

**PUBLIC EMPLOYMENT  
RELATIONS BOARD**

**ANNUAL REPORT**

**to the  
LEGISLATURE**



**1988-89**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

October 15, 1989

1988-1989 Report  
To The Legislature



George Deukmejian  
Governor  
State of California

Deborah M. Hesse, Chairperson  
Stephen Porter, Member  
William A. Craib, Member  
Willard A. Shank, Member  
Richard L. Camilli, Member

1031 18th Street  
Sacramento, CA 95814-4174  
(916) 322-3198

177 Post Street, Suite 900  
San Francisco, CA 94108-4737  
(415) 557-1350

3530 Wilshire Blvd., Room 650  
Los Angeles, CA 90010-2334  
(213) 736-3127

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS . . . . .	i
MESSAGE FROM THE CHAIRPERSON . . . . .	ii
BOARD MEMBERS . . . . .	iii
PURPOSE AND DUTIES OF THE PUBLIC EMPLOYMENT RELATIONS BOARD	
Purpose . . . . .	1
Organization of PERB . . . . .	2
PERB ACTIVITIES	
Representation . . . . .	4
Elections . . . . .	4
Impasse Resolution . . . . .	5
Financial Reports . . . . .	6
Bargaining Agreements . . . . .	6
Advisory Committee . . . . .	6
Unfair Practices . . . . .	7
Litigation . . . . .	8
RESEARCH AND REPORTS	
Background and Overview . . . . .	19
Legislative Direction. . . . .	19
Request for Information. . . . .	19
Routine Information Collected by PERB. . . . .	20
Collective Bargaining Agreements. . . . .	20
Factfinding Reports . . . . .	20
Unfair Practice and Filings . . . . .	20
Research: Designing and Implementing Projects of Manageable Proportions . . . . .	20
Selecting Research Efforts . . . . .	21
Health Care Expenditures and Cost Containment. . . . .	21
Labor-Management Cooperation... The Emerging Paradigm . . . . .	21
PERB Survey of Employer-Employee Relations In California Education . . . . .	22
Neutral Reliable Information About Bargaining Results. . . . .	23
Summary. . . . .	23
CASE DIGEST	
Representation . . . . .	25
Administrative Appeals . . . . .	27
Educational Employment Relations Act (EERA) . . . . .	27
Ralph C. Dills Act . . . . .	31
Higher Education Employer-Employee Relations Act (HEERA). . . . .	33
Unfair Practice Cases . . . . .	33
Educational Employment Relations Act (EERA) . . . . .	33
Ralph C. Dills Act . . . . .	47

TABLE OF CONTENTS  
(Continued)

Higher Education Employer-Employee Relations Act (HEERA). . . . .	50
--	----

APPENDICES

Injunctive Relief Requests . . . . .	59
Total Representation Case Activity . . . . .	61
Unfair Practice Case Activity. . . . .	62
Total Filings by Act - Unfair Practice Cases . . . . .	63
EERA Unfair Practice Caseload Chart. . . . .	64
Ralph C. Dills Act Unfair Practice Caseload Chart. . . . .	65
HEERA Unfair Practice Caseload Chart . . . . .	66
Total of All Acts Unfair Practice Caseload Chart . . . . .	67
Abbreviations to Elections Held . . . . .	68
EERA, Ralph C. Dills Act, HEERA Elections Held Fiscal Year 1988/1989. . . . .	69
Regional Attorney Staff Activity . . . . .	71
Administrative Law Judge Staff Activity . . . . .	72

## MESSAGE FROM THE CHAIRPERSON

This year PERB built upon its new organizational foundation to progress in many areas. The labor-management cooperation program, initiated last year, has seen very promising success. Our agency objective is to promote public sector labor-management cooperation and thereby reduce the number of labor-management disputes. The role of government in providing neutral third party assistance in this manner has been a key factor in successful private sector cooperative labor relations.

PERB has conducted the first statewide conference featuring labor-management cooperation in the public sector. This conference was extremely well attended by labor relations practitioners from throughout the state. By popular demand, the conference will be repeated in Southern California early in 1990. Conferees were presented with the results of PERB's survey of employer-employee relations in California, a (first of its kind) research endeavor to ascertain the needs of PERB's education constituents.

PERB also conducted the first of a series of intensive training in labor-management cooperation. The four day residential training introduced representatives, both labor and management, from two school districts, both labor and management, to alternative bargaining methodologies and effective ways to resolve work place conflicts. Participants were given an opportunity to practice dealing with conflicts in a way that influences need-based, win-win outcomes. Following the completion of the training courses, PERB assigned a facilitator, a PERB employee, to work with the participants throughout the school year. The participants were highly enthusiastic about the training and PERB's role in providing educational programs.

PERB has also been working with the Bureau of Labor-Management Relations and Cooperative Programs in the U. S. Department of Labor (DOL). DOL has provided resources to PERB and its staff in an effort to aid PERB's program within the California public sector.

With an eye towards improved service to the parties and public at large, the Board also continues its review of the organization itself. This review includes an internal assessment of operations and procedures, as well as the development of ways to provide efficient services and enhance the success of expanded services to PERB's constituency.

All of these efforts are an attempt to ensure that PERB fulfills its role to administer, improve and enhance the collective bargaining process and labor relations in California.

In sum, the Board is pleased to have embarked upon a new phase of providing public sector labor and management with information and techniques on how to make the collective bargaining process work better. Our results thus far have been promising and speak well for the future. On behalf of the Board and its staff, I wish to thank the parties for their assistance and support over the past year.

DEBORAH M. HESSE



**Deborah M. Hesse  
Board Chairperson**

Deborah M. Hesse has begun her second five year term as member and chairperson of the Public Employment Relations Board. She was first appointed in 1984 and reappointed in 1989. Prior to her appointment to the Board, Ms. Hesse had served as Deputy Director of the State Department of Personnel Administration (DPA) since January 1983. From 1979 until joining DPA, Ms. Hesse was an Affirmative Action Officer for the State Department of Justice. Ms. Hesse worked for two years as a Management

Analyst with the Secretary of State's Office.

Previously, she was Assistant to the Director of the Governor's Office of Employee Relations from 1976 to 1977. She also spent part of 1977 in the Department of Consumer Affairs and Investigative Services.

Ms. Hesse holds a Bachelor's Degree in Social Work and a Master's Degree in Public Administration, both from the California State University at Sacramento.

## BOARD MEMBERS

Stephen Porter was appointed to the Public Employment Relations Board in April 1985. Prior to this, he worked for the state Department of Justice for 22 years as a Deputy Attorney General in the Administrative Law Section and as the Senior Assistant Attorney General in charge statewide of the Public Administrative Law Section. Later he served as Assistant Chief of the Civil Law Division. Before joining the Department of Justice, he was a Deputy District Attorney in Contra Costa County serving as a criminal prosecutor. Mr. Porter did his undergraduate work at the University of California, Berkeley and received his law degree from the Hastings College of Law in San Francisco. His term expires January 1, 1990.



**Stephen Porter**  
Board Member



**William A. Craib**  
Board Member

William A. (Bill) Craib was appointed as a member of the Public Employment Relations Board in February 1986. Mr. Craib retired from the California Department of Transportation in 1981, after serving as an engineer since 1958. For the 1984-1985 year, he was appointed Honorary Mayor of his hometown, Orangevale, CA. From 1980 to 1983, he served as National President for the 500,000 member Assembly of Governmental Employees. Mr. Craib was the President of the California State Employees' Association (CSEA) from 1976 to 1979. Mr. Craib also served as an elected public official and Board Member of the Westborough County Water District. It has been recently announced that Mr. Craib has been voted into The Who's Who in California to be published in December of 1988. His term as a member of the Public Employment Relations Board expires January 1, 1991.



Willard A. Shank was appointed as a member of the Public Employment Relations Board in April 1987. He served as the Adjutant General of the California National Guard from 1983 to February 1987. Member Shank was the assistant Adjutant General of the California National Guard from 1975-1983. He joined the California Department of Justice as a Deputy Attorney General in 1950. He also served as Chief Assistant Attorney General Civil from 1977-1983. Mr. Shank is a member of the State Bar Association. He received his Bachelor of Law Degree from the University of California, Berkeley in 1946 and his juris doctorate from the same university four years later. His term expires January 1, 1992.



**Willard A. Shank**  
**Board Member**



**Richard L. Camilli**  
**Board Member**

Richard L. Camilli was appointed as member of the Public Employment Relations Board in November 1988. Mr. Camilli was Assistant Commissioner for the Department of Corporations' Health Care Services Division from 1984-1988. From 1983-1984 he was undersecretary for the Health and Welfare Agency. From 1982-1983 he served as the associate warden for Folsom State Prison and from 1980-1982 he was a deputy director for the Department of Corrections. Prior to that he was a manager for the State Personnel Board from 1976-1980, an assistant to the legislative counselor for the state Legislative Counsel from 1975-1976, director of the Employment Development Department from 1974-1975, president of Health Management Systems, Inc., a Sacramento consulting and data processing service company from 1973-1974 and from 1971-1973 he was Executive Director for the State Personnel Board. Mr. Camilli received his bachelor's degree in business administration from the University of Santa Clara. His term expires January 1, 1993.

## PURPOSE AND DUTIES OF PERB

### PURPOSE

The Public Employment Relations Board was created by the provisions of the Educational Employment Relations Act (EERA) of 1976 (Government Code section 3540, et seq.). This statute was authored by State Senator Albert S. Rodda, and established collective bargaining in California's public schools K-14. Collective bargaining was established in state government by the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Government Code section 3512, et seq.). In 1979, coverage was extended to higher education under the provisions of the Higher Education Employer-Employee Relations Act (HEERA) authored by Assemblyman Howard Berman (Government Code section 3560, et seq.).

PERB is the quasi-judicial agency established to administer these statutes and adjudicate disputes that arise under them. The Board

is empowered to: (1) conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them at the bargaining table; (2) prevent and remedy unfair practices, whether committed by employers or employee organizations; (3) break impasses that may arise at the bargaining table by establishing procedures to resolve such disputes; (4) ensure that the public receives accurate information and has time to register its opinion regarding negotiations; (5) interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts; (6) monitor the financial activities of employee organizations; (7) conduct research, perform public education and conduct training programs related to public employer-employee relations.



Executive Director DENNIS BATCHELDER served as Deputy Director for the Department of Personnel Administration before his appointment to PERB. Dennis' background includes a degree in journalism and service as the chief negotiator for Sacramento County.

Approximately 665,174 public sector employees and 1,159 employers are included under the jurisdiction of these three Acts. The majority of these employees (450,000+) work for California's public school system from pre-kindergarten through, and including the Community College system (K-14). The remainder of the employees covered are employed by the State of California (120,000) or the University of California, the California State University, and the Hastings College of Law (88,000). Municipal, county, and local special district employers and employees are not subject to PERB jurisdiction, but rather are covered under the Meyers-Millie-Brown Act.



Deputy Executive Director JOHN W. SPITTLER was previously a Deputy Attorney General in the Civil Division of the Office of the Attorney General.

#### ORGANIZATION OF PERB

PERB is headquartered in Sacramento with regional offices in Los Angeles, Sacramento and San Francisco. The major organizational elements of the agency consist of the Board, the Division of Administrative Law, the General Counsel, the Division of Representation and the Division of Administrative Services.

The Board is composed of five members appointed by the Governor and subject to confirmation by the State Senate. In addition to the overall responsibility for administering the PERA, the Ralph C. Dills Act and HEERA, the Board itself acts as an appellate body to hear challenges to decisions by its agents and administrative law judges. Ninety-six Board decisions were issued in the 1988-1989 reporting year. Only nine were appealed to the State Appellate Courts. One other case was appealed to Superior Court.

The Division of Administrative Law houses PERB's administrative Law Judges (ALJ). The ALJs hold informal settlement conferences on the unfair practice cases. If no agreement is reached, another ALJ conducts a formal hearing and maintains a record. The ALJ issues a proposed decision of written findings and legal conclusions that are binding on the parties if no appeal is filed. If a party disagrees with the ALJ's decision, an appeal may be filed with the Board itself. The Board issues a decision and if the parties still disagree, the case may be

appealed to the State Appellate Courts.

In the 1988-1989 reporting period, 62 proposed decisions on unfair practice allegations were issued by the ALJs. Twenty cases (32%) were appealed to the Board and 42 (68%) became final without an appeal being filed.

The General Counsel is the Board's chief legal officer. The General Counsel also oversees the agency's charge processing and litigation functions.

In litigation, the General Counsel represents the Board when its formal decisions are challenged in court, when attempts are made to enjoin the Board's processes, and when the Board wishes to seek injunctive relief against alleged unfair practices.

In the capacity of charge processing, a regional attorney in each regional office is responsible for investigating unfair practice charges to determine whether they reflect a "prima facie" case of unfair practice. After investigation, regional attorneys resolve

unfair practice charges by issuing complaints or dismissing charges that do not state a prima facie case.

The Division of Representation has representatives in each regional office which include a Regional Director, Labor Relations Specialist, and support staff. The division is responsible for handling a broad range of representational matters, including bargaining unit configurations, unit modification requests, certification and decertification elections, and elections to approve or rescind organizational security arrangements. The Division of Representation also handles public notice complaints, requests to certify negotiation disputes to mediation and factfinding, and allegations of noncompliance with PERB orders.

The Division of Administrative Services provides the technical and support services of the PERB, such as business services, personnel, accounting, data processing, mail and duplicating. It is responsible for the day-to-day operations of the Agency, and for initiating and conducting research and legislative activity.



General Counsel CHRISTINE BOLOGNA served as Chief Counsel to the Department of Personnel Administration and Counsel to the California State Employees Association prior to her appointment at PERB.

This division also coordinates training, and arranges and conducts meetings, many of which are held as forums designed to facilitate communication between employers and employees. It also maintains liaison with the Legislature and the Executive branch of state government.

PERB employs approximately 90 persons throughout the State, including permanent personnel, temporary employees and student assistants.

In keeping with State of California guidelines, PERB maintains an affirmative action policy as a means of achieving equal employment opportunities. PERB's policy prohibits discrimination based on age, race, sex, color, religion, national origin, political affiliation, ancestry, marital status, sexual orientation or disability. PERB continues to maintain and ensure equal employment opportunities for applicants and employees at all levels in the organization.

## PERB ACTIVITIES

### Representation

The representation process normally begins when a petition is filed by an employee organization to represent classifications of employees which reflect an internal and occupational community of interest. If only one employee organization petition is filed and the parties agree on the unit description, the employer may either grant voluntary recognition or ask for a representation election. If more than one employee organization is competing for representational rights of the same unit, an election is mandatory.

If either the employer or an employee organization dispute the appropriateness of a unit or the employment status of individuals within the unit, a Board agent convenes a settlement conference to assist the parties in resolving the dispute. The Board has historically stressed voluntary settlements and has consistently and effectively offered the assistance of Board agents to work with the parties toward agreement on unit configurations.

If the dispute cannot be settled voluntarily, a Board agent will conduct a formal investigation and/or hearing and issue a written determination which is appealable to the Board itself. This decision sets forth the appropriate bargaining unit, or modification of that unit, and is based upon application of statutory unit determination criteria and appropriate case

law to the facts obtained in the investigation or hearing.

Once an initial bargaining unit has been established and an exclusive representative has been chosen, another employee organization or group of employees may try to decertify the incumbent representative by filing a decertification petition with PERB. Such a petition is dismissed if filed within 12 months of the date of voluntary recognition by the employer or certification by PERB of the incumbent exclusive representative. As of June 30, 1989, there were 2,202 bargaining units within PERB's jurisdiction.

### Elections

A primary function of PERB is to conduct representation and organizational security elections. PERB conducts initial representation elections in all cases in which the employer has not granted voluntary recognition. 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. The choice of "No Representation" appears on the ballot in every election.

In the 1988-1989 reporting period PERB conducted a total of 39 elections covering approximately 26,965 employees. Eleven of these elections were to determine which employee organization, if any, would represent the employees of a

particular negotiating unit. Of these 10 elections resulted in the selection of an exclusive representative and one in the selection of "No Representation".

The Board conducted 16 decertification elections. Of these, 11 resulted in retention of the incumbent organization, and 5 resulted in the selection of another employee organization as the exclusive representative. One a unit modification election was also conducted by the Board. This type of election is most often held to decide whether or not certain groups of employees should be added to existing negotiating units.

Organizational security elections occur in order for employees to approve (under the EERA) or rescind (under the EERA and Ralph C. Dills Act) and organizational security or a fair share fee arrangement. Organizational security election procedures are similar to those followed in representation elections. The Board conducted a total of 10 approval elections and no rescission elections in the 1988-89 reporting period. All approval elections resulted in the ratification of the organizational security provisions.

Elections procedures are contained in PERB regulations (section 32700 et seq.). The Board agent or the representative of a party to the election may challenge the voting eligibility of any person who casts a ballot. In addition, parties to the election may file objections to the conduct of the election.

Challenged ballots and objections are resolved through procedures detailed in PERB regulations.

#### Impasse Resolution

PERB assists the parties in reaching negotiated agreements through mediation under all three statutes, and then through factfinding under EERA and HEERA, should it be necessary. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. At that time, a Board agent contacts both parties to determine if they have reached a point in their negotiations where their differences are so substantial or prolonged that further meetings without the assistance of a mediator would be futile.

In cases where there is no agreement of the parties in regard to the existence of an impasse, a Board agent seeks information that helps the Board determine if mediation would be appropriate. Once it is determined that an impasse exists, the State Mediation and Conciliation Service (SMCS) of the Department of Industrial Relations is contacted to assign a mediator. Approximately 85 percent of all disputes are settled, resulting in the need for appointment of a factfinding panel in only 15 percent of all impasse cases.

In the event settlement is not reached during mediation, either party (under EERA or HEERA) may request the implementation of factfinding procedures. If the mediator agrees that factfinding is appropriate, PERB provides a

list of neutral factfinders from which parties select an individual to chair the tripartite Panel. If the dispute is not settled during factfinding, the panel is required to make findings of fact and recommend terms of settlement. These recommendations are advisory only. Under EERA, the public school employer is required to make the report public within ten days after its issuance. Under HEERA, publication is discretionary. Both laws provide that mediation can continue after the factfinding process has been completed.

#### **Financial Reports**

The law requires recognized or certified employee organizations to file with PERB an annual financial report of income and expenditures. Organizations who have negotiated a fair share fee arrangement, have additional filing requirements. Complaints alleging noncompliance with these requirements may be filed with PERB. PERB may take action to bring the organization into compliance.

#### **Bargaining Agreements**

PERB regulations require that employers file, with PERB regional offices, a copy of collective bargaining agreements or amendments to those agreements (contracts) within 60 days of the date of execution. These contracts are maintained on file as public records in regional offices.

#### **Advisory Committee**

The Advisory Committee to the Public Employment Relations Board was organized in 1980 to assist PERB in the review of its regulations as required by AB 1111. The Advisory Committee consists of over 150 people from throughout California representing employers, employee organizations, law firms, negotiators, professional consultants, the public and scholars. Although the regulation revision has long been completed, the Advisory Committee continues to assist the Board in its search for creative ways in which its professional staff can cooperate with parties to promote the peaceful resolution of disputes and contribute to greater stability in employer-employee relations. This dialogue has aided PERB in reducing case processing time by such improvements as the substitution of less costly investigations in certain public notice cases, the stimulation of innovative research projects of value to the parties, and the suggestion and preparation of further regulatory changes.

A member of the Board attends Advisory Committee meetings. This direct participation with the Advisory Committee ensures communication between the Board and its constituents.



## UNFAIR PRACTICES

An employer, employee organization, or employee may file a charge with PERB alleging that an employer or employee organization has committed an unfair practice. Examples of unlawful employer conduct are: coercive questioning of employees regarding their union activity; disciplining or threatening employees for participating in union activities, or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union, or an exclusive representative's failure to represent bargaining unit members fairly in the employment relationship with the employer.

Four hundred twelve (412) unfair practice charges were filed in fiscal year 1988-89. After the charge is filed, a Board agent evaluates the charge and the underlying facts to determine whether a prima facie case of an unfair practice has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, or HEERA exists.

If the Board agent determines that the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies. If the charge is neither amended nor

withdrawn, the Board agent will dismiss it. The charging party may appeal the dismissal to the Board itself.

Investigations by Board agents have been successful in minimizing the issuance of formal complaints in cases involving spurious charges. This has resulted in a savings of time and resources for PERB and the parties. During this fiscal year, investigations were completed in four hundred twenty-seven (427) cases. Two hundred twenty-nine (229) of these were withdrawn or dismissed at the investigation stage.

If the Board agent determines that a charge, in whole or in part, constitutes a prima facie case, a complaint is issued. During this fiscal year, one hundred thirty (130) complaints, twenty-six (26) complaints/partial dismissals, and forty-two (42) complaints/partial withdrawals were issued. Once a complaint is issued, the respondent is given an opportunity to file an answer to the complaint. An ALJ is assigned to the case and calls the parties together for an informal settlement conference. These conferences are scheduled to be held within 30 days of the date the complaint is issued. At the informal conference, the parties are free to discuss the case in confidence with the ALJ. If settlement is not reached, a formal hearing is scheduled. During this final year, one hundred forty-seven (147) cases were closed as result of settlement following issuance of the complaint.

If the case proceeds to formal hearing, a different ALJ is assigned to hear it. Normally, the case is heard within sixty (60) days of the informal conference. At the hearing, the ALJ rules on motions and takes sworn testimony and other evidence which becomes part of an administrative record.

Two hundred twenty-one (221) days of formal hearing, involving one hundred twenty-nine (129) cases were held this fiscal year.

After the hearing, the ALJ then studies the record, considers the applicable law, and issues a proposed decision. A proposed decision applies precedential Board decisions to the facts of a case. In the absence of Board precedent, the ALJ decides the issue(s) by applying other relevant legal principles. Proposed decisions that are not appealed are binding only upon the parties to the case. Sixty-two (62) proposed decisions issued during the fiscal year.

If a party to the case is dissatisfied with a proposed decision, it may file a statement of exceptions and supporting brief with the Board. After evaluating the case, the Board may: (1) affirm the proposed decision; (2) modify it in whole or in part; (3) reverse; or (4) sent the matter back to the ALJ to take additional evidence. Approximately 30 percent of the proposed decisions issued this fiscal year were appealed to the Board itself.

An important distinction exists between (ALJ) proposed decisions that become final and decisions of the Board itself. Proposed decisions may not be cited as precedent in other cases before the Board. Board decisions are precedential, binding on not only the parties to a particular case, but also serving as guidance for similar issues in subsequent cases. (See appendix.)

#### LITIGATION

This Board is represented in litigation by the General Counsel. The litigation responsibilities of the General Counsel include:

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

cases affecting the  
jurisdiction of the  
Board.

## LITIGATION SUMMARY

During the 1988-1989 fiscal year, PERB opened eleven (11) new superior court, appellate court and federal district court files. In addition, the Board received decisions in six (6) cases; two of these were filed in previous years and four (4) were opened during the current fiscal year. Two decisions were published and precedential, two were unpublished opinions and two were summary dispositions.

Several significant cases are currently pending disposition by the California Courts of Appeal and the California Supreme Court.

During 1988-89, twenty-one (21) requests for injunctive relief were received. Fourteen (14) requests were withdrawn; seven (7) requests were denied, one by formal Board order (IR No. 52-S (5/17/89)) and six (6) by letters of the General Counsel.

### A. PUBLISHED OPINIONS

The Regents of University of California v. PERB/American Federal of State, County of Municipal Employees, Local 372 and William H. Wilson, President, Local 372), (1988) 485 U.S. 99 L. Ed. 2d 664, 108 S.Ct. 1404. (PERB Dec. No. 420-H).

After remand from the Court of Appeal, First Appellate District, PERB issued Decision No. 420-H, concluding that a total ban on free use of the

internal mail system by employee organizations was an unreasonable regulation. The Board decided that the Private Hands Without Compensation and the Business of the Carrier exceptions to the Private Express Statutes allowed carriage of union mail concerning labor relations in the Regents' internal mail system to University of California employees. PERB ordered the Regents to refrain from "denying employees their rights by refusing employee organizations access to its internal mail system."

Another petition for review followed. On June 9, 1986, the appellate court affirmed the Board's Order. The California Supreme Court denied review. The Regents appealed the decision to the U.S. Supreme Court on November 11, 1986.

On April 20, 1988, the U.S. Supreme Court reversed the decision of the Court of Appeal which effectively overruled the PERB decision as well. The Supreme Court held:

1. The federal Private Express Statutes prohibit postage free letters from carriage crossing postal routes.

2. Neither the Business of the Carrier exception nor the Private

Hands Without  
Compensation  
exception apply to  
the Regents'  
delivery of mail  
without postage for  
the union to U.C.  
employees.

On May 26, 1988, the Supreme Court remanded the case to the Court of Appeal, ordering it to reverse its' own and the Board's prior decisions. On June 30, 1988, the appellate court vacated its order and reversed the earlier Board ruling. On August 31, 1988, the Court of Appeal issued its remittitur, making all orders final.

Cumero v. PERB/King City High School District Assn. CTA/NEA; King City JUHSD; California Teachers' Assn.; National Education Assn.,  
(1989) Case No. SF 24905,  
\_\_\_\_\_ Cal.3d \_\_\_\_\_  
(PERB Dec. No. 197).

The Board decision concluded that: (1) PERB had jurisdiction under Government Code sections 3543 and 3546 to review agency fee arrangements in public school collective bargaining agreements as unfair practices and (2) a variety of expenditures, such as lobbying, organizing and representatives were permissible uses of agency fees.

Petitioner appealed the Board decision holding to the Court of Appeal,

First Appellate District which, in part, overruled the Board rationale, applying the test of Ellis v. Brotherhood of Railway, Airline and Steamship Clerks (1984) 466 U.S. 435 to the expenditures (Cumero v. P E R B ( 1 9 8 5 ) 167 Cal.App.3d 131). PERB, Cumero and the Associations requested review of the appellate decision and the California Supreme Court granted review, thereby vacating the lower court's ruling. Oral argument before the Supreme Court was held May 10, 1988, in San Francisco.

On September 7, 1989, the court filed its opinion. The court unanimously held that organizing and recruiting expenditures were nonchargeable; affiliation payments were allowable; the exclusive representative bears the burden of proof on what proportion of expenditures are appropriately chargeable to objectors, and involuntary payroll deduction of the agency fee pursuant to a collective bargaining agreement was permissible. The court ruled 4-3 that, under EERA, lobbying and ballot proposition activities are not chargeable except for responsive efforts to employer-initiated consultation on matters related to scope of representation. The court reversed the Court

of Appeal decision and remanded the case to the court for reconsideration of its earlier denial of attorney fees, given the modification of the lower court's ruling. The decision will become final unless a petition for rehearing or petition for certiorari with the U.S. Supreme Court is filed.

Mt. San Antonio Community College District v. PERB/Mt. San Antonio Community College Faculty Association, (1989)  
210 Cal.App.3d 178,  
258 Cal.App.  
Cal.Rptr. 302  
(PERB Dec. No. 691).

In this compliance case, the Board limited back pay liability for the District's unilateral changes to the 1977-79 collective bargaining agreement for stipends, preparation periods and release time. PERB found also that the District waived tolling of liability for the duration of the 77-79 agreement. The Board further rejected an equitable statute of limitations regarding enforcement proceedings; the only arguable prejudice was the running of interest and the Board tolled interest as of the date the Association requested negotiations. The Board decided that interest did not resume when enforcement proceedings started, concluding that the Association's failure to

exercise diligence in initiating compliance proceedings was not absolved. Finally, the Board held that the proper rate of interest was seven percent (7%) from May 1977 through June 1983, and ten percent (10%) from July through September 1983, based upon amendment of California Code of Civil Procedure section 685.010.

The District filed a petition for review on July 28, 1988, in the Court of Appeal, Second Appellate District, Division 7. PERB simultaneously filed a brief in opposition/response and a cross-petition for enforcement. On April 6, 1989, oral argument was held in Los Angeles.

On May 9, 1989, the appellate court issued its unanimous ruling fully affirming the Board. The opinion further upheld PERB's refusal to establish a statute of limitations for compliance proceedings and the broad remedial powers of the Board. Accordingly, the court granted enforcement of the PERB cross-petition for enforcement of its decision. This is the first reported case specifically addressing PERB's remedial powers.

Petitions for rehearing and review were not filed. The Court of

Appeal issued its remittitur on July 9, 1989 thereby making its order final.

United Public Employees, Local 790, SEIU v. PERB/San Francisco Community College District, (1989) Case No. A044154, \_\_\_\_\_ Cal.App.3d \_\_\_\_\_ (PERB Dec. Nos. 688 and 688a).

On November 15, 1988, a petition for writ of review was filed in the Court of Appeal, First Appellate District, Division 5. The court ordered a stay of the Board decision on November 18, 1988. Oral argument was held June 7, 1989, in San Francisco.

On September 6, 1989, the court filed its opinion. the court unanimously held that the District was a joint employer, with the City and County of San Francisco, of the classified employees of the District. Thus, the court annulled the Board decision dismissing the complaint for lack of jurisdiction based on PERB's finding that the District acted as an employer under the Meyers-Milias Brown Act (MMB) concerning the classified employees. The court annulled this Board decision and remanded the case to the Board for further proceedings. The decision will become final unless a petition

for rehearing or review is filed.

#### B. UNPUBLISHED OPINIONS

Elsinore Valley Education Association CTA/NEA v. PERB/Lake Elsinore School District, Case No. E005078 (PERB Dec. No. 646).

The Board interpreted EERA section 3541.5(a) to preclude its exercise of unfair practice jurisdiction because the parties' collective bargaining agreement culminated in binding arbitration; the dispute (unilateral extension of work day) was covered by the agreement, and the conduct alleged was prohibited by the agreement, notwithstanding that neither the parties nor the administrative law judge addressed prearbitration deferral.

The Board's decision was appealed to the Court of Appeal, Fourth Appellate District, Division 2. The appellate court stayed application of the Board's jurisdictional ruling to all pending cases. As a result, the Board placed all pending prearbitration deferral cases in abeyance as well as any such cases filed during the stay.

The case was orally argued on July 7, 1988, in San Bernadino. On July 28, 1988, the appellate court issued its unanimous ruling

fully validating the Board's decision. The court found the Board's discussion of deferral jurisdiction and statutory construction to be a "lengthy and well-reasoned analysis."

PERB requested publication by the Court of Appeal and the State Supreme Court. The Supreme Court denied the Board's request for publication on October 12, 1988. Petitions for rehearing and review were not filed. The Court of Appeal issued its remittitur on November 3, 1988, closing the case. All Board cases previously held in abeyance were then activated.

Jeff D. Paige v. PERB/Hacienda La Puente Unified School District, Case No. B036106 (PERB Dec. No. 685).

The Board ruled that failure to rehire charging party was not covered by EERA because applicants for employment are non-employees and thus are excluded from the Act's coverage. The Board also found that the charge alleging denial of leave of absence was untimely filed; further, the denial was not discriminatory as the employer would have taken the same course of action regardless of charging party's protected activity. Finally, the

Board rejected a claim of constructive discharge.

A petition for writ of review was filed July 25, 1988, in the Court of Appeal, Second Appellate District, Division 4. The Board filed a motion to dismiss the petition as untimely filed, which the Court denied on August 23, 1988. Oral argument was scheduled for April 18, 1989. Argument was cancelled when the Court issued its order denying the petition. The Court did not reach the questions of timely filing, constructive termination and petitioner's status as an applicant so as to invoke the protections of EERA. Rather, the Court found that substantial evidence supported the Board decision that the District had not discriminated against petitioner.

#### C. SUMMARY DISPOSITIONS

Associated Chaffey Teachers v. PERB/Chaffey Joint Union HSD and Bobby Fikes, Case No. E005650 (PERB Dec. No. 669).

The Board found that charging party had standing to file unfair practice charges challenging an agency fee election, whether or not he actually voted in the election. Standing arose from the need to maintain integrity in the election process, reasoned the Board. The Board also concluded that the



allegations must be considered in their totality and these stated a prima facie case of interference by the exclusive representative during the election; the conduct also stated a prima facie violation of EERA section 3546. The Board also used the totality of circumstances test in evaluating the allegations against the District, finding that charging party had adequately alleged a prima facie case of employer interference.

A petition for writ of review was filed June 30, 1988, in the Court of Appeal, Fourth Appellate District, Division 2. The Board filed a motion to dismiss for failure to serve PERB which the court denied on August 3, 1988. The petition, however, sought review of a non-final decision or order of the Board in an unfair practice case because the PERB decision reinstated unfair practice charges previously dismissed and ordered the General Counsel to issue complaints. A motion to dismiss the petition for lack of jurisdiction under EERA section 3542(b) was filed. On August 26, 1988, the Court of Appeal issued a summary order granting the motion and dismissing the petition.

Peernock et al v.  
Bologna, et al., U.S.

District Court No. 890907  
(C.D. Cal).

A supplemental complaint against the PERB General Counsel, alleging civil violations of the Racketeer Influenced Corrupt Organization (RICO) Act and seeking damages of ten (10) million dollars for conspiracy and destruction of evidence, was filed on or about June 20, 1989; also filed were testimonial and documentary subpoenas for PERB witnesses and papers. The California Attorney General provided representation and filed an answer on July 7, 1989. On July 18, 1989, the court denied plaintiff's motion to file a supplemental complaint as an amended complaint, finding no claim was stated under the RICO Act.

#### D. DECISIONS PENDING APPEAL

San Diego Adult  
Educators, Local 4289 v.  
PERB/San Diego Community  
College District, Case  
No. D009278  
(PERB Dec. Nos. 662 and 662a).

A petition for writ of review was filed in the Court of Appeal, Fourth Appellate District, Division 1, on December 27, 1988. On June 21, 1989, the court ordered consolidation of this petition with the District's petition for disposition. Briefing was concluded in

August 1989. The case has not yet been set for oral argument. The question presented is the adequacy of the remedy after the Board found an unfair practice in the employer's non-negotiated removal of bargaining unit work.

San Diego Community College District v. PERB/San Diego Adult Educators, Case No. D009280 (PERB Dec. Nos. 662 and 662a).

The District filed a petition for writ of review in this cross appeal in the Court of Appeal, Fourth Appellate District, Division 1, on December 28, 1988. On June 21, the court ordered consolidation of the District's petition with that of the San Diego Adult Educators' for disposition. Briefing was concluded in August 1989. The District's motion to strike the PERB reply brief was opposed by PERB and the San Diego Adult Educators, and denied by the court on August 25, 1989. The case has not been scheduled for oral argument. The issues presented in the District's petition are statute of limitations, waiver of right to negotiation, negotiability of the decision to discontinue classes and the appropriate remedy.

Regents of the University of California v. PERB/California Nurses Association, Case No. A045488 (PERB Dec. No. 722-H).

A petition for writ of review was filed in the Court of Appeal for the First Appellate District, Division 2, on March 31, 1989. The case is now being briefed. The issue presented is the proper procedure for exclusion of supervisory employees from the bargaining unit.

Regents of the University of California v. PERB/University Counsel, AFT Locals et al., Case No. A045723 (PERB Dec. No. 725-H).

A petition for writ of review was filed in the Court of Appeal, First Appellate District, Division 2, on April 21, 1989. The case is now being briefed. The issue presented is a total bar on access to the University's internal mail system at five campuses. Association of Graduate Student Employees v. PERB/Regents of the University of California, Case No. A046075 (PERB Dec. No. 703-H).

A petition for writ of review was filed in the Court of Appeal, First Appellate District, Division 3, on May 25, 1989. The case is now being briefed. The issue presented is the status of graduate teaching and research assistants as

students or employees under HEERA.

#### E. OTHER LITIGATION

Johnson, Mahan & Foster  
v. PERB, Sacramento  
Superior Court  
No. 507208.

This complaint for declaratory relief, injunction and for relief under the Civil Rights Act of 1981 (42 U.S.C. § 1983) was filed in Sacramento Superior Court on March 3, 1989, against the Board and three Board members. The application of out-of-state counsel to appear in the action was granted April 19, 1989. Defendants filed a demurrer and motion to strike on April 3, 1989, but the hearing was taken off calendar, pending the parties stipulation to limit the scope of the lawsuit. On May 26, 1989, the Superior Court approved the Stipulation and Ordered dismissing the individually named defendants and the 42 U.S.C. § 1983 cause of action with prejudice. Plaintiffs filed an amended complaint and request for dismissal of the individual defendants and section 1983 cause of action with prejudice on June 22, 1989. PERB filed an amended answer and dismissed its demurrer and motion to strike on July 21, 1989. Further hearings have not yet been scheduled in the matter.

This litigation tests the validity of the PERB agency fee regulations which the Board adopted on December 8, 1988; these rules were approved by the Office of Administrative Law on March 2, 1989, and took effect April 1, 1989.

Abbot v. PERB/San Ramon  
USD, Sacramento Superior  
Court No. 362180  
(PERB Dec. No. 751).

A petition for writ of mandate was filed in Sacramento Superior Court on July 31, 1989. The Board filed a demurrer and answer and supporting briefs on August 28, 1989. Hearing on the demurrer and on petitioner's out-of-state counsel's application to appear, is scheduled for September 19, 1989. A hearing on the merits of writ petition is set for September 22, 1989. The issues presented are judicial review of a decision refusing to issue an unfair practice complaint by a superior court and the employer's liability for insuring compliance by the exclusive representative in collecting agency fees under the Chicago Teachers Union, Local 1 v. Hudson decision of the U.S. Supreme Court.

R.A. Mann, Inc. v. Link,  
et al., Orange County  
Superior Court No. 13982.

This complaint for breach of contract and property damage was filed in 1981.

The California Attorney General is providing representation. The matter is in abeyance pending completion of bankruptcy proceedings. Thereafter, a request for dismissal will be filed.



Chief Administrative Law Judge GARY GALLERY served as the General Counsel to the California Community College Commission prior to his work at PERB as an Administrative Law Judge.

## THE PERB RESEARCH PROGRAM

### BACKGROUND

Fourteen years have elapsed since the Rodda Act, collective bargaining in public education, was initiated. In that time, the PERB has been crafting a unique, service-oriented research program. Seeking to be of service to the parties under its jurisdiction, to be responsive to the informational needs of the public, Legislature and press, and to be responsible in its expenditure of resources, the research projects of PERB have been modest in scope yet multifaceted in purpose and execution. The projects have been of short duration, yet susceptible to long term extension as necessary. They have addressed specific topical needs, yet offer basic behavioral data about the collective bargaining process to policymakers and academicians; and they have encouraged the mutual participation of the parties in the development and direction of the bargaining process.

### LEGISLATIVE DIRECTION

The statutes which are administered by the PERB are very clear in their mandate to the agency that ongoing research be conducted. The Educational Employment Relations Act provides in Government Code section 3541.3(f) that PERB has the responsibility to conduct research and studies "relating to employee-employer relations, including the collection, analysis, and making available of data relating to wages,

benefits, and employment practices in public and private employment, and when it appears necessary in its judgment to the accomplishment of the purposes of this Chapter, recommend legislation."

### REQUEST FOR INFORMATION

The requests for information received by the agency show that the research mandate of PERB is real and functioning. Legislators and their staff, the Executive Branch of Government, the press, academicians, the public, and organizations representing labor and management frequently request information about the results and surrounding variables of the collective bargaining process.

In order to satisfy the need the public and policymakers have for knowing the impact of collective bargaining on education and other public services, a reliable baseline of fundamental information must be developed before questions regarding the impact of public sector bargaining can be addressed accurately.

Specific legislative enactments which have funded the individual research projects of the agency have emphasized PERB's legislative mandate to conduct research and collect data on the bargaining process. For example, PERB has been instructed by the Legislature to gather basic data with regard to health benefit expenditures. The Legislature

also instructed PERB to collect information regarding the implementation of the provision of the Hart-Hughes School Reform Act (SB 813) which authorized employers to negotiate discipline short of dismissal for certificated employees.

In addition PERB initiates its own research studies in an effort to improve the practice of collective bargaining in the public sector and to provide the Legislature and public with a more complete picture of that practice.

#### **ROUTINE INFORMATION COLLECTED BY PERB**

PERB continues to collect a wealth of information regarding collective bargaining. Examples of information routinely collected by PERB include: negotiated agreements, factfinding reports, unfair practice filings, as well as the agency's internal management information system regarding case processing.

#### **COLLECTIVE BARGAINING AGREEMENTS**

PERB regulations require employers under each of the Acts it administers to file copies of negotiated agreements in a PERB regional office. Agreements filed with PERB are now being read and the contents are electronically encoded for later analysis and retrieval. Electronic data processing presents an exciting opportunity to expeditiously and creatively access and examine the contents of these collectively bargained contracts.

#### **FACTFINDING REPORTS**

Reports of the tripartite factfinding panels utilized in the impasse procedures of EERA and HEERA are filed with PERB. Factfinding reports have been available to parties and practitioners by subscription from PERB since its inception, and in addition, PERB has compiled an index to these. The index permits cross-reference of issues, parties and neutrals involved in each report.

#### **UNFAIR PRACTICE AND FILINGS**

PERB's unfair practice charges constitute another source of data on the collective bargaining process and the relationships between parties within PERB jurisdictions. PERB decisions on unfair practice filing are manually indexed, and the index is available to the parties and the public commercially, or by subscription from PERB.

#### **RESEARCH: DESIGNING AND IMPLEMENTING PROJECTS OF MANAGEABLE PROPORTIONS**

The PERB research program has been constrained by a variety of factors that influenced which projects would be undertaken and how the studies would be conducted. PERB is evolving a research program based on the congruence between limited resources within the agency and needs of the parties and related organizations for objective and reliable information.

PERB's research program is designed to complete small, focused projects through the

use of research consultants and inter-agency agreements. Section 3541.3(f) of the Government Code states: "The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter."

#### SELECTING RESEARCH EFFORTS

Two major elements have influenced the establishment of research priorities. First, the statute instructs that PERB focus on reports and studies "necessary to the accomplishment of the purposes of the collective bargaining acts." A prime consideration has been to make information available to the parties that would assist the collective bargaining process.

PERB, with the help of its Advisory Committee, identified research needs that would support the parties in conducting realistic and factual bargaining. The second element influencing the choice of research projects is that of fiscal resources available to PERB for research purposes.

#### HEALTH CARE EXPENDITURES AND COST CONTAINMENT

The State of California, the schools and higher education employers, as has been the case for virtually all other employers in the last decade, have been faced with rapidly increasing health care costs. This was especially true in 1980-1983. In an effort to provide bargaining parties with

information about the magnitude of these increases, and more importantly the alternatives to containing costs pursuant to SB 922, of 1983, the Legislature and Governor directed PERB to ". . . collect, analyze, and compare data on health benefits and cost containment in the public and private sectors, and to make recommendations concerning public employees. The recommendations may take into consideration health benefit cost containment issues in public and private employment. . . ." PERB conducted studies from 1984 through 1987.

The results of PERB's Health Care Cost Containment surveys have been forwarded to the Legislature under separate cover.

#### LABOR-MANAGEMENT COOPERATION ...THE EMERGING PARADIGM

New frontiers in the practice of labor relations have been pioneered by the private sector. These efforts have improved product quality and reduced conflict. PERB has taken a leadership role in examining these methods and introducing them to the public sector.

By providing the parties within its jurisdiction with these new and innovative tools for working together, labor-management disputes are less likely to occur. With approximately 80% of the caseload originating from only 20% of the jurisdictions, these innovative methods of dispute resolutions can be applied to help overcome chronic areas of conflict.

PERB SURVEY OF EMPLOYER-  
EMPLOYEE RELATIONS IN  
CALIFORNIA EDUCATION

With the California Department of Finance predicting a school population growth during the 1990's in excess of two million new students, the Board initiated an inquiry into less adversarial methods of collective bargaining as a means of reducing work place conflict in California's public schools. During the summer of 1988, PERB research staff identified approximately 20 school districts statewide which had attempted or were practicing what has been described as nontraditional or nonpositional collective bargaining. What the research found was compiled and published in the December 1988 issue of the UC Berkeley publication California Public Employee Relations (CPER) No. 79.

These research and findings prompted an even further and more rigorous study by PERB.

PERB wanted to identify current trends in labor-management cooperation in California schools. PERB is looking for ways to improve the labor-management relationship and to develop cooperative partnerships between employee organizations and employers.

PERB's survey is the first systematic comparison of labor and management views on cooperation in the public schools. The survey is a substantial source of new information to help design strategies to prevent costly labor-management disputes. The Board approved a significant

program of research and development for the 1988-1989 fiscal year. PERB wants to base its program development on objective consideration of the views of both management and labor, certificated and classified bargaining units, in California education today.

In the survey, completed late in 1988, practitioners of labor-management relations in California schools endorsed more involvement of the PERB in fostering labor-management cooperation. Respondents advised PERB that:

- they generally rate their employer-employee organization relationships as positive;

- mutual commitment to solving problems was clearly the most prevalent positive factor in labor-management relationships;

- other key positive factors include readily sharing information, listening to each other with open minds and willingness to understand, and being able to trust each other's word;

- key individuals often contribute to poor relationships;

- lack of skill in the practice of good labor-management relations hurts relationships;

- incorrect information creates problems for labor and management;



lack of employee involvement in decisionmaking contributes to poor relationships; and lack of established methods for regular problem-solving meetings between the parties are important factors cited by employee organizations as contributing to poor relationships;

the use of cooperative bargaining practices is generally perceived as a positive factor in labor-management relationships where such practices are used;

greater trust and respect among the parties and improved employee morale are the most likely benefits from improved labor-management relations.

Sixty percent of the respondents endorsed PERB conduct of orientation and training workshops to provide information about effective labor-management cooperative efforts. A majority of respondents support PERB provision of technical assistance to parties and conducting research and publishing results on effective labor-management relationships.

The 1288 responses were drawn about equally from labor and management. Both certificated and classified bargaining units are covered by the survey.

More study will be needed in the following areas: (1) to determine which jurisdictions now practice exemplary labor-management relations; and (2)

the effectiveness of using innovative problem-solving methods outside of bargaining.

#### NEUTRAL RELIABLE INFORMATION ABOUT BARGAINING RESULTS

A reliable database containing a tally of the contents of collective bargaining agreements provides important and useful statistical information to bargaining parties. Such information compiled by a neutral body will conceivably reduce disagreements between parties and allow for more rapid closure of bargaining. Such a contract reference file also provides state policymakers such as the Legislature and the administration with an added tool in their efforts to predict and manage the costs and conflicts in public education.

#### SUMMARY

In developing its research and goals, PERB has relied heavily upon the expressed need of its immediate constituents - the parties under its jurisdiction as well as the public, administration, and the Legislature. As a result, these goals, when reduced to specific statements of expectation are to ...

- encourage and conduct high quality research in labor-management relations;
- provide a forum for the discussion of labor relations problems and their solutions;
- provide a medium for the exchange of information related to the aims,

objectives, procedures and administration of dispute resolution;

• assist the PERB in rendering improved services to the parties, the public and the executive, legislative, and judicial branches of government;

• improve employer-employee relationships in the public sector and promote the peaceful resolution of employer-employee and labor-management disputes; and

• develop the public's interest in labor relations, and to aid labor, management, and the public in obtaining a better understanding of their respective responsibilities under the laws administered by PERB.

## CASE DIGEST

### REPRESENTATION

#### A. CONFIDENTIAL EMPLOYEE

Upper Lake Union  
Elementary School District  
and California School  
Employees Association and  
its Upper Lake Chapters  
No. 427

(5/4/89)

PERB Dec. No. 736

The Board found that the District secretary was a confidential employee under EERA section 3540.1, and therefore must be excluded from the bargaining unit.

The Board reaffirmed its earlier decisions of Sierra Sands USD (1976) PERB Decision No. 2 and progeny. Under those cases, a confidential employee has access to or possesses information relating to both employer-employee negotiations and the processing of employee grievances, and has substantial involvement in employer-employee relations so that the employer's ability to negotiate on an equal posture would be jeopardized if such information were to be publicized.

The Board found that the District secretary typed negotiation packets circulated to school board members which contained bargaining tactics and strategy. The employee also typed employee

evaluations and documents relating to employee grievances and maintained personnel files and documents. In addition, she attended employee grievance meetings.

#### B. PUBLIC NOTICE

Howard O. Watts v. Los  
Angeles Unified School  
District (12/16/88)

PERB Dec. No. 705

Complainant appealed the Board agent's dismissal of allegations that the District violated EERA sections 3547(a), (b), (c) and (e) by failing to place its 1987-88 school calendar proposal on the agenda for a Board of Education meeting.

The Board upheld the dismissal of the public notice complaint because an amendment to a previously noticed school calendar did not change that calendar. The Board also refused to allow new evidence ("more documents"), where there was no showing that the material was previously unavailable.

In Howard O. Watts v. Los Angeles Unified School District (6/19/89) PERB Dec. No. 705a, the Board denied the request for reconsideration. The Board rejected the argument that evidence that was "unavailable" until recently, finding complainant failed to explain why public

documents could not have been discovered the exercise of reasonable diligence.

Howard O. Watts v. United Teachers of Los Angeles  
(12/29/88)  
PERB Dec. No. 713

The Board affirmed the Board agent's dismissal of a claim that a union did not provide public notice as required by EERA section 3457. The union had suggested alternatives in response to the employer's unilateral change. The Board held counterproposals made by an exclusive representative need not be publicly noticed.

Howard O. Watts v. Los Angeles Community College District (5/3/89)  
PERB Dec. No. 731

The Regional Director ordered the District to cease and desist from failing to provide copies of all bargaining proposals to members of the public upon request. After the District complied with the Order, the Regional Director dismissed the public notice complaint pursuant to PERB regulation 32920(b)(7). Complainant appealed the dismissal contending that the District was obliged to provide the proposals upon presentation and not only upon request. The Board rejected this argument, holding that the California Public

Records Act (Government Code sections 6250, et seq.) requires that copies of public records must be made available only upon request.

Howard O. Watts v. American Federation of Teachers College Guild, Local 1521 (6/14/89)  
PERB Dec. No. 740

The Board affirmed the Board agent's dismissal of a public notice complaint. Complainant alleged that the union violated EERA section 3547(b) by placing its non-specific salary proposal on its public agenda. Consistent with Palo Alto Unified School District (1981) PERB Decision No. 184, the salary proposal, based upon the "Los Angeles-Long Beach Consumer Price Index-Urban for the preceding quarter or 2.5%, whichever is higher, was sufficiently specific to adequately inform the public of the issue to be negotiated.

#### C. UNIT MODIFICATION

State of California, Department of Personnel Administration (DPA)  
(4/3/89)  
PERB Dec. No. 727-S

This representation case arose when the California Union of Safety Employees (CAUSE) filed a unit modification petition in 1984, seeking to add the State Park Ranger II class to state bargaining

unit 7 (Protective Services & Public Safety) under PERB rule 32781(a)(1). The original state unit determination decision (Dec. No. 110c-S) excluded the class by virtue of a stipulation, accepted by the Board, between the state employer and employee organizations that such employees were supervisory under Dills Act section 3522.1; CAUSE was not a party to the stipulation, however. The Board agent rejected DPA's claim that the petition was barred by res judicata and the conclusive effect of the stipulation but agreed that Ranger IIs with subordinates were supervisors and denied the petition. Both parties excepted.

The Board affirmed the proposed decision. It concluded that res judicata requirements were not met and the stipulation did not provide sufficient information respecting the statutory criteria of section 3521(b). It agreed that Ranger II duties regarding seasonal park aides excluded from Dills Act coverage qualified as supervisory.

Sanger Unified School District and California School Employees Association Chapter No. 153 (6/30/89)  
PERB Dec. No. 752

The unit modification petition was granted to exclude the classification of food service supervisors (FSS) where District was able to show changed circumstances. Changed circumstances were found because the employees exercised the only supervisory authority at the worksite; were not subject to substantial review or approval of day-to-day operations; evaluated employees, and determined the need for substitutes. The Board applied Antioch USD (1984) PERB Decision No. 415.

#### ADMINISTRATIVE APPEALS

##### EERA

#### A. DECERTIFICATION PETITION

Oakland Unified School District and United Teachers of Oakland, AFT Local No. 771 and Oakland Education Association, CTA/NEA (7/14/88)  
PERB Order No. Ad-172

The exclusive representative and the

petitioner union to a decertification election disagreed as to the unit size. At issue were substitute teachers who taught less than 10 percent of the school year. The Board ruled that Oakland USD (1983) PERB Decision No. 320 did not overrule Palo Alto USD/Jefferson Union High School District (1979) PERB Decision No. 84, absent facts relating to work histories, categories of substitutes, or other criteria to support a different voter eligibility formula.

The voter eligibility standard for substitute teachers is established interest in employment and a reasonable expectation of continued employment.

To be eligible to vote in the decertification election, employees were required to teach more than 10 percent of the current or prior school year. The Board dissolved its prior stay.

Pasadena Community College Faculty Association v. Pasadena Area Community College District (12/29/88)  
PERB Order No. Ad-179

The Board affirmed the Board agent's determin-

ation that the decertification petition filed by the Association lacked an adequate showing of support, and dismissal of the petition with prejudice. PERB also noted that the Association had filed unfair practice charges alleging the same conduct as in this appeal, but withdrew those charges with prejudice.

#### B. STAY

Imperial Teachers Association, CTA/NEA v. Imperial Unified School District (6/8/89)  
PERB Order No. Ad-185

The Board granted District's request for stay of a hearing pending an appeal of the District's motion to dismiss the complaint.

Calipatria Unified Teachers Association v. Calipatria Unified School District (6/9/89)  
PERB Order No. Ad-186

The ALJ denied the District's motion to dismiss the complaint and defer the unfair practice charge to arbitration. The District filed a timely appeal of this decision and requested a stay of hearing. The Board ordered the hearing stayed pending the outcome of the District's appeal.

C. SUPERVISOR/EMPLOYEE ORGANIZATION (DEFINITION)

Jamestown Elementary School District and Jamestown Teachers Association CTA/NEA and California School Employees Association and its Tuolumne Chapter 276 (6/21/89)

PERB Order No. Ad-187

The Board affirmed the Board agent's determination that a decertification petition should proceed. CSEA argued that: (1) JTA is not an employee organization within the meaning of EERA, and (2) JTA was precluded by section 3545(b)(2) from representing the classified employees because it currently represents the teachers who also supervise the classified employees. The Board agent found that JTA was an employee organization and that PERB has already held that classroom teachers are not supervisory employees. (Redlands Unified School District (1982) PERB Decision No. 235.

D. UNFAIR PRACTICE PROCEDURES

Gridley Union High School Teachers Association. CTA/NEA v. Gridley Union High School District (6/16/89)  
PERB Order No. Ad-182

The ALJ partially dismissed the complaint alleging that the District failed to negotiate in violation of section 3543.5(c). The ALJ further found that the District violated section 3543.5(a) by interfering with the employee's protected right to representation. Finally, the ALJ concluded that there was insufficient evidence to support a violation of section 3543.5(b).

Following the issuance of the proposed decision, the Association filed timely exceptions to the dismissal of the section 3543.5(c) allegation. The District filed a timely response to the Association's exceptions and the District also filed exceptions to certain findings regarding the section 3543.5(c) violation.

The Association thereafter withdrew its appeal. The District's exceptions remained pending before the Board.

The Board dismissed the District's exceptions because the District did not appeal the ALJ's finding of a section 3543.5(a) violation, and the Association had withdrawn its appeal of the ALJ's dismissal of the section 3543.5(c) allegation.

Mildred B. Goodman v. Coronado Unified School District (6/27/89)  
PERB Order No. Ad-188

The Board rejected an appeal from the Board agent's denial of a request for extension of time to file exceptions to an ALJ's proposed decision for failure to timely serve the appeal on the opposing party. The Board concluded that failure to comply with the concurrent service requirement of PERB regulation 32140(b) should be excused only in cases presenting exceptional circumstances. The Board stressed that charging party had been made aware of the service requirement on several occasions. The Board also affirmed the denial of the request for extension of time because the bare assertion of unavailability of counsel did not constitute good cause.

#### E. WITHDRAWAL

Oakland Unified School District and United Teachers of Oakland, AFT Local 771 and Oakland Education Association (10/13/88)  
PERB Order No. Ad-171a

OEA filed a request for reconsideration of PERB Order No. Ad-171. Subsequent to that filing, the Board ruled on the administrative appeal concerning voter eligibility and issued an order in Oakland Unified School District (1988) PERB Order No. Ad-172. The decertification election ballots were counted and OEA prevailed as the exclusive representative.

OEA requested to withdraw its request for reconsideration and the Board granted the request.

Service Employees International Union, Local 102, AFL-CIO and California School Employees Association and its Poway Chapter No. 313 and Poway Unified School District (7/18/89)  
PERB Order No. Ad-173

SEIU appealed the administrative determination that a decertification petition filed by CSEA was not barred by a contract extension executed between SEIU and the District. It then requested to withdraw



its appeal. The Board found that the purposes of the EERA and the interests of all concerned would be best served by granting SEIU's requests to withdraw its appeal and for stay.

Shasta Union High School District and California School Employees Association and its Chapter 181, and Shasta Educational Support Personnel/Affiliate of CSEA/CTA/NEA (11/30/88)  
PERB Order No. Ad-175

After timely appealing an administrative determination in a decertification case under PERB rule 32360, the Association requested to withdraw its appeal. The Board concurred and ordered the appeal withdrawn with prejudice, as in the best interests of the parties and consistent with EERA purposes.

Wholesale & Retail Food Distribution Local 63, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and California School Employees Association and Pasadena Unified School District (2/17/89)  
PERB Order No. Ad-180

The Board granted the Teamsters' request to withdraw its appeal of the Board agent's determination that a decertification petition of the California School Employees Association

(CSEA) was timely filed. At issue was the appropriate termination date for the Teamsters-District contract and whether the contract b a r r e d t h e decertification petition.

Eureka Teachers Association, CTA/NEA v. Eureka City School District (5/25/89)  
PERB Order No. Ad-184

The ALJ issued a proposed decision and the District filed timely exceptions. The Board granted the Association's request to withdraw its underlying unfair practice charge and set aside the proposed decision. The District did not object to the withdrawal and the unfair practice charge was dismissed.

#### DILLS ACT

##### A. CONTRACT BAR

State of California (Department of Personnel Administration) and California Association of Psychiatric Technicians and Action CWA Local 9000 (5/23/89)  
PERB Order No. Ad-183-S

The Board denied the appeal of the California Association of Psychiatric Technicians (CAPT). CAPT had appealed the Board agent's determination that its contract with the State of California, Department of Personnel Administration (DPA) did not bar a decertification

petition filed by CWA because that contract had been prematurely extended. The doctrine of premature extension was first approved by the Board in Hayward Unified School District (1980) PERB Order No. Ad-96. (See also Butte County Superintendent of Schools (1983) PERB Decision No. 338 and Centralia School District (1985) PERB Decision No. 519).

The doctrine was intended to preclude manipulation of the window period when bargaining unit employees lawfully seek to change their exclusive representative. The Board remanded the case to the Sacramento Regional Director to conduct a decertification election.

B. STATE EMPLOYEE  
(DEFINITION)

State of California  
(Department of Personnel  
Administration) and  
California State  
Employees Association and  
California Union of  
Safety Employees  
(12/1/88)  
PERB Order No. Ad-176-S

The Board instructed the Board agent to submit the records of four state employer-filed unit modification petitions concerning seasonal employees to it for decision pursuant to PERB rule 32215. The issue is the definition of "state employee."

C. STAY

State of California,  
Department of Personnel  
Administration and  
California Union of Safety  
Employees and California  
State Peace Officers  
Association (5/12/89)  
PERB Order No. Ad-181-S

The state employer entered into a written agreement with California Union Safety Employees (CAUSE) to extend the existing contract. Later, Department of Personnel Administration (DPA) and CAUSE verbally agreed to further extend their agreement. The Board agent found that the verbal agreement extending the contract was invalid and therefore not an effective bar to the severance petition. The Board denied CAUSE's request for stay of activity.

D. WITHDRAWAL

State of California  
(Department of Personnel  
Administration) and  
California Department of  
Forestry Employees  
Association (12/20/89)  
PERB Order No. Ad-178-S

After timely appealing an administrative determination in a unit modification case under PERB rule 32360, DPA requested withdrawal of the appeal. The Board concurred, ordering the appeal withdrawn with prejudice as in the best interest of the parties and Dills Act purposes.

## HEERA

### A. COMPLIANCE

Statewide University Police Association v. Trustees of the California State University (8/24/88)  
PERB Order No. Ad-174-H

The Board affirmed the Board agent's determination that CSU failed to comply with the posting order set forth in the proposed decision which had become final. The Board agreed that the order required systemwide posting, and therefore, posting only at the CSU Sacramento campus did not constitute full compliance. The Board endorsed the propriety of systemwide posting (citing Los Angeles USD (1988) PERB Decision No. 659), where the named respondent is CSU rather than the Sacramento campus and the posting order centers on contract language for the entire bargaining unit employed at the CSU campuses.

### B. IMPASSE

California State University and California Faculty Association (12/16/88)  
PERB Order No. Ad-176-S

The Board denied the Association's appeal from the administrative determination of impasse, as well as the Association's request for stay until related unfair practice charges (blocking charges) were litigated.

The Board found no abuse of discretion by the Board agent. PERB noted that it was making no determination of the merits of the pending charge.

California State University and California Faculty Association (2/15/89)  
PERB Order No. Ad-177a-H

The Board denied CFA's request for reconsideration, finding that CFA's claims of prejudicial errors of fact related to claims already considered by PERB in the underlying decision.

## UNFAIR PRACTICE CASES

## EERA

### A. ACCESS

Teachers Association of Long Beach v. Long Beach Unified School District (3/3/89)  
PERB Dec. No. 721

The Board reversed the ALJ's conclusion that the District's regulations violated EERA sections 3543.5(a) and (b) by restricting the right of employees and employee organizations to use the District's internal mail system, and dismissed the complaint.

The Board found that the U.S. Supreme Court's decision in Regents of the University of California v. PERB/Wilson (1988) 485 U.S. 589

[99 L.Ed.2d 664] (U.C. Regents) applied equally to access rights under EERA. Because the Union's newsletters were delivered to the individual mailboxes of bargaining unit employees and contained messages directed to them, the Board concluded that these newsletters were not newspapers or periodicals, but instead were "letters" as defined by U.S. postal regulations and under the Federal Private Express Statutes. Pursuant to the U.C. Regents decision, the Board held that neither the "Letters of the Carrier" nor "Private Hands" exceptions to U.S. Mail statutes permitted the District to carry the Union materials through the District's internal mail system.

In Teachers Association of Long Beach v. Long Beach Unified School District (6/6/89) PERB Dec. No. 721(a), the Board denied reconsideration for failure to meet the standards set forth in PERB Regulation 32410(a).

#### B. AGENCY FEE

Barbara C. Abbot v. San Ramon Valley Unified School District (6/29/89) PERB Dec. No. 751

The Board affirmed the Board agent's dismissal of a charge alleging that the school district was liable for the exclusive

representative's failure to comply with the procedural due process requirements established by the U.S. Supreme Court in the Hudson case (Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 232).

The Board agreed that neither EERA nor federal law places an affirmative obligation on a public employer to ensure a union's compliance with the Hudson standards. The Board further found that imposing such a duty upon a public school employer would conflict with the provision of EERA authorizing agency fees and interfere with the collective bargaining relationship between an employer and an exclusive representative.

#### C. DEFERRAL TO ARBITRATION

Eureka Teachers Association, CTA/NEA v. Eureka City School District (10/19/88) PERB Dec. No. 702

The Board reversed the ALJ and dismissed the unfair practice charge. Pursuant to Lake Elsinore School District (1987) PERB Dec. No. 646, affirmed in Elsinore Valley Education Association, CTA/NEA v. PERB (Lake Elsinore School District) (July 28, 1988) Cal. App. 4th, Case No. E005078 [nonpubl. opn.]), the Board is without jurisdiction to review matters expressly covered by the parties'

contract under the express proscriptive language of EERA section 3541.5(a), irrespective of respondent's willingness to waive procedural defenses. Similarly, the failure to timely file a grievance could not overcome the EERA jurisdictional prohibition.

Lynn Prager, Errol Jacobs, Larry Merken, Michael Boyer v. Los Angeles Unified School District (5/24/89)  
PERB Dec. No. 737

The Board affirmed the Board agent's dismissal of a charge alleging that the District violated sections 3543.5, 3543.6 and 3541.5 of EERA.

Pursuant to Lake Elsinore School District (1987) PERB Dec. No. 646, the Board held it was without jurisdiction to issue a complaint because the subject of the charge was expressly covered by the parties' contract, given the express mandatory

proscription of EERA section 3541.5(a).

California School Employees Association and its ALACO Chapter No. 615 v. Alameda County Superintendent of Schools (6/27/89)  
PERB Dec. No. 747

The Board reversed the ALJ and dismissed the unfair practice charge for lack of jurisdiction. Where the dispute is covered by the parties' contract and is subject to the grievance/arbitration procedure, and the contract provides for binding arbitration, the charge must be deferred to arbitration under Lake Elsinore School District (1987) PERB Dec. No. 646. Failure to raise deferral as an affirmative defense in a timely manner does not preclude a party from raising it at a later stage of the proceeding because deferral is a nonwaivable jurisdictional defense.

D. DISCRIMINATION

Campbell Education Association, CTA/NEA v. Campbell Union High School District (10/12/88)

PERB Dec. No. 701

The Board affirmed the regional attorney's dismissal of charging party's allegation that respondent violated EERA sections 3543.5(a) and (b) by involuntarily transferring him after he filed a grievance. Charging party failed to establish a nexus between the transfer and the grievance and did not show that the transfer was adverse to his interests.

California School Employees Association, Ch. No. 504 v. Pleasant Valley School District

(12/21/88)

PERB Dec. No. 708

The Board, affirmed the ALJ's conclusion that the District violated EERA section 3543.5(a) when it reassigned a classified employee following his safety complaint, but based its decision on a different rationale. The Board held that the employee exercised an EERA statutory right to represent himself individually in employment relations with the District in discussing his safety complaint with his supervisor. Thus, the Board found that the employee's conduct constituted protected activity under EERA. The Board rejected the

employer's assertion that the employees' complaint regarding his personal safety did not constitute "concerted activity" and was therefore unprotected. The District implicitly admitted that the reassignment was solely a result of the employer's safety complaint, and thus failed to rebut the inference of discrimination.

The Board reversed the ALJ's finding of a derivative section 3543.5(b) violation because there was no evidence that the District's conduct violated the employee organizations' rights.

Robert Ray Bradley v. Los Angeles Community College District (6/28/89)

PERB Dec. No. 748

The Board adopted the ALJ's proposed decision that District did not violate EERA section 3543.5(a) and interfere with charging party's rights by release of a "confidential" document. The release was made while investigating longstanding accusations by the charging party against another department because he had raised the same issues both before and after he filed a grievance. The release of the document was not a deviation from the District's customary practice in investigating allegations.

E. DUTY OF FAIR REPRESENTATION

John J. Pearce v. American Federation of Teachers, Local 2121 (7/28/88)  
PERB Dec. No. 695

The Board affirmed the Board agent's dismissal of charging party's allegation that respondent violated EERA section 3543.6(b), by handling his grievance in a perfunctory or arbitrary manner. The union's decision not to pursue the grievance to arbitration did not demonstrate that the grievance was handled perfunctorily. Unions may exercise discretion in deciding whether to arbitrate grievances and here, that discretion was based on an honest appraisal of the merits of the claim.

Norman P. Barth v. Los Rios College Federation of Teachers, Local 2279 CFT/AFT (12/29/88)  
PERB Dec. No. 712

The Board affirmed the ALJ's dismissal of the charge, finding that charging party failed to state a prima facie case in violation of EERA sections 3544.9 and 3543.6. Charging party filed a grievance alleging that the collective bargaining agreement created an illegal agency fee arrangement. The

Federation denied his request to pursue the matter to arbitration. Charging party failed to allege sufficient facts that the grievance was handled in a perfunctory manner or that the union acted with bad faith, discriminatory motive, or arbitrarily.

Martha Maire O'Connell v. California State Employees' Association (6/30/89)  
PERB Dec. No. 753

The Board affirmed the ALJ's decision dismissing charging party's allegations that the Association removed her from an appointed steward in retaliation for her pursuit of grievances and filing unfair practices against the Association.

The Board rejected the ALJ's reliance on SEIU, Local 99 (Kimmett) (1979) PERB Decision No. 106 regarding the charges alleging reprisal for protected activity. The Board held that if the allegations concern retaliation, the Kimmett substantial impact test is not applicable and the proper analysis is the Novato USD (1982) PERB Decision No. 210 standard as to whether the Association's actions were motivated by the charging party's protected activity.

F. EMPLOYER (DEFINITION)

United Public Employees,  
Local 790, SEIU, AFL-CIO  
v. San Francisco Community  
College District  
(10/18/88)

PERB Dec. No. 688a

In PERB Dec. No. 688, the Board affirmed the ALJ's dismissal of charges but disagreed with the rationale. Charging party alleged that the District unilaterally adopted a policy barring classified personnel from performing part-time teaching duties in violation of EERA sections 3543.5(a), (b), (c) and (d).

The Board found that classified employees are not employed by the District, but rather by the City and County of San Francisco. The Board overruled San Francisco Community College District, (1986) PERB Order No. Ad-153 to the extent that it found that the District is a joint employer of classified employees.

Charging party requested reconsideration of that decision based on prejudicial errors of fact and that the Board violated principles of appellate adjudication.

The Board denied the request, finding that charging party mischaracterized the Board's factual findings; the District had the right to raise exceptions to the proposed decision since it

was a party to the proceeding, and charging party failed to respond to the District's exceptions, instead raising such arguments for the first time in the request for reconsideration.

Pat M. Miller v. Hacienda  
La Puente Unified School  
District (6/16/89)

PERB Dec. 741

The Board dismissed a complaint alleging that the District violated EERA section 3543.5(a) and (b) when it failed to consider charging party for reemployment following her termination. Pursuant to Hacienda La Puente Unified School District (1988) PERB Decision No. 685 (affirmed in Paige v. PERB/Hacienda La Puente Unified School District (April 22, 1988) Cal. App. 2d, Case No. B036106 [nonpubl. opn.]), the Board affirmed the ALJ's conclusion that charging party was not an employee at the time she sought reemployment and, therefore, lacked standing under EERA.

The Board construed the terms "employee" in EERA section 3543.5(a) and "employed" in section 3540.1(j) as referring to an individual in an existing employment relationship with a public school employer, and not to an applicant or prospective employee. Charging



party's status as an applicant when she applied for reemployment with the District excluded her from coverage under the EERA.

#### G. INTERFERENCE

Service Employees International Union, Local 715, AFL-CIO v. Los Gatos-Saratoga School District (6/19/89)  
PERB Dec. No. 742

The Board upheld the Board agent's partial dismissal of the charge alleging that the layoff of a classified employee, and failure to allow the employee to fill an available vacant position in another classification, interfered with the employee's protected rights. Charging party claimed that the District had permitted a similarly situated employee to fill the same vacant position several years prior and thus discriminated against her because she was an active and visible union adherent.

The facts of this case were similar to those set forth in Novato USD (1982) PERB Decision No. 210, and the Board has not previously found that a discrimination violation automatically gives rise to an interference violation.

#### H. JURISDICTION

San Francisco Community College Federation of Teachers, AFT 2121 v. San Francisco Community College District (10/28/88)  
PERB Dec. No. 703

The ALJ found that the District violated EERA section 3343.5(c), and derivatively sections (a) and (b), by adopting a policy which eliminated the use of part-time certificated classified employees who also held full-time classified positions within the District.

The Board reversed the ALJ and dismissed the charge on the ground that classified employees are employed by the City and County of San Francisco and not by the District. City and County control over classified employees through the civil service system, therefore, is not a matter within the scope of representation under EERA, or negotiable between the public school employer and the exclusive representative for the certificated unit.

In San Francisco Community College Federation of Teachers, AFT 2121 v. San Francisco Community College District (2/16/89)  
PERB Dec. No. 703(a), the Board denied the request

for reconsideration. Charging party claimed that PERB erroneously ruled that San Francisco Civil Service Commission Rule 29 made the District's decision nonnegotiable, the Board, however, stated that its holding was not dependent on that rule. The Board also rejected the argument that it was bound to cite NLRB precedent. Finally, the Board concluded that a public school employer is not under a duty to negotiate the effects of a nonnegotiable decision made by another employer. Even if the nonnegotiable decision had been made by the public school employer, there was no demand to bargain the effects of the policy.

#### I. NEGOTIATIONS

San Diego Adult Educators, Local 4289, American Federation of Teachers/California Federation Teachers, AFL-CIO v. San Diego Community College District (11/28/88)  
PERB Dec. No. 662a

In PERB Dec. No. 662, the District contracted with a private, non-profit foundation so that the latter offered language classes no longer presented by the District's Adult School. Affirming the ALJ, the Board found that although the District could lawfully cease to offer the classes, it violated EERA when it contracted out the work formerly

performed by bargaining unit members.

The Board ruled that the charge was timely although service of the change on the District was not made within the six-months statute of limitations because the charge itself was timely filed by the charging party and the District was not prejudiced by the delay.

Both parties requested reconsideration. The Board denied each request, finding that the Union reiterated arguments previously considered and rejected by the Board in its underlying decision and arguments of the District were without merit.

Elsinore Valley Education Association, CTA/NEA v. Elsinore School District (9/7/88)  
PERB Dec. No. 696

The Board reversed the ALJ's finding that the District violated 3543.5(c) by adopting a resolution to participate in the California Mentor Teacher Program (Educ. Code, sections 44490 - 44497). Education Code section 44494(d) provides that the "subject of participation" by a school district is nonbargainable.

The State Superintendent of Public Instruction provided school districts with information regarding the program and

requested a noncommittal letter of intent from districts wishing to participate. The State distributed a subsequent memo advising of an application deadline and requested a resolution of participation from the District governing board, including whether it had considered views of parents, pupils and other representatives, and a brief description of the District's plans for implementation of the program.

The District requested to meet and did meet with the Association to "set parameters" for the Program. The Association maintained that any discussion regarding the Program was negotiable and should be referred to the bargaining team.

The Board held that no bargaining obligation was created until the State approved the District's application and granted funds for program implementation. Once the funds were received, the District contacted the Association. There was no evidence that the parties met or reached an agreement regarding implementation of the program.

Elsinore Valley Education Association, CTA/NEA v. Lake Elsinore School District (12/29/89)  
PERB Dec. No. 715

The Board reversed the ALJ's conclusion that the District violated EERA section 3543.5(c) and, derivatively, subsections (a) and (b), by failing to give the exclusive representative notice and opportunity to bargain the negotiable effects of the District's nonnegotiable decision to reduce the hours of instructional aides. The Board found that the main purpose of the School Improvement Program, under which the aides were hired, was maximization of direct instructional assistance to students. Therefore, any increases in teachers' workday caused by the reduction in aide time did not result from a district-compelled increase in workload. (See also Lake Elsinore School District (1987 PERB Decision No. 646).

Klamath-Trinity Teachers Association, CTA/NEA v. Klamath-Trinity Joint Unified School District (12/30/89)  
PERB Dec. 717

The Board reversed the regional attorney's

dismissal of the charge for failure to state a prima facie case and remanded it to the General Counsel for issuance of a complaint pursuant to PERB regulation 32640. Charging party stated a prima facie violation of EERA section 3543.5 by alleging that the District transferred or subcontracted work out of the bargaining unit without providing it with notice and an opportunity to bargain about the decision and/or its effects.

California School Employees Association and its San Bernardino Chapter No. 183 v. San Bernardino City USD (3/8/89)  
PERB Dec. No. 723

The Board affirmed an ALJ's proposed decision that the 1981 amendment to Education Code section 45256 did not effectively overrule Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689. Consequently, the District unlawfully refused to bargain proposals over salary range changes for certain classifications within an occupational grouping.

The Board also rejected the District's argument that the Board has no jurisdiction to interpret the Education Code. The Board District's argument that the salary proposal failed the 3-prong Anaheim Union HSD (1981) PERB Decision No. 177 test for

negotiability was not persuasive as that test is applied to subjects not specifically enumerated in EERA section 3543.2 scope of representation. The subject of wages is, by contrast, specifically enumerated in section 3543.2.

Compton Community College Federation of Employees, AFL-CIO v. Compton Community College District, et al. (4/4/89)  
PERB Dec. 728

The Board adopted the proposed decision that the District had not bargained in good faith and did not participate in good faith in impasse procedures; further, respondent failed to establish that charging party had engaged in the same unlawful conduct. The Board specifically addressed coalition bargaining and the charging party's alleged "sick-out." To prove unlawful coalition bargaining, the employer must prove that the exclusive representative either refused to bargain unless the units met jointly with the employer or conditioned the settlement of one contract upon settlement of the other. The Board upheld the ALJ's finding that coalition bargaining did not occur, based on credibility determinations.

The Board held that the respondent failed to meet

its burden of proving that the charging party encouraged, planned, authorized or ratified the sick out. Although most Federation officials called in sick, the District failed to show that they acted as agents of the charging party rather than as individual employees.

California School Employees Association and its Chapter No. 505 v. Riverside USD and Associated Teachers of Metropolitan v. Riverside Unified School District (6/29/89)  
PERB Dec. No. 750

The Board reversed the ALJ's finding that the District's unilateral ban of employee smoking inside district facilities violated EERA section 3543.5(a), (b) and (c). In concluding that the smoking policy was not a mandatory subject of bargaining, the Board relied upon contract language and legislative action and findings, especially the legislative mandate that each school district "take all steps it deems practical to discourage high school students from smoking." The Board noted that the smoking policy was implemented not only out of concern for employee health, but "... in the best interest of the district and its

employees and pupils." Additionally, the Board applied the analysis set forth in Anaheim Union High School District (1981) PERB Decision No. 177 as the basis for nonnegotiability of the policy.

J. NON EXCLUSIVE REPRESENTATIVE

Butte County Part-Time Faculty Association/Communications Workers of America v. Butte Community College District (6/19/89)  
PERB Dec. No. 743

Charging party filed an exception to the proposed decision dismissing allegations that the District violated EERA sections 3543.5(a) and (b) by failing to provide charging party with notice and an opportunity to meet and consult with the respondent prior to changing the "flex-time" policy.

The Board affirmed, holding that respondent did not violate the Act by changing the calculation of faculty "flex-time" composition. Charging party also failed to prove that the District was on notice of the Association's status as a non exclusive representative at the time of the change in policy.

**K. STATUTE OF LIMITATIONS**

Rebecca E. Duran-Chungon  
v. San Marcos Educators  
Association, CTA/NEA  
(12/21/88)  
PERB Dec. No. 711

The Board affirmed the regional attorney's dismissal that charging party's charge was untimely filed. A charge filed against the District did not give constructive notice to the Association. All relevant conduct occurred outside the six month period, including the reasonable time frame for charging party to realize that further grievance assistance from the Association was unlikely. Charging party's belated knowledge of a possible legal remedy did not toll the running of the six month period.

**L. UNFAIR PRACTICE PROCEDURES**

Oxnard Educators  
Association (Gorcey and  
Tripp) (8/26/88)  
PERB Dec. No. 664a

In PERB Dec. No. 664, the Board affirmed the regional attorney's dismissal of the alleged violation of Education Code section 45028. The Board also affirmed the dismissal of EERA 3543.6(c) violation because charging parties lacked standing to bring charges against the Association for failure to negotiate in good faith with the District. The Board reversed the regional attorney's

dismissal of the 3544.9 duty of fair representation charge, finding that charging parties had stated a prima facie case that the Association's conduct in negotiating a salary schedule unfavorable to them was arbitrary, discriminatory, or in bad faith. The case was remanded to the General Counsel for issuance of a complaint.

The Association requested reconsideration based on "newly discovered" evidence and alleged that evidence was presented and a decision issued in a related charge which should have been considered by the Board.

The Board denied the Association's request for reconsideration. The Board found that the Association had not shown "reasonable diligence" and therefore failed to demonstrate extraordinary circumstances warranting reconsideration.

Compton Community College  
Federation of Employees,  
Local 3486 v. Compton  
Community College  
District (11/22/88)  
PERB Dec. No. 704

Charging party alleged that the District violated EERA sections 3543.5(a), (b), (c) and (d). The Board agent dismissed part of the charge and charging party appealed the partial dismissal. The Board took official notice of a

Notice of Withdrawal submitted to the ALJ presiding over a portion of the case on which a complaint had been issued. After receiving no response from charging party to present argument why the withdrawal was not effective as to the aspect of the case before the Board, PERB gave full effect to the plain language of the Notice of Withdrawal and dismissed the case.

Rebecca Abboud, et al., v. United Teachers - Los Angeles (6/8/89)  
PERB Dec. No. 738

The Board dismissed the charging party's appeal of the Board agent's dismissal of her charge on the grounds that the appeal failed to comply with PERB Regulation 32645. Specifically, charging parties failed to state any issues of procedure, fact, law or rationale as to which the appeal was taken. Charging parties conceded that dismissal was proper and filed an appeal to exhaust administrative remedies.

#### M. UNILATERAL CHANGE

California School Employees Association, Chapter 45 and Jimmie Thompson v. Compton Community College District  
(3/01/89)  
PERB Dec. No. 720

The Board affirmed, in part, the proposed decision concluding that the District violated EERA by unilaterally reducing benefit plan contributions before impasse procedures were exhausted. The Board reversed the ALJ finding that the District failed to negotiate over the effects of layoffs, reasoning that an employer may implement a nonnegotiable decision after providing reasonable notice and a meaningful opportunity to bargain effects. The Board articulated a three part test: (1) the implementation date is not an arbitrary one, but is based upon either an immutable deadline (such as the one set by the Education Code or other laws not superseded by EERA) or an important managerial interest, such that a delay in implementation beyond the date

chosen would effectively undermine the employer's right to make the nonnegotiable decision; (2) notice of the decision and implementation date is given sufficiently in advance of the implementation date to allow for meaningful negotiations prior to implementation; and (3) the employer negotiates in good faith prior to implementation and continues to negotiate in good faith after implementation as to those subjects not necessarily resolved by virtue of the implementation. The Board also found that the District failed to present a valid business necessity defense.

In California School Employees Association Chapter 45 and Jimmie Thompson v. Compton community College District (6/19/89)

PERB Dec. 720(a), the Board granted the request for reconsideration, adopting the date on which the parties exhausted impasse procedures for their successor agreement to the 1982-1985 contract as the appropriate date to cut off liability for the District's unilateral change in its benefit plan contribution. The Board rejected the District's argument that the retroactive effective date

of the agreement should be applied to limit the monetary loss award.

California School Employees Association v. Calistoga Joint Unified School District (6/19/89)  
PERB Dec. 744

The Board found that the District violated EERA sections 3543.5(b) and (c) when it failed to negotiate the transfer of yard supervision duties from the classified to the certificated unit. The "overlapping duties" exception found in Eureka No. 481 did not apply because the classified unit completely ceased to perform duties which it had previously accomplished. Waiver was not established because Association demanded to bargain the decision and its effects.

#### N. WITHDRAWAL OF APPEAL

Bonita Unified Teachers Assn., CTA/NEA v. Bonita Unified School District (12/29/88)  
PERB Dec. No. 714

The Board granted the charging party's request to withdraw, with prejudice, its appeal of the Board agent's dismissal. Such withdrawal was found to be in the best interest of the parties and consistent with EERA.



Antelope Valley Teachers Association, CTA/NEA v. Antelope Valley Union High School District (3/14/89)  
PERB Dec. 724

The Board granted the Association's request to withdraw, with prejudice, the appeal of the Board agent's dismissal.

#### DILLS ACT

##### A. DEFERRAL TO ARBITRATION

California Department of Forestry Employees Association v. State of California (Department of Forestry and Fire Protection) (5/3/89)  
PERB Dec. 734-S

The Board affirmed the Board agent's dismissal of the allegation of interference with employees' rights occurred when a supervisor threatened loss of a fire fighting contract with a local district. That issue was deferred to arbitration because the collective bargaining agreement contained a binding arbitration clause which covered such action.

The Board reversed the dismissal of the employer allegation that the same statement violated the rights of the employee organization, finding a prima facie case was stated. The charge was therefore remanded to the General Counsel to issue

a complaint based on a violation of section 3519(b).

California Correctional Peace Officers Association v. State of California, Department of the Youth Authority (6/28/89)  
PERB Dec. No. 749-S

Pursuant to Lake Elsinore School District (1987) PERB Decision No. 646, the Board affirmed the Board agent's dismissal of an unfair practice charge where the collective bargaining agreement provided that the requested remedy for reprisal and/or discrimination was either through PERB or the binding grievance - arbitration procedure. The agreement requiring a grievant to choose between PERB and the grievance-arbitration procedure does not confer jurisdiction on PERB where the unfair practice allegations are also covered by the grievance-arbitration procedures.

The Board reversed the Board agent's dismissal where allegations of reprisal and/or discrimination were clearly excluded from the grievance and arbitration procedure in the previous collective bargaining agreement, and ordered the General Counsel to issue a complaint based on a violation of section 3519(a).

B. DISCRIMINATION

Barbara L. Long v.  
California Association of  
Psychiatric Technicians  
(CAPT) (6/20/89)  
PERB Dec. No. 745-S

The Board affirmed the ALJ's finding that the Association discriminated against charging party in violation of section 3519.5(b) in denying union membership to her because of her prior membership in a rival employee organization.

The Novato (Novato USD (1982) PERB Dec. No. 210) standard was applied. Unlawful motive was evinced by an unexplained and unsupported deletion of charging party's membership request from the membership list which respondent sent to the State Controller, and by the union's continuous failure to process charging party's applications for CAPT membership. Respondent took deliberate actions to deprive charging party of her statutory right to join the union and this conduct constituted discrimination under the Novato standard.

C. DUTY OF FAIR REPRESENTATION

Rose Marie Parisi v.  
California State Employees  
Association (CSEA)  
(5/3/89)  
PERB Dec. No. 733-S

The Board affirmed the ALJ's dismissal of an unfair practice charge that the Association violated section 3519.5(b) and its duty of fair representation. Charging party alleged that the union failed to properly prepare to represent her before the State Personnel Board (SPB) in her appeal from medical termination.

The ALJ treated the motion to dismiss prior to hearing as a motion for summary judgment, assuming all facts most favorable to the charging party.

The proposed decision held there was no union duty to represent charging party because the SPB proceedings involved individual rights unconnected with collective bargaining. The remaining issues of timely filing and exhaustion of internal union procedures were therefore moot.

D. NEGOTIATIONS

Professional Engineers in California Government (PECG) v. State of California (Department of Personnel Administration)  
(12/20/88)  
PERB Dec. No. 648a-S

In PERB Dec. No. 648-S, the state employer refused to bargain over proposals on (1) contracting out; (2) discipline procedures; (3) layoff decisions; (4) promotions; (5) staffing ratios; (6) job action interference; (7) out-of-class claims; and (8) employee assignments submitted by the exclusive representative. The state employer did not appeal the ALJ's findings that staffing ratios, promotions and out-of-class claims were negotiable.

The Board ruled that the proposals on contracting out, layoffs, and discipline were outside the scope of representation, either because they were inherent management prerogatives (layoff); constitutionally deficient (discipline), or so broad that it was not possible to relate the proposals to labor costs and thus no bargaining duty arose (contracting out). The proposals concerning work preservation/transfer and job action interference/assignment of work were negotiable and the state employer unlawfully

refused to negotiate such subjects.

In the present case, the Board affirmed the Executive Director's denial of PECG's request to allow a late filing of its request for reconsideration of Decision No. 648-S. The extraordinary circumstances had not been demonstrated by PECG's assertions that the timing and content of the Board's decision made it difficult to decide upon a course of action, thereby preventing timely filing. The Board also questioned whether it had jurisdiction to consider a request for reconsideration once a petition for review had been filed and/or the time to seek judicial review has expired.

California State Employees' Assn., SEIU, Local 1000 v. State of California, Dept. of Personnel Administration  
(12/16/88)  
PERB Dec. No. 706-S

Charging party appealed the Board agent's dismissal of its unfair practice charge that the state employer failed to meet and confer in good faith before the Governor submitted his proposed budget to the Legislature pursuant to Article IV, section 12(a) of the California Constitution. The charge further alleged that the Governor failed to provide CSEA with all initial meet and

confer proposals regarding salary increases at a public meeting in violation of section 3519(a), (b) and (c) of the Dills Act. The Board affirmed the dismissal on the ground that the Governor's submission of the budget is not a matter for negotiation, but rather the performance of a constitutionally imposed duty.

Association of California State Attorneys and Administrative Law Judges v. State of California, Department of Personnel Administration (6/8/89)  
PERB Dec. No. 739-S

The Board reversed the ALJ's dismissal of the complaint that the state employer failed to "meet and confer in good faith" by delaying any response to charging party's salary proposal until 2 months after adoption of the state budget by both the Legislature and the Governor. Finding that the allegations stated a prima facie case, and whether DPA failed to meet and confer in good faith required a factual determination, the Board remanded the complaint to the Chief ALJ for further hearing on the merits.

#### E. WITHDRAWAL OF APPEAL

California Correctional Peace Officers Association v. State of California, Department of Correction (5/3/89)  
PERB Dec. No. 732-S

Charging party appealed the Board agent's dismissal of its charge that respondent violated sections 3519.5(a) and (b) and later sought to withdraw its appeal. The Board granted charging party's request for withdrawal of its appeal with prejudice, finding it in the best interest of the parties and consistent with the Dills Act.

#### HEERA

##### A. ACCESS

University Council, AFT, Locals 2034, 2199, 1990, 1474, 2141, 1966, 2226, 1795 and 2023 v. Regents of the U.C. (3/21/89)  
PERB Dec. No. 725-H

The Board affirmed the proposed decision, finding that the University unlawfully denied AFT total access to its internal mail system. Given the U.S. Supreme Court's decision in Regents v. PERB/Wilson (1988) 48 U.S. 589, such

access must comply with the Private Express Statutes and applicable postal regulations. Thus, access may be afforded only to those unstamped union mailings which fall outside the scope of the postal monopoly (subject also to any other limitations arising under the "reasonable regulation" proviso of HEERA section 3568). The Board rejected as speculative the University's assertions that such access would be unduly burdensome, as that denial of access is reasonable because alternative forms of communication exist. The Board also rejected AFT's argument that the Regents v. PERB holding is limited to nonexclusive representatives engaged in organizing efforts.

Martha Maire O'Connell, Kevin Johnson and Kristen Wigren v. California State University, Chico (4/4/89) PERB Dec. No. 729-H

The Board affirmed the proposed decision that the State University's internal mail regulations violated section 3571(a), (b) and (d) of HEERA by denying the right to access to its mail system, interfering with employees' rights and interfering with the rights of employee organizations.

The Board affirmed the finding that the University's discriminatory and

inconsistent application of a verification requirement infringed upon employee rights. The Board also affirmed the conclusion that imposition of a fee for delivery of the flyers was not a reasonable regulation because PERB precedent holds that the exercise of statutory access rights cannot be conditioned upon payment of fees to an employer.

The Board also affirmed the ALJ's determination that the flyers were not letters within the postal regulations of a "letter;" therefore, Regents v. PERB/Wilson (1988) 485 U.S. 589 was not controlling.

#### B. D U T Y O F F A I R R E P R E S E N T A T I O N

Thomas E. Hale, et al. v. California Faculty Association (7/26/88)  
PERB Dec. No. 693-H

The Board upheld the regional attorney's dismissal, for failure to state a prima facie case, of charging parties' allegation that the Association violated HEERA section 3571.1(b). The charge alleged that the Union interfered with charging parties' rights by defamatory statements made by one of its coordinators and that CFA breached its duty of fair representation by failing to discipline the coordinator.

Dr. Cheng T. Wang v.  
California Faculty  
Association (7/26/88)  
PERB Dec. No. 692-H

The Board upheld the General Counsel's dismissal, for failure to state a prima facie case, of charging party's allegations that CFA violated HEERA sections 3571.1(a) and (b). Charging party alleged that the union breached its duty of fair representation in representing him in the disciplinary action initiated by the California State University and by failing to notify him of his right to use the union's Representation Policy after his representation was discontinued.

In Dr. Cheng T. Wang v.  
California Faculty  
Association (12/29/88)  
PERB Dec. No. 692a-H, the Board denied charging party's request for reconsideration, finding that HEERA did not constitute law that was not previously available, or could not have been discovered with the exercise of reasonable diligence. The Board further found that there was no evidence that the Board's decision contained prejudicial errors of fact.

B. Benedict Waters v.  
American Federation of  
State, County and  
Municipal Employees  
(9/25/88)  
PERB Dec. No. 697-H

The Board affirmed the regional attorney's dismissal of charging party's allegation that the union violated HEERA sections 3571.1(a) and (b). The Board held that an employee organization does not violate HEERA by failing to distribute copies of the collective bargaining agreement to unit employees.

Alexander V. Pomerantsev  
v. California Faculty  
Association (9/26/88) PERB  
Dec. No. 698-H

The Board affirmed the regional attorney's dismissal of charging party's allegation that the union violated HEERA section 3571.1(e). Charging party alleged that the union breached its duty of fair representation by failing to properly represent him in challenging his termination. The charge failed to allege that the Association's conduct was arbitrary, discriminatory or in bad faith.

W. Slater Hollis v.  
California Faculty  
Association (12/21/88)  
PERB Dec. No. 709-H

The Board summarily affirmed the Board agent's dismissal of the charge alleging that the exclusive representative violated the duty of fair representation by negotiating a two-tiered Faculty Early Retirement Program with California State University. While the duty of fair representation does extend to contract negotiations, charging party failed to allege that the exclusive representative's conduct was without a rational basis or devoid of honest judgment.

W. Slater Hollis v.  
California State  
University (Pomona)  
(12/21/88)  
PERB Dec. No. 710-H

The Board summarily affirmed the Board agent's dismissal of a charge alleging that California State University violated HEERA sections 3571, subdivisions (a), (c) and (d) by negotiating an agreement with the exclusive representative establishing a two-tiered Faculty Early Retirement Program. Individual employees lack standing to bring a charge of bad faith bargaining against the employer (Oxnard School District (Gorcey/Tripp) (1988) PERB Dec. No. 677). Charging party also failed to demonstrate that the CSU

interfered with the exercise of his protected rights under HEERA. The HEERA section 3571(d) allegation was dismissed for lack of factual basis.

Martha O'Connell v.  
California State  
Employees Association  
(CSEA) (3/21/89)  
PERB Dec. No. 726-H

The Board found first that the charging party's appeal was not in compliance with PERB regulation 32300. There was no identification or specificity as to which part of the proposed decision was being appealed.

The Board also clarified its decision in CSEA (O'Connell), (1986) PERB Dec. No. 596-H regarding when a union's misrepresentation breaches its duty of fair representation. In matters of internal union business, the fact misrepresented must have a substantial impact upon the relationships of the unit members to their employer; a knowing misrepresentation during the process of securing ratification of a contract is one example of the Vaca v. Sipes (1967) 386 U.S. 271 standard of "bad faith."

The record indicated that representations to the employees by the bargaining team members were made without prior

consultation with union management and amounted to no more than mere negligence or poor judgment.

Farhad Mirhady v. California Faculty Association (6/26/89)  
PERB Dec. 746-H

The Board affirmed the Board agent's dismissal of the unfair practice charge alleging breach of the duty of fair representation under section 3571.1. The Association's conduct in representing charging party in the grievance process, in which charging party challenged the employer's failure to grant tenure, could not be characterized as perfunctory. Charging party's first amended charge failed to add sufficient allegations. The union's failure to introduce every favorable document or raise every argument deemed significant by charging party did not breach the duty imposed upon the exclusive representative.

C. EMPLOYEE (DEFINITION)

Association of Graduate Student Employees v. Regents of the University of California (4/26/89)  
PERB Dec. No. 730-H

The Board found that, with few exceptions, graduate student instructors and graduate student researchers at UC Berkeley are not employees for purposes of

HEERA; thus, the University did not violate sections 3571(a) and (b) when it failed to recognize the Association as an employee organization and did not implement dues deductions for the students.

The specific statutory language of HEERA establishes a two-prong test. To be "employees," the educational objectives of the students must be unrelated to services performed; if related, the educational objectives must be subordinate to those services, and providing statutory coverage must further the purposes of HEERA. The services were clearly related to educational objectives, so the question presented was whether the services were subordinate to the educational objectives. The Board affirmed the ALJ's finding that the educational goals were not subordinate for graduate researchers and reversed the finding that they were subordinate for teaching assistants.

The Board broadly viewed "educational objectives" to include the mutual interests of the students and their mentor professors. The Board acknowledged that "educational objectives" tend to be determined by subjective criteria, i.e., the views of students and professors, while "services" are



characterized by objective criteria such as indicia of employment, making the determination and recognized that the two interests are interrelated. By examining these relationships, the Board was able to determine which objectives were subordinate to services. Thus, students have many indicia of employment, but when academic considerations conflict, these will ultimately prevail.

Finding that coverage would not significantly further the purposes of HEERA, the Board reasoned that the employment was primarily intended to provide living expenses during graduate study. The stated statutory purpose of encouraging the pursuit of excellence in teaching and research would not therefore be served by providing coverage for some, but not all students, and many students serve in several capacities during their education.

#### D. IMPASSE PROCEDURES

United Professors of California v. California State University  
(1/19/89)  
PERB Dec. No. 719-H

The Board affirmed the dismissal of the charge that the California State University unlawfully failed to make public a factfinding report arising out of impasse

proceedings. Relying upon Hanford UHSD (1978) PERB Decision No. 58 and Regents of the University of California v. PERB (1985) 168 Cal.App.3d 937, the Board held that a nonexclusive representative has no standing to assert a HEERA section 3571(e) violation. The Board also found no prima facie violation of PERB regulation 32800(b), as no final report was ever issued. Charging party's allegations regarding violations of the public notice requirements of HEERA section 3595 and HEERA section 3571(a) proscribing interference with employee rights were rejected for failure to set forth sufficient supporting facts.

#### E. INTERFERENCE

Nancy A. Ridley v. Regents of the University of California (9/27/88)  
PERB Dec. No. 699-H

The Board affirmed the regional attorney's dismissal of charging party's allegation that respondent violated HEERA section 3571(a). The allegation that the employer did not hold a timely grievance meeting in accordance with the contract (due to the unavailability of the employer's representative) failed to reflect any harm to the charging party's statutory rights and was, at most, a contract violation. Charging

party failed to state a prima facie case of interference with her right to present grievances.

Nancy A. Ridley v. Regents of the University of California (9/27/88)  
PERB Dec. No. 700-H

The Board affirmed the regional attorney's dismissal of charging party's allegations that the University refused to process her grievance. Charging party failed to allege facts demonstrating that U.C.'s actions in suspending the processing of the grievance pending receipt of an addendum promised by the grievant caused any harm to her statutory rights or arguably breached the contract. Even assuming that a breach of the agreement occurred, the charge still failed to state an unfair practice.

Nancy A. Ridley v. Regents of the University of California (12/21/88)  
PERB Dec. No. 707-H

The Board summarily affirmed the Board agent's dismissal of charging party's allegations that the University refused to process her grievance in violation of HEERA

section 3571(a). Charging party failed to allege facts that the U.C.'s conduct in suspending the processing of the grievance pending receipt of an addendum promised by the grievant, and requiring use of the proper grievance form, caused any harm to her statutory rights or arguably breached the contract. Even assuming that a breach of the contract occurred, the charge still failed to state an unfair practice.

B. Benedict Waters v. Regents of the University of California (7/26/88)  
PERB Dec. No. 694-H

The Board affirmed the Board agent's dismissal of the charge. The Board agent found that the charge was not timely filed as it was based upon conduct occurring more than six months prior to filing. Further, charging party failed to demonstrate that the University interfered with any rights guaranteed by HEERA section 3571(a) or unlawfully assisted the exclusive representative under HEERA section 3571(d). Charging party alleged only a contract violation over which PERB lacks jurisdiction pursuant to HEERA section 3563.2.

F. JURISDICTION

California State Employees Association v. California State University (San Diego) (1/17/89)  
PERB Dec. No. 718-H

The Board reversed the proposed decision. The underlying charge concerned three alleged occasions on which the University transferred tree-trimming work outside the bargaining unit.

The Board dismissed the first allegation, finding that HEERA section 3563.2(a) creates a jurisdictional bar to issuance of a complaint on conduct occurring more than six months before the charge was filed. The Board held that the statute of limitations may not be viewed as an affirmative defense subject to a party's waiver. The Board did not limit its ruling to HEERA, and overruled Walnut Valley Educators Association (1983) PERB Dec. No. 279 to the extent that it established that the EERA statute of limitations and parallel provisions of the Dills Act statute of limitations, may be treated as affirmative defenses subject to waiver.

The Board reasoned that, it is appropriate under PERB regulation 32646 to require a respondent to point out an untimely charge, but a

respondent's failure to do so does not establish waiver.

The Board dismissed the remaining allegations of unlawful transfer of work, finding that, pursuant to past practice, non-unit employees had been used to perform unit work under certain emergency circumstances.

G. STATUTE OF LIMITATIONS

Napier's Employment Security Agency (NESA) v. UCLA Labor Relations Division (5/4/89)  
PERB Dec. 735-H

The Board affirmed the Board agent's dismissal as untimely filed an unfair practice charge where there was no "continuing violation" by respondent in refusing to proceed with a grievance. Further, charging party did not pursue the grievance machinery so as invoke an equitable tolling.

H. UNFAIR PRACTICE PROCEDURES

B. Benedict Waters v. Regents of the University of California  
(12/30/88)  
PERB Dec. No. 716-H

The Board affirmed the ALJ's dismissal of the complaints based upon the charging party's failure to present evidence sufficient to establish a prima facie case of violation of HEERA.

The Board found that its regulations allow either party to file exceptions to a decision dismissing a complaint, as opposed to a charge, and does not depend upon the outcome of the case. Thus, the University had standing to challenge the ALJ's Statement of Reasons for Dismissal. The Board concluded, however, that the Statement of Reasons for Dismissal set forth adequate grounds for dismissal of the charge.

#### I. UNILATERAL CHANGE

California Nurses Association v. The Regents of the University of California  
(3/3/89)  
PERB Dec. No. 722-H

The Board held that the University violated HEERA sections 3571(a), (b), and (c) when it unilaterally converted bargaining unit positions to newly created supervisory positions during the existing collective bargaining

agreement, without invoking and exhausting PERB's unit modification procedures (PERB Regulation 32781).

The Board rejected the University's argument that it was entitled to unilaterally transfer alleged supervisors into new classifications and thereby engage in a "technical refusal to bargain" as an alternative means of testing the contours of the certified bargaining unit.

The Board affirmed the ALJ's finding that the University violated HEERA section 3571(c) and, derivatively, (b). The Board reversed the proposed decision insofar as it found a derivative violation of HEERA section 3571(a) based solely on the finding of a HEERA section 3571(c) violation. The Board instead concluded that independent violations of HEERA sections 3571(a) and (b) were established by the facts of the case.

## 1988/89 INJUNCTIVE RELIEF REQUESTS

<u>IR#</u>	<u>CASE NAME</u>	<u>CASE NO.</u>	<u>ALLEGATION</u>	<u>FILED</u>	<u>DISPOSITION - DATE</u>
278	Steve Gregory Fox v. LAUSD	LA-CE-2763	Adverse evaluation resulting in termination for participating in protected activity	7/1/88	W/D 7/1/88
279	CSEA v. State (Dept. of Justice DPA)	LA-CE-194-S	Access to mail system	7/5/88	W/D 7/5/88 defective filing
280	Cheng T. Wang v. Calif. Faculty Assoc.	LA-CO-11-H PERB Dec #692-H	Reprisal - duty of fair representation	8/5/88	Denied 8/9/88 defective filing
281	San Luis Coastal TA, CTA/ NEA v. San Luis Coastal USD	LA-CE-2780	Unilateral change	8/26/88	Withdrawn 8/30/88
282	Chowchilla ETA, CTA/NEA v. Chowchilla SD	S-CE-1238	Unilateral change in health insurance plans	9/13/88	Withdrawn 9/13/88
283	Chowchilla ETA, CTA/NEA v. Chowchilla SD	S-CE-1238	Unilateral change in health insurance plans	9/15/88	Withdrawn 9/20/88
284	The International Brotherhood of Peace Officers v. State of California, Dept. of Corrections	LA-CE-193-S	Reprisal against employee, derivative against employee organization	10/3/88	Withdrawn 10/5/88
285	South Pasadena USD v. Teachers Assn. of South Pasadena, CTA/NEA	LA-CO-460	Intermittent strike; pre-impasse v. post- impasse activity	10/21/88	Withdrawn 10/21/88
286	California State Employees Assn. v. State of California (Dept. General Services/Office of State Printing)	S-CE-414-S	Termination of contract clauses after contract expired and successor agreement rejected	11/2/88	Denied 11/9/88 Order IR-52 5/17/89
287	Los Angeles USD v. United Teachers, LA	LA-CO-462	Partial work stoppage/ boycott of required work duties	11/9/88	Withdrawn 11/10/88
288	Los Angeles USD v. United Teachers, LA	LA-CO-462	Partial work stoppage/ boycott of required	11/14/88	Denied 11/15/88 Letter 11/16/88

## 1988/89 INJUNCTIVE RELIEF REQUESTS

<u>IR#</u>	<u>CASE NAME</u>	<u>CASE NO.</u>	<u>ALLEGATION</u>	<u>FILED</u>	<u>DISPOSITION - DATE</u>
289	Mt. Diablo Educ. Assn. CTA/NEA v. Mt. Diablo USD	SF-CE-1287	Unilateral change in health benefits/ Employer cancellation of plan	11/28/88	Withdrawn 11/29/88
290	CWA/Action Local 900 v. State of California (Dept. Dev. Services, Camarillo State Hosp.)	LA-CE-198-S	Denial of access to union organizers	1/25/89	Withdrawn 1/26/89
291	Prager, et al. v. Los Angeles Angeles USD; Prager, et al. v. Leonard Britton	LA-CE-2813 LA-CE-2814	Dock of pay; futility of grievance arbitration procedure	2/2/89	Denied 2/3/89 as defective filing
292	Wiley v. Orange County Schools Educators Assn.	LA-CO-474	Misleading communications in contract ratification process	4/13/89	Withdrawn 4/14/89 letter 4/20/89
293	California Faculty Assn. v. California State University	LA-CE-253-H	Conditioning agreement on withdrawal of prior grievance, pending lawsuit, unfair practice charge	4/17/89	Withdrawn 4/20/89
294	Calif. State Emp. Assn. v. State of Calif. (Dept. of Corrections)	S-CE-421-S	Denial of release time and failure to pay travel expenses as reprisals, deferral	5/1/89	Defective filing and withdrawn 5/1/89; letter 5/4/89
295	Cheng T. Wang v. Calif. State University	LA-CE-255-H	Bad faith bargaining and denial of faulty hearing.	5/2/89 reactivated 5/8/89	Denied w/prejudice 5/15/89; GC letter 5/18/89
296	Calif. State Emp. Assn. v. Calif. State Univ.	LA-CE-256-H	Conditioning contract execution on withdrawal of legislative proposals	5/4/89 Abeyance at CP's Request	Withdrawn 5/17/89
297	AFSCME L2229 v. ABC USD	LA-CE-2860	Refuse to bargain and participate impasse re: health & welfare issues	6/2/89	Denied w/o prejudice 6/12/89; GC letter 6/13/89
298	San Jose USD v. San Jose Teachers Assn.	SF-CO-360	Calling strike w/o advance notice; removing school materials	6/7/89	Denied w/o prejudice 6/15/89 by GC letter

TOTAL ACTIVITY  
(ERRA - HEERA - RALPH C. DILLS ACT)  
REPRESENTATION CASE ACTIVITY  
Fiscal Year 1988/89

	<u>Active as of 7-1-88</u>	<u>Cases Filed</u>	<u>Total Active Cases</u>	<u>Closed Cases</u>	<u>Active as of 6-30-89</u>
REPRESENTATION PETITIONS	15	52	67	41	26
DECERTIFICATION PETITIONS	13	26	39	26	13
UNIT MODIFICATION PETITIONS	24	97	121	64	57
ORGANIZATIONAL SECURITY PETITIONS	2	13	15	11	4
AMENDED CERTIFICATIONS	2	15	17	12	5
MEDIATION	109	329	438	310	128
FACTFINDINGS	11	47	58	45	13
ARBITRATIONS	0	4	4	2	2
PUBLIC NOTICE COMPLAINTS	2	9	11	10	1
COMPLIANCE	14	26	40	17	23
FINANCIAL STATEMENTS	0	2	2	2	0
OTHER	2	3	5	4	1
<hr/>					
TOTAL	194	623	817	544	273

EERA - HEERA - RALPH C. DILLS ACT  
UNFAIR PRACTICE CASE ACTIVITY  
Fiscal Year 1988/89

	Active as of <u>7/1/88</u>	Cases <u>Filed</u>	Closed <u>Cases</u>	Active as of <u>6/30/89</u>
<u>EERA</u>				
CE	214	231	261	184
CO	73	59	56	76
<hr/>				
TOTAL	287	290	317	260
 <u>HEERA</u>				
CE	52	35	50	37
CO	10	9	14	5
<hr/>				
TOTAL	62	44	64	42
 <u>RALPH C. DILLS ACT</u>				
CE	38	52	58	32
CO	10	27	13	24
<hr/>				
TOTAL	48	79	71	56
 =====				
<u>TOTAL</u>				
CE	304	318	369	253
CO	93	95	83	105
<hr/>				
GRAND TOTAL	397	413	452	358
 =====				

NOTE: "CO" means charge against the Employee Organization  
"CE" means charge against the Employer



TOTAL FILINGS - BY ACT  
UNFAIR PRACTICE CASES  
Fiscal Year 1988/89

CE's

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
JULY	13	2	9	24
AUGUST	14	2	10	26
SEPTEMBER	17	5	0	22
OCTOBER	22	1	4	27
NOVEMBER	16	4	1	21
DECEMBER	27	4	4	35
JANUARY	14	2	3	19
FEBRUARY	21	1	3	25
MARCH	24	6	2	32
APRIL	23	2	3	28
MAY	14	4	4	22
JUNE	26	2	9	37
<hr/>				
TOTAL	231	35	52	318

CO's

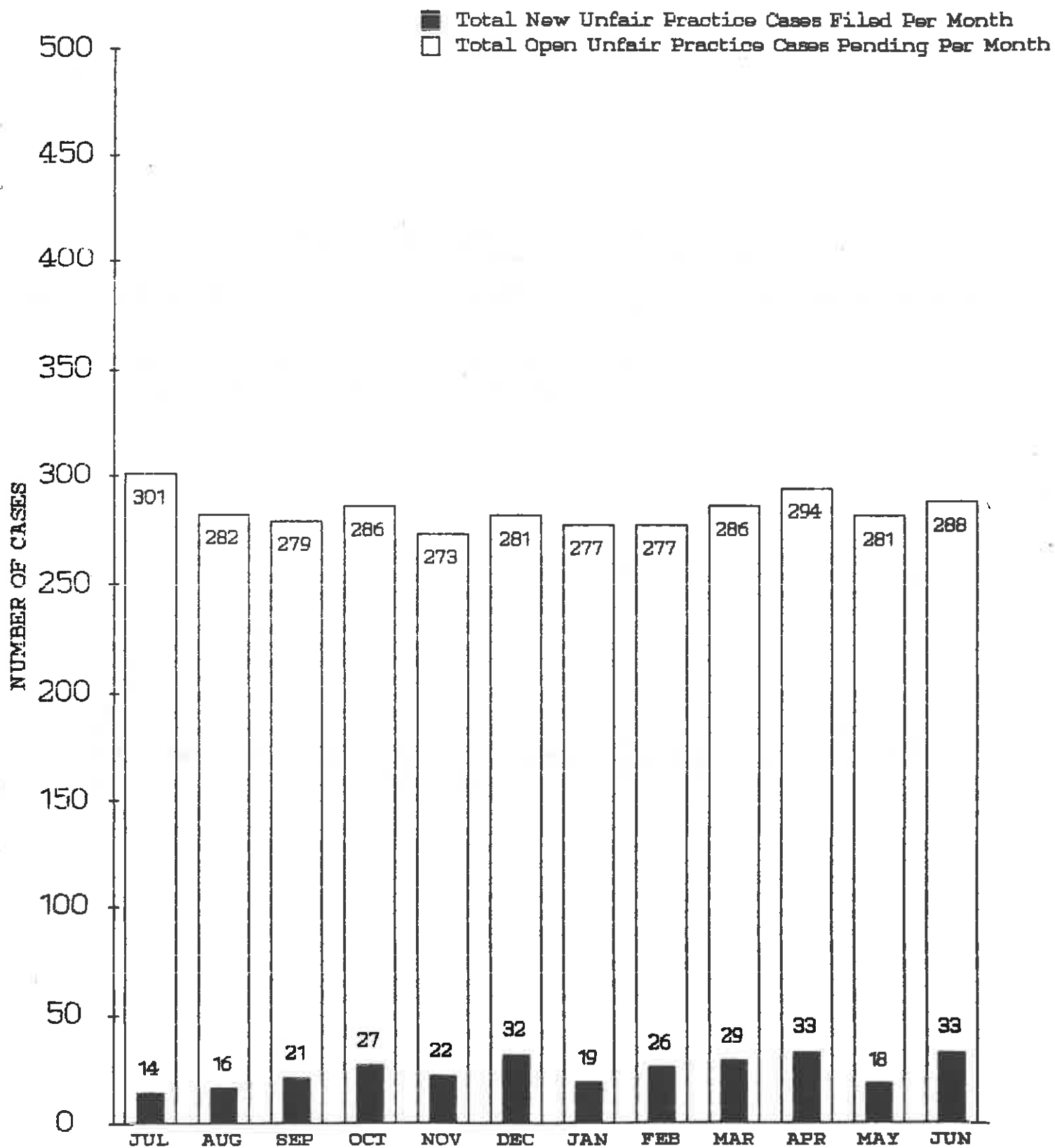
	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
JULY	1	0	0	1
AUGUST	2	0	3	5
SEPTEMBER	4	1	2	7
OCTOBER	5	2	1	8
NOVEMBER	6	0	1	7
DECEMBER	5	0	1	6
JANUARY	5	1	2	8
FEBRUARY	5	1	1	7
MARCH	5	1	1	7
APRIL	10	2	1	13
MAY	4	1	1	6
JUNE	7	0	13	20
<hr/>				
TOTAL	59	9	27	95

---

GRAND TOTAL	290	44	79	413
-------------	-----	----	----	-----

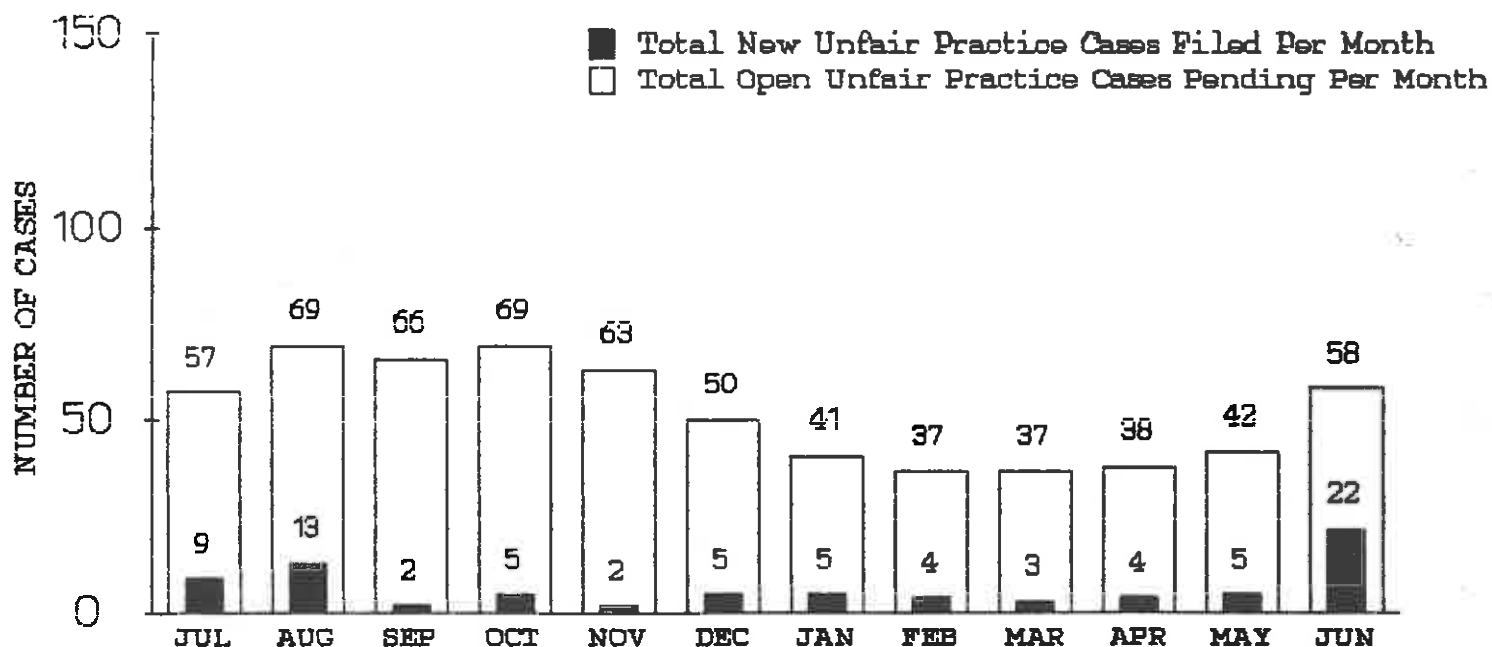
# EERA

## UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1988/89



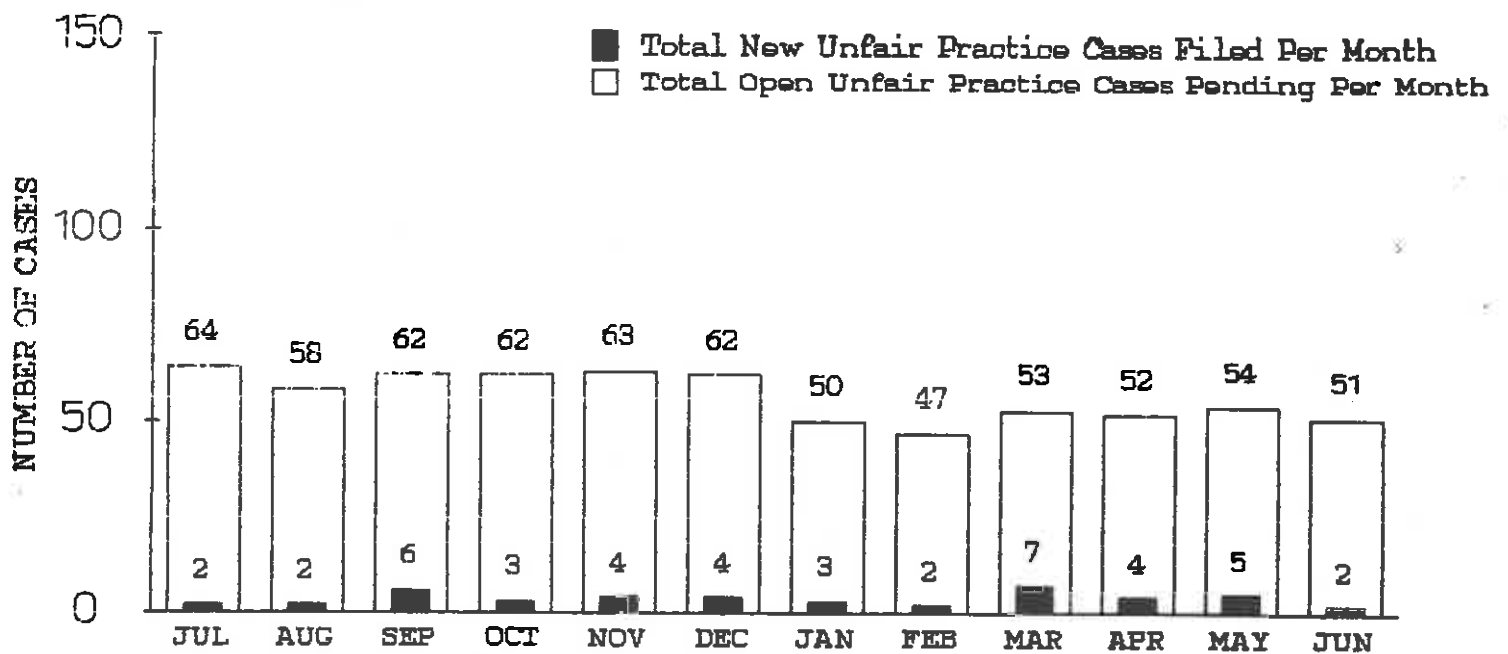
## RALPH C. DILLS ACT

### UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1988/89



# HEERA

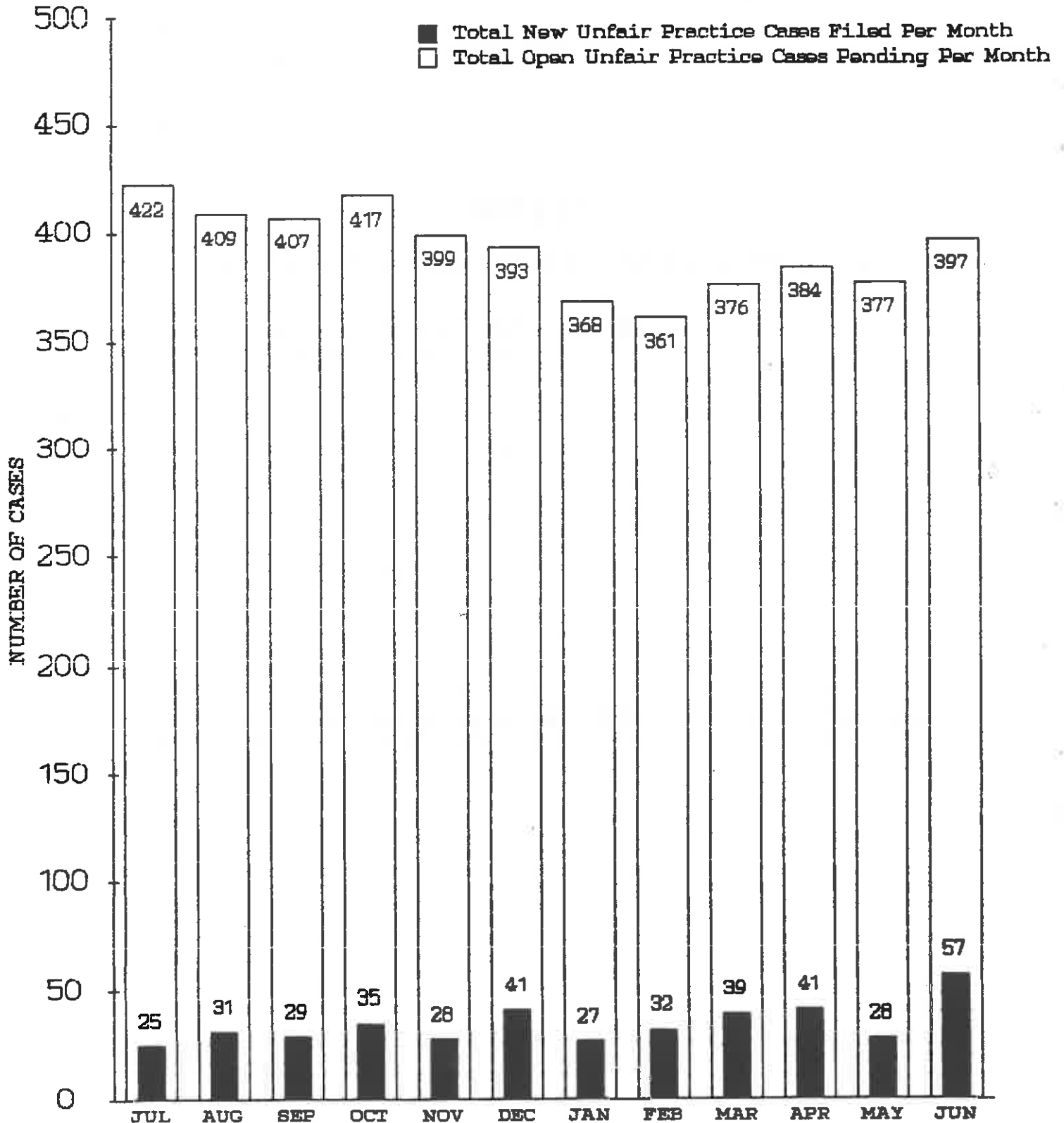
## UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1988/89



# TOTAL OF ALL ACTS

(EERA - HEERA - RALPH C. DILLS ACT)

## UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1988/89



## ABBREVIATIONS TO ELECTIONS HELD

AFA	All Faculty Association
CAPT	California Association of Psychiatric Technicians
CFT/AFT	California Federation of Teachers/ American Federation of Teachers
CPWU	California Public Workers Union
CSEA	California School Employees Association
CTA/NEA	California Teachers Association/National Education Association
CUHSEA	Corning Union High School Education
CUSDPOA	Compton Unified School District Police Officers Association
CWA	Communication Worker's of America
SCOPE	SCOPE Local 707
SEIU	Service Employees International Union

EERA ELECTIONS HELD - FISCAL YEAR 1988/89

1988/89 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
7/12/88	LA-D-232	Glendale USD	CLS	201	155	CSEA-85	CFT/AFT-68		2	0	0	D/REP
7/19/88	SF-D-169	Oakland USD	CERT	3751	2494	CTA/NEA-1604	CFT/AFT-856		34	4	126	D/REP
7/20/88	LA-D-219	Poway USD	CLS	248	146	SEIU-92	CSEA-53		1	0	0	D/REP
8/03/88	LA-D-222	Culver City USD	CLS	286	164	CTA/NEA-102	CFT/AFT-62		0	1	2	D/REP
9/08/88	LA-D-233	Compton USD	CLS	43	36	CUSDPOA-33			3	0	0	C/REP
9/14/88	S -D-115	Cascade UnESD	CERT	78	77	CFT/AFT-43	CTA/NEA-34		0	0	0	C/REP
12/07/88	S -D-110	Shasta UnHSD	CLS	73	61	CTA/NEA-32	CSEA-27		2	0	1	D/REP
5/04/89	SF-D-171	Oakland USD	CLS	206	167	CTA/NEA-104	CFT/AFT-62		1	1	3	C/REP
5/26/89	SF-D-172	San Francisco USD	CERT	3866	3141	CFT/AFT-1703	CTA/NEA-1388		50	50	25	C/REP
6/05/89	SF-D-174	Napa Valley USD	CLS	383	313	CSEA-202	Teamsters-101		10	0	2	C/REP
6/07/89	S -D-123	San Juan USD	CLS	1704	1030	CSEA-584	CTA/NEA-406		40	0	23	D/REP
6/09/89	LA-D-240	Pasadena Area CCD	CLS	72	66	Teamsters-35	CSEA-31		0	0	0	C/REP
6/15/89	LA-D-236	Long Beach USD	CLS	1645	947	CSEA-603	CPWU-293		51	2	17	D/REP
6/15/89	LA-D-237	Long Beach USD	CLS	222	163	CSEA-126	CPWU-36		1	0	2	D/REP
6/26/89	LA-D-241	San Diego COE	CERT	129	103	CTA/NEA-68	CFT/AFT-32		3	0	1	C/REP
9/22/88	SF-OS-133	Windsor UnSD	CLS	54	37		YES-24	NO-13	-	0	0	C/REP
11/22/88	LA-OS-112	Grossmont UnHSD	CLS	109	53		YES-38	NO-15	-	0	0	C/REP
11/29/88	SF-OS-134	San Francisco USD	CLS	12	11		YES-11	NO-0	-	0	0	C/REP
12/09/88	LA-OS-114	El Monte UnHSD	CERT	25	12		YES-10	NO-2	-	0	1	C/REP
12/09/88	LA-OS-113	El Monte UnHSD	CERT	338	193		YES-147	NO-46	-	0	8	C/REP
1/12/89	LA-OS-116	Long Beach USD	CERT	102	66		YES-48	NO-18	-	0	3	C/REP
1/12/89	LA-OS-115	Long Beach USD	CERT	3035	2405		YES-1506	NO-899	-	0	35	C/REP
4/13/89	SF-OS-135	Oak Grove ESD-Santa Clara	CLS	151	111		YES-84	NO-27	-	0	0	C/REP
5/25/89	SF-OS-136	Sequoia UnHSD	CERT	330	268		YES-244	NO-24	-	0	0	C/REP
6/29/89	LA-OS-118	San Dieguito UnHSD	CERT	353	271		YES-209	NO-60	-	2	0	C/REP
11/21/88	S -R-854	Southwest Transp Agency	CLS	29	23	CSEA-20			3	0	0	C/REP
12/15/88	LA-R-944	Somis UnESD	CERT	16	15	CTA/NEA-15			0	0	0	C/REP
12/19/88	S -R-852	Sacramento City USD	CLS/SPV	87	73	Teamsters-70			3	0	0	C/REP
1/19/89	LA-R-945	Mount San Jacinto CCD	CLS	71	60	CSEA-47			13	0	0	C/REP
1/30/89	S -R-855	Gerber UnESD	CLS	9	9	CSEA-7			2	1	0	C/REP
2/01/89	S -R-856	Madera COE	CLS	30	21	CSEA-10			11	0	2	C/REP
3/01/89	LA-R-948	Trona JtUSD	CERT	49	39	CTA/NEA-24			15	0	0	D/REP
3/06/89	S -R-860	Terra Bella UnESD	CLS	40	7	CSEA-25			7	1	0	C/REP
3/14/89	SF-R-699	Geyserville USD	CLS	20	19	SCOPE-12			7	1	0	C/REP

# EEERA ELECTIONS HELD - FISCAL YEAR 1988/89

1988/89 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
6/13/89	SF-R-700	Sonoma County Jr College	CERT	1170	761	*CFT/AFT-333	*AFA-242	CTA/NEA-133	53	26	0	C/REP
6/13/89	SF-AC-17	City of Santa Rosa ESD/HSD	CLS/SPV	32	30	Teamsters-27			3	0	0	C/REP
10/26/88	S -S-116	Corning UnHSD	CLS	8	8	Teamsters-7	CSEA-0		1	0	0	C/REP
1/17/89	LA-UM-453	Rosemead ESD	CLS	66	30	CSEA-24			6	0	1	C/REP

# RALPH C. DILLS ACT ELECTIONS HELD - FISCAL YEAR 1988/89

1988/89 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
6/05/89	S -D-120-S	State of California	U18	7639	4101	CAPT-2714	CWA-1273		114	81	85	D/REP

\* Runoff election needed between these two groups.

# HEERA ELECTIONS HELD - FISCAL YEAR 1988/89

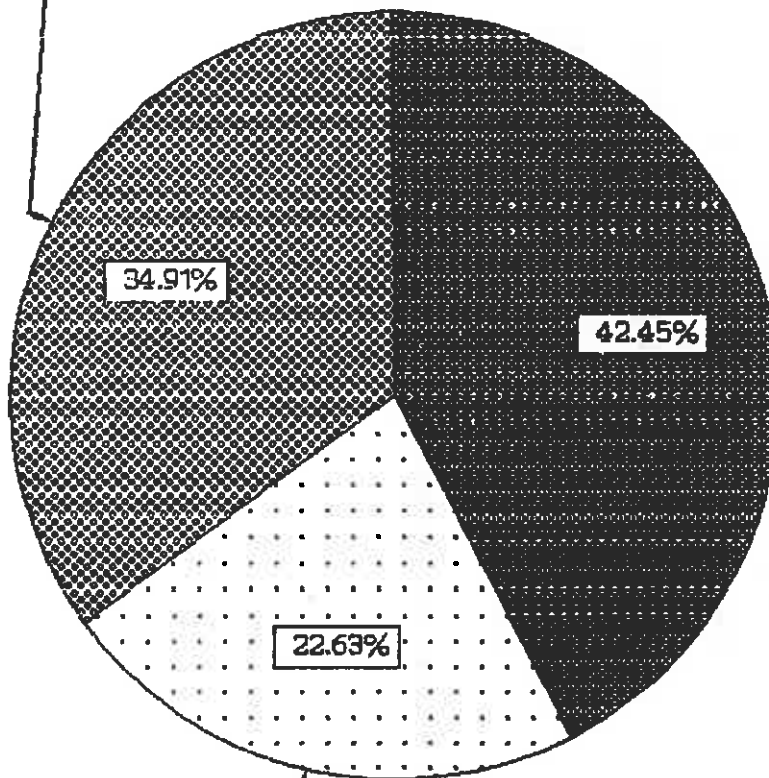
None



**REGIONAL ATTORNEY STAFF ACTIVITY**  
Fiscal Year 1988/89

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
COMPLAINTS ISSUED	161	20	18	199
DISMISSALS	63	17	49	129
WITHDRAWALS	191	23	25	242

COMPLAINTS ISSUED



WITHDRAWALS

DISMISSALS

ADMINISTRATIVE LAW JUDGE STAFF ACTIVITY  
Fiscal Year 1988/89

PROPOSED DECISIONS ISSUED - 62

WITHDRAWALS - 140

DISMISSALS - 7

