



# **PUBLIC EMPLOYMENT RELATIONS BOARD**

# **ANNUAL REPORT**

**to the**

# **LEGISLATURE**



**1990-91**

**PUBLIC EMPLOYMENT RELATIONS BOARD**

**October 15, 1991**

**1990-1991 Report  
To The Legislature**



**Pete Wilson  
Governor  
State of California**

**Deborah M. Hesse, Chairperson**

**Willard A. Shank, Member**

**Richard L. Camilli, Member**

**Huston T. Carlyle, Jr., Member**

**Headquarters**

**1031 18th Street, Suite 200  
Sacramento, CA 95814-4174  
(916) 322-3088**

**Regional Offices**

**1031 18th Street, Suite 102  
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 . . . . .	5
Elections . . . . .	5
Impasse Resolution . . . . .	6
Financial Reports . . . . .	7
Bargaining Agreements . . . . .	7
Advisory Committee . . . . .	7
Unfair Practices . . . . .	8
Litigation . . . . .	9
THE PERB RESEARCH PROGRAM	
Background . . . . .	14
Legislative Direction. . . . .	14
Request for Information. . . . .	14
Factfinding Reports . . . . .	15
Unfair Practice and Filings . . . . .	15
Research: Designing and Implementing Projects of Manageable Proportions. . . . .	15
Selecting Research Efforts . . . . .	15
Health Care Expenditures and Cost Containment. . . . .	15
Labor-Management Cooperation . . . . .	16
Creation of Labor Management Cooperation Nonprofit Corporation . . . . .	18
Summary . . . . .	18
CASE DIGEST	
Administrative Appeal Decisions. . . . .	20
Representation and Unfair Practice Charge Decisions. . . . .	21
APPENDICES	
Requests for Injunctive Relief . . . . .	27
Total Representation Case Activity . . . . .	29
Unfair Practice Case Activity. . . . .	30
Total Filings by Act - Unfair Practice Cases . . . . .	31
EERA Unfair Practice Caseload Chart. . . . .	32
Ralph C. Dills Act Unfair Practice Caseload Chart. . . . .	33
HEERA Unfair Practice Caseload Chart . . . . .	34
Total of All Acts Unfair Practice Caseload Chart . . . . .	35
Abbreviations to Elections Held . . . . .	36
EERA, Ralph C. Dills Act, HEERA Elections Held Fiscal Year 1989/1990 . . . . .	37
Staff Activity . . . . .	39

## MESSAGE FROM THE CHAIRPERSON

This year PERB has undergone significant changes as the result of budget reductions and the transfer of PERB's pilot labor-management cooperation training program to a non-profit corporation.

Like many other state agencies, PERB has had to adjust to a unallocated reduction in its operating budget. Over the past year, PERB's staff has been reduced by approximately 26%. Most of these reductions were positions cut from the Board itself, from administrative support, and from operating expenses. For example, the Board has reduced the number of Board Member legal advisors from two per Member to one per Member, PERB's administration division has been reduced to a bare minimum, and the physical size of PERB's San Francisco and Los Angeles Regional Offices are being reduced by more than one-half. Yet, even in the face of these reductions, response times for the performance of statutory services to PERB's constituency have either continued to improve, or remained unchanged. For example, the Board itself issued 90 decisions with a turnaround time of 67 median days, and deliberated on 5 injunctive relief requests.

On another front, PERB worked with interested parties to create a non-profit corporation to take over PERB's pilot labor-management cooperation training program. Named the California Foundation for the Improvement of Employer-Employee Relations (CFIER), CFIER was incorporated on April 1, 1991. PERB worked to create CFIER and to transfer the labor-management cooperation program to the corporation because of language contained in the 1990-1991 Budget Act. Language contained in the 1991-1992 Budget Act further directs that PERB not assist CFIER in any of its efforts.

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 is in her second five-year term as Member and Chairperson of the California Public Employment Relations Board. Mrs. Hesse was first appointed on February 1, 1984. Mrs. Hesse is also a member and former chairperson of the California Advisory Committee to the U.S. Civil Rights Commission. She is a member of the Industrial Relations Association of Northern California. She is a member of the California Afro-American Museum Board of Directors and an officer in the National Forum for Black Public Administrators, Sacramento Chapter. She serves on several advisory boards -- California Public Employee Relations

(labor relations periodical), and institute of Labor Research Labor-Management Program.

Mrs. Hesse was the Chief Deputy Director of the California Department of Personnel Administration. She was the Affirmative Action Officer of the Department of Justice. Mrs. Hesse was Assistant to the Director in the Governor's Office of Employee Relations.

Mrs. Hesse has a bachelor's degree in social work and a master's degree in public administration from the California State University at Sacramento. Her term expires January 1, 1994.

## BOARD MEMBERS

Huston T. Carlyle, Jr. (not shown) was appointed as a member of the Public Employment Relations Board in January 1991. From 1989 until his appointment to the Board Mr. Carlyle was former Governor Deukmejian's Legal Affairs Secretary. Mr. Carlyle has had broad experience practicing law and working with state and local government, including Chief of Staff for the Governor of Nebraska, Director of the Governor's Office of Planning and Research, and senior assistant city attorney for the City of Burbank. He is a former Assistant United States Attorney. His term expires January 1, 1996.



Willard A. Shank  
Board Member

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 1975-1977. He joined the California Department of Justice as a Deputy Attorney General in 1950. He also served as Chief Assistant Attorney General Civil from 1978-1983. Mr. Shank is a member of the State Bar Association. He received his Bachelor of Arts 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.



Richard L. Camilli  
Board Member

Richard L. Camilli was appointed as a member of the Public Employment Relations Board in November 1988. Mr. Camilli has served for over 30 years in various staff, management and executive positions in state service. Mr. Camilli received his bachelor's degree in business administration from the University of Santa Clara. His term expires January 1, 1993.



Alex R. Cunningham  
\*In Memoriam\*  
9/1/36 - 5/7/91

Alexander R. Cunningham was appointed as a member of the Public Employment Relations Board in January 1990 and passed away on May 7, 1991.



## 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 sector employer-employee relations.



Executive Director DENNIS BATCHELDER served as Deputy Director for Labor Relations for the Department of Personnel Administration before his appointment to PERB in 1988. Dennis' background includes degrees in journalism and public administration and service as the chief negotiator for Sacramento County.

Approximately 665,174 public sector employees and 1,169 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-Milias-Brown Act.

#### 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 EERA, 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. There were 109 appeals to the Board that were docketed in fiscal year 1990-1991. In

the 1990-1991 reporting year, 90 Board decisions were issued. In addition to the decisions issued, the Board reviewed and deliberated on 5 injunctive relief requests. These decisions were issued in a median of 67 days. Only 8 of those decisions were appealed to the State Appellate Courts. One case was appealed to the Supreme Court. Currently, there are 18 appeals pending before the Board.



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 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 1990-1991 reporting period, 45 proposed decisions on unfair practice allegations were issued by the ALJs. There were 17 cases (38%) appealed to the Board and 28 (62%) became final without an appeal being filed.



General Counsel JOHN SPITTLER previously was the Deputy Executive Director of PERB and Deputy General Counsel. He also served as a Deputy Attorney General in the Civil Division of the Office of the Attorney General.

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 Specialists, 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 has also developed and implemented PERB's Pilot Labor Management Cooperation project, which, pursuant to legislative direction, has been

transferred to the non-profit California Foundation for the Improvement of Employer-Employee Relations (CFIER).

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. 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.

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 levels in the organization. PERB employs approximately 70 persons throughout the State, including permanent personnel, temporary employees and student assistants.

## 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, 1991, there were 2,296 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 1990-1991 reporting period PERB conducted a total of 55 elections covering approximately 45,505 employees. Fifteen of these elections were to determine which employee organization, if any, would represent the employees of a

particular negotiating unit. Of these, 11 elections resulted in the selection of an exclusive representative and 4 in the selection of "No Representation."

The Board conducted 20 decertification elections. Of these, 14 resulted in retention of the incumbent organization, 4 resulted in the selection of another employee organization as the exclusive representative, 1 resulted in a vote of no representation, and 1 was void due to voter challenges. One unit modification election was also conducted by the Board.

Organizational security elections occur in order for employees to approve (under the EERA) or rescind (under the EERA and Ralph C. Dills Act) an 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 21 approval elections and 3 rescission elections in the 1990-1991 reporting period. Seventeen elections resulted in the ratification or retention of the organizational security provisions, one resulted in organizational security being voted down, one rescission election was successful, and two organizational security rescission elections were unsuccessful.

Election 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. During the 1990-1991 reporting period 268 impasse declarations were filed with PERB. Approximately 88 percent of all such disputes are settled by the mediator, resulting in the need for appointment of a factfinding panel in only 9 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.

In fiscal year 1990-1991, there were 442 unfair practice charges filed. 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 458 cases. Of these cases, 238 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, 166 complaints, 19 complaints/partial dismissals, and 35 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. There were 237 days of settlement conferences in fiscal year 1990-1991. These conferences are scheduled to be held within 30 days of the date the complaint 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 fiscal year, 175 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 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.

There were 121 days of formal hearing, involving 63 cases this fiscal year. In addition, there were 9 days of representation hearings, conducted in the Division of Administrative Law. 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. There were 45 proposed decisions (including 3 representation case 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) send the matter back to the ALJ to take additional evidence. Approximately 38 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 not only on 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 1990-1991 fiscal year, PERB opened nineteen (19) new superior court, appellate court and federal district court files. Seven decisions were certified for publication and one court decision was unpublished.

During 1990-1991, eleven (11) requests for injunctive relief were received. Four (4) requests were withdrawn; seven (7) requests were denied by the Board (all by letters of the General Counsel).

The following are significant cases for this fiscal year:

San Diego Adult Educ. v. PERB/San Diego CCD and San Diego CCD v. PERB/San Diego Adult Educ., Supreme Court Case No. S018010, PERB Dec. Nos. 662, 662(a), LA-CE-1905, (4th DCA D009278 and D009280). Issue: Whether employer's decision to subcontract out work to a related foundation is negotiable where the employer had previously laid off employees who performed the work. On 4/30/90, Court filed published opinion, dismissing petition (219 Cal.App.3d 866). On 9/12/90, Court filed published opinion, reversing PERB's Dec. Nos. 662 & 662a (223 Cal.App.3d 1124).

Johnson, Mahan & Foster v. PERB, 3rd DCA, Case No. C009380 (Sacramento Superior Court No. 507208). Issue: Validity of PERB agency fee regulations. On 6/1/90, Court

granted Summary Judgment, denying Summary Adjudication of Issues and Judgment.

Abbot v. PERB/San Ramon USD, 3rd DCA Case No. C007750 (PERB Dec. No. 751; Sacramento Superior Court No. 362180). Issue: Employer's deduction of agency fees in noncompliance with Hudson procedural protection. On 4/29/91, Court's Decision affirming PERB's Dec. No. 751. (Unpublished decision, awarded costs to PERB.)

U. C. Regents v. PERB/University Council, AFT Locals, et al., 1st DCA/Div. 2, Case No. A045723 (PERB Dec. No. 725-H) (220 Cal.App.3d 346). Issue: Access to internal mail system at five U.C. campuses, reasonable regulations. On 5/16/90, Court, in a published opinion, set aside PERB's Dec. No. 725-H and remanded for further proceedings.

McFarland USD v. PERB/McFarland TA, CTA/NEA, Supreme Court No. S020064 (5th DCA, Case No. F013404; PERB Dec. No. 786). Issue: Non-re-election of probationary teacher as discrimination. On 3/7/91, 5th DCA Court affirmed PERB Dec. No. 786 in published opinion; Supreme Court denied review 5/2/91.

Inglewood TA v. PERB/Inglewood USD, 2nd DCA/Div. 7, Case No. B048803 (PERB Dec. No. 792). Issue: Agency relationship between District and principal in filing lawsuit, attorney fees under the "private attorney general" statute (Cal. Code of Civ. Proc., sec. 1021.5). On 1/29/91, Court affirmed PERB's Dec. No. 792

in published decision. (227 Cal.App.3d 767.)

California School Employees Assn., Chap. 276 v. PERB/Jamestown Elem. School Dist./Jamestown TA, CTA/NEA, 5th DCA, Case No. F0103809 (PERB Dec. No. 795). Issue: Unilateral change in longevity pay, retaliation, support of competing union in decertification campaign as interference. On 8/20/90, Court denied Petition for Writ of Review.

Abbott & Cameron v. PERB/San Ramon Valley Ed. Assn., CTA/NEA, 1st DCA/Div.2, Case No. A049459 (PERB Dec. No. 802). Issue: Agency fee collection procedures; audit and restitution of fees. On 12/13/90, Court denied Petition for Review.

South Bay USD v. PERB/Southwest TA, CTA/NEA, 4th DCA/Div. 1, Case No. D012247 (PERB Dec. Nos. 791 & 791a). Issue: Whether the District refused or failed to negotiate in good faith by failing to agree to allow Association to file grievances in its own name? On 3/13/91, Court affirmed PERB Dec. Nos. 791 & 791a; certified for partial publication (228 Cal.App.3d 502).

California Faculty Assn. v. PERB/California State University, 2nd DCA, Case No. B050667 (PERB Dec. Nos. 799-H & 799a-H). Issue: Is PERB's denial of CFA's motion to reopen the record erroneous and an abuse of discretion? On 8/22/90, Petitioner filed Request for Dismissal of

Petition for Writ of Review; case closed.

Karin Chen v. PERB/Secretary of State, 2nd DCA/Div. 1, Case No. B05139 (PERB Dec. No. 812-S). Issue: Whether PERB's Decision was in accordance with the evidence presented? On 7/19/90, Court denied Petition for Review.

Chen T. Wang v. PERB/Trustees of the California State University, Los Angeles Super. Court No. BS001680 (PERB Dec. No. 813-H). Issue: Whether good cause for delay existed in Petitioner's filing of ULP charges against Trustees of CA University; whether dismissal of the unfair practice was unconstitutional; and whether the University was unfair to deprive faculty members of their traditional and statutory right through a labor agreement without their full knowledge. On 9/28/90, Court sustained demurrer without leave to amend. Now 2nd DCA, Case No. B054804 - awaiting argument and/or decision.

Association of Calif. State Attorneys and Admin. Law Judges (ACSA) v. PERB/Department of Personnel Administration, 3rd DCA, Case No. C009321 (PERB Dec. No. 823-S). Issue: Interpretation of Section 3517 of the Ralph C. Dills Act; whether the Governor is required to make a salary proposal or counter-proposal prior to the adoption by the State of its final budget for the ensuing year. On 2/7/91, Court denied Petition for Writ of Review.

William J. Cumero v. PERB/King City High School District Assn., CTA/NEA; King City JUHSD, Supreme Court No. S016738 (1st DCA/Div. 3, Case No. A016723; San Francisco Superior Court No. 24905). Issue: Agency fee expenditures, attorney fees. On 8/29/90, Petition for Review denied by Court. (49 Cal.3d 575.)

Regional Occupational Program Educational Assn. of North Orange County, CTA/NEA v. PERB/North Orange County Regional Occupational Program, 3rd DCA/Div. 3, Case No. G010526 (PERB Dec. No. 857). Issue: Whether PERB, by refusing to exercise jurisdiction to decide whether the unit proposed by ROPEA or determined by the ALJ is appropriate? On 1/23/91, Court order, dismissing Petition for Writ of Review.

Jan Smith v. PERB/Univ. of CA Riverside, 4th DCA/Div. 2, Case No. E009089 (PERB Dec. No. 858-H). Issue: Whether Court of Appeals has jurisdiction to review PERB Decision No. 858-H). On 2/25/91, Court denied Petition for Review.

Woodland Joint Unified School Dist. v. PERB/Woodland Educ. Assn., CTA/NEA, 3rd DCA, Case No. C009620 (PERB Dec. Nos. 808 & 808a). Issue: Whether employer unlawfully retaliated against an employee; Government Code section 3543.5(a). Awaiting decision.

Mt. Diablo Unified School Dist. v. PERB/Mt. Diablo Educ. Assn., CTA/NEA, Supreme Court No. S021161 (1st DCA/Div. 2, Case No. A051450) (PERB Dec.

No. 844). Issue: Does EERA confer a statutory right on the exclusive representative to file and process a grievance in its own name; and is it a mandatory subject of bargaining? On 5/4/91, 1st DCA Court denied Petition for Writ of Review. On 5/21/91, Filed Petition for Review with the Supreme Court. Awaiting decision.

Trustees of California State University v. PERB/Statewide Univ. Police Assn., 5th DCA, Case No. F015083 (PERB Dec. No. 805-H, 805a-H, 805b-H). Issue: Whether PERB should give collateral estoppel effect to the final decision of the SPB. On 7/26/91, Court ordered Petition for Writ of Review denied. Case closed.

Trustees of California State University v. PERB/Statewide Univ. Police Assn. (Washington), 5th DCA, Case No. F015482 (PERB Dec. Nos. 845-H and 845a-H). Issue: Whether employer (CSU, Fresno) retaliated and discriminated against an employee, Government Code sections 3571(a) & (b). Awaiting decision.

Tommie R. Dees v. PERB/CSU Hayward, Bd. of Trustees CSU & Colleges, 1st DCA/Div. 1, Case No. A053018 (PERB Dec. No. 869-H). Issue: Whether PERB Dec. No. 869-H dismissing alleged unlawful retaliation is proper remedy? Briefing stage.

California State Employees' Assn. v. PERB, Sacto. Super. Ct. No. 520844. Issue: Summons and Complaint for TRO, Preliminary & Permanent Injunction. Petitioner

requesting stay of ballot count per PERB Reg. 32370. On 6/3/91, CSEA withdrew request for TRO.

Assn. of California State Attorneys and Admin. Law Judges (ACSA) v. PERB/State of California (Department of Personnel Administration), Sacto. Super. Ct. No. 367255. Issue: Petition for Writ of Mandate; Complaint for Declaratory Relief; whether the Governor is required to meet and confer in good faith by making a salary proposal or counterproposal prior to the adoption by the State of its final budget for the ensuing year. Briefing stage.

## THE PERB RESEARCH AND TRAINING PROGRAM

### BACKGROUND

Fifteen years have elapsed since the Rodda Act, collective bargaining in public education, was initiated. In that time, PERB has crafted 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 collective bargaining process.

### LEGISLATIVE DIRECTION

Although major reductions in PERB's 1991-1992 budget has necessitated a severe reduction in research and training efforts, the statutes which are administered by the PERB clearly authorize the agency to conduct research. The Educational Employment Relations Act provides in Government Code section 3541.3(f) that PERB has the authority 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

Legislators and their staff, the Executive Branch of state government, the press, academicians, the public, and organizations representing labor and management frequently request information about the collective bargaining process.

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.

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.

#### **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's jurisdiction. PERB decisions on unfair practice filings are 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**

PERB initiates 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.

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, identifies research needs that support the parties in conducting 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. In an effort to provide

bargaining parties with information about the magnitude of these increases, and more importantly the alternatives to containing costs, with the enactment of SB 922, 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 surveys from 1984 through 1987, and is in the process of concluding this project with the results of a final survey conducted in the spring of 1990.

#### **LABOR-MANAGEMENT COOPERATION PROGRAM**

New frontiers in the practice of labor relations have been pioneered by the private sector. These efforts have improved product quality and reduced conflict. With approximately 80% of PERB's unfair labor practice caseload originating from only 20% of the governmental agencies under PERB's jurisdiction, PERB has taken a leadership role in examining these methods and introducing them to its constituency.

Under the guidance of the PERB Advisory Committee, PERB conducted a comprehensive survey of its primary education constituency on the topic of labor-management cooperation. This survey was the first systematic comparison of labor and management views on labor-management cooperation in the

public schools, and it provided a substantial source of new information to help PERB design pilot programs to prevent costly labor-management disputes.

With the help of key labor and management representatives, the U.S. Department of Labor, private consultants, academics and private foundations, PERB developed a three-point labor-management program which offers (1) one-day and two-day orientation and training programs; (2) five-day relationship-building workshops; and (3) follow-up facilitation services by trained neutrals to help employers and unions maintain and build upon what they have learned and apply it to specific problems and issues in their districts.

PERB has provided one- and two-day orientation intensives to school districts and unions. Twenty school districts and 29 unions have completed PERB's five-day intensive training program with a total of 283 participants.

Comments from participants have been very favorable. George J. Jeffers, Superintendent of Schools, San Juan Unified School District said:

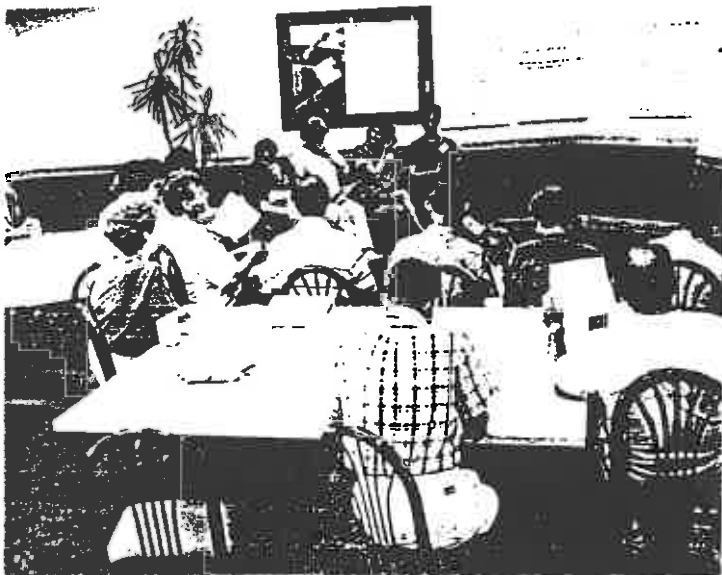
I have been actively involved in collective bargaining for over 20 years, working on both the labor and management sides of the table. I believe this training is one of the most progressive and meaningful efforts to improve labor relations I have ever seen. I have seen a dramatic



change in the labor relations climate in the San Juan School District as a direct result of our participation in PERB's training program. We went from a very bad, non-cooperative relationship with our teachers union, to one of working together to come up with solutions to our problems that reflect our mutual dedication to a quality education program. This program is one of the most exciting trends I have seen in education.



Participants in PERB Intensive Training Workshop

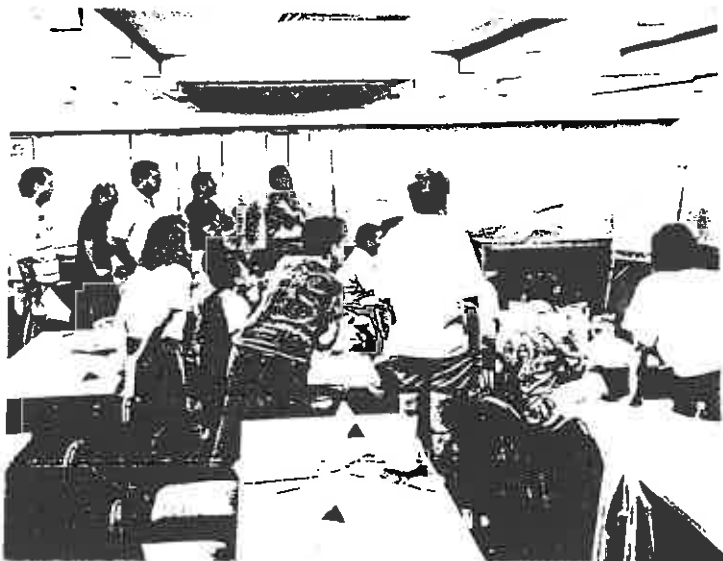


Participants in PERB Intensive Training Workshop

Brian McKenna, Executive Director, San Jose Teachers Association CTA/NEA states:

To emphasize the dramatic change in our relationship, I give you the following brief collective bargaining

history (cites 13 years of multiple impasses, strikes, district bankruptcy). The 1990 bargaining is a whole new experience. The 4-1/2-day intensive training taught us to focus on our interests rather than our positions. This produced a willingness to look at options, to be creative, and to develop common solutions. The 180-degree turn in our relationship allows us to focus primarily on our true mission -- educating children -- and resolving difficulties amicably and quickly. Thank you on behalf of the 1550 teachers and 29,000 students in San Jose Unified.



Participants in PERB Intensive Training Workshop

#### CREATION OF LABOR-MANAGEMENT COOPERATION NONPROFIT CORPORATION

As part of the 1990-1991 Budget Act, the Legislature directed PERB to "assist, to the extent allowed by law, in the formation of a private, nonprofit corporation dedicated to the promotion and administration of an Improved Employer-Employee Relations Program (IEERP)." The Legislature further directed that:

Effective April 1, 1991, the duties and responsibilities for the IEERP shall be transferred from PERB to the private

non-profit corporation (formed pursuant to California law) established for that purpose. The Public Employment Relations Board is prohibited thereafter from using private or public resources to directly administer the IEERP.

PERB successfully worked with interested parties on the creation of the labor-management cooperation nonprofit corporation, and on April 1, 1991, the California Foundation for the Improvement of Employer-Employee Relations (CFIER) was incorporated and responsibility for the program was transferred to CFIER. As part of the 1991-1992 Budget Act, the Legislature directed that "None of the funds appropriated in this item shall be used by the Public Employment Relations Board to support or provide staff assistance to the California Foundation for the Improvement of Employer-Employee Relations."

#### SUMMARY

In developing its research and training 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;

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

### ADMINISTRATIVE APPEAL DECISIONS

South County Community College  
District and Chabot-Las Positas  
Faculty Association and  
California Teachers  
Association/NEA (10/26/90)  
PERB Order No. Ad-215

The Board granted an amended certification reflecting the local employee organization's disaffiliation with CTA and NEA. The Board concluded that the amendment of the certification was appropriate where (1) the changes resulting from the disaffiliation were not sufficiently dramatic to alter the local organization's identity; and (2) the disaffiliation election was conducted with adequate due process safeguards in accordance with the organization's constitution. The Board rejected CTA's contentions that PERB lacked authority under EERA section 3514.3(m) or Regulation 32761 to grant disaffiliations under the amendment of certification procedure where the parent opposed the disaffiliation.

San Jose/Evergreen Community  
College District Faculty  
Association and California  
Teachers Association/NEA and  
San Jose-Evergreen Community  
College District (10/29/90)  
PERB Order No. Ad-216

The Board granted an amended certification request arising from a local's disaffiliation from a state and national union (CTA and NEA). The Board held

that the effective date of affiliation/disaffiliation, where there is not question of representation raised by the change, is the date of the vote, or other proper procedure, taken by the union. Therefore, all rights held by the original union inhere to the successor union as of the change date, including the right to dues deductions from the employer. However, the employer, when faced with competing claims on dues deduction rights, may take reasonable steps, such as placing the disputed dues in an interest bearing account, to avoid improper disbursement pending the Board's decision.

California State Employees's  
Association v. State of  
California (Department of  
Personnel Administration)  
(6/20/91)  
PERB Order No. Ad-221-S

The Board held that when the parties agree to a consent election agreement (CEA), which is approved by PERB, the parties are bound by the terms of the CEA. Here, the parties agreed to a specific provision limiting voter eligibility to a date certain. CSEA requested that the provisions of PERB Regulation 32728 apply to the CEA; namely, that the Board exclude those employees who have terminated their employment in bargaining unit 1 prior to casting their ballots. As the voter eligibility provision of the CEA is clear and unambiguous, the Board held the parties are bound by the CEA.

Inglewood Teachers Association,  
CTA/NEA v. Inglewood Unified  
School District (6/24/91)  
PERB Order No. Ad-222

The Board affirmed ALJ's denial of motion to dismiss complaint on the grounds of untimeliness and deferral to arbitration.

Timeliness is not properly before the Board at the pre-hearing stage under PERB Regulation 32646.

Regarding the issue of pre-arbitration deferral, the Board found that the disputed issue was covered by the grievance machinery of the parties' collective bargaining agreement. However, the agreement limited the Association's standing to grieve the articles and therefore PERB is the only available forum for the Association's grievance in this matter. The denial of the Association's right to allege a violation of EERA would not be consistent with the Act's purpose and policy, and therefore the Board refused to defer to binding arbitration.

REPRESENTATION AND UNFAIR  
PRACTICE CHARGE DECISIONS

Statewide University Police  
Association v. Trustees of the  
California State University  
(11/14/90)  
PERB Decision No. 805b-H

This case was before the Board on a request for reconsideration filed by California State University (CSU). In its motion, CSU requested that the Board give collateral estoppel effect to a conflicting decision of the State Personnel Board (SPB).

A majority of the Board concluded that it would be improper to apply collateral estoppel to the situation herein. In the lead opinion, the Board examined the origins of the jurisdictions of both PERB and the SPB and concluded PERB's initial, exclusive jurisdiction, conferred by HEERA section 3563.2, is preemptive in nature.

Regents of the University of  
California (University Council-  
American Federation of  
Teachers) (7/3/90)  
PERB Decision No. 826-H

In these consolidated cases, the Regents of the University of California (UC) was alleged to have violated HEERA section 3571(a), (b) and (c), by unilaterally changing the appointment policy embodied in the parties' collective bargaining agreement (CBA) for post six-year lecturers to three-year positions.

LA-CE-235-H

The Board found that the doctrine of equitable tolling does not survive California State University, San Diego (1989) PERB Decision No. 718-H where the statute of limitations was held specifically to be non-waivable. Also, if the charge was not timely filed, the Board has no jurisdiction whatsoever, and may not apply the doctrine of equitable tolling.

SF-CE-272-H

Article VII C (1) (a) of the parties' agreement was interpreted to allow the UC to take financial and fiscal considerations into account

when determining whether a certain class would be taught for a three-year period by a lecturer under section VII C (1)(a)(1). The agreement did not, however, allow the UC to take such factors into account when considering Article VII C (1)(a)(2) when instructional need had already been determined. Because, in the Santa Cruz case the UC decided to create a percentage ratio of three-year to one-year appointments, and because this was not one of the criteria established under the agreement, the UC was found to have violated the Act by unilaterally implementing a change in the parties' agreed upon policy with regard to post six-year appointments.

The Board required a system-wide posting of a notice that would specify the violation occurred in Santa Cruz (Trustees of the California State University (1988) PERB Order No. Ad-174-H). In addition, the Board ordered a compliance proceeding be held wherein it would be determined what the instructional need actually was during the three-year appointment period.

Chula Vista Elementary Education Association, CTA/NEA v. Chula Vista City School District (8/16/90)  
PERB Decision No. 834

The Board found that the District did not interfere with the rights of employees by making improper comments about the Association's representation of these employees in its negotiations with the District because the statements were not "threats of reprisal or force or promise of

a benefit." The Board found that the District illegally insisted to impasse on: a proposal that limited the Association's right to present grievances on behalf of individual members in its own name; a proposal that limited the Association's right to take grievances to arbitration without the concurrence of the named grievant; and a proposal to maintain prior contract language that provided that the parties waive their right to seek unit modification or clarification during the term of the contract.

However, a proposal that limited the Association's right to be physically present at all grievance meetings even if the employee involved did not seek representation by the Association did not infringe on the Association's statutory rights.

The Board did not find bad faith bargaining under the "totality of conduct" test based solely on the District's failure to provide certain information and insistence to impasse on nonmandatory subjects of bargaining.

Mt. Diablo Education Association, CTA/NEA v. Mt. Diablo Unified School District (10/1/90)  
PERB Decision No. 844

The Board found that the District violated 3543.5(c), (e) and derivatively (b) of EERA when it insisted to impasse that the Association: (1) waive its right to file grievances in its own name; and (2) waive its right to arbitrate grievances in cases where the individual grievant

does not wish to pursue the grievance to arbitration.

Dr. Kathryn Jaeger and the Elk Grove Psychologists and Social Workers Association v. Elk Grove Unified School District (12/17/90)  
PERB Decision No. 856

The Board affirmed a Board agent's dismissal of an unfair practice charge alleging a violation of 3543.5(a) on the grounds that the charging party alleged no facts that she engaged in protected activity. The Board declined to consider whether the Board agent properly dismissed the 3543.5(c) charge since the Association, the only charging party who had standing to appeal the (c) violation, was not a party to the appeal.

North Orange County Regional Occupational Program and Regional Occupational Program Educational Association of North Orange County CTA/NEA (12/17/90)  
PERB Decision No. 857

The Board found that NOCROP was not a public school employer under EERA, and, accordingly, there was no jurisdiction for the Board to resolve this matter. Therefore, the Board denied ROPEA's petition requesting unit recognition. In making the order, the Board specifically overruled Tulare County Organization for Vocational Education (1978) PERB Decision No. 57, insofar as Tulare County held that a regional occupational center or program operated by a joint powers agency was a public school employer under EERA.

United Teachers - Los Angeles v. Los Angeles Unified School District (12/19/90)  
PERB Decision No. 860

The Board affirmed the ALJ's proposed decision wherein it was found that the District unlawfully unilaterally established the wage rate payable to certificated employees participating in an after-school Early Education Program (EEP). Board affirmed ALJ's refusal to defer matter to arbitration on ground that relevant collective bargaining agreement provision did not "arguably prohibit" conduct at issue, and therefore, Lake Elsinore test was not met.

Newark Teachers Association, CTA/NEA v. Newark Unified School District (1/14/91)  
PERB Decision No. 864

The Board affirmed the ALJ's proposed decision and determined that the District violated EERA section 3543.5(a), (b) and (c) by its conduct of: (1) involuntarily transferring Association member in retaliation for his protected activity; and (2) refusing to provide information relevant to the transfer to the Association at a contract grievance hearing.

California School Employees Association and its Whisman Chapter #355 v. Whisman Elementary School District (2/14/91)  
PERB Decision No. 868

The Board found that the District did not violate EERA when it utilized the services of volunteers for work which



had been performed by unit members, because at the time the volunteer program was formed, the unit members were not performing this work. Because no unit members ceased performing this work as a result of the decision to utilize volunteers, the decision to contract out this work was not a subject of mandatory negotiation.

State of California, Department of Personnel Administration v. California State Employees' Association (3/20/91)  
PERB Decision No. 871-S

The Board held it is not precluded by the doctrine of res judicata from considering the merits of two unit modification petitions. The doctrine of res judicata precludes relitigation of an issue when the same issue has been fully and fairly litigated and finally decided in a prior action involving the same parties. However, since CSEA did not assert res judicata as a defense, Board considered the merits of the petitions filed under PERB Regulation 32781(b)(5).

The Board also held that in determining whether a particular classification is "supervisory," some weight may be given to the scope of responsibilities, authority, and duties described in the class specification and job description or duty statement created by SPB.

Relying on State of California (Department of Personnel Administration) (1990) PERB Decision No. 787-S, Board noted that state employee is defined in section 3513(c) as "any

civil service employee of the state." Further, that Article VII, section 1(a) of the California Constitution states, "civil service includes every officer and employee of the state except as otherwise provided in this Constitution." Since Conservation Corps members were not listed under Article VII, section 4, as one of the categories of employees specifically exempt from civil service, Board found that they are state civil service (nonmerit system) employees for the purposes of the Dills Act.

Charter Oak Educators Association, CTA/NEA v. Charter Oak Unified School District (4/4/91)  
PERB Decision No. 873

The Board affirmed a Board agent's dismissal and refusal to issue complaint of an unfair practice charge filed by the Association, alleging that the District violated EERA sections 3543, 3543.1(a), 3543.5(b) and (d), and 3548 by failing and refusing to bargain in good faith, making unilateral changes in policy and bypassing and undermining the Association. Although the Board found that the statement made by the District's attorney, that factfinding would "not make any difference, because the [District] Board will not accept the factfinding report anyway," was circumstantial evidence of bad faith, the other factual allegations, even when taken together with the statement, were insufficient to state a prima facie case of bad faith bargaining under the rule enunciated in Modesto City Schools (1983) PERB Decision No. 291. The portion of the



PERB case of Temple City Unified School District (1990) PERB Decision No. 843, which discusses the duty concerning consideration of the factfinding report, including the reference to footnote 18 of Modesto, supra, PERB Decision No. 291, was overruled.

California School Employees Association and its Chapter #568 v. San Diego County Office of Education (5/21/91)  
PERB Decision No. 880

The Board held that where an arbitration award has issued which covers a matter at issue in a complaint before the Board, the Board should use a post-arbitration repugnancy analysis. The post-arbitration repugnancy standards are the same as those used by the NLRB and are as follows: (1) The matters raised in the unfair practice charge must have been presented to and considered by the arbitrator; (2) the arbitral proceedings must have been fair and regular; (3) all parties to the arbitration proceedings must have agreed to be bound by the arbitral award; and (4) the award must not be repugnant to the Act, as interpreted by the PERB.

The Board also adopted the NLRB rule that the parties seeking to have the Board reject deferral has the burden of showing that the standards for deferral have not been met, i.e., that the arbitral process or award is defective.

In this case, it was found that the arbitration award did cover the alleged 3543.5(a) violation, and was not repugnant to the purposes of the Act.

The alleged violation of section 3543.5(b) was not raised before the arbitrator nor decided in the arbitration award, and therefore a pre-arbitration deferral analysis was appropriate. The Board found that the (b) allegation should not be deferred because, in accord with the standard for the determination of deferral under Lake Elsinore School District (1987) PERB Decision No. 646, the collective bargaining agreement does not provide the Association with access to binding arbitration to litigate the Association's protected right to represent its members. Furthermore, the conduct alleged in the complaint was not prohibited by the parties' collective bargaining agreement.

Modesto City Schools Association/CTA/NEA and California School Employees Association and its Chapter 007 (6/3/91)  
PERB Decision No. 884

The Board granted the District's petition to modify the certificated bargaining unit by removing the school board's newly adopted position of High School Auditorium Manager (HSAM) from the bargaining unit. Board agent found that none of the duties of the HSAM required certification under Education Code section 44065. Therefore, pursuant to Education Code section 45104, the position was part of the classified service and, as such, was expressly prohibited from being included in the certificated bargaining unit by EERA section 3545(b)(3).

Elizabeth I. Baddour v.  
San Diego Unified School  
District (6/14/91)  
PERB Decision No. 885

The Board found that the doctrine of collateral estoppel does not preclude PERB from consideration of the issues raised in the District's exceptions to the proposed decision in San Diego Unified School District (1987) PERB Decision No. 631 (Baddour I); and (2) reversed the ALJ's conclusion in Baddour I that the District violated EERA section 3543.5(a) by discriminating against Charging Party because of the exercise of her EERA rights.

California State Employees  
Association v. California State  
University (6/19/91)  
PERB Decision No. 890-H

The Board affirmed Board agent's dismissal of charging party's claim that the CSU violated section 3571(b) of HEERA because employee organizations have not been granted a general and independent statutory right to represent unit members in their employment relations with their employer.

# 1990/91 REQUESTS FOR INJUNCTIVE RELIEF

<u>IR#</u>	<u>CASE NAME</u>	<u>CASE NO.</u>	<u>ALLEGATION</u>	<u>FILED</u>	<u>DISPOSITION</u>
307	Malin v. United Teachers of Los Angeles	LA-C0-545	Seeking Ct. Order to require UTLA to recognize Mr. Malin as holder of an elected position w/ the Union.	8/22/90	Defective filing; withdrawn w/o prejudice.
308	Malin v. United Teachers of Los Angeles	LA-C0-545	Same issue as above.	9/7/90	Denied 9/17/90 by General Counsel Letter.
309	Lodi Educ. Assn., CTA/NEA v. Lodi USD	S-CE-1374	Seeking Ct. Order against Lodi District to refrain from deducting amounts for employee contributions to health insurance premiums.	9/21/90	Denied by General Counsel Letter.
310	California School Employees Association v. Lodi USD	S-CE-1375	Same issue as above.	9/25/90	Denied by General Counsel Letter.
311	Alliance of Trades and Maintenance v. California Dept. of Corrections	S-CE-470-S	ATAM seeking Court Order to prevent the State from continuing to deny ATAM organizers access to prisons where members of their bargaining unit work.	11/20/90	Withdrawn by Charging Party, without prejudice (settled).
312	Merced City Teachers Assn, CTA/NEA v. Merced City School District	S-CE-1384	Assn. seeking Ct. Order to prevent District from unilaterally	11/21/90	Withdrew - deficient filing.

**1990/91 REQUESTS FOR INJUNCTIVE RELIEF**

<b>IR#</b>	<b><u>CASE NAME</u></b>	<b><u>CASE NO.</u></b>	<b><u>ALLEGATION</u></b>	<b><u>FILED</u></b>	<b><u>DISPOSITION</u></b>
<b>Continued</b>					
312	Merced City Teachers Assn, CTA/NEA v. Merced City School District	S-CE-1384	altering health benefits provided to bargaining unit employees. Deficient filing due to lack of decs. and affidavit of notice.		
313	Merced City Teachers Assn., CTA/NEA v. Merced City School District	S-CE-1384	Assn. seeking Court Order to prevent District from unilaterally altering health benefits provided to bargaining unit employees. Deficient filing due to lack of decs. and affidavit of notice.	11/27/90	Denied without prejudice to renewal by General Counsel Letter.
314	California Union of Safety Employees v. Department of Personnel Administration	S-CE-495-S	CAUSE seeking I.R. ordering DPA to meet-and-confer in good faith.	5/14/91	Denied without prejudice to renewal by General Counsel Letter.
315	Department of Personnel Administration v. Professional Engineers in California Government	S-CO-127-S	DPA seeking I.R. alleging PECG refuses to bargain and participate.	6/4/91	Orally withdrawn. 6/6/91
316	Association of California State Attorneys and Professional Engineers in California Government v. State of California	S-CE-498-S	Charging Parties seek I.R. ordering Governor to refrain from making proposals that would impact terms and conditions of emp. and benefits without first meeting and conferring.	6/24/91	Denied without prejudice to renewal by General Counsel. Letter.
317	California Association of Psychiatric Technicians v. Department of Personnel Administration	S-CE-500-S	Charging Party seeks I.R. alleg. DPA refuses to meet-and-confer.	6/28/91	Denied without prejudice to renewal by General Counsel.

TOTAL ACTIVITY  
(ERRA - HEERA - RALPH C. DILLS ACT)  
REPRESENTATION CASE ACTIVITY  
Fiscal Year 1990/91

	<u>Active as of 7-1-90</u>	<u>Cases Filed</u>	<u>Total Active Cases</u>	<u>Closed Cases</u>	<u>Active as of 6-30-91</u>
REPRESENTATION PETITIONS	18	47	65	48	17
DECERTIFICATION PETITIONS	6	26	32	19	13
UNIT MODIFICATION PETITIONS	19	63	82	56	26
ORGANIZATIONAL SECURITY PETITIONS	7	26	33	29	4
AMENDED CERTIFICATIONS	5	9	14	13	1
MEDIATION	163	268	431	285	146
FACTFINDINGS	15	36	51	29	22
ARBITRATIONS	2	1	3	3	0
PUBLIC NOTICE COMPLAINTS	5	5	10	5	5
COMPLIANCE	29	18	47	25	22
FINANCIAL STATEMENTS	1	1	2	2	0
OTHER	4	7	11	7	4
<hr/>					
TOTAL	274	507	781	521	260

EERA - HEERA - RALPH C. DILLS ACT  
UNFAIR PRACTICE CASE ACTIVITY - STAFF  
Fiscal Year 1990/91

	Active as of <u>7/1/90</u>	Cases <u>Filed</u>	Closed <u>Cases</u>	Active as of <u>6/30/91</u>
<u>EERA</u>				
CE	111	250	288	73
CO	58	70	84	44
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	169	320	372	117
 <u>HEERA</u>				
CE	17	37	43	11
CO	2	4	4	2
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	19	41	47	13
 <u>RALPH C. DILLS ACT</u>				
CE	17	67	63	21
CO	3	16	16	3
<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTAL	20	83	79	24
 =====				
<u>TOTAL</u>				
CE	145	354	394	105
CO	63	90	104	49
 =====				
GRAND TOTAL	208	444	498	154

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

TOTAL FILINGS - BY ACT  
UNFAIR PRACTICE CASES  
Fiscal Year 1990/91

CE'S

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
JULY	23	5	8	36
AUGUST	20	4	5	29
SEPTEMBER	12	3	7	22
OCTOBER	24	2	1	27
NOVEMBER	23	5	4	32
DECEMBER	38	0	5	43
JANUARY	18	0	4	22
FEBRUARY	25	3	7	35
MARCH	17	2	7	26
APRIL	20	4	2	26
MAY	16	4	9	29
JUNE	14	5	8	27
<hr/>				
TOTAL	250	37	67	354

CO'S

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS</u> <u>ACT</u>	<u>TOTAL</u>
JULY	1	1	2	4
AUGUST	3	0	0	3
SEPTEMBER	2	0	2	2
OCTOBER	2	0	2	4
NOVEMBER	3	0	3	6
DECEMBER	34	1	1	36
JANUARY	8	0	1	9
FEBRUARY	2	0	0	2
MARCH	3	0	1	4
APRIL	3	0	2	5
MAY	7	1	0	8
JUNE	2	1	4	7
<hr/>				
TOTAL	70	4	16	90

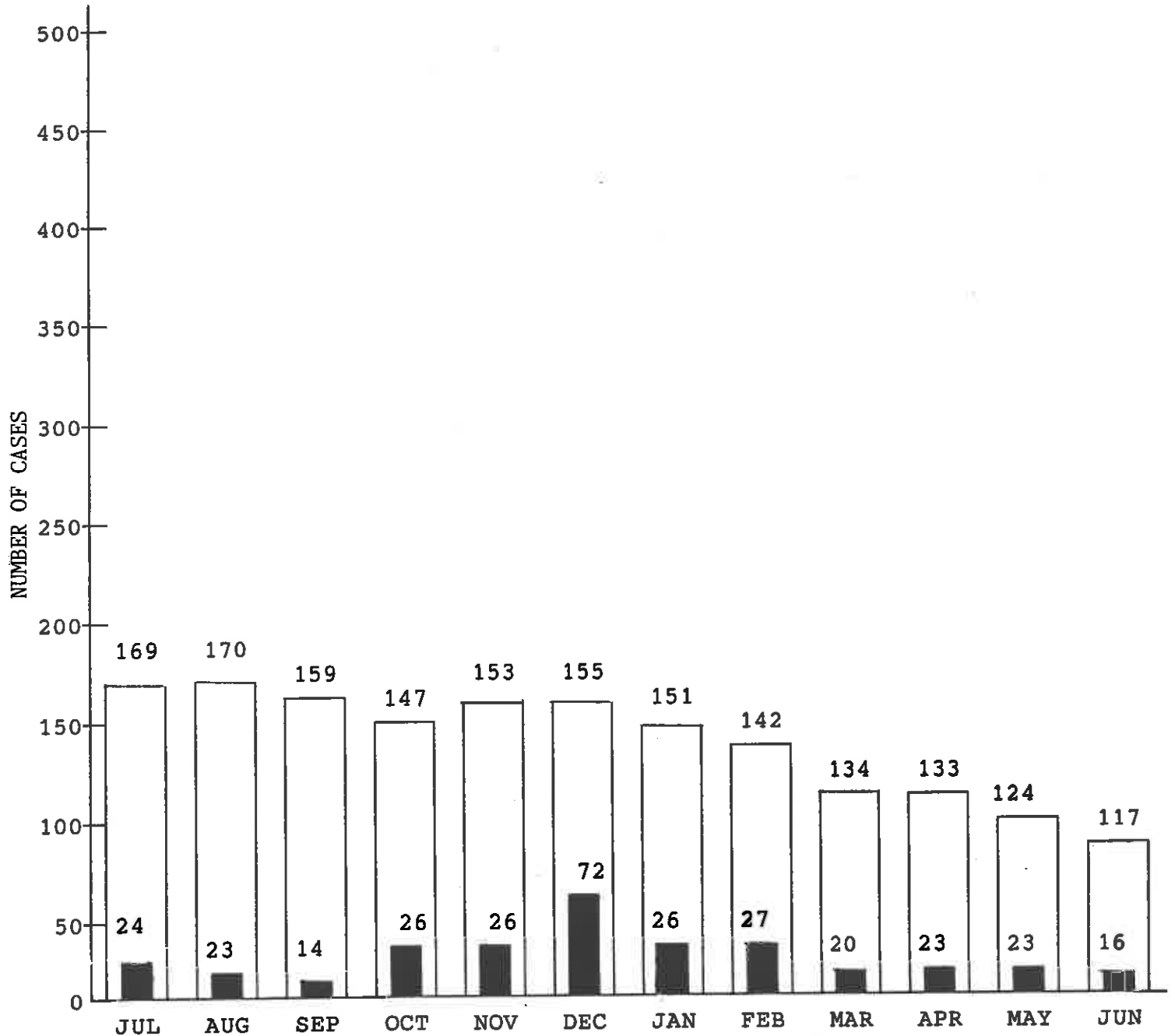
=====

GRAND TOTAL	320	41	83	444
-------------	-----	----	----	-----

## EERA

### UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1990/91

■ Total New Unfair Practice Cases Filed Per Month  
□ Total Open Unfair Practice Cases Pending Per Month

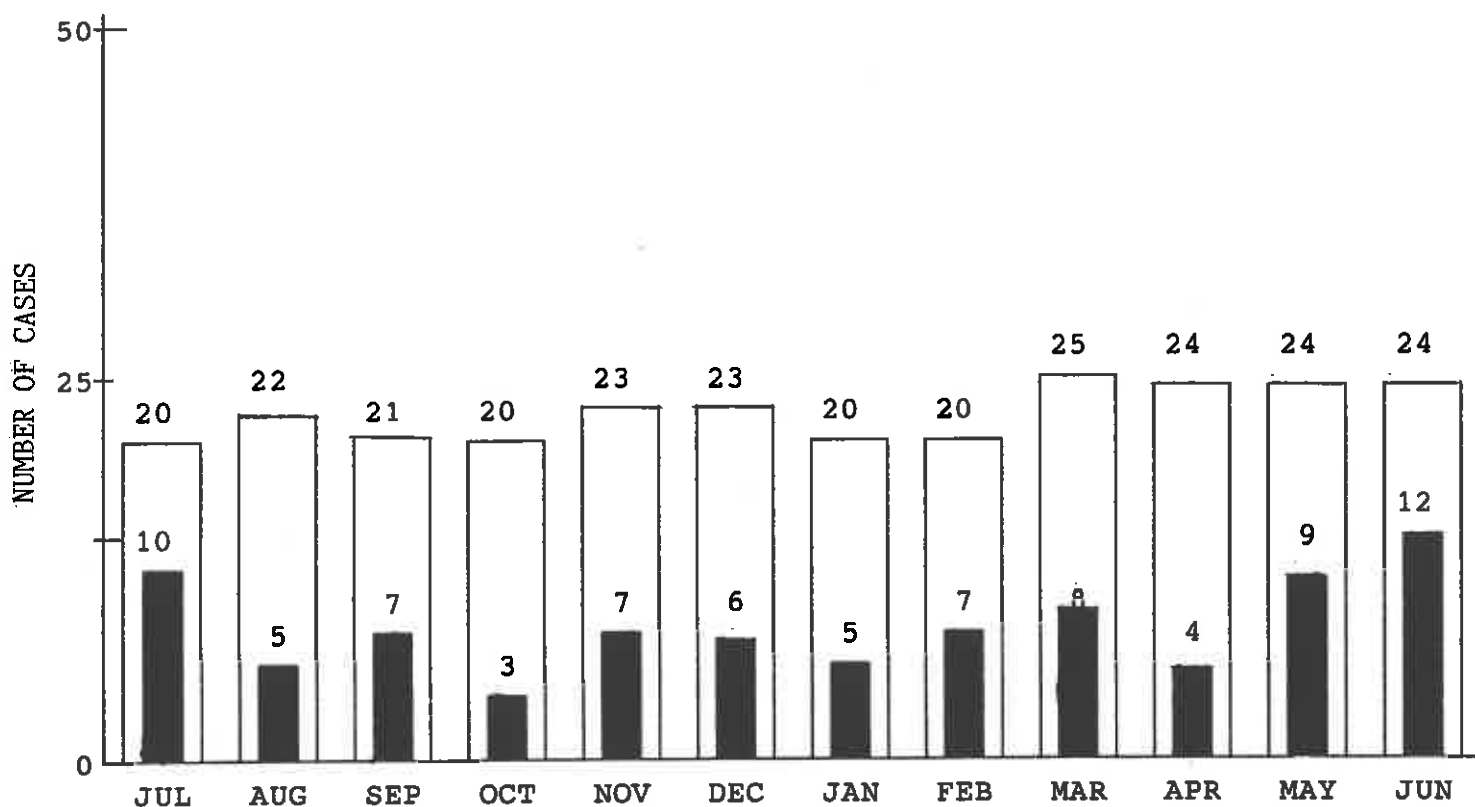




# RALPH C. DILLS ACT

## UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1990/91

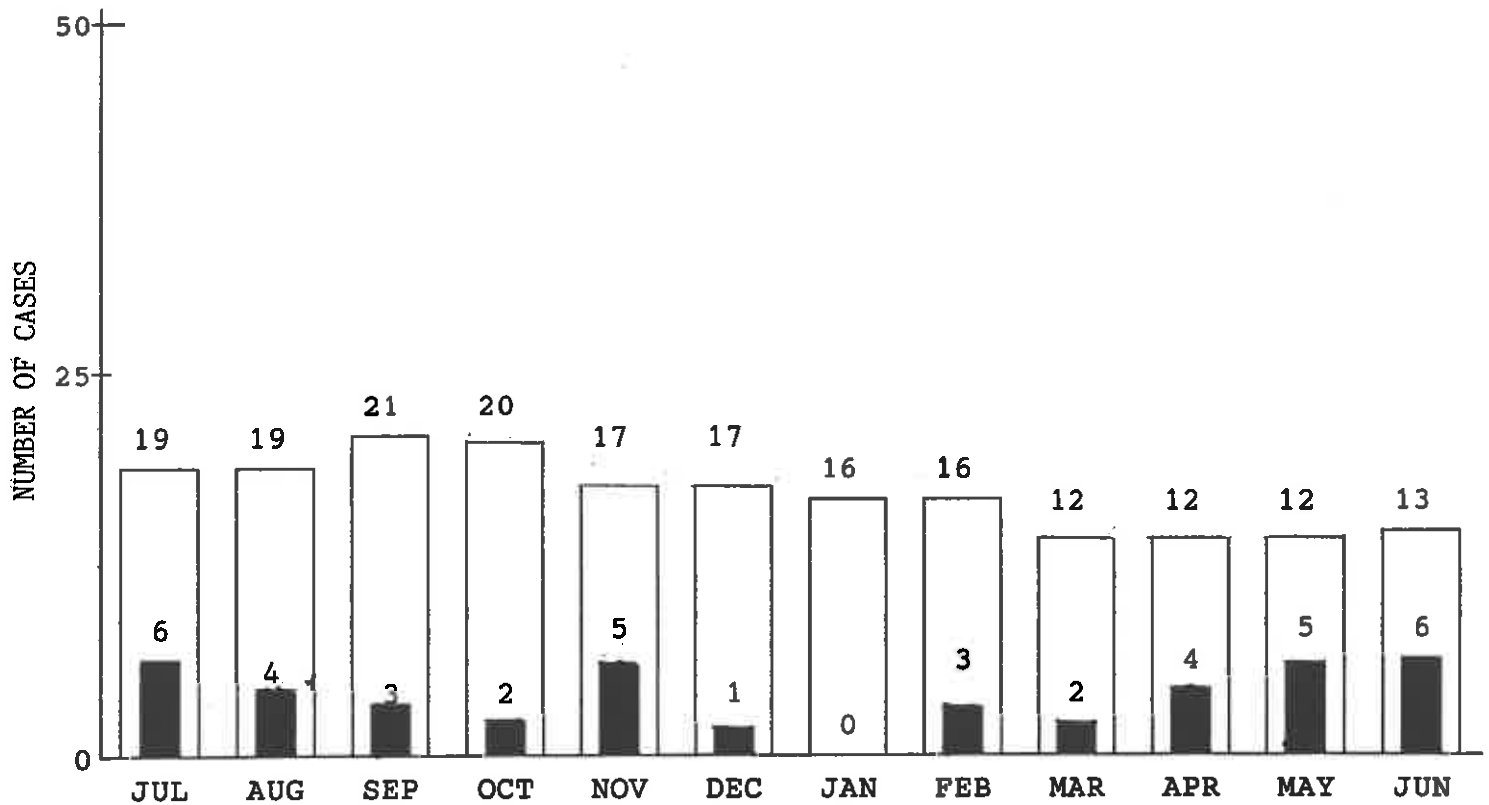
Total New Unfair Practice Cases Filed Per Month  
 Total Open Unfair Practice Cases Pending Per Month



## HEERA

### UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1990/91

■ Total New Unfair Practice Cases Filed Per Month  
□ Total Open Unfair Practice Cases Pending Per Month

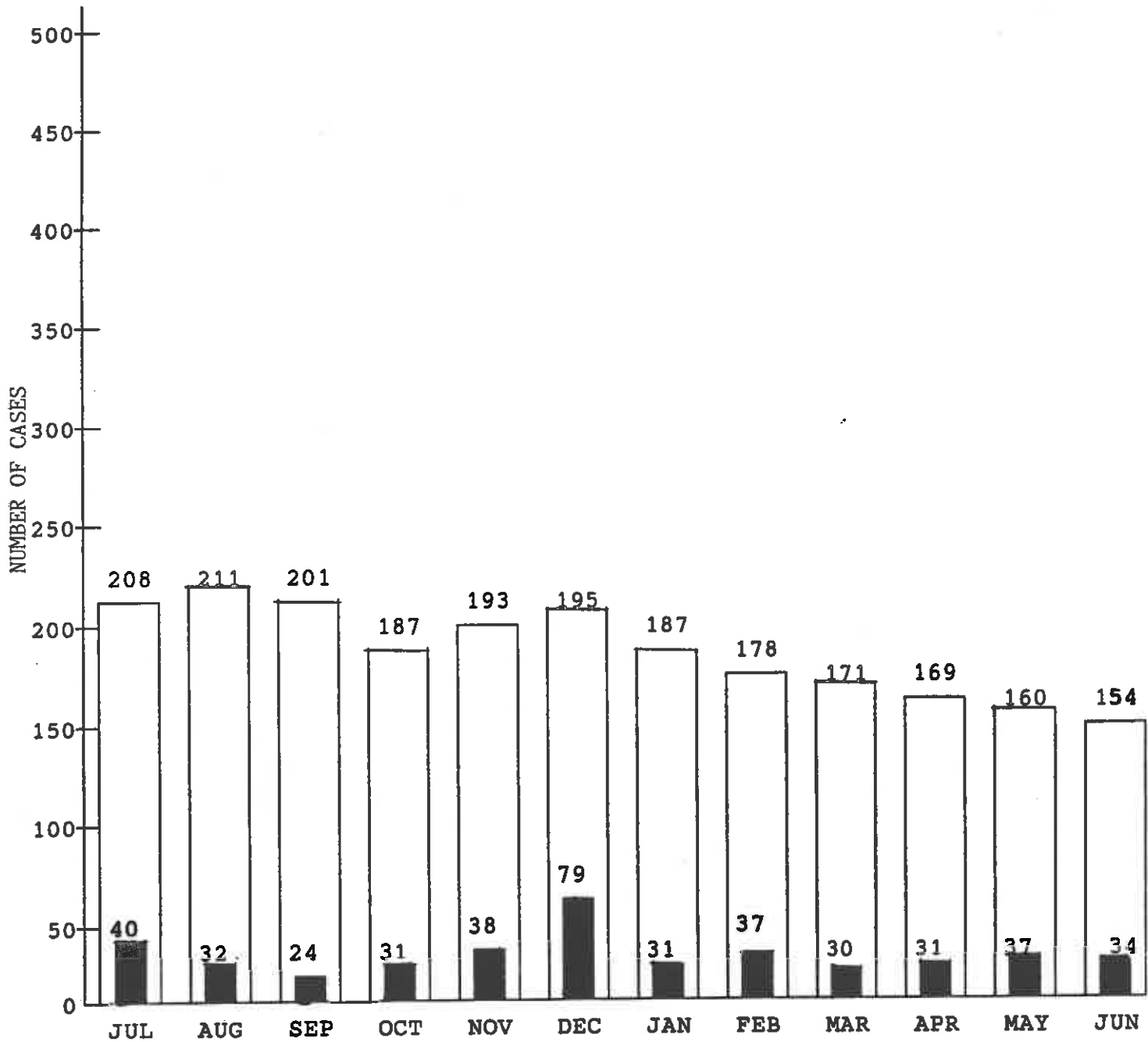


## TOTAL OF ALL ACTS

(EERA - HEERA - RALPH C. DILLS ACT)

### UNFAIR PRACTICE CASELOAD CHART - FISCAL YEAR 1990/91

■ Total New Unfair Practice Cases Filed Per Month  
□ Total Open Unfair Practice Cases Pending Per Month



# **ORGANIZATIONS' ACRONYMS & ABBREVIATIONS ELECTION LOG**

AFT	American Federation of Teachers
ATAM	Alliance of Trades & Maintenance
AVC	Apple Valley Classified
AVCFCE	Antelope Valley College Faculty Classified Employees
BESP	Brittan Educational Support Personnel
BHEA	Beverly Hills Education Association
CAUSE	California Union of Safety Employees
CCTA	Culver City Teachers Association
CCFOT	Culver City Federation of Teachers
CSEA	California School Employees Association
CSSEC/CSPOA	California State Safety Employees Council/California State Police Officers Association
CTA	California Teachers Association
HRTA	Hart-Ransom Teachers Association
HATA	HA Teachers Association
ISSUT	Instructional Support Services Unit
IUOE	International Union of Operating Engineers
JTA	Jamestown Teachers Association
LTFAOC	Lake Tahoe Faculty Association Organizing Committee
LTCCFA	Lake Tahoe Community College Faculty Association
MESP	Mammoth Educational Support Personnel
NAGE	National Association of Government Employees
NEA	National Education Association
RSF	Rancho Sante Fe Faculty Association
SJCOE	San Joaquin County Employees Association
SJCOE	San Joaquin County Employees Association, Inc. (Manteca USD)
STA	Snowline Teachers Association
OEA	Oakland Education Association
TEAMSTERS	Teamsters-Local 911 (Fall River JUSD)
UHTA	Union Hill Teachers Association

**HERA ELECTIONS HELD - FISCAL YEAR 1990/91**

1990/91 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	ORG WITH MAJORITY	OTHER ORG	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
9/12/90	S -D-118	Jamestown ESD	250	17	16	JTA/CTA/NEA-12	CSEA-3	1	2	0	D/REP
10/23/90	S -D-129	Manteca USD	250	540	342	CSEA-278	SJCOE-58	6	0	0	C/REP
10/24/90	LA-D-246	Downey USD	253	164	124	CSEA-70	CALPRO-52	2	0	0	C/REP
11/19/90	LA-D-245	Apple Valley USD	250	325	211	AVC/CTA-138	CSEA-67	6	0	10	C/REP
3/27/91	S -D-130	Mammoth USD	250	36	32	MESP/NEA-25	CSEA-6	1	0	2	C/REP
4/04/91	SF-D-185	Oakland USD	102	186	133	AFT-99	OEA/CTA-34	0	0	0	C/REP
4/29/91	LA-D-251	Needles USD	250	100	88	CSEA-48	NEA-38	2	2	0	C/REP
5/08/91	S -D-135	Hart-Ransom UESD	100	25	20	HRTA/CTA-14	HATA-6	0	0	0	C/REP
5/14/91	S -D-136	Brittan ESD	100	28	20	BEA/CTA-11		9	4*	0	C/REP
5/20/91	SF-D-190	Sequoia UHSD	253	92	58	AFSCME-35	CSEA-22	1	0	4	C/REP
5/21/91	SF-D-187	Petaluma City ESD/JUHSD	100	348	309	AFT-156	CTA-152	1	1	0	C/REP
5/29/91	SF-D-186	City of Santa Rosa ESD/HSD	450	33	31		Teamsters-5	26	0	0	D/REP
6/05/91	SF-D-188	Gilroy USD	100	447	399	CTA-204	AFT-192	3	0	1	C/REP
6/06/91	LA-D-252	Culver City USD	100	260	222	CCTA/CTA-113	CCFOT/AFT-106	3	3	0	C/REP
6/06/91	LA-D-253	Santa Maria JUHSD	250	175	54	EESA-48	AFT-3	3	0	0	D/REP
6/11/91	S -D-137	Fall River JUSD	250	127	77	CSEA-48	Teamsters-28	1	0	1	C/REP
6/21/91	SF-D-189	Oakland USD	108	3353	2481	OEA/CTA-1512	AFT-937	32	2	10	C/REP
6/27/91	LA-D-255	Beverly Hills USD	252	47	36	BHEA-23	CSEA-13	0	0	2	C/REP
8/31/90	S -R-886	Union Hill ESD	100	21	21	UHTA-21		0	0	0	C/REP
9/26/90	LA-R-967	Sweetwater UHSD	450	57	48	NAGE-34		14	0	0	D/REP
10/03/90	S -R-889	Kings COE	251	32	29	CSEA-26		3	0	0	C/REP
12/14/90	LA-R-971	Rancho Santa Fe ESD	100	27	27	RSF/CTA/NEA-16		11	0	0	C/REP
12/18/90	SF-R-698A	South Bay UESD	251	3	2		CSEA-1	1	0	0	C/REP
12/18/90	SF-R-698B	South Bay UESD	252	9	4		CSEA-2	2	0	0	C/REP
2/21/91	S -R-894	San Joaquin COE	251	72	50	SJCOE-30		20	0	0	C/REP
3/05/91	LA-R-958;										
	LA-I-106	Pasadena Area CCD	252	247	145	ISSUT-129		16	0	0	C/REP
4/16/91	S -R-895	Golden Hills SD	250	58	45	CSEA-44		1	5	0	C/REP
4/26/91	S -R-902;										
	S -I-108	Lake Tahoe CCD	100	22	20	LTFAOC-12	LTCCFA/CTA-2	6	0	0	C/REP
5/01/91	S -R-904	Waterford ESD	250	51	31	CSEA-12		9	1	2	C/REP
5/14/91	S -R-903;										
	S -I-107	Brittan ESD	250	24	19	CSEA-13	BESP/CTA-6	0	1	0	C/REP
5/31/91	SF-R-719	San Ramon Valley USD	251	223	142	CSEA-81		61	0	0	C/REP
6/12/91	S -R-905	Newcastle ESD	250	13	8		CSEA-3	5	0	0	C/REP
6/28/91	LA-R-977	Snowline JUSD	100	212	148		STA-63	85	1	0	C/REP
6/12/91	LA-UM-513	Antelope Valley CCD	252	35	24	AVCFCE/AFT-17		7	0	0	C/REP

**RALPH C. DILLS ACT ELECTIONS HELD - FISCAL YEAR 1990/91**

1990/91 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	ORG WITH MAJORITY	OTHER ORG	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
5/02/91	S -D-131-S	State of California	S07	5694	4020	CAUSE-2122	CSSEC/CSPOA-1699	199	50	78	D/REP
5/03/91	S -D-133-S	State of California	S12	10759	6376	IUOE-3283	ATAM-2752	341	6	117	D/REP

\*Challenges Determinative - The outcome of this election has not yet been determined.

# HEERA ORGANIZATIONAL SECURITY ELECTIONS HELD - FISCAL YEAR 1990/91

1990/91 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	OS-YES	OS-NO	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
11/20/90	SF-OS-147	San Francisco USD	108	3844	2407	1469	938	0	19	C/REP
11/30/90	LA-OS-137	Ontario-Montclair ESD	100	926	489	286	203	0	2	C/REP
12/18/90	SF-OS-150	Belmont ESD	250	54	28	24	4	0	0	C/REP
12/19/90	LA-OS-136	San Diego City USD	100	6418	4194	3063	1131	0	14	C/REP
1/15/91	S -OS-85	Shasta UHSD	253	78	57	28	29	0	0	C/REP
2/08/91	SF-OS-148	South County CCD	250	234	188	126	62	0	0	C/REP
2/14/91	SF-OS-152	Sonoma COE	100	146	111	94	17	0	0	C/REP
2/20/91	S -OS-84	Folsom-Cordova USD	100	591	402	303	99	1	1	C/REP
2/28/91	SF-OS-149	San Francisco USD	251	2090	762	613	149	0	4	C/REP
4/01/91	SF-ROS-153	Napa Valley CCD	100	204	164	114	50	0	0	C/REP
4/08/91	SF-ROS-151	Foothill-De Anza CCD	254	113	69	24	45	0	0	C/REP
4/26/91	LA-OS-140	Palmdale ESD	250	421	255	133	122	0	4	C/REP
5/03/91	SF-OS-154	Hayward USD	256	8	5	3	2	0	0	C/REP
5/03/91	SF-OS-155	Hayward USD	253	257	192	159	33	2	0	C/REP
5/03/91	SF-OS-156	Hayward USD	251	209	147	130	17	0	2	C/REP
5/14/91	SF-OS-158	Analy UHSD	100	122	96	77	19	0	0	C/REP
5/21/91	LA-OS-139	Chula Vista City ESD	100	873	644	460	184	0	20	C/REP
5/21/91	LA-OS-138	National ESD	100	301	222	166	56	0	7	C/REP
6/03/91	LA-OS-142	Tehachapi USD	100	266	183	101	82	0	2	C/REP
6/17/91	S -OS-87	Black Oak Mine USD	100	103	68	29	39	0	0	C/REP

## RALPH C. DILLS ACT ORGANIZATIONAL SECURITY ELECTIONS HELD - FISCAL YEAR 1990/91

1990/91 TALLY DATE	CASE NOS.	EMPLOYER NAME	UNIT TYPE	UNIT SIZE	VALID VOTES	OS-YES	OS-NO	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
12/21/90	S -OS-83	State of California	518	7748	2729	1406	1323	0	10	C/REP

## HEERA ELECTIONS HELD - FISCAL YEAR 1990/91

NONE

# S T A F F     A C T I V I T Y

Fiscal Year 1990/91

	<u>EERA</u>	<u>HEERA</u>	<u>RALPH C. DILLS ACT</u>	<u>TOTAL</u>
COMPLAINTS ISSUED	168	18	34	220
DISMISSALS	105	13	17	135
WITHDRAWALS	221	22	32	275