board.

**Disposition:** The Board granted the appeal and remanded the charge to the Office of the General Counsel for further investigation. The Board clarified that deferral to arbitration is not appropriate unless all factually and legally interrelated allegations in the charge are subject to deferral. The Board found deferral was not appropriate because all of the charge allegations arose from the same core set of facts and one of the allegations, direct dealing, was not appropriate for deferral under the circumstances.

**Decision No.** [Ad-486-M](#)

**Caption:** *Central Basin Municipal Water District and American Federation of State, County and Municipal Employees, Local 1902*  
**Precedential**

**Description:** AFSCME filed a petition seeking to be recognized as the exclusive representative of the District's non-managerial employees. PERB's Office of the General Counsel (OGC) determined that: (1) AFSCME submitted proof of support from a majority of employees in the proposed bargaining unit; (2) no other employee organization demonstrated at least 30 percent proof of support; (3) the District did not dispute that the proposed unit was appropriate; and (4) the District had not granted recognition. Accordingly, OGC certified AFSCME as the proposed unit's exclusive representative under PERB Regulation 61275. The District appealed OGC's administrative determination.

**Disposition:** The Board affirmed the administrative determination. The District waived its position with respect to AFSCME's proof of support and the appropriateness of the unit by failing to file a timely challenge, despite having been provided multiple opportunities to do so. PERB did not consider five employee declarations the District improperly submitted for the first time with its appeal, but even had PERB considered the declarations, they would not have constituted cause to hold an evidentiary hearing. Potential revocations which postdated the date the petition was filed were irrelevant.

**2020 – 2021 DECISIONS OF THE BOARD  
JUDICIAL REVIEW DECISIONS\***

**Judicial Review Decisions**

**Decision No.** JR-30-E

**Caption:** *Alliance Judy Ivie Burton Technology Academy High School et al. and United Teachers Los Angeles*

**Precedential**

**Description:** Board majority denied charter school employers' request for judicial review of an underlying representation decision in which the Board certified union as exclusive representative of teachers units at three schools. Majority concluded that the request did not meet the strict criteria for judicial review set out in PERB Regulations and decisional law. Dissent would have granted the request.

**Disposition:** Board denied request for judicial review.

**2020 – 2021 DECISIONS OF THE BOARD  
INJUNCTIVE RELIEF DECISIONS\***

**Injunctive Relief Decisions**

There were no injunctive relief decisions issued by the Board for the 2020-2021 fiscal year.