



2021-2022 Annual Report

CALIFORNIA PUBLIC EMPLOYMENT
RELATIONS BOARD

OCTOBER 15, 2022

Table of Contents

Letter from the Chair	3	Office of the General Counsel	24	Representation Activity	41
2021-2022 Highlights	4	State Mediation and Conciliation Service	25	Mediation and Factfinding	43
Statutory Authority and Jurisdiction	5	Administrative Operations	28	State Mediation and Conciliation Case Dispositions	46
Purpose and Functions	11	Case Dispositions	29	Legislation	47
Board Members	12	Unfair Practice Charges	30	Rulemaking	48
Major Functions	16	Dispute Resolutions and Dispositions	34	Administrative Leadership	50
Unfair Practice Charges	17	Administrative Adjudication	36	Organizational Chart	53
Representation	21	Board Decisions	38	2021 - 2022 Litigation Activity	54
Appeals Office	23	Litigation	40	2021 - 2022 Decisions of the Board	71

Letter from the Chair



Dear Members of the State Legislature and fellow Californians:

We are pleased to submit the 2021 – 2022 Public Employment Relations Board (PERB) Annual Report. 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 2021 – 2022 activities and case dispositions, including a summary of all Board decisions issued in the last fiscal year.

The Board issued 59 decisions in the 2021 – 2022 fiscal year. The [Board's docket](#) continues to reflect a historical low number of cases to be decided. The Board continues to issue decisions within six months of receiving the parties' briefs. The low docket and decreasing case processing time have also allowed the Board to focus on projects such as improving the Board decision bank [Topic Index](#) and Decision Headnotes. Other highlights from 2021 – 2022 include:

- 544 unfair practice charges filed
- 134 representation petitions filed
- 76 requests for mediation
- 39 factfinding requests
- 369 days of informal settlement conferences
- 57 formal hearings completed by administrative law judges
- 64 proposed decisions issued by administrative law judges
- 511 cases filed with State Mediation and Conciliation Service

The past year continued the trend of public transit districts subject to the labor relations provisions found in the Public Utilities Code being added to PERB's jurisdiction. Senate Bill 598 (Chapter 492, Statutes of 2021) gave PERB jurisdiction over disputes relating to employer-employee relations of the Sacramento Regional Transit District (SacRT).

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

2021 – 2022 Highlights

- Nearly sixty percent (57%) of unfair practice charges settled during mediation by the Office of the General Counsel.
- SMCS helped parties reach agreements and settlements in situations where authorized strikes would have involved a over 1,600 workers and impacted thousands students and transit riders.
- The Division of Administrative Law was able to reduce its Pending Proposed Decisions by over twenty percent (21%).
- The Board's low docket and vastly improved processing times have allowed it to focus on projects to improve the constituent experience, such as refining the Topic Index and Decision Headnotes.
- In the *Barke* litigation, the PERB successfully defended the constitutionality of the PEDD (Gov. Code section 3550) before the Ninth Circuit Court of Appeals.

Statutory Authority and Jurisdiction

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board administers several collective bargaining statutes, ensures their consistent implementation and application, and adjudicates labor relations disputes between parties.

In fiscal year 2021–2022, 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 childcare 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

Statutes under PERB jurisdiction (cont'd):

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.)
 14. [Sacramento Regional Transit District Act \(SacRTD Act\)](#) (Public Utilities Code § 102398 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

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.

History of PERB's Statutory Authority and Jurisdiction (cont'd)

PERB's jurisdiction and responsibilities were changed in late June 2012 by the passage of the In-Home Supportive Service Employer- Employee Relations Act (IHSSEERA). 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, IHSSEERA was repealed, returning the IHSS providers to coverage under the MMBA.

In 2012, the Governor's Reorganization Plan 2 placed PERB under the California Labor and Workforce Development Agency. 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, 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.

History of PERB's Statutory Authority and Jurisdiction (cont'd)

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 Deterring 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.

Senate Bill 598 (Chapter 492, Statutes of 2021) gave PERB jurisdiction over disputes relating to employer-employee relations of the Sacramento Regional Transit District (SacRT) for those exclusive representatives that have elected to move one or more of its bargaining units to the jurisdiction of the Public Employment Relations Board for unfair practice charges.

Purpose and Functions

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 fourteen statutes, 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 statutes;
- 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 statutes it administers.

Board Members (2021-2022)

Eric R. Banks was reappointed to the Board as Chairperson in January of 2022. In January of 2021, Governor Gavin Newsom designated Banks as Chairperson of the Board; the first openly gay person to hold the position. He was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, February 2015, and February 2017. 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 2026.

Board Members (2021-2022)

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.

Board Members (2021-2022)

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.

Board Members (2021-2022)

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.

Unfair Practice Charges (cont'd)

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 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.

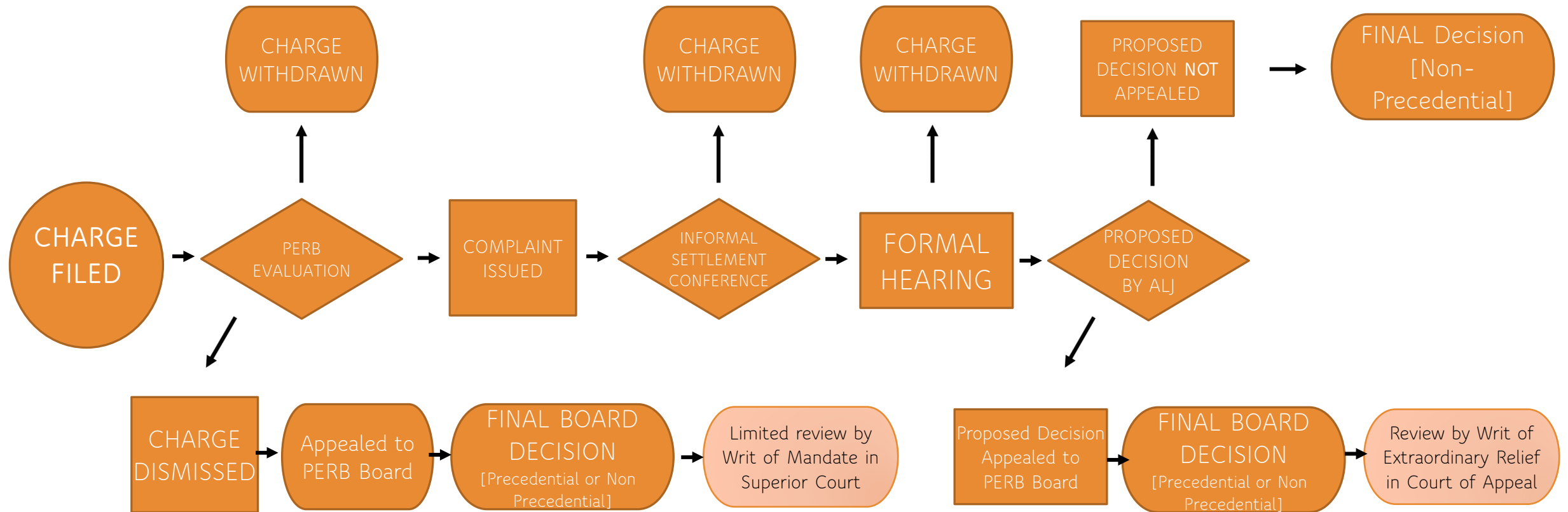
Unfair Practice Charges (cont'd)

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](#).

UPC Flow Chart



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.

Representation (cont'd)

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)

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 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.

State Mediation and Conciliation Service (cont'd)

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.

State Mediation and Conciliation Service (cont'd)

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.

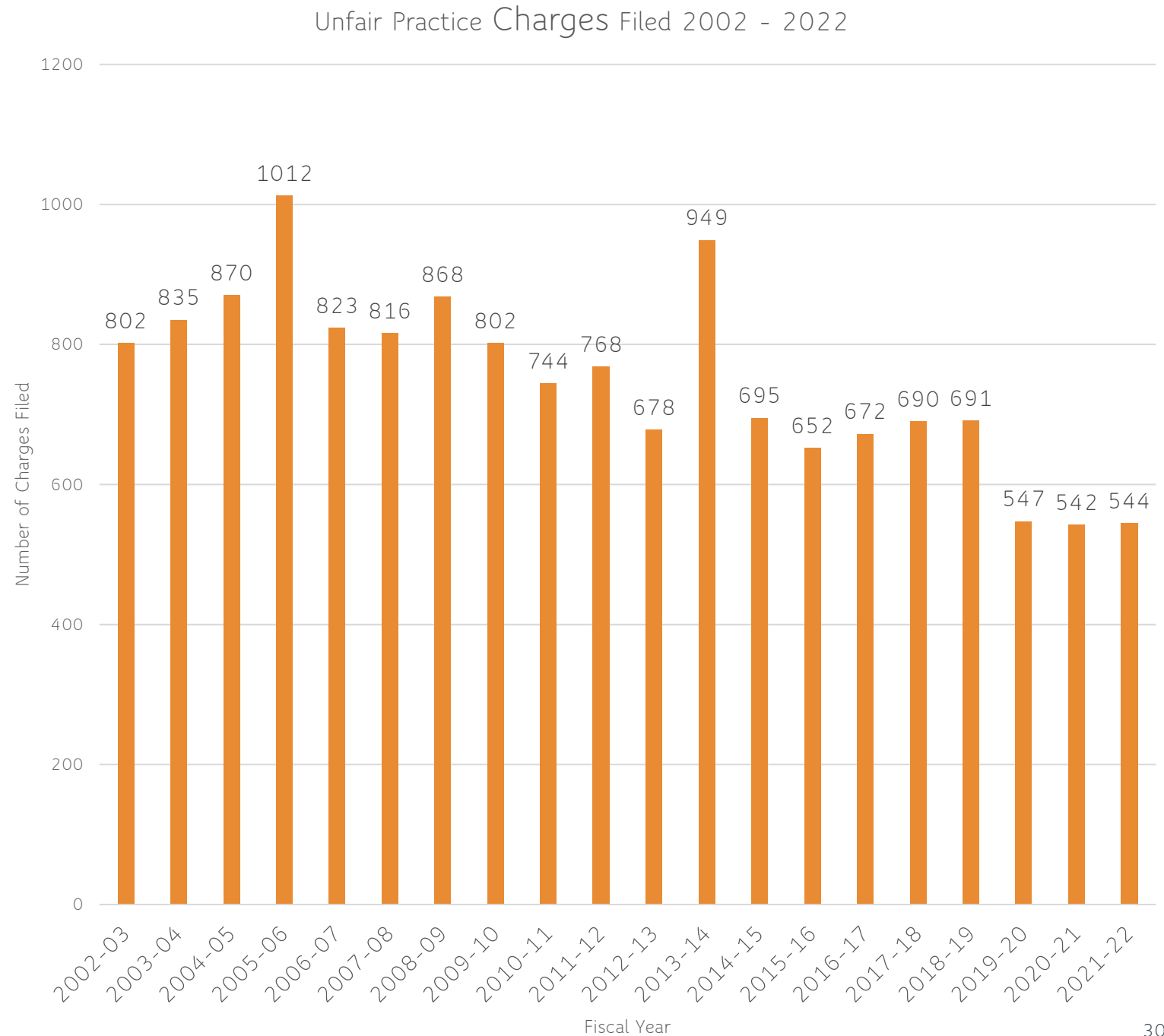
A full range of services are provided for both annual planning/reporting cycles and ongoing operations in fiscal, human resources, technology, facility, procurement, audits, security, and business services areas.

Case Dispositions

Unfair Practice Charge Filings

In Fiscal Year 2021-2022, parties filed 544 new charges with PERB. The chart shows UPC filings over the past 20 years, which includes the following adjustment: in FY 2004-05, 1,126 filings were reduced by 256 due to similar charges filed by one group of employees. The spike in FY 2013- 14 was due to 173 filings by the same individual on behalf of himself and/or other employees.

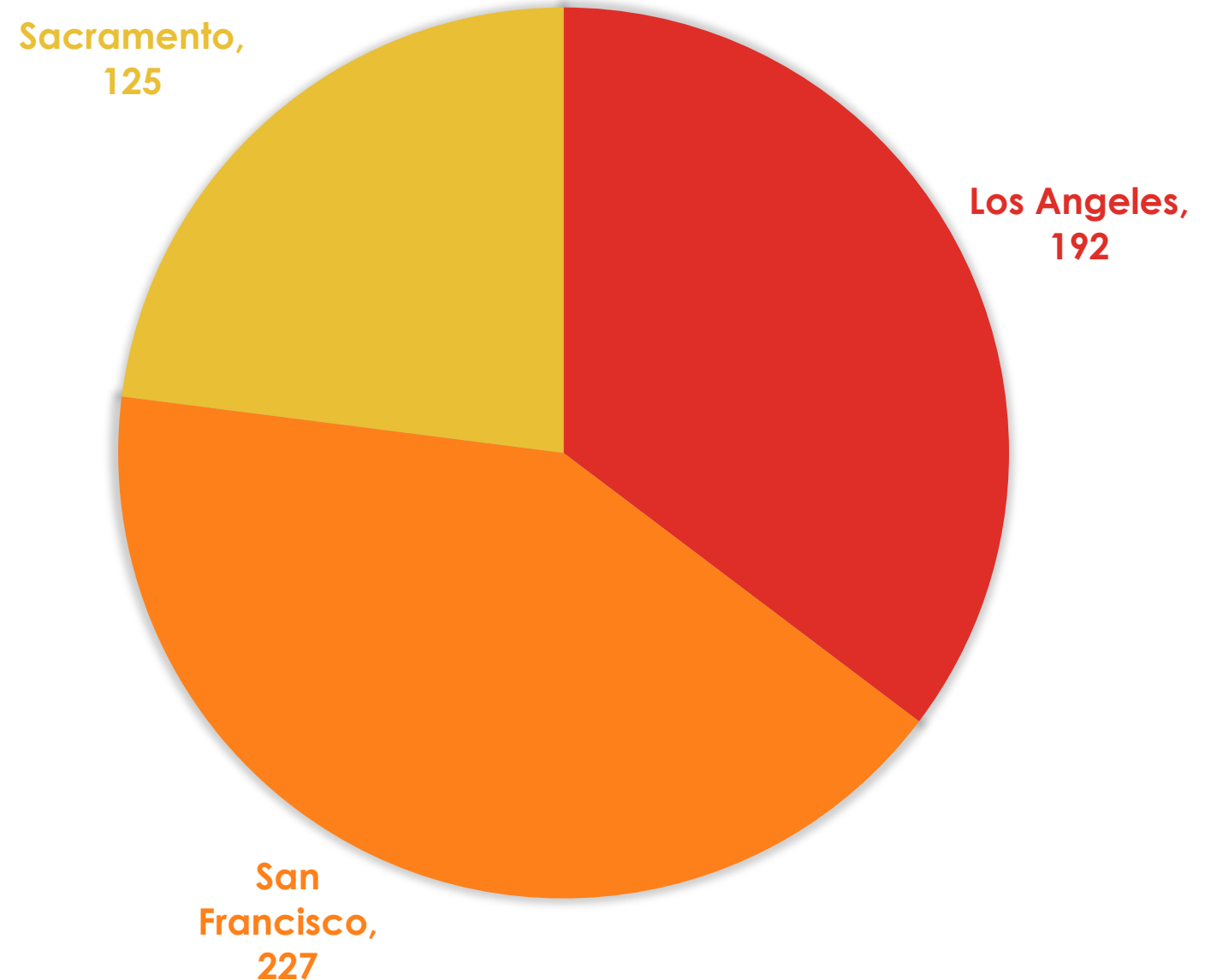
The impact of COVID-19 on charge filings over recent fiscal years has resulted in a significant drop in the five-year average (603) when compared to the 20-year average of 750 charges.



Unfair Practice Charges by Region

Regionally, of the 544 UPC filings for Fiscal Year 2021-2022, the San Francisco Regional Office received the most charges (227), the Los Angeles Regional Office followed with **192**, and the Sacramento Regional Office again received just over one in every five charges filed (125).

UNFAIR PRACTICE CHARGES BY REGION



2021 – 2022 Unfair Practice Charges by Type of Act

Act	Total UPCs
Dills Act	37
EERA	198
HEERA	67
MMBA	220
TEERA	1
Trial Court Act	10
Court Interpreter Act	4
Childcare Act	0
Judicial Council Act	0
PUC Transit Districts	4
Non-Jurisdictional	3
Total	544

UPC Five Year Workload Comparison: Charges Filed by Fiscal Year

2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	5 Year Average
690	691	547	542	544	603

Dispute Resolutions and Dispositions

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 2021 – 2022, the parties withdrew 146 cases entirely and 24 partially, 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 579 charge dispositions in Fiscal Year 2021 – 2022, 288 had complaints issued, 146 had charges withdrawn, and 110 were dismissed. In addition, 11 had complaints issued with a partial dismissal and 24 had complaints issued with a partial withdrawal.

The following Dispositions by Region table provides regional data for the 579 UPC dispositions in Fiscal Year 2021 – 2022. The San Francisco Regional Office was responsible for about 41 percent of case dispositions; the Los Angeles Regional Office was responsible for about 39 percent of case dispositions; and the Sacramento Regional Office for about 20 percent of case dispositions.

Dispositions By Region

	Withdrawal	Dismissal	Complaint	Complaint/ Partial Dismissal	Complaint/ Partial Withdrawal	Total
Sacramento	23	14	71	0	8	116
San Francisco	65	53	107	6	6	237
Los Angeles	58	43	110	5	10	226
Total	146	110	288	11	24	579

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).

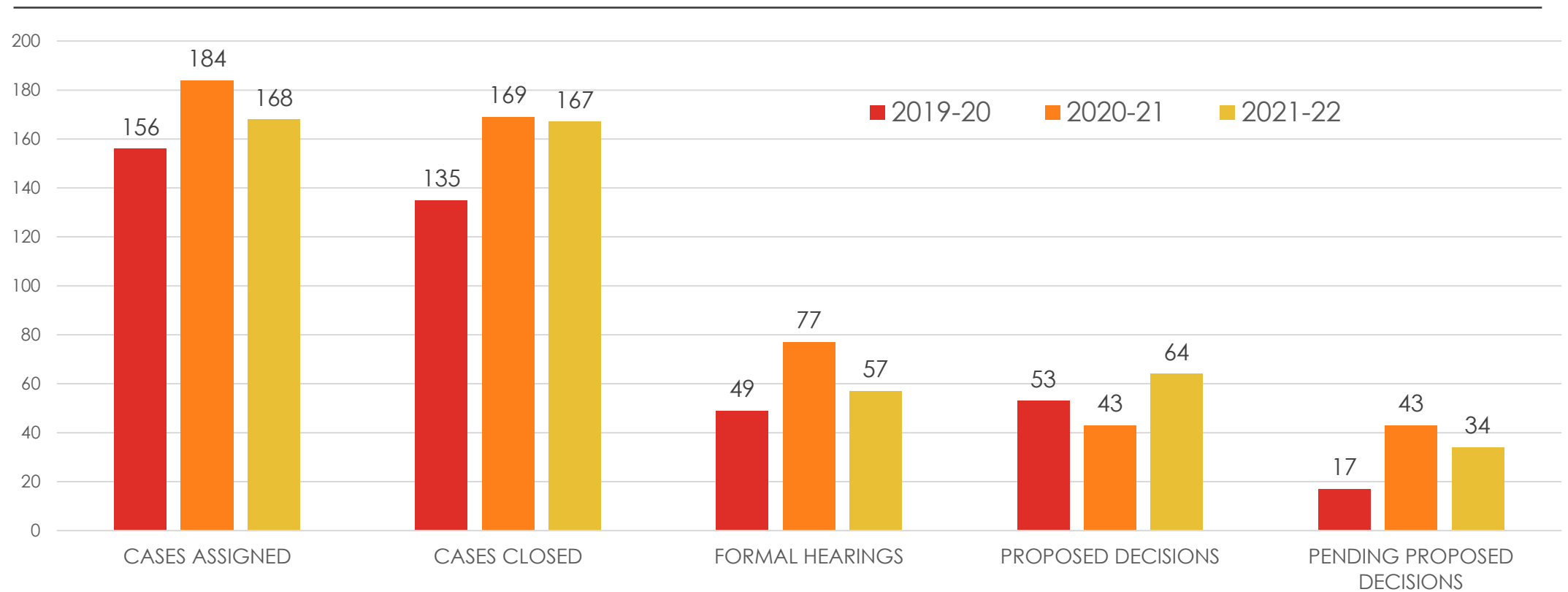
In Fiscal Year 2021 – 2022, the Division had an average of ten ALJs conducting formal hearings and writing proposed decisions. The ALJs' issued 64 proposed decisions, an increase from the prior year (43 proposed decisions). The average time it took to issue a proposed decision increased from 141 days in 2020 – 2021 to 174 days in 2021 – 2022.

The number of formal hearings completed decreased this year to 57, down from 77 the year prior. In Fiscal Year 2021 – 2022, the Division ended with 34 pending proposed decisions to write, compared to 43 pending at the end of the prior Fiscal Year.

In Fiscal Year 2021 – 2022 there were 168 cases assigned and 167 cases closed, compared to 184 cases assigned and 169 closed in Fiscal Year 2020 – 2021.

Regionally speaking, the Los Angeles Regional Office in 2021-2022 had the highest percentage of hearing activity, which is consistent with most prior years. In Fiscal Year 2021 – 2022, Los Angeles Regional conducted 62 percent of PERB's completed formal hearings, with the San Francisco Regional Office at 26 percent and Sacramento at 12 percent.

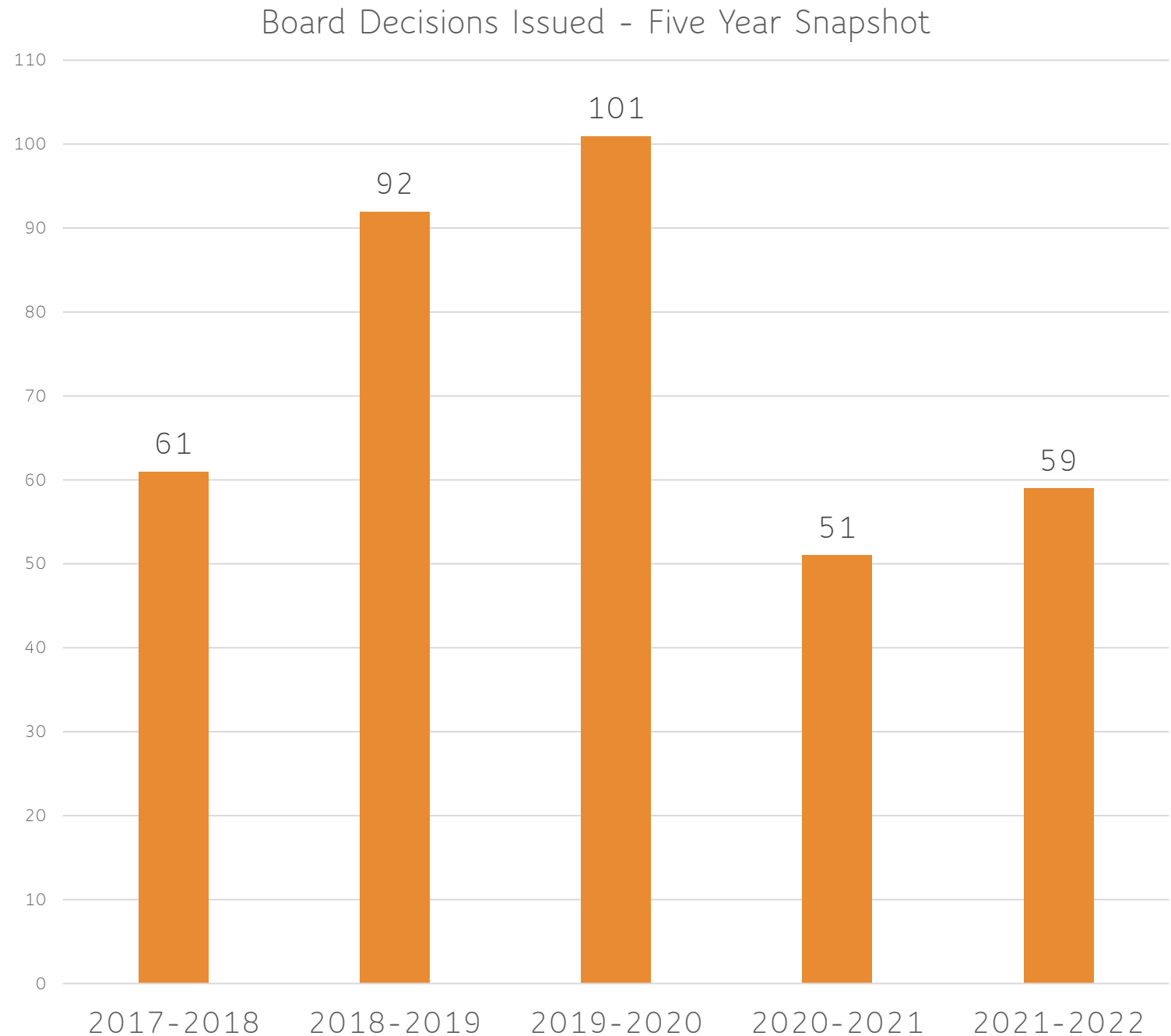
Administrative Adjudication Activity



Board Decisions

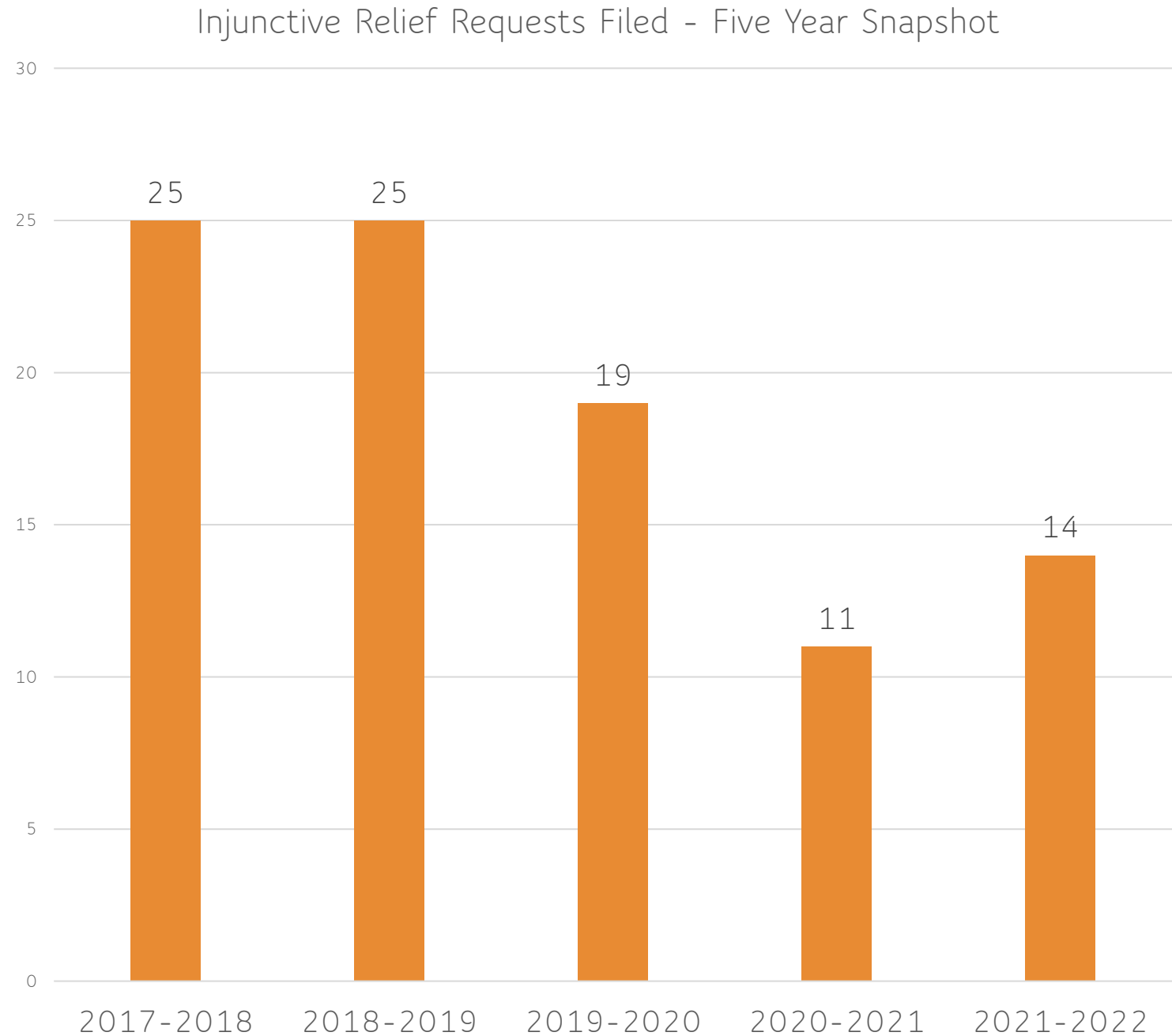
Proposed decisions, charge dismissals, and administrative determinations issued by Board agents may be appealed to the Board itself. During Fiscal Year 2021 – 2022, the Board issued 59 decisions as compared to 51 during Fiscal Year 2020 – 2021 and an average of 73 over the past five years.

The Board's docket remains historically low and decisions are being issued within six months of filings being complete.



Injunctive Relief Requests

The Board considered 14 requests for injunctive relief in Fiscal Year 2021 – 2022, compared to 11 in Fiscal Year 2020 – 2021. Injunctive relief requests filed over the past five fiscal years and investigated by the General Counsel are shown and averaged 19 per year over the five-year period.

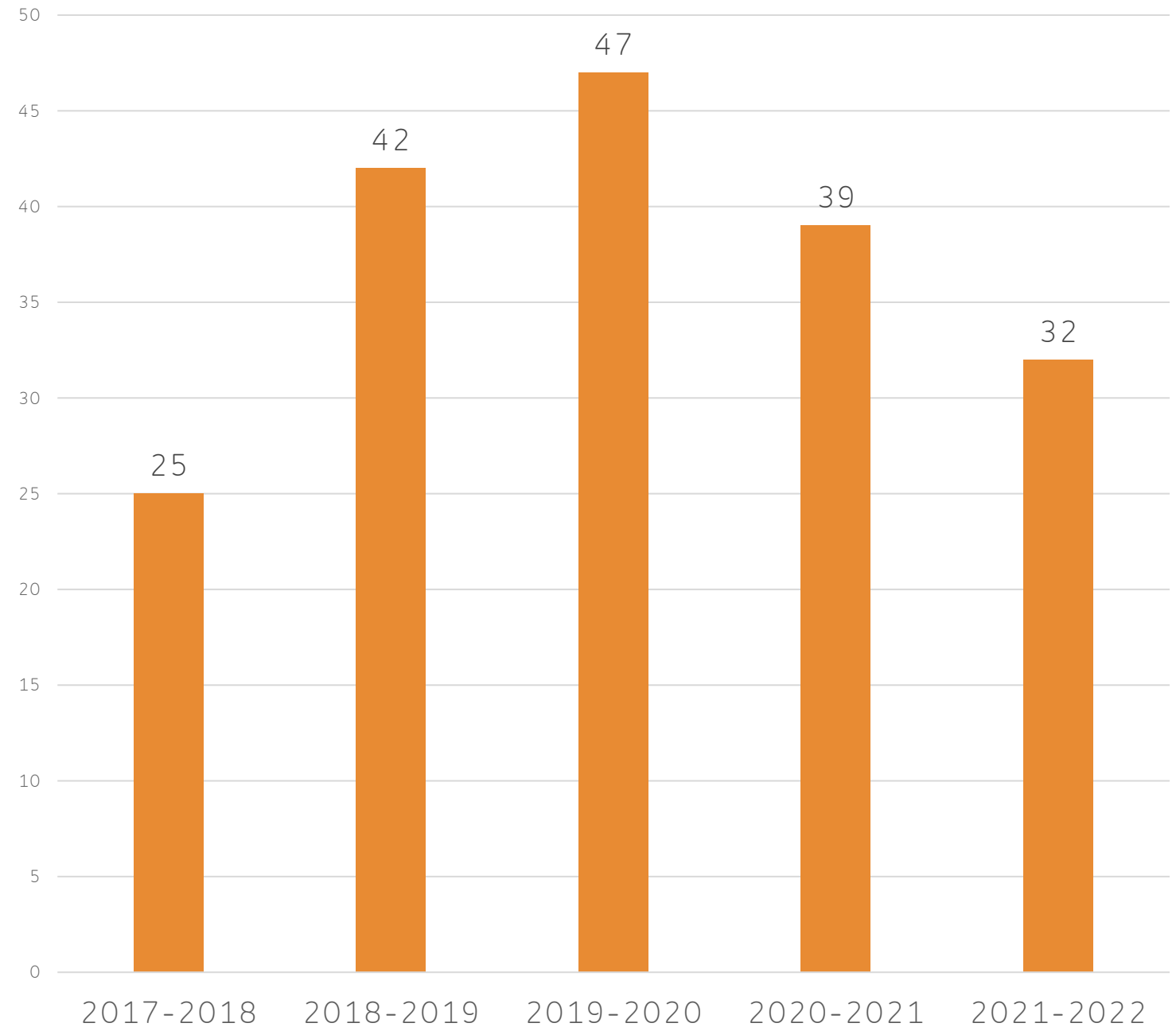


Litigation

PERB's litigation projects decreased in Fiscal Year 2021 – 2022. PERB's Regional Attorneys completed 81 litigation-related projects (compared to 132 litigation projects last fiscal year). The number of active litigation cases in Fiscal Year 2020 – 2021 also decreased. A total of 32 litigation cases, including new and continuing matters, were handled during the Fiscal Year (compared to 39 last year, and 47 the year before). A listing of these cases is provided beginning on page 53.

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.

Active Litigation Projects - Five Year Snapshot



Representation Activity

PERB received 134 new representation petitions in Fiscal Year 2021 - 2022, compared to 91 in the prior Fiscal Year. As shown, the total number of petitions for Fiscal Year 2021 - 2022 includes: 53 unit modification petitions, 55 recognition petitions, 17 decertification petitions, 3 requests for amendment of certification, 4 petitions for certification, and 2 severance requests.

Representation Related Case Filings

Case Type	Number Filed
Request for Recognition	55
Severance Petition	2
Petition for Certification	4
Decertification	17
Amended Certification	3
Unit Modification	53
Totals	134

Representation Related Cases Filed by Fiscal Year

2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	5 Year Average
110	89	71	91	134	99

Elections Conducted in Fiscal Year 2021 - 2022 by Type

Election Type	Number Conducted
Amendment of Certification	0
Decertification	4
Representation	2
Severance	0
Unit Modification	0

Representation Activity

Election activity increased, with 6 elections conducted by PERB in Fiscal Year 2021 - 2022, and only 2 elections in the prior Fiscal Year. Nearly 450 employees were eligible to participate in these elections, with 164 employees in the largest bargaining unit and 11 in the smallest.

Elections in Fiscal Year 2021 - 2022

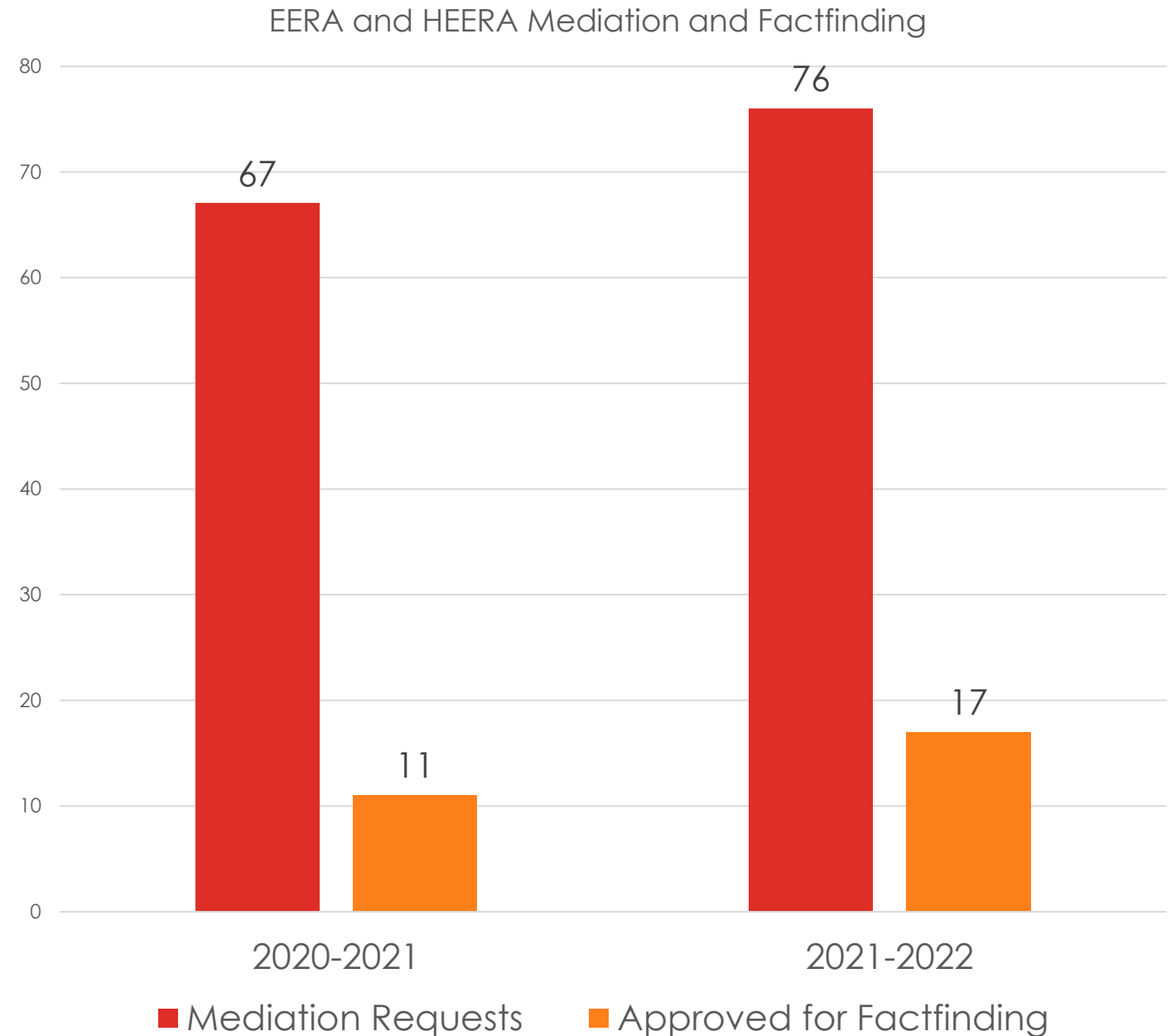
Case Number	Employer	Unit Type	Winner	Unit Size
SA-RR-1195-M	Clovis Unified School District	Psychologists	Association of Clovis Educators	71
LA-RR-1317-M	Arvin-Edison Water Storage District	Non-Exempt Field Employees	International Union of Operating Engineers, Local 501	27
LA-DP-449-E LA-DP-441-E	Gompers Preparatory Academy	Certificated	San Diego Education Association, CTA/NEA	41
LA-DP-448-E	Maple Elementary School District	Certificated	No Representation	11
SA-DP-276-E	Sierra Joint Community College District	Classified Unit - Blue and White Collar	United Public Employees of California, Local 792	164
SF-DP-342-E	Alameda Health System	General Management, Senior Management, and Confidential Employees	Alameda County Management Employees Association	133

EERA and HEERA Mediation and Factfinding

During Fiscal Year 2021 – 2022, PERB received 85 impasse mediation requests under EERA and HEERA.

The number of mediation requests under EERA and HEERA increased from the prior year (67 such requests were filed in Fiscal Year 2020 – 2021).

Subsequently, 76 of those requests were approved for mediation, and 17 of those impasse cases (22 percent) were approved for factfinding.



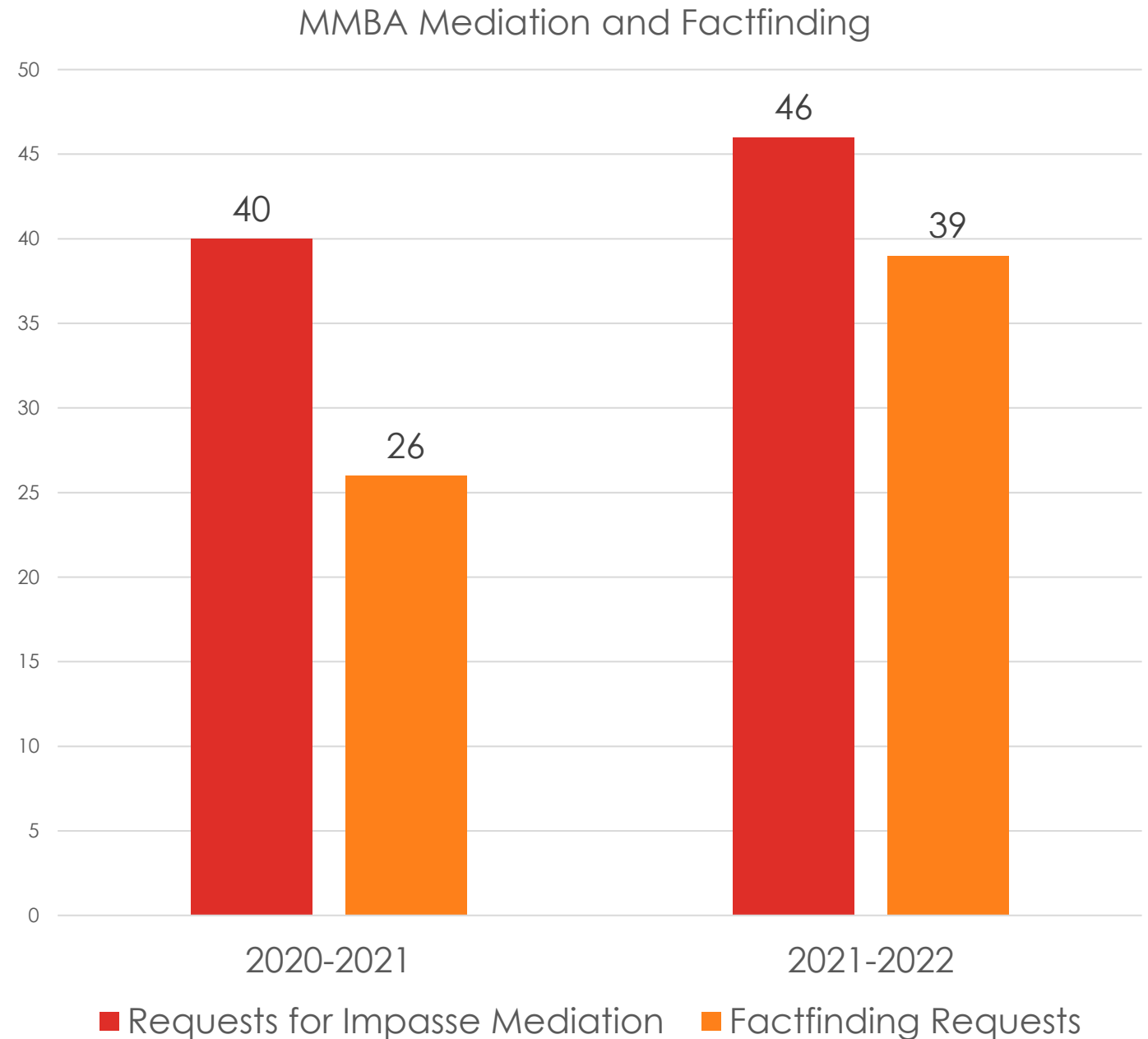
MMBA Mediation and Factfinding

During this period, 39 factfinding requests and 46 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.

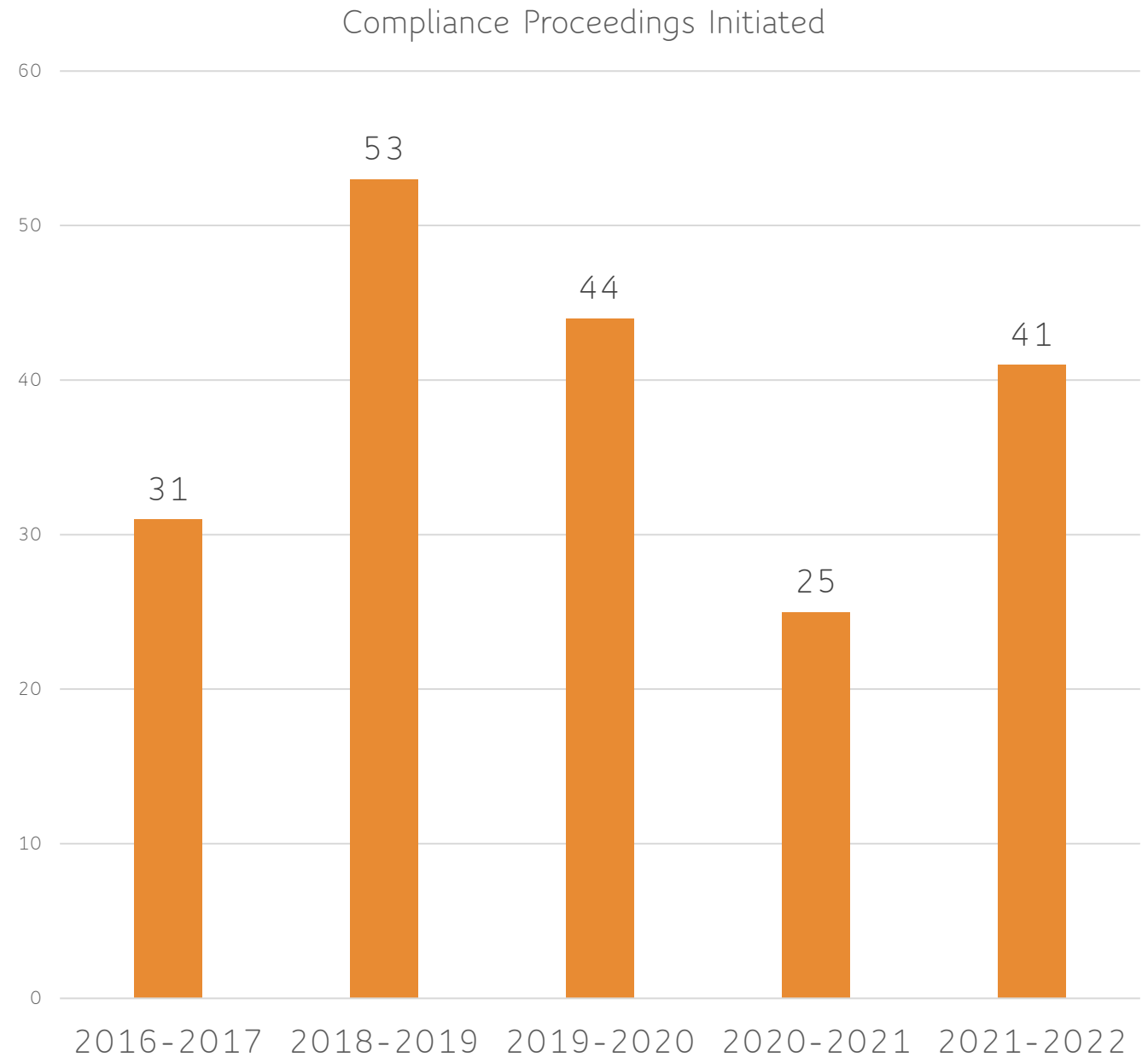
Mediation is not usually a required step in the MMBA impasse process, so many cases proceed directly to factfinding.

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 2021-2022, PERB initiated compliance proceedings in 41 unfair practice cases in which a final decision resulted in a finding of a violation of the applicable statute. This is an increase in compliance activity over the prior year (25 compliance proceedings were initiated in Fiscal Year 2020 - 2021) and above the five-year average of 39.



SMCS Case Dispositions

The Division of State Mediation and Conciliation Service (SMCS) received a total of 511 new cases in Fiscal Year 2021 – 2022 and closed 439. The tables provide information on SMCS's activities in Fiscal Year 2021 – 2022.

Contract Impasses and Other Contract Mediations	
EERA and HEERA	112
MMBA	72
Transit	6
Trial Courts	3
State of California	0
Los Angeles City and County	9

Grievances and Disciplinary Appeals	
EERA and HEERA	140
MMBA	63
Transit	2
State Trial Courts	2
Los Angeles City and County	0
Private Sector (PUC, Other SMCS Specified)	27

Other	
Representation and Election Cases	31
Workplace Conflict or Training and Facilitation Assignments	26
Miscellaneous Cases Related to Education, Outreach, and Internal Mediation or Program Administration Projects	18
Requests for Lists of Arbitrators from Panel of Independent Arbitrators	384

Legislation

PERB monitors legislation concerning labor relations statutes under PERB's jurisdiction. In Fiscal Year 2021-2022, two bills were signed into law by Governor Newsom.

Senate Bill 270 (Chapter 330, Statutes of 2021)

Government Code section 3558 requires public employers to provide unions representing public employees with certain personal contact information about those employees. This bill requires PERB to assess a penalty of up to \$10,000 if PERB finds that the employer violated a union's right to receive the information, after the employer is given the opportunity to cure the violation. PERB is required to base the penalty on the employer's annual budget, the severity of the violation, and the employer's history of violating the requirements. The penalty would be paid to the General Fund. PERB will also be required to award a prevailing charging party attorney's fees and costs that accrue from the inception of proceedings before the board's Division of Administrative Law until final disposition of the charge by the board. If the board initiates proceedings with a superior court to enforce or achieve compliance with a board order or is required to defend a decision of the board involving this section after a party seeks judicial review, the court shall award the board attorney's fees and costs if the board is the prevailing party.

Senate Bill 598 (Chapter 492, Statutes of 2021)

SB 598 authorized an exclusive representative of the Sacramento Regional Transit District to move one or more of its bargaining units to the jurisdiction of PERB to adjudicate unfair labor practice charges and makes the jurisdiction of PERB irrevocable for that bargaining unit.

Rulemaking

PERB initiated and continued work on several rulemaking packages 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.

[Continuances, Exceptions, Recusals, Subpoenas, SMCS](#) - As part of implementing Case Processing Efficiency Initiative recommendations, 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 became effective in January 2022.

[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 is expected to be completed in FY 2022 - 2023.

Rulemaking continued

[Expedited Case Processing Regulations](#) - update the Board's rules that govern expedited case processing. This rulemaking package is expected to be completed in FY 2022 - 2023.

[Request for Reasonable Accommodation Regulations](#) - update the Board's rules that govern requests for reasonable accommodations. This rulemaking package is expected to be completed in FY 2022 - 2023.

[Transit Regulations](#) - revise and update existing regulations covering transit jurisdictions, which is expected to be completed in FY 2022 - 2023.

[Special Remedies under the Public Employee Communication Chapter](#) - add the Board's rules that govern special remedies under the Public Employee Communication Chapter added by Senate Bill 270 (Chapter 330, Statutes of 2021). This rulemaking package is expected to be completed in FY 2022 - 2023.

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, he served as Chief Counsel for SEIU Local 1000, where he worked from 2008 to 2015. From 2000 to 2008, he 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.

He also served as a member of the Board of Directors for the AFL-CIO Lawyers Coordinating Committee and the Sacramento Center for Workers Rights. He was a Staff Attorney and Program Director at the California Rural Legal Assistance Foundation and, before that, the State Policy Analyst for the Mexican American Legal Defense and Educational Fund. He also served as an Instructor at the UC Davis Extension in the Labor Management Certificate Program. He is a 1999 graduate of UC Davis' King Hall School of Law.

Administrative Leadership (cont'd)

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). Fecher is the author of all three editions of the CPER Pocket Guide to Public Sector Mediation in California.

Administrative Leadership (cont'd)

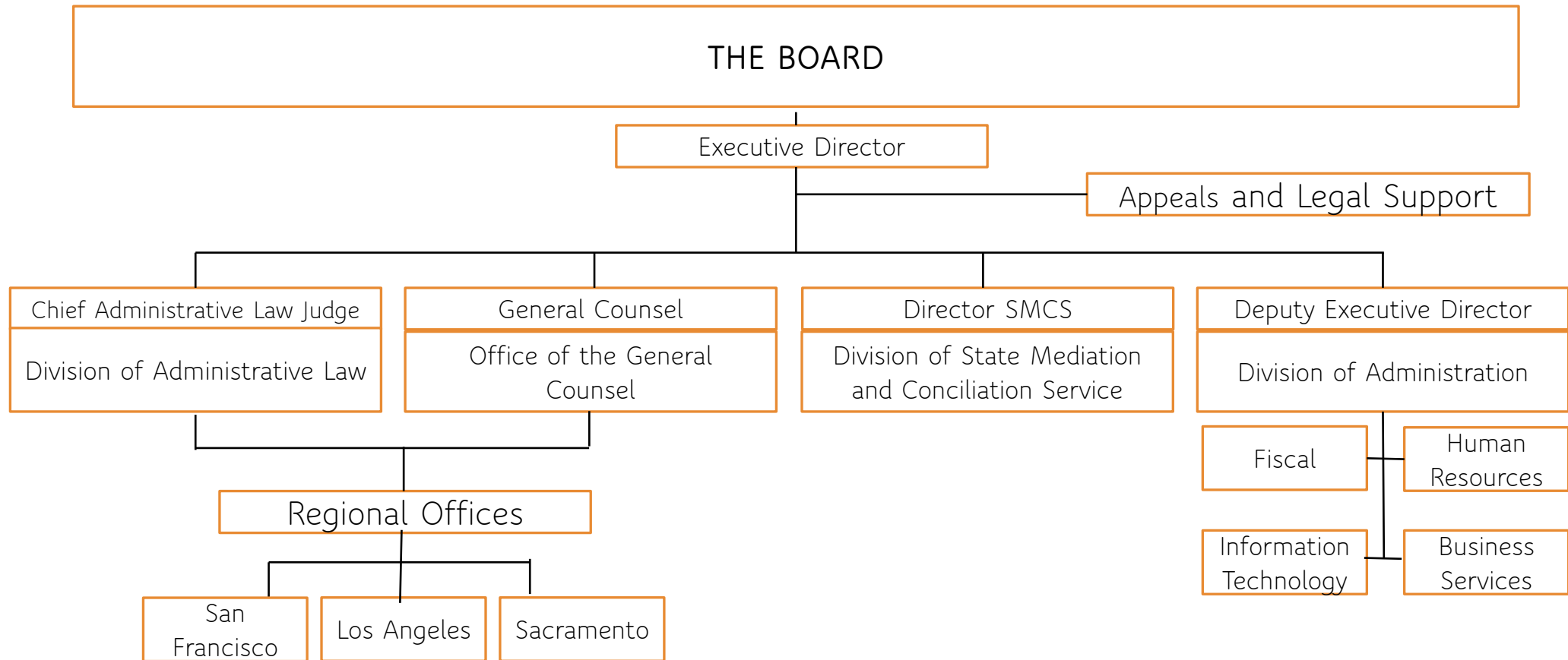
Wendi L. Ross, Deputy General Counsel [Acting General Counsel (May 2014 – February 2015); Interim General Counsel (December 2010 – April 2011)], joined PERB in April 2007 and has more than 30 years of experience practicing labor and employment law. Ms. Ross was previously employed by the State of California, 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.

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



2021-2022 Litigation Activity

2021-2022 Litigation Activity

1. *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. (Board Decision affirmed 10/4/2021.)
2. *Oroville Union High School District v. Public Employment Relations Board; 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, in part, 8/20/2021.)

2021-2022 Litigation Activity

3. *County of Kern v. Public Employment Relations Board, Service Employees International Union, Local 1021*, 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? (Board Decision affirmed 9/21/2021.)
4. *Rebecca Wu v. Public Employment Relations Board; Twin Rivers United Educators*, Filed: December 30, 2019, Sacramento County Superior Court, Case No. 34-2019-80003289 [PERB Case No. SA-CO-618-E]. Issue: Wu is challenging the Board's decision sustaining the Regional Attorney's refusal to issue a complaint in her underlying unfair practice charge alleging that Twin River United Educators violated EERA by not representing her with respect to a misclassification issue. (Active.)

2021-2022 Litigation Activity

5. *City & County of San Francisco v. Public Employment Relations Board; Service Employees International Union Local 1021*, Filed: 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. (Board Decision affirmed 10/28/2021.)
6. *Jeffrey I. Barke, et al. v. Eric 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. (Motion to Dismiss granted 8/25/2020.)

2021-2022 Litigation Activity

7. *City of Glendale v. Public Employment Relations Board: IBEW, Local 18*, Filed: March 4, 2020, California Court of Appeal, Second Appellate District, Division 7, Case No. B304702; PERB Decision No. 2694 [PERB Case No. LA-CE-805-M]). Issue: Whether the Board erred when it found that: (1) the City had engaged in bad faith bargaining that prevented the parties from reaching a legitimate, good faith impasse during contract negotiations; (2) the City declared impasse prematurely; (3) even if the parties had reached impasse, the parties' concessions broke the impasse; (4) [a material portion of] the decision to layoff UDCM classification was for cost savings; (5) the City had made the decision to subcontract existing and future UDCM work prior to or in conjunction with its decision to eliminate the UDCM classification. (Petition for Review denied 7/6/2021.)
8. *Region 2 Court Interpreter Employment Relations Committee & California Superior Courts of Region 2 v. Public Employment Relations Board; 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 its policy of paying a pension stipend, unilaterally changing employee pension contribution rates, and repudiating collectively bargained grievance procedures. (Board Decision affirmed 10/21/2021.)

2021-2022 Litigation Activity

9. *Regents of the University of California v. Public Employment Relations Board; 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.)
10. *Latanja Chambers v. Public Employment Relations Board; Berkeley Unified School District*, Filed: May 18, 2020, California Court of Appeal, 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. (Board Decision affirmed 11/29/2021.)

2021-2022 Litigation Activity

11. *Alliance Environmental Science and Technology High School, et al. v. Public Employment Relations Board; United Teachers Los Angeles*, 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. (Board Decision affirmed 11/19/2021.)
12. *Alliance College Ready Public Schools, et al. v. Public Employment Relations Board; United Teachers Los Angeles*, 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. (Board Decision affirmed 11/19/2021.)

2021-2022 Litigation Activity

13. *Rebecca Wu v. Public Employment Relations Board; Twin Rivers United Educators*, Filed: September 11, 2020, California Court of Appeal, Third Appellate District, Case No. C092640; Sacramento County Superior Court, Case No. 34-2019-80003289 [PERB Case No. SA-CO-618-E]. Issue: Whether the Superior Court properly sustained Twin Rivers United Educator's demurrer. (Active.)
14. *Jeffrey I. Barke, et al. v. Eric Banks, et al.*, Filed: October 16, 2020, US Court of Appeals, 9th Circuit, Case No. 20-56075; US District Court, Central District of California, Case No. 8:20-cv-00358. 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. (Motion to Dismiss affirmed 2/7/2022.)
15. *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 8, 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. (Board Decision affirmed 3/17/2022.)

2021-2022 Litigation Activity

16. *State of California, Correctional Health Care Service v. Public Employment Relations Board: Kevin M. Healy*, Filed: May 12, 2021, California Court of Appeal, First Appellate District, Division 5, 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.)
17. *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. (Board Decision affirmed 9/7/2022.)

2021-2022 Litigation Activity

18. *City of Glendale v. Public Employment Relations Board: International Brotherhood of Electrical Workers, Local 18*, Filed July 6, 2021, California Supreme Court, Case No. S269695, California Court of Appeal, Second Appellate District, Division 7, Case No. B304702; PERB Decision No. 2694 [PERB Case No. LA-CE-805-M]). Issue: The City's Petition for Review identifies three issues: (1) When the parties to a negotiation are at impasse, does that impasse remain in effect where, despite minor concessions in bargaining positions, the parties remain deadlocked on key issues? (2) Is impasse broken, thereby requiring the parties to return to the bargaining table, when the party that declared impasse presents a modified proposal during what it believed were impasse resolution procedures and states that the modified proposal is for settlement purposes only? (3) Can a party who believes it has reached a bona fide impasse during negotiations be compelled to return to the bargaining table even if the other side has not demonstrated a change in position that makes agreement possible? (Petition for Review denied, 9/15/2021.)

2021-2022 Litigation Activity

19. *County of Sonoma v. Public Employment Relations Board; Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association*, Filed July 22, 2021, California Court of Appeal, First Appellate District, Division Three, Case No. A163100; PERB Decision No. 2772-M [PERB Case Nos. SF-CE-1816-M, SF-CE-1817-M]). Issue: Whether the Board erred by finding the County violated the MMBA by refusing to meet and confer in good faith with the Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association before placing a county ordinance on the ballot. The ordinance made changes to the County's Independent Office of Law Enforcement Review and Outreach (IOLERO), including expanding IOLERO's investigative authority in several ways, and eliminating the requirement that its director be an attorney. (Active.)
20. *Public Employment Relations Board v. Clovis Unified School District; Association of Clovis Educators, CTA/NEA*, Filed August 30, 2021, Fresno County Superior Court, Case No. 21CECG02548; IR Request No. 804 [PERB Case Nos. SA-CE-3040-E and SA-CE-3047-E]. Issue: Whether injunctive relief is necessary to restore the status quo based on the Clovis Unified School District's conduct of potentially violating EERA by interfering with ACE's organizing campaign, dominating and assisting a competing employee organization, failing to meet and confer with ACE, surveilling ACE's activity, retaliating against an ACE organizer, and failing to act with strict neutrality between the two organizations. (Active.)

2021-2022 Litigation Activity

21. *State of CA, Department of Corrections and Rehabilitation v. Public Employment Relations Board; California Association of Psychiatric Technicians*, Filed: November 4, 2021, California Supreme Court, Case No. S271318, 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. (Board Decision affirmed 1/5/2022.)
22. *City & County of San Francisco v. Public Employment Relations Board; Service Employees International Union Local 1021*, Filed: November 8, 2021, California Supreme Court, Case No. S271694; 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 Court of Appeal erred in summarily denying the City's petition to review PERB Decision No. 2691-M, which CCSF claims renders unworkable a decades-old provision in the City Charter, adopted by voters, requiring that labor negotiations conclude before the Board of Supervisors adopts a budget. (Board Decision affirmed 12/15/2021.)

2021-2022 Litigation Activity

23. *Alliance College Ready Public Schools, et al. v. Public Employment Relations Board; United Teachers Los Angeles*, Filed: November 29, 2021, California Supreme Court, Case No. S272008, 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: Alliance College Ready Public Schools (Alliance) asks the California Supreme Court to review the appellate court's summary denial of its petition for extraordinary reliefs and decide whether EERA permits PERB to impose a duty to "meet and discuss" matters of "fundamental concern" with representatives that have not yet obtained status as exclusive representative of employees. (Petition for Review denied 1/26/2022.)
24. *Alliance Environmental Science and Technology High School, et al. v. Public Employment Relations Board; United Teachers Los Angeles*, Filed: November 29, 2021, California Supreme Court, Case No. S272009, 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: Alliance Environmental asks the California Supreme Court to review the appellate court's summary denial of its petition for extraordinary reliefs and decide whether the absolute privilege codified in Civil Code [section] 47(b) applies to public labor laws administered by PERB. Section 47(b) provides that communications made in any "judicial proceeding" or "any other official proceeding" are privileged such that they cannot give rise to tort liability. (Petition for Review denied 1/26/2022.)

2021-2022 Litigation Activity

25. *Alliance Marc & Eva Stern Math and Science High School, et al. v. Public Employment Relations Board; United Teachers Los Angeles*, Filed: December 6, 2021, California Court of Appeal, Second Appellate District, Division 2, Case No. B316745; PERB Decision No. 2795 [PERB Case Nos. LA-CE-6362-E, LA-CE-6366-E, LA-CE-6372-E and LA-CE-6377-E]). Issue: Whether the Board erred by finding e-mails sent by Alliance deterred or discouraged support for the union since the e-mails had a strong tendency to influence employee choice about whether to authorize representation. Alliance argues that Government Code section 3550 on its face, or as applied by PERB, violates the free speech protections under the U.S. and California Constitutions. (Active.)
26. *Visalia Unified School District v. Public Employment Relations Board; California School Employees Association*, Filed: March 9, 2022, California Court of Appeal, Fifth Appellate District; Case No. F084032; PERB Decision No. 2806 [SA-CE-2979-E]. Issue: Whether the Board erred in finding that the District terminated Gladys Ramirez in retaliation for her exercise of EERA-protected rights. (Active.)

2021-2022 Litigation Activity

27. *Alliance High School, et al v. Public Employment Relations Board; United Teachers Los Angeles*, Filed: March 29, 2022, California Court of Appeal, Second Appellate District, Division 2, Case No. B319352; PERB Decision Nos. 2719 and 2809 [PERB Case Nos. LA-CE-6600-E & LA-RR-1281-E, LA-RR-1282-E, and LA-RR-1283-E]. Issue: Whether the Board erred by finding Alliance's reorganization did not render the bargaining units inappropriate or excuse Alliance from recognizing or negotiating with UTLA, thereby finding Alliance refused to bargain in violation of the EERA. In addition, whether the Board erred when it denied Alliance's request to reconsider certifying the union at three of its charter schools, and granted UTLA's request for an amended certification at one school because it included a classification that was not listed in the petition. (Active.)
28. *Bellflower Unified School District v. Public Employment Relations Board; California School Employees Association*, Chapter 32, Filed: April 22, 2022, California Court of Appeal, Second Appellate District, Division 8, Case No. B319777; PERB Decision Nos. 2544a [PERB Case Nos. LA-CE-5955-E]. Issue: Whether the Board erred when it determined the District failed to comply with its remedial orders, including an attorney's fees award ordered in 2019 for its filing a frivolous reconsideration request. (Active.)

2021-2022 Litigation Activity

29. *Palomar Health v. National Nurses United, California Nurses Association (CNA); Public Employment Relations Board*, Filed: May 10, 2022, San Diego County Superior Court, Case No. 37-2022-00017624-CU-MC-NC [LA-CE-1581-M]. Issue: Whether the Court should dismiss Palomar's complaint for injunctive relief against CNA on the basis that PERB has exclusive initial jurisdiction over the dispute. (Active.)
30. *Public Employment Relations Board v. Fresno County Public Safety Association, County of Fresno*, Filed: May 16, 2022, Fresno County Superior Court, Case No. CECG01506. Issue: Whether the Court should enjoin certain essential employees in the correctional officer classification from participating in a strike. (Injunction dissolved 8/9/2022.)

2021-2022 Litigation Activity

31. *Cerritos Community College District v. Public Employment Relations Board: Cerritos College Faculty Federation American Federation of Teachers, Local 6215, Filed: June 6, 2022, California Court of Appeal, Second Appellate District, Division One, Case No. B320779; PERB Decision Nos. 2819 [PERB Case Nos. LA-CE-6378-E]. Issue: Whether the Board erred when it affirmed the ALJ's decision that the District violated its duty to bargain in good faith with Cerritos College Faculty Federation, American Federation of Teachers, Local 6215, over proposals concerning: (1) standards and procedures regarding discipline short of suspension or dismissal for full-time faculty; (2) the use of reassignment, assignment loss, and mandatory training as discipline for faculty; (3) misconduct investigations, including information the District will disclose to the Federation and accused faculty member during such investigations; and (4) provisions for paid administrative leave. (Active.)*
32. *Victor Valley Union High School District v. Public Employment Relations Board; Victor Valley Teachers Assn., Filed: July 6, 20223, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E079318; PERB Decision No. 2822 [PERB Case No. LA-CE-6562-E]. Issue: Whether the Board erred by finding that the District violated EERA when, during a deposition, its attorney asked Victor Valley Teachers Association President questions about: (1) confidential communications she had with a bargaining unit member concerning a disciplinary matter in which she advised that member; and (2) confidential communications she had with other bargaining unit members and union personnel about the disciplinary matter. (Active.)*

Decisions of the Board

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](https://perb.ca.gov) FOR UP-TO-DATE INFORMATION.

Decision No. 2544a-E

Caption: *California
School Employees
Association, Chapter 32
v. Bellflower Unified
School District*

Precedential

Description: The Board reviewed a proposed decision issued as part of ongoing proceedings regarding compliance with the Board's order in an earlier decision. That earlier decision, Bellflower Unified School District (2017) PERB Decision No. 2544, held that the District violated EERA in 2014 by subcontracting bus driver work without meeting and negotiating in good faith. The Board's remedial order required the District to cease and desist from unilaterally implementing bargainable policies, rescind its subcontract, reinstate laid-off drivers, make them whole, and reimburse the Union for lost dues. Then, in a 2019 decision, the Board directed the District to pay the Union attorney fees as a sanction for filing a frivolous reconsideration request. After a compliance hearing, the ALJ found the District had not complied with the Board's orders. The ALJ directed the District to do so, and the ALJ calculated interim amounts owed through December 31, 2020. Both parties excepted to the proposed decision.

Disposition: The Board affirmed most of the ALJ's determinations, supplemented the ALJ's analysis, and corrected several errors. In Part I, the Board determined the District failed to comply with its cease-and-desist, recission, and reinstatement obligations. In Parts II-V, the Board analyzed major compliance issues relevant to make-whole relief and the attorney fee award, and the Board explained its methods and calculations for ascertaining amounts owed. The Board ordered the District to pay the interim amounts owed through December 31, 2020, and the Board directed the ALJ to convene further compliance proceedings regarding remaining issues, including damages and interest accruing after December 31, 2020.

Decision No. 2598a-E

Caption: *California Association of Psychiatric Technicians v. State of California (Department of Corrections & Rehabilitation)*

Precedential

Description: In State of California (Department of Corrections & Rehabilitation) (2018) PERB Decision No. 2598-S, the Board concluded that the Department of Corrections and Rehabilitation (CDCR) interfered with (1) an employee's right to be represented by her union, the California Association of Psychiatric Technicians (CAPT), prior to and during an invasive body search; and (2) CAPT's corresponding right to represent employees prior to and during such searches. The Board found that CDCR thereby violated the Dills Act section 3519, subdivisions (a) and (b). CDCR filed a writ petition with the Court of Appeal for the Third Appellate District. In an unpublished opinion and order in Department of Corrections and Rehabilitation v. Public Employment Relations Bd. (October 4, 2021, No. C088562, 2021 WL 4519682), the Court of Appeal affirmed the Board's conclusion that CDCR violated the Dills Act, but the Court modified the wording of the Board's remedial order. Specifically, the Court of Appeal held that the remedial order applies only in circumstances in which CDCR and its representatives either constitute the appointing authority or are acting as an employer and the employee reasonably fears discipline.

Disposition: In accordance with the Court of Appeal's direction, the Board issued an order that fully supersedes its remedial order in State of California (Department of Corrections & Rehabilitation), supra, PERB Decision No. 2598-S.

Decision No. 2627a-E

Caption: *Oroville
Secondary Teachers
Association, CTA/NEA
v. Oroville Union High
School District*

Precedential

Description: The Board issued a modified decision in this matter after the Third District Court of Appeal partially vacated a portion of the original decision. The court found that the Oroville Union High School District did not violate the Educational Employment Relations Act by requiring two Oroville Secondary Teachers Association bargaining team members to use Personal Necessity Leave to engage in Association business. The Third District affirmed the Board's conclusion that EERA section 3543.1, subdivision (c) provides a reasonable amount of released time for negotiations preparation.

Disposition: The Board issued a modified decision in accordance with the order of the Third District Court of Appeal in Oroville Union High School District v. Public Employment Relations Board (Aug. 20, 2021, C089108) [nonpub. opn..].)

Decision No. 2758a-M

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

Precedential

Description: Charging Party Criminal Justice Attorneys Association of Ventura County requested reconsideration of County of Ventura (2021) PERB Decision No. 2758-M. In that decision, the Board found the County of Ventura violated the Meyers-Milias-Brown Act (MMBA) by implementing constructive receipt taxation of accrued leave without affording the Association adequate notice and a meaningful opportunity to bargain over the negotiable effects of that decision; and by bargaining in bad faith over amending the parties' leave redemption plan. The Association asked the Board to broaden the scope of the make-whole order.

Disposition: The Association's request for reconsideration of the Board's decision in County of Ventura (2021) PERB Decision No. 2758-M was denied. The Association's arguments were already presented to the Board and rejected and reiterating them was not an appropriate subject for reconsideration.

Decision No. 2776-E

Caption: *Annette*

*(Barudoni) Deglow v. Los
Rios Community College
and Annette (Barudoni)
Deglow v. Los Rios College
Federation of Teachers,
Local 2279*

Non-Precedential

Description: Deglow appealed the dismissal of her unfair practice charges alleging that: (1) the District violated the Educational Employment Relations Act (EERA) by failing to correct her hire date; and (2) the Federation violated EERA by working in “collusion” with the District to deny Deglow her correct her date. The Office of the General Counsel dismissed the charges on the grounds that they were untimely and failed to state a prima facie case. Deglow appealed.

Disposition: The Board dismissed the unfair practice charges without leave to amend and denied the District’s request for monetary sanctions without prejudice. However, the Board did issue a new litigation sanction against Deglow.

Decision No. 2777-E

Caption: *Annette
(Barudoni) Deglow v.
Los Rios Community
College District and
Annette (Barudoni)
Deglow v. Los Rios
College Federation of
Teachers, Local 2279*

Non-Precedential

Description: Deglow appealed the dismissal of her unfair practice charges alleging that: (1) the District violated the Educational Employment Relations Act (EERA) by failing to pay her a 20-year longevity increment and denying her medical care for her work-related injuries; and (2) the Federation violated EERA by “collaborat[ing]” with the District to deny her the 20-year longevity increment. The Office of the General Counsel dismissed the charges on the grounds that they were untimely and failed to state a prima facie case. Deglow appealed.

Disposition: The Board dismissed the unfair practice charges without leave to amend and denied the District’s request for monetary sanctions without prejudice. However, the Board did issue a new litigation sanction against Deglow.

Decision No. 2778-E

Caption: *Steven Eric
Field v. Glendale
Teachers Association*

Non-Precedential

Description: Charging Party Steven Eric Field appealed an Order of Dismissal issued by an administrative law judge following Glendale Teachers Association's (GTA) Motion to Dismiss. The ALJ issued an Order of Dismissal finding that, even if Field was able to prove all of the allegations in the unfair practice charge and complaint, they failed to state a prima facie violation of EERA.

Disposition: Dismissal Affirmed.

Decision No. 2779-E

Caption: *Michelle
McNaughton & The
Anonymous Know
Nothings v. Los Angeles
Unified School District*

Non-Precedential

Description: Michelle McNaughton and the Anonymous Know Nothings appealed the Office of the General Counsel's dismissal of their unfair practice charge. The charge, as amended, alleged that the Los Angeles Unified School District violated EERA by interfering with McNaughton's protected rights, terminating McNaughton in retaliation for her protected activities, and dominating the exclusive representative of classified employees, Service Employees International Union, Local 99.

Disposition: The Board affirmed the dismissal of the unfair practice charge.

Decision No. 2780-E

Caption: *Michelle
McNaughton & The
Anonymous Know
Nothings v. Service
Employees
International Union,
Local 99*

Non-Precedential

Description: Michelle McNaughton and the Anonymous Know Nothings appealed the Office of the General Counsel's dismissal of their unfair practice charge. The charge, as amended, alleged that Service Employees International Union, Local 99 violated EERA by failing to adequately represent McNaughton during her Skelly hearing and subsequent termination appeal proceedings before McNaughton's employer, the Los Angeles Unified School District (LAUSD), and colluding with LAUSD to interfere with McNaughton's protected rights.

Disposition: The Board affirmed the dismissal of the unfair practice charge.

Decision No. 2781-E

Caption: *Camille Piper
v. California Teachers
Association*

Non-Precedential

Description: The charge alleged that California Teachers Association breached its duty of fair representation, interfered with protected activities, and retaliated against charging party for engaging in such activities. PERB's Office of the General Counsel dismissed the charge for failing to state a prima facie case.

Disposition: In a non-precedential decision, the Board concurred that the charge did not allege a prima facie case, and the Board therefore affirmed the dismissal.

Decision No. 2782-M

Caption: *Ryan Allen
Wagner, Mark C.R.
Pipkin, and Brett Day v.
Operating Engineers
Local Union No. 3,
AFL-CIO*

Precedential

Description: Three consolidated complaints alleged that Operating Engineers Local Union No. 3, which represents a bargaining unit at the Sacramento-Yolo Mosquito & Vector Control District, violated the MMBA by interfering with the rights of three District employees. The complaints specifically alleged that Local 3 interfered with protected rights when it submitted a public records request asking for, among other items, certain e-mails that Charging Parties sent or received over a 15-week period. After receiving cross-motions for summary judgment, the ALJ found Local 3 liable for the violations as alleged in the complaints.

Disposition: The Board reversed and dismissed the complaints and underlying charges. The Board held that where the sole challenged conduct is a respondent's public records request, a charging party must meet PERB's traditional interference standards and show that the request, or any part of it, was both baseless and in bad faith. The Board found undisputed facts showing that Local 3's request was not baseless, and the Board therefore found no need to reach any other issue.

Decision No. 2783-H

Caption: *American Federation of State, County & Municipal Employees Local 3299; University Professional & Technical Employees, Communication Workers of America, Local 9119 v. Regents of the University of California and Teamsters Local 2010 v. Regents of the University of California*

Precedential

Description: The Regents of the University of California issued an Executive Order requiring “all students, faculty, and staff living, learning, or working” on University premises to receive an influenza vaccination by November 1, 2020. The complaints alleged that the University made the decision and implemented that decision without satisfying its obligation to meet and confer with unions representing employees working on University premises.

Disposition: The Board found that the decision to adopt the influenza vaccination policy was outside the scope of representation because under the unprecedented circumstances of a potential confluence of the COVID-19 and influenza viruses, the need to protect public health was not amenable to collective bargaining or, alternatively, outweighed the benefits of bargaining over the policy as to University employees. The Board also found, however, that the University was not privileged to implement the vaccination policy before completing negotiations over its effects because it did not meet and confer in good faith prior to implementation. Based on these findings, the University’s implementation of the vaccination policy constituted an unlawful unilateral change in violation of HEERA.

Decision No. 2784-E

Caption: *Laureen
Thompson v. California
School Employees
Association Chapter
821*

Non-Precedential

Description: Laureen Thompson appealed the Office of the General Counsel's dismissal of her unfair practice charge alleging that California School Employees Association Chapter 821 violated its duty of fair representation by declining to arbitrate a grievance alleging that Thompson's employer involuntary transferred her to another school site in violation of the collective bargaining agreement.

Disposition: The Board affirmed the dismissal of Thompson's unfair practice charge.

Decision No. 2785-E

Caption: *Ermine
Fredrica Nelson & The
Anonymous Know
Nothings v. Jurupa
Unified School District*

Non-Precedential

Description: Ermine Fredrica Nelson and the Anonymous Know Nothings appealed the Office of the General Counsel's dismissal of their unfair practice charge. The charge, as amended, alleged that the Jurupa Unified School District violated EERA by retaliating against Nelson for protected activities, and interfering with such activities, when it: issued her a Letter of Concern, removed her collaborative class and added a direct instruction class in its place, failed to provide her own classroom, directed her to return to her school site in May 2020 (during the COVID-19 pandemic) to pack up her classroom, and misprocessed her workers' compensation claim. Charging Parties also alleged violations of various federal and state statutes outside PERB's jurisdiction, including the National Labor Relations Act, the Education Code, the Labor Code, the California Constitution, and provisions of the Government Code unrelated to PERB's enforcement of EERA.

Disposition: The Board affirmed the dismissal of the unfair practice charge, finding that Charging Parties had not alleged facts stating a prima facie case of any claim within PERB's jurisdiction.

Decision No. 2786-E

Caption: *Jason Pickard &
The
AnonymousKnowNothings
v. Los Angeles Unified
School District*

Non-Precedential

Description: Charging Parties Jason Pickard and the AnonymousKnowNothings filed exceptions to a proposed decision issued by a PERB Administrative Law Judge dismissing Charging Parties' unfair practice charge and complaint. The ALJ dismissed the allegations that the District had engaged in retaliatory conduct and interfered with protected activity for failure to state a prima facie case.

Disposition: Non-Precedential decision. Dismissal affirmed.

Decision No. 2787-M

Caption: *Joseph E.
Knighten, Sr. v. San
Francisco Housing
Authority*

Non-Precedential

Description: Charging Party Joseph E. Knighten, Sr. appealed the dismissal issued by PERB's Office of the General Counsel of Knighten's unfair practice charge. The charge alleged that the Housing Authority of the City and County of San Francisco had violated the Meyers Miliias-Brown Act by breaching a contract with Knighten's union and failing to follow past practice by not allowing Knighten to "bump" into a foreman position in another department after he was laid off. The Office of the General Counsel dismissed the charge, finding that Knighten did not have standing to allege an unlawful unilateral change and had not alleged facts stating a prima facie case of retaliation.

Disposition: Non-Precedential decision. Dismissal affirmed.

Decision No. 2787-M

Caption: *Joseph E.
Knighten, Sr. v. San
Francisco Housing
Authority*

Non-Precedential

Description: Charging Party Joseph E. Knighten, Sr. appealed the dismissal issued by PERB's Office of the General Counsel of Knighten's unfair practice charge. The charge alleged that the Housing Authority of the City and County of San Francisco had violated the Meyers Miliias-Brown Act by breaching a contract with Knighten's union and failing to follow past practice by not allowing Knighten to "bump" into a foreman position in another department after he was laid off. The Office of the General Counsel dismissed the charge, finding that Knighten did not have standing to allege an unlawful unilateral change and had not alleged facts stating a prima facie case of retaliation.

Disposition: Non-Precedential decision. Dismissal affirmed.

Decision No. 2788-M

Caption: *Pasadena Non-Sworn Employees Association v. City of Pasadena*

Precedential

Description: Pasadena Non-Sworn Employees Association (PNSEA) alleged that the City of Pasadena unreasonably denied a representation/severance petition and thereby violated the City's Employer-Employee Relations Resolution (EERR), the MMBA, and PERB regulations. The petitioned-for unit would include the City's 12 unrepresented Police Supervisors, in addition to nearly 80 employees severed from two represented bargaining units. The complaint alleged the City unreasonably applied its EERR by: (1) requiring PNSEA to demonstrate that its proposed unit was more appropriate than the existing units; (2) rejecting PNSEA's contention that its proposed unit was appropriate based on evidence of unit configurations in surrounding cities; (3) declining to find a community of interest between supervisory and non-supervisory classifications and (4) denying PNSEA's alleged alternative request to create a new unit solely comprised of the residual, unrepresented Police Supervisor classification. After the parties filed post-hearing briefs, the Board directed that the record be submitted to the Board itself for decision pursuant to PERB Regulation 32320, subdivision (a)(1).

Disposition: PNSEA did not establish any violation. In determining that it would be inappropriate to sever classifications and parts of classifications from their existing units, the City reasonably applied the EERR's unit determination criteria, including community of interest factors, labor relations history, efficiency of operations, and freedom to exercise protected rights. Because the City reasonably determined not to sever non-supervisory positions from their existing bargaining units, the City had a valid threshold reason not to create the petitioned-for unit, and the Board did not need to determine whether the EERR was unreasonable in purporting to require that supervisors be in a separate unit from non-supervisors. The Board also found that PNSEA had never requested to represent a unit solely comprised of the residual, unrepresented Police Supervisor classification.

Decision No. 2789-M

Caption: *American Federation of State, County & Municipal Employees, District Council 36 v. Long Beach Public Transportation Company*

Non-Precedential

Description: An administrative law judge issued a proposed decision finding that the District violated MMBA by unilaterally rescinding a sick leave buy-back program. The District excepted to the proposed decision. While exceptions were pending before the Board, the parties informed the Board that they had reached a global settlement of all disputes and the Union requested that it be permitted to withdraw the underlying unfair practice charge with prejudice, dismiss the corresponding complaint, and close the administrative case.

Disposition: The Board found the withdrawal of the underlying unfair practice charge and dismissal of the complaint pursuant to a global settlement agreement between the parties to be consistent with the MMBA's purpose of promoting harmonious labor relations and granted the request.

Decision No. 2790-M

Caption: *Estella R. DuBose
v. City of Compton*

Non-Precedential

Description: Estella DuBose appealed an order by an ALJ dismissing her complaint against the City of Compton. The complaint, as amended, alleged that the City violated the Meyers-Milias-Brown Act by: (1) refusing to disqualify the City's Personnel Board Chairman and replace him with an independent hearing officer for purposes of DuBose's termination appeal hearing, thereby creating intolerable conditions for DuBose to pursue her appeal; (2) failing to engage in the interactive process to determine if the City could accommodate DuBose's disability during her appeal proceedings; (3) causing the Personnel Board to sustain the City's objections to the majority of the proposed exhibits DuBose intended to introduce at her appeal hearing; and (4) refusing to accept DuBose's request to appeal the Personnel Board's ruling to binding arbitration pursuant to the Memorandum of Agreement between the City and the Compton Management Employees Association, American Federation of State, County, and Municipal Employees, Local 2325, AFL-CIO, Council 36. The complaint alleged that the City took these actions in retaliation for DuBose's protected activities, and that the actions interfered with her protected rights.

Disposition: The Board affirmed the dismissal of the unfair practice charge.

Decision No. 2791-S

Caption: *California
Attorneys, Administrative
Law Judges & Hearing
Officers in State
Employment v. State of
California (Department of
Fish & Wildlife)*

Non-Precedential

Description: The amended unfair practice charge alleged that the State of California (Department of Fish & Wildlife) violated the Ralph C. Dills Act by refusing to promote its in-house attorneys to the Attorney V classification and instead outsourcing legal work to a private law firm. The Office of the General Counsel found the charge failed to state a prima facie case of bad faith bargaining under either the “per se” or “totality of conduct” tests, and dismissed the charge.

Disposition: The Board affirmed the dismissal of the unfair practice charge.

Decision No. 2792-E

Caption: *Glendale Unified School District v. Glendale Teachers Association*

Non-Precedential

Description: The Glendale Unified School District alleged that the Glendale Teachers Association violated its duty to bargain in good faith when one of its negotiators recorded a bargaining session even though the parties had agreed not to do so. An administrative law judge granted the Association's prehearing motion to dismiss, and the District appealed. While the District's appeal was pending before the Board, the parties informed the Board that they had settled their dispute and the District requested that it be permitted to withdraw the underlying unfair practice charge and appeal.

Disposition: The Board found the District's withdrawal request to be consistent with EERA's purpose of promoting harmonious labor relations. The Board therefore granted the District's request.

Decision No. 2793-E

Caption: *Bellflower
Teachers Association v.
Bellflower Unified School
District*

Non-Precedential

Description: An administrative law judge issued a proposed decision finding that the Bellflower Unified School District violated EERA by unilaterally denying a certificated employee paid bereavement and personal necessity leaves during his summer teaching assignment, without providing the Association notice and a prior opportunity to bargain over the decision. The District excepted to the proposed decision.

Disposition: The Board rejected the District's exceptions and affirmed the proposed decision.

Decision No. 2794-E

Caption: *Joei Dyes and the AnonymousKnowNothings v. Palmdale School District*

Non-Precedential

Description: Charging Parties Joei Dyes and the AnonymousKnowNothings (Charging Parties) appealed a dismissal by PERB's Office of the General Counsel (OGC) finding that: (1) PERB lacked jurisdiction over the alleged breach of contract, the alleged defamation, retaliation and/or discrimination based on a protected class (race, gender and age), and any violation of the Labor Code; (2) Charging Parties lacked standing to allege that the employer violated section 3543.5, subdivision (d); (3) Charging Parties failed to establish a prima facie violation of Educational Employment Relations Act (EERA) based on blacklisting or defamation; and (4) Charging Parties' allegations in the amended charge related to discrimination failed to establish a prima facie case that the employer treated Dyes disparately, departed from established procedures, offered inconsistent or contradictory justifications for its actions, or any other facts that might demonstrate the employer's unlawful motive. The amended charge also alleged that the employer violated the Public Employee Communication Chapter (PECC) by failing to provide the exclusive representative with Dyes' contact information within 30 days of her conditional offer of employment. OGC's dismissal letter did not address this allegation.

Disposition: The Board found that the newly alleged PECC violation predated the amended charge by more than six months and Charging Parties did not allege facts indicating that the relation back doctrine or another recognized exception to the statute of limitations applies. Thus, the new PECC allegation was untimely. Accordingly, the Board found that alleged PECC violation, along with Charging Parties' remaining allegations, were properly dismissed.

Decision No. 2795-E

Caption: *United Teachers Los Angeles v. Alliance Marc & Eva Stern Math & Science High School; Alliance Ouchi-O'Donovan 6-12 Complex; Alliance Renee & Meyer Luskin Academy High School; Alliance College-Ready Middle Academy #10 A.K.A. Alliance Leadership Middle Academy; Alliance Judy Ivie Burton Technology Academy High School; Alliance Collins Family College-Ready High School; Alliance Gertz-Ressler/Richard Merkin 6-12 Complex; Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School; Alliance College-Ready Middle Academy No. 5; Alliance College-Ready Middle Academy No. 8; Alliance College-Ready Middle Academy No. 12*

Precedential

Description: These consolidated cases came before the Board on exceptions and cross-exceptions, and supplemental briefing after the issuance of Regents of the University of California (2021) PERB Decision No. 2755-H and Regents of the University of California (2021) PERB Decision No. 2756-H, in which the Board articulated the standard for what constitutes a violation of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), Government Code section 3500. This case arose after a union filed petitions with PERB to seek to represent certificated employees at three of the schools within a charter school management organization. In response the charter school management organization and several of the schools' principals and assistant principals sent e-mail messages about the union's organizing efforts to certificated employees. The complaints issued alleged that these e-mail messages violated the Educational Employment Relations Act (EERA) and PEDD. The Administrative Law Judge concluded that none of the e-mails at issue on appeal violated EERA or PEDD.

Disposition: The Board held that the e-mails deterred or discouraged support for the union because the e-mails had a strong tendency to influence employee choice about whether or not to authorize representation, as they clearly suggested that unionization, especially with this particular union, would harm employees' paychecks, their employment, students, and the continuation of their charter school. The Board also found that the school principals and assistant principals, and the charter management organization that served as the schools' human resources and labor relations department by contract, acted as agents of the schools in sending the e-mails. The Board thus found sending the e-mails was a violation of PEDD but did not interfere with employee or union rights in violation of EERA.

Decision No. 2796-E

Caption: *Bellflower
Teachers Association,
CTA/NEA v. Bellflower
Unified School District*

Precedential

Description: The complaint alleged that the Bellflower Unified School District violated EERA by unilaterally altering the status quo without providing Bellflower Teachers Association notice and the opportunity to meet and negotiate. Specifically, the complaint alleged that the District changed the status quo by requiring employees to attend on-site meetings after the normal on-site workday ended, without obtaining their consent. The ALJ found the District liable for the alleged violation. The proposed decision ordered the District, among other things, to compensate nine teachers with one-half hour of extra pay for attending a mandatory on-site meeting that lasted past the end of their normal on-site workday. The District filed exceptions.

Disposition: The Board affirmed the ALJ's conclusion that the District violated its bargaining obligations. The Board determined the District deviated from the parties' contract, implemented new policies, and/or enforced existing policy in a new way. The Board also concluded that the deviation had a "generalized effect or continuing impact" on terms and conditions of employment. Finally, the Board partially granted one of the District's exceptions regarding the ALJ's remedial order and directed the Office of the General Counsel to determine in compliance proceedings the number and identity of any teachers entitled to monetary compensation.

Decision No. 2797-E

Caption: *Carpinteria
Association of United
School Employees, Local
2216 v. Carpinteria
Unified School District*

Precedential

Description: The Carpinteria Unified School District filed exceptions to a PERB ALJ's determination that it retaliated against Carpinteria Association of United School Employees, Local 2216 (CAUSE or Union) President Jay Hotchner because of his protected activities, and thereby denied CAUSE its right to represent its members, in violation of Educational Employment Relations Act (EERA) section 3543.5, subdivisions (a) and (b). Central to the dispute were two Notices of Unprofessional Conduct the District issued to Hotchner. The first Notice included three incidents the District described as unprofessional conduct: Hotchner's classroom knock-knock joke, his conduct at and surrounding layoff "bumping" meetings, and his interaction with the District's HR director related to an employee's personnel file review. The second Notice was for voicemail messages Hotchner left on a parent's phone.

The Board affirmed the ALJ's finding that a majority of the conduct underlying the Notices was related to labor and employment disputes, and not so "opprobrious, flagrant, insulting, defamatory, insubordinate, or fraught with malice" as to substantially disrupt or materially interfere with employer operations, and thus lose protection. (Rancho Santiago Community College District (1986) PERB Decision No. 602, p. 13 (Rancho Santiago).) The Board affirmed that these protected activities were the but-for cause of the Notices, and not outweighed by the District's affirmative defense that it would have issued both the Notices absent Hotchner's protected activity based on his alleged misconduct. The Board also upheld the ALJ's subpoena rulings and his remedial order.

Disposition: The Board affirmed the proposed decision, finding that the District retaliated against Hotchner and denied CAUSE its right to represent its members.

Decision No. 2798-M

Caption: *American Federation of State, County & Municipal Employees, District Council 36 v. Sanitation Districts of Los Angeles County*

Non-Precedential

Description: Respondent Sanitation Districts of Los Angeles County filed exceptions challenging a proposed decision issued by a PERB Administrative Law Judge. The ALJ found that the Respondents had unilaterally used GPS data to investigate potential timekeeping abuse by an employee, failed to adequately respond to Charging Party's information request, and terminated an employee in retaliation for engaging in protected activity. The Board affirmed the findings of unilateral change and failure to adequately respond to the request for information but reversed the finding of retaliation.

Disposition: Non-Precedential decision. Proposed decision partially affirmed, partially dismissed.

Decision No. 2799-M

Caption: *Santa Clara
County District Attorney
Investigators' Association
v. County of Santa Clara*

Precedential

Description: The complaint alleged that Santa Clara County violated the MMBA by enacting an ordinance which regulates the County's surveillance technology use before completing negotiations with the Santa Clara County District Attorney Investigators Association over the County Board of Supervisors' decision to adopt the ordinance and/or the decision's effects on terms and conditions of employment. The ALJ found that the County had no obligation to bargain over its decision to adopt the ordinance, but the ALJ upheld the complaint's effects bargaining claim. The Association filed exceptions, primarily contending that the County had a duty to bargain over the ordinance's definition of the term "surveillance technology" and over its provision establishing criminal misdemeanor liability for misusing County surveillance technology.

Disposition: The Board affirmed the ALJ's conclusion that the County was not required to engage in decision bargaining but did have a duty to engage in effects bargaining. While the ALJ found that the Association had the right to bargain over the ordinance's effects on employee workload and safety, the Board concluded that the Association also had the right to meet and confer over the consequences to Association-represented employees found to have misused County surveillance technology. The Board directed the County to: (1) meet and confer, upon request, over all three of the ordinance's effects; (2) make whole any employees harmed by the ordinance to date; and (3) cease and desist from enforcing the ordinance against Association-represented employees until one of the following conditions is satisfied: the parties reach an overall agreement on each of the specified effects; the parties conclude their effects negotiations in a bona fide impasse; or the Association fails to pursue effects negotiations in good faith.

Decision No. 2800-E

Caption: *Mark A. Wilson
v. Service Employees
International Union Local
1021*

Non-Precedential

Description: Wilson appealed the dismissal of his unfair practice charge alleging that SEIU Local 1021 violated the Educational Employment Relations Act (EERA) by failing to adequately represent him during his Skelly hearing and subsequent termination arbitration with Wilson's employer, the Oakland Unified School District. The Office of the General Counsel dismissed the charges on the grounds that they failed to state a prima facie case. Wilson appealed.

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

Decision No. 2801-M

Caption: *Brett A. Moore v.
International Association
of Fire Fighters, Local 55*

Non-Precedential

Description: Charging Party filed an unfair practice charge alleging that International Association of Fire Fighters, Local 55 violated the MMBA by intimidating and shaming him after he decided to withdraw his union membership. OGC determined that Charging Party had not alleged facts that would, if proven, establish a prima facie case of any unfair practice, and dismissed the charge. Charging Party timely appealed from OGC's dismissal.

Disposition: In a nonprecedential decision, the Board affirmed OGC's dismissal of the unfair practice charge without leave to amend.

Decision No. 2802-E

Caption: *Joei Dyes and
The*

*AnonymousKnowNothings
v. United Teachers Los
Angeles*

Non-Precedential

Description: Charging Parties filed an unfair practice charge alleging that United Teachers Los Angeles (UTLA) violated EERA by breaching the union's duty of fair representation. Charging Parties primarily claim that UTLA: (1) failed to require Dyes' employer, Los Angeles Unified School District, to reverse its decision to dismiss her employment; and (2) did not contact Dyes to inform her of the opportunity to vote on a successor collective bargaining agreement. OGC dismissed the charge, finding that none of the claims stated a prima facie case. Charging Parties timely appealed from OGC's dismissal.

Disposition: In a nonprecedential decision, the Board affirmed the dismissal of the unfair practice charge without leave to amend.

Decision No. 2803-E

Caption: *Oxnard
Federation of Teachers
and School Employees,
Local 1273 v. Oxnard
Union High School District*

Precedential

Description: In March 2020, Oxnard Union High School District responded to COVID-19 by shifting to distance instruction like many school districts. In October 2020 and March 2021, the District and the Oxnard Federation of Teachers and School Employees signed MOUs addressing the eventual return to hybrid instruction or full in-person instruction. The MOUs established a maximum hybrid class size and gave staff a choice whether to return on-site for hybrid instruction during the remainder of the 2020-21 school year. The complaint alleged that the District ultimately deviated from these agreements, thereby violating its bargaining obligations as to its decisions and/or their negotiable effects. After an ALJ held an evidentiary hearing on liability, the Board transferred the record to the Board itself.

Disposition: The Board found the District violated EERA when it: (1) unilaterally repudiated multiple MOU provisions; and (2) failed to satisfy its effects bargaining obligations. The Board held that while management's right to respond to a public health emergency by instituting distance instruction (while bargaining in good faith as time allows) includes a concomitant right to return to the status quo in stages (also while bargaining in good faith as time allows), the District violated its bargaining duties. The Board found that the Federation gave up other potential demands in exchange for what it achieved in the binding MOUs the parties reached many months into the pandemic, and the District could not repudiate its commitments. The Board remanded to the Division of Administrative law for settlement discussions and absent an agreement, a hearing on remedies.

Decision No. 2804-E

Caption: *Maria-Ester
Nunez v. South Orange
County Community
College District*

Precedential

Description: Charging Party Maria-Ester Nunez appealed a dismissal by PERB's Office of the General Counsel (OGC) finding that: (1) the amended charge did not allege any nexus factors to support the retaliation allegation; (2) the allegation that the District postponed the Trustees' vote to deprive Nunez of the opportunity to clarify and correct misleading information was speculative and did not provide other facts that might demonstrate the employer's unlawful motive; and (3) PERB does not have jurisdiction to enforce the open meeting requirements under the Brown Act.

Disposition: The Board remanded to the OGC to issue a complaint alleging that the South Orange County Community College District terminated Maria-Ester Nunez's employment because she engaged in activities protected by the Educational Employment Relations Act. All other allegations in the amended unfair practice charge were dismissed without leave to amend.

Decision No. 2805-E

Caption: *Lillian Edith
Grant v. Inglewood
Unified School District*

Non-Precedential

Description: Lillian Edith Grant alleged that the Inglewood Unified School District violated the Educational Employment Relations Act (EERA) by transferring Grant to the Human Resources Department, removing various public relations duties from her, recommending her position be eliminated, and ultimately laying off Grant in retaliation for engaging in protected activity. The administrative law judge (ALJ) dismissed the complaint and underlying unfair practice charge, concluding that Grant failed to prove the District engaged in unlawful retaliation. Grant timely appealed.

Disposition: The Board found the ALJ's factual findings were supported by the record and his conclusions of law are consistent with applicable law. The Board therefore affirmed the dismissal of the complaint for the reasons stated in the proposed decision.

Decision No. 2806-E

Caption: *California School
Employees Association,
Chapter 83 v. Visalia
Unified School District*

Precedential

Description: The complaint alleged that the Visalia Unified School District violated EERA by terminating the CSEA Chapter President in retaliation for her protected activities. The ALJ found the District liable for the alleged violation and ordered the District to offer the affected employee immediate reinstatement and provide her backpay from the date of termination to the date she is reinstated or declines reinstatement. Both parties filed exceptions to the proposed decision.

Disposition: The Board affirmed the proposed decision. The Board adjusted the remedial order to require that the District offer the affected employee reinstatement to her former position or, if that position no longer exists, a substantially similar position within 30 days the decision is no longer subject to appeal. In addition, the Board ordered the District to make the affected employee whole for any financial losses she suffered as a result of her termination, including backpay.

Decision No. 2807-M

Caption: *Tarita Tennison
v. County of Solano*

Non-Precedential

Description: Tennison filed an unfair practice charge alleging that the County of Solano, while implementing a departmental reorganization, denied her a preferable assignment, and thereby retaliated against her for activities protected under the MMBA. Following a formal hearing, the ALJ dismissed the complaint and underlying unfair practice charge. The ALJ concluded that Tennison failed to establish a prima facie case and that, in any event, the County established its affirmative defense that it would have taken the same action even if Tennison had not engaged in protected activity. Tennison filed timely exceptions.

Disposition: In a nonprecedential decision, the Board affirmed the proposed decision.

Decision No. 2808-E

Caption: *Joei Dyes and
The
AnonymousKnowNothings
v. United Teachers Los
Angeles*

Non-Precedential

Description: Dyes and the AnonymousKnowNothings (Charging Parties) appealed the dismissal of their consolidated unfair practice charges alleging that UTLA violated the Educational Employment Relations Act (EERA) by retaliating against Dyes for protected activity and breaching its duty of fair representation related to a series of disputes with Dyes' then employer, Los Angeles Unified School District. The Office of the General Counsel dismissed the charges on the grounds that they failed to state a prima facie case. Charging Parties appealed.

Disposition: In a non-precedential decision, the Board dismissed the unfair practice charges without leave to amend.

Decision No. 2809-E

Caption: *United Teachers
Los Angeles v. Alliance Judy
Ivie Burton Technology
Academy High School,
Alliance Gertz-
Ressler/Richard Merkin 6-12
Complex & Alliance College-
Ready Middle Academy No.
5*

Precedential

Description: Charging Party United Teachers Los Angeles (UTLA) alleged that Respondents, three Alliance Charter Schools, refused to recognize and bargain with UTLA in violation of EERA. Respondents alleged that they were committing a technical refusal to bargain in order to obtain appellate court review of Alliance Judy Ivie Burton Technology Academy High, et al. (2020) PERB Decision No. 2719, which certified UTLA as the exclusive representative of the certificated bargaining units at each school. Respondents also alleged that a recent reorganization constituted changed circumstances that warranted reversing the finding that the individual school units were appropriate. Based on the reorganization, UTLA requested an amendment of certification to change Respondents' names to the name adopted during the reorganization.

Disposition: The Board issued its decision based on a stipulated record pursuant to PERB Regulations 32215 and 32320, subdivision (a)(1), finding that Respondents' conduct violated EERA. The Board concluded that the reorganization did not render the bargaining units inappropriate or excuse the Respondents from recognizing or negotiating with UTLA; and therefore, the Charter Schools' refusal to bargain with UTLA violated EERA. The Board further found that the purported changed circumstances do not warrant modification of the units and amended UTLA's certifications to reflect the employers' new name.

Decision No. 2810-E

Caption: *David Lisker v.
San Francisco Community
College District*

Non-Precedential

Description: David Lisker alleged that his employer, San Francisco Community College District, violated the Educational Employment Relations Act by taking numerous adverse actions against him because he engaged in EERA-protected activities. The Office of the General Counsel (OGC) issued a partial dismissal finding there was no causal nexus between the dismissed adverse actions and Lisker's protected activity. Lisker timely appealed.

Disposition: In a non-precedential decision, the Board affirmed the OGC's partial dismissal after discussion of the requirement to allege facts to establish nexus.

Decision No. 2811-E

Caption: *David Lisker v.
American Federation of
Teachers, Local 2121,
CFT/AFT*

Non-Precedential

Description: David Lisker alleged that his union, American Federation of Teachers, Local 2121, CFT/A, violated the Educational Employment Relations Act by breaching the duty of fair representation. The Office of the General Counsel (OGC) dismissed the amended charge for failure to establish a prima facie case. Lisker timely appealed.

Disposition: In a non-precedential decision, the Board affirmed OGC's dismissal.

Decision No. 2812-E

Caption: *Mount Diablo School Psychologists Association, American Federation of Teachers, Local 1902 v. Mount Diablo Unified School District*

Non-Precedential

Description: PERB's Office of the General Counsel (OGC) dismissed a charge filed by the Mount Diablo School Psychologists Association, American Federation of Teachers, Local 1902 (Association). The charge, as amended, alleged that the Mount Diablo Unified School District bargained in bad faith and/or participated in impasse procedures in bad faith, thereby violating EERA. OGC found that the amended charge did not state a prima facie case, and the Association timely appealed.

Disposition: While the Association's appeal was pending before the Board, the parties settled their dispute. Based on the parties' agreement, the Association asked to withdraw its appeal and dismiss the pending case. In a non-precedential decision, the Board found that it was consistent with the purposes of EERA to grant the Association's request to withdraw its appeal, and to dismiss the unfair practice charge without leave to amend.

Decision No. 2813-E

Caption: *Antelope Valley
Community College
District v. Antelope Valley
College Federation of
Teachers*

Non-Precedential

Description: Charging Party Antelope Valley Community College District appealed the dismissal of its unfair practice charge by PERB's Office of the General Counsel (OGC). The charge, as amended, alleges that the Antelope Valley College Federation of Teachers (Federation) violated the Educational Employment Relations Act (EERA) by demanding to negotiate with the District over eliminating the District's winter intersession term in the 2020-2021 and 2021-2022 academic years. The District alleges this conduct constitutes a per se violation of the Federation's duty to bargain in good faith, and that the totality of the circumstances also demonstrate a violation of EERA section 3543.6, subdivision (c). OGC dismissed the charge for failure to state a prima facie case.

Disposition: Dismissal affirmed.

Decision No. 2814-E

Caption: *Joei Dyes and
The
AnonymousKnowNothings
v. Los Angeles Unified
School District*

Non-Precedential

Description: Charging Parties Joei Dyes and the AnonymousKnowNothings appealed the dismissal of their unfair practice charge by PERB's Office of the General Counsel. The charge, as amended, alleges that the Los Angeles Unified School District violated the Educational Employment Relations Act by harming Dyes' ability to obtain and/or maintain employment with other public school employers, i.e., by "blacklisting" Dyes. OGC dismissed the charge, finding that it failed to state a prima facie case.

Disposition: Dismissal affirmed.

Decision No. 2815-M

Caption: *Mikel Jaye v.
Service Employees
International Union Local
1021*

Non-Precedential

Description: Mikel Jaye alleged that his union, Service Employees International Union Local 1021, violated the Meyers-Milias-Brown Act by making harassing comments about Jaye's nonmember status, excluding him from the bargaining team and from negotiation strategy discussions because of his nonmember status, and informing him that nonmembers are not permitted to vote on ratification of a memorandum of understanding. The Office of the General Counsel (OGC) dismissed the amended charge for failure to establish a prima facie case. Jaye timely appealed.

Disposition: In a non-precedential decision, the Board affirmed OGC's dismissal.

Decision No. 2816-M

Caption: *Jon-Michael
Lopez v. Service
Employees International
Union Local 721*

Non-Precedential

Description: Lopez appealed the dismissal of his unfair practice charge alleging that SEIU violated the Meyers-Milius-Brown Act (MMBA) by interfering with Lopez's right to be represented; failing to represent him in good faith; discriminating against him; and slandering him and his uncle. The Office of the General Counsel dismissed the charge on the grounds that it failed to state a prima facie case of interference, discrimination, breach of the duty of fair representation, or any other unfair labor practice. Lopez appealed.

Disposition: In a non-precedential decision, the Board dismissed the unfair practice charge without leave to amend.

Decision No. 2817-E

Caption: *Annette
(Barudoni) Deglow v. Los
Rios Community College
District; Annette
(Barudoni) Deglow v.
Los Rios College
Federation of Teachers,
Local 2279*

Non-Precedential

Description: Deglow appealed the dismissal of her unfair practice charges alleging that: (1) the District violated the Educational Employment Relations Act (EERA) by failing to correct her hire date, thus depriving her of longevity pay; and (2) the Federation violated EERA by causing or attempting to cause her employer to deprive her of longevity pay. The Office of the General Counsel (OGC) summarily dismissed both charges for failure to state a prima facie case, based on application of the litigation sanction the Board articulated in Los Rios Community College District and Los Rios College Federation of Teachers, Local 2279 (2021) PERB Decision No. 2776 (Los Rios). OGC found that though Deglow's charges allege a new longevity increment for 2019-2020, the underlying basis is the same dispute Deglow previously litigated concerning the District's asserted failure to correct her hire date and the Federation's asserted failure to take action regarding that dispute.

Disposition: The Board dismissed the unfair practice charges without leave to amend and clarified that litigation sanction against Deglow articulated in Los Rios, supra, PERB Decision No. 2776, and reiterated in Los Rios Community College District and Los Rios College Federation of Teachers, Local 2279 (2021) PERB Decision No. 2777, applies not only to 20-year longevity increments, but to any dispute about a longevity increment premised on the underlying dispute about Deglow's hire date or missing service credits.

Decision No. 2818-I

Caption: *California Federation of Interpreters, Local 39000, The Newspaper Guild-Communication Workers of America v. Orange County Superior Court & Region 4 Court Interpreter Employment Relations Committee.*

Precedential

Description: California Federation of Interpreters, Local 39000 TNG-CWA (CFI) filed exceptions to the proposed decision of an administrative law judge (ALJ) dismissing its unfair practice charge against Orange County Superior Court and/or the Region 4 Court Interpreter Employment Relations Committee. CFI alleged that the Court made an unlawful unilateral change when it disciplined a bargaining unit member based on the accuracy of their interpretation, without affording CFI an opportunity to meet and confer over the decision to implement the new discipline criterion or procedure and/or the effects of that decision. The ALJ dismissed the unfair practice charge and complaint, finding CFI failed to demonstrate a change in policy based on the narrow facts of the case, which included that the single reprimand at issue was based on conduct the bargaining unit employee admitted to in an investigatory interview.

Disposition: The Board affirmed the proposed decision, finding that CFI failed to demonstrate that the Court changed policy when it issued the reprimand, and thus failed to establish a prima facie case of a unilateral change in violation of the Court Interpreter Act, section 71825, subdivision (c). The Board therefore dismissed the complaint and underlying unfair practice charge.

Decision No. 2819-E

Caption: *Cerritos College
Faculty Federation,
American Federation of
Teachers Local 6215 v.
Cerritos Community
College District*

Precedential

Description: Respondent Cerritos Community College District excepted to an ALJ's proposed decision concluding that it had violated its duty to bargain in good faith with the Cerritos College Faculty Federation, American Federation of Teachers Local 6215 (Federation) over proposals on: (1) standards and procedures regarding discipline short of suspension or dismissal for full-time faculty; (2) the use of reassignment, assignment loss, and mandatory training as discipline for faculty; (3) misconduct investigations, including information the District will disclose to the Federation and accused faculty member during such investigations; and (4) provisions for paid administrative leave. The ALJ dismissed the Federation's remaining allegation.

Disposition: The Board affirmed the proposed decision.

Decision No. 2820-M

Caption: *Registered Nurses
Professional Association v.
County of Santa Clara*

Precedential

Description: Registered Nurses Professional Association (RNPA) filed an unfair practice charge against County of Santa Clara alleging that the County violated the MMBA by unilaterally issuing Clinical Nurses new assignments without providing RNPA notice and an opportunity to bargain. PERB's Office of the General Counsel (OGC) found that the new assignments were reasonably comprehended within the nurses' existing assignments, and OGC therefore dismissed the charge.

Disposition: The Board granted RNPA's appeal and directed OGC to issue a complaint alleging that the County materially changed job assignments without providing RNPA notice and an opportunity to bargain. The Board held that "reasonably comprehended" is an objective standard that refers to what a reasonable employee would comprehend based on all relevant circumstances, including, but not limited to, past practice, training, and job descriptions. The Board found there are contested, outcome-determinative facts that must be resolved after an evidentiary hearing.

Decision No. 2821-M

Caption: *California Nurses Association v. County of Monterey*

Precedential

Description: California Nurses Association (CNA) filed a unit modification petition with County of Monterey, seeking to add unrepresented per diem Registered Nurses (RNs) and per diem Nurse Practitioners (NPs) to “Unit S,” an existing County bargaining unit of regular RNs and NPs. The County denied CNA’s petition and instead created a new unit containing solely per diem RNs and NPs. CNA filed an unfair practice charge alleging that, in denying the petition, the County violated its Employer-Employee Relations Resolution (EERR), the MMBA, and PERB Regulations.

Disposition: The Board resolved the charge based upon the evidentiary record, finding in CNA’s favor and directing the County to add the per diem RNs and NPs to Unit S. The Board found the County provided minimal analysis in support of its conclusions and unreasonably applied its EERR by ignoring its most critical unit determination criteria and misapplying other factors. The Board found the only reasonable interpretation of the EERR was to place per diem RNs and NPs in the same unit as regular RNs and NPs who perform the same work at the same hospital.

Decision No. 2822-E

Caption: *Victor Valley
Teachers Association v.
Victor Valley Union High
School District*

Precedential

Description: The Victor Valley Teachers Association alleged that the Victor Valley Union High School District interfered with Educational Employment Relations Act (EERA) protected rights when, during a deposition, the District's attorney asked Association President questions about: (1) confidential communications with a bargaining unit member concerning a disciplinary matter; and (2) confidential communications with other bargaining unit members and union personnel. The District excepted to the proposed decision finding the District's questioning of the Association President during the deposition interfered with EERA-protected rights.

Disposition: The Board affirmed the proposed decision's legal conclusions, granted one of the Association's cross-exceptions related to the administrative law judge's factual findings, and supplemented the proposed decision's analysis with discussion of the District's exceptions and the Association's cross-exceptions.

Decision No. 2823-S

Caption: *Union of
American Physicians &
Dentists v. State of
California (California
Correctional Health Care
Services)*

Precedential

Description: The State of California (California Correctional Health Care Services) (CCHCS) commenced two new programs to treat inmates with substance use disorder. Union of American Physicians & Dentists (UAPD) alleges that CCHCS violated the Dills Act by failing to engage in good faith bargaining over its decision and/or bargainable effects on employment terms for UAPD-represented primary care providers (PCPs). The ALJ concluded that while CCHCS had no duty to bargain over its decision to offer new programs, the Dills Act required CCHCS to bargain in good faith over the decision's negotiable effects, and CCHCS failed to comply with this duty.

Disposition: In a partially precedential decision, the Board affirmed the ALJ's overall conclusion that CCHCS violated the Dills Act, but adjusted certain of the ALJ's factual findings, legal conclusions, and remedial order. In the published part of the decision, the Board held that CCHCS materially changed terms and conditions of employment. To determine if a reasonable PCP would find the changes material, the Board compared PCPs' new duties, qualifications, and workload with the status quo. The Board determined, among other things, that CCHCS imposed new duties that were not reasonably comprehended within PCPs' previous duties.

Decisions of the Board

ADMINISTRATIVE DETERMINATIONS

Order No. Ad-487-E

Caption: *Antelope Valley
College Federation of
Classified Employees v.
Antelope Valley
Community College
District*

Precedential

Description: In compliance proceedings for Antelope Valley Community College District (2018) PERB Decision No. 2618, PERB's Office of the General Counsel issued an administrative determination to resolve some compliance issues. OGC found, in relevant part, that the Board's order: (1) authorizes the District to compensate current employees with its choice of compensatory time off or backpay pursuant to the parties' collective bargaining agreement (CBA); and (2) does not require unit members who subsequently changed to a different alternate work schedule after February 2014, to be made whole for the period following the subsequent change. The Federation appealed, seeking reversal of these two findings. The Board partially granted the appeal and found that employees who subsequently changed to a different alternate work schedule are presumptively entitled to the decision's make-whole remedy until the District restores the standard 5/8 workweek, except to the extent that the District proves in compliance proceedings that an employee successfully asked for a new schedule and would clearly have done so irrespective of the District's unfair labor practice. The Board affirmed OGC's determination that the decision's make-whole order allows the District to choose whether to make affected employees whole by providing backpay or compensatory time off.

Disposition: Partially granted. The compliance case is remanded to the OGC to collect additional evidence to determine whether the District has complied with the remedial order in Antelope Valley Community College District (2018) PERB Decision No. 2618, in accordance with this Order.

Order No. Ad-488-E

Caption: *Joei Dyes and the AnonymousKnowNothings v. Los Angeles Unified School District]*

Precedential

Description: Charging Parties Joei Dyes and the AnonymousKnowNothings (Charging Parties) appealed an administrative determination by PERB's Office of the General Counsel (OGC) finding that the Los Angeles Unified School District complied with the Board's Order in Los Angeles Unified School District (2020) PERB Decision No. 2750. After an investigation, OGC determined that the District had complied with the order because the District submitted evidence reflecting several different efforts at circulating the required notice, including multiple mass e mails and a 60-day website posting as directed by OGC. Charging Parties claimed some employees had not received the mass e-mails. OGC issued an order to show cause requesting that Charging Parties provide declarations under penalty of perjury from employees who had not received the electronic notice. Charging Parties declined to file any declarations because OGC would not allow them to redact the declarants' names. Having received no declarations, OGC determined compliance was achieved and closed the case. Charging Parties argue on appeal that OGC erred by not allowing them to file declarations with the declarant's name redacted, which Charging Parties assert is necessary to prevent the District from retaliating against the declarants.

Disposition: The Board held that because Charging Parties declined to produce declarations of District employees who allegedly did not receive the e-mail notice, there was no material factual dispute over whether the District e-mailed the Notice to the entire certificated bargaining unit. Thus, the Board denied the appeal and affirmed the administrative determination.

Order No. Ad-489-E

Caption: *Joei Dyes & The AnonymousKnowNothings v. Los Angeles Unified School District*

Non-Precedential

Description: Joei Dyes and the AnonymousKnowNothings (Charging Parties) appealed an administrative determination by PERB's Appeals Office rejecting their appeal of a dismissal as untimely.

Disposition: In a nonprecedential decision, the Board denied the appeal from the administrative determination and affirmed the dismissal. Charging Parties argued that they had a past practice of adding an additional day to a filing deadline when a holiday occurred within the time period to file. PERB Regulations do not provide an extension to the deadline when a holiday falls on a day within the filing period other than the last day to file. The Board found Charging Parties failed to establish good cause to excuse the late filing because based on their conduct in other cases, their explanation for the calendaring error was neither a reasonable nor credible.

Order No. Ad 490-E

Caption: *Pasadena City
College Faculty Association
v. Pasadena Area
Community College
District,*

Precedential

Description: This case came before the Board on an interlocutory appeal filed by the Pasadena Area Community College District to an administrative law judge's (ALJ) order compelling it to produce an e-mail to the Pasadena City College Faculty Association that the District claims must be partially redacted.

The parties' dispute involves a single e-mail that the District asserted includes internal bargaining strategy and is thus protected from disclosure by PERB precedent. The District provided the Association with a partially redacted version of the e-mail, together with a privilege log covering the e-mail and several other items. After the parties reached agreement regarding the other privilege log entries, they asked the ALJ to decide whether the District had to produce the e-mail in unredacted form. The Association asked the ALJ to review the unredacted e-mail in camera before ruling. The ALJ denied the Association's request for in camera review and ordered the District to produce the e-mail without redactions. The District appealed the part of the ALJ's order directing production, and the ALJ certified the interlocutory appeal directly to the Board.

The District raised two legal questions for Board review: (1) whether the qualified negotiations protection may be overcome by weighing the asserted protection against the need for disclosure; and (2) whether the qualified negotiations protection is intended to be narrowly construed only to maintain confidentiality of each party's collective bargaining strategy during pending negotiations. The Board relied on PERB and federal precedent and incorporated important policy considerations to (1) hold that the qualified negotiations protection is not limited to maintaining confidentiality for pending negotiations; and (2) explain the balancing test for the qualified negotiations protection.

Disposition: The Board granted the District's appeal, reversed the ALJ's order that the District disclose unredacted records to the Association, and directed the ALJ to review the relevant records in camera, then apply the balancing test set forth in the Board's Order and provide the parties with a new ruling.

Order No. Ad-491-E

Caption: *Alliance Morgan McKinzie High School and United Teachers Los Angeles; Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School and United Teachers Los Angeles,*

Precedential

Description: Employers Alliance Morgan McKinzie High School (Morgan McKinzie) and Alliance Leichtman-Levine Family Foundational Environmental Science High School (Leichtman-Levine) appealed an administrative determination granting petitioner United Teachers Los Angeles' (UTLA) petitions for recognition as exclusive representative of two separate bargaining units of certificated employees at Morgan McKinzie and Leichtman-Levine. The schools are two schools in a network of approximately 25 charter schools and contended that individual school bargaining units were not appropriate because only a Network-wide bargaining unit is appropriate. Based on Alliance Judy Ivie Burton Technology Academy High, et al. (2020) PERB Decision No. 2719, where we considered and rejected the argument that the only appropriate unit configuration is Network-wide, PERB's Office of the General Counsel rejected the schools' arguments. Because UTLA had provided proof of majority support at each school, UTLA's petitions certifying UTLA as the exclusive representative of the schools' certificated employees were granted. The schools appealed.

Disposition: The Board found that the petitioned-for units at Morgan McKinzie and Leichtman-Levine are appropriate. Because UTLA has provided proof of majority support, the Board certified UTLA as the exclusive representative of the certificated units at Morgan McKinzie and Leichtman-Levine.

Order No. Ad-492-E

Caption: *Junnie Verceles v.
Oakland Unified School
District*

Non-Precedential

Description: Charging Party Junnie Verceles appealed the Appeals Assistant's rejection of his exceptions that were filed approximately one month after the deadline to file exceptions had passed and the decision became final.

Disposition: Non-Precedential decision. Rejection affirmed – the decision remains final.

Decisions of the Board

JUDICIAL REVIEW DECISIONS – NONE IN 2021-2022

Decisions of the Board

INJUNCTIVE RELIEF DECISIONS

Order No. IR-63-E

Caption: *Association of
Clovis Educators,
CTA/NEA v. Clovis
Unified School District*

Precedential

Description: A nonexclusive representative engaged in ongoing efforts to organize certificated employees of a school district filed a request for injunctive relief. The nonexclusive representative contends that injunctive relief is necessary to prevent the school district from continuing to hamper its organizing campaign by, among other things, financially supporting and granting preferential treatment to a rival employee organization in violation of the Educational Employment Relations Act (EERA), and sending communications that deter or discourage employee support for the organizing union in violation of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD).

Disposition: The Board granted the injunctive relief request because the nonexclusive representative provided sufficient allegations to find reasonable cause to believe the school district violated EERA and PEDD and an injunction was necessary to preserve the efficacy of any final Board order. The Board found reasonable cause to believe the school district violated—and continued to violate—EERA and PEDD by interfering with the administration of the rival employee organization, providing financial and other material support to the rival organization, and expressing a preference for the rival organization. Injunctive relief was just and proper because the school district’s alleged unfair practices have the foreseeable effect of causing employee support for the nonexclusive representative to vanish during PERB’s adjudicatory process, and an injunction is necessary to prevent a meaningless Board order at the conclusion of that process.



PERB

California Public Employment
Relations Board