



# **PUBLIC EMPLOYMENT RELATIONS BOARD**

## **2014-2015 ANNUAL REPORT**

**October 15, 2015**



**EDMUND G. BROWN JR., GOVERNOR**

**STATE OF CALIFORNIA**

# **PUBLIC EMPLOYMENT RELATIONS BOARD**

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### **Board Members**

ANITA I. MARTINEZ  
A. EUGENE HUGUENIN  
PRISCILLA S. WINSLOW  
ERIC R. BANKS  
MARK C. GREGERSEN

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**PUBLIC EMPLOYMENT RELATIONS BOARD**

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October 15, 2015

Dear Members of the State Legislature and fellow Californians:

On behalf of the Public Employment Relations Board (PERB), I am pleased to submit our 2014-2015 Annual Report. PERB is committed to conducting all agency activities with transparency and accountability. The Report describes PERB's statutory authority, jurisdiction, purpose and duties, and highlights recent legislative activity. The Report further provides case disposition achievements for the Board's divisions.

I am delighted to report that the Governor reappointed Eric R. Banks to a new two-year term and appointed Mark C. Gregersen to a five-year term on February 6, 2015.

The eight public sector collective bargaining statutes administered by PERB guarantee the right of public employees to organize, bargain collectively and to participate in the activities of employee organizations, and to refrain from such activities. The statutory schemes protect public employees, employee organizations and employers alike from unfair practices, with PERB providing the impartial forum for the settlement and resolution of their disputes.

Statistical highlights during the 2014-2015 fiscal year include:

- 695 unfair practice charges filed
- 110 representation petitions filed
- 120 mediation requests filed pursuant to the Educational Employment Relations Act (EERA), Higher Education Employer-Employee Relations Act (HEERA), and Ralph C. Dills Act
- 23 EERA/HEERA factfinding requests approved
- 41 Meyers-Milias-Brown Act factfinding requests filed; 33 requests approved
- 268 unfair practice charges withdrawn/settled prior to formal hearing
- 334 days of unfair practice informal settlement conferences conducted by regional attorneys
- 69 formal hearings completed by administrative law judges
- 70 proposed decisions issued by administrative law judges
- 671 cases filed with State Mediation and Conciliation Service
- 74 decisions issued and 19 injunctive relief requests decided by the Board itself

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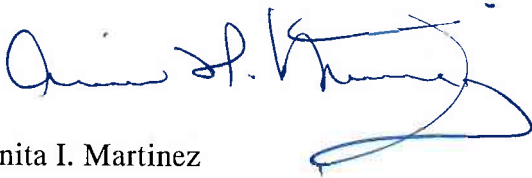
I invite you to explore the Report for more detailed information about PERB's 2014-2015 activities and case dispositions. Also enclosed is a summary of all Board decisions describing the myriad issues the Board addressed in the last fiscal year.

Though we are proud of the accomplishments referenced above, our capacity to resolve labor disputes in a timely and meaningful way has been severely strained as staffing levels and resources have failed to keep pace with legislative expansion of our jurisdiction. This expansion has resulted in a corresponding increase in our workload. To assist in identifying specific areas of needed improvement, a first of its kind PERB survey was undertaken this past year to solicit input from our constituents regarding the adequacy of PERB's services.

Participants in the survey rated the following five functions as most critical (in descending order of importance): (1) unfair practice processing and investigation; (2) Board decisions; (3) mediations; (4) hearings; and (5) informal settlement conferences. Sixty-two percent of participants stated that the processing and investigation of unfair practice charges was the most important Office of the General Counsel function. Participants *overwhelmingly* agreed that timeliness of decision-making is the area where improvement is needed the most.

We hope you find this Report informative. Please visit our website at [www.perb.ca.gov](http://www.perb.ca.gov) or contact PERB at (916) 323-8000 for any further information.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Anita I. Martinez", with a large, stylized flourish at the end.

Anita I. Martinez  
Chair

## **I. OVERVIEW**

### **Statutory Authority and Jurisdiction**

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

- (1) Educational Employment Relations Act (EERA) (Government Code § 3540 et seq.)—California's public schools (K-12) and community colleges;
- (2) State Employer-Employee Relations Act (Dills Act) (Government Code § 3512 et seq.)—State employees;
- (3) Higher Education Employer-Employee Relations Act (HEERA) (Government Code § 3560 et seq.)—California State University and University of California systems and Hastings College of Law;
- (4) Meyers-Milias-Brown Act (MMBA) (Government Code § 3500 et seq.)—California's city, county, and local special district employers and employees (excludes specified peace officers, and the City and County of Los Angeles);
- (5) Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Public Utilities Code § 99560 et seq.);
- (6) Trial Court Employment Protection and Governance Act (Trial Court Act) (Government Code § 71600 et seq.);
- (7) Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Government Code § 71800 et seq.); and
- (8) In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA) (Government Code § 110000 et seq.).

The history of PERB's statutory authority and jurisdiction is included in the Appendices, beginning at page 17.

## **PERB's Purpose and Duties**

### **The Board**

By statute, the Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to a term of up to five years, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the eight statutory schemes, the Board acts as an appellate body to decide challenges to decisions issued by Board agents. Decisions of the Board itself may be appealed, under certain circumstances, to the State appellate and superior courts. The Board, through its actions and those of its agents, is empowered to:

- Conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Remedy unfair practices, whether committed by employers or employee organizations;
- Investigate impasse requests that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register opinions regarding the subjects of negotiations between public sector employers and employee organizations;
- Interpret and protect the rights and responsibilities of employers, employees, and employee organizations under the statutory schemes;
- Bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- Conduct research and training programs related to public sector employer-employee relations; and
- Take such other action as the Board deems necessary to effectuate the purposes of the statutory schemes it administers.

A summary of the Board's 2014-2015 decisions is included in the Appendices, beginning at page 30.



## **Major PERB Functions**

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

A detailed description of PERB's major functions is included in the Appendices, beginning at page 19.

## **Other PERB Functions and Activities**

### **Information Requests**

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

### **Administrative Services**

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

## **II. LEGISLATION AND RULEMAKING**

### **Legislation**

In the 2014-2015 fiscal year, the Legislature enacted only one bill that amended a statute under PERB's jurisdiction: Assembly Bill 1611 (Chapter 801, Statutes of 2014). This bill amended the EERA by requiring that a public school employer give reasonable written notice to the exclusive representative of the classified personnel of its intent to make changes to matters within the scope of representation; a notice provision similar to those in the MMBA, the Dills Act, and the Trial Court Act.

### **Rulemaking**

The Board did not consider any rulemaking proposals in the 2014-2015 fiscal year.

### **III. CASE DISPOSITIONS**

#### **Unfair Practice Charge Processing**

Since 2001, the number of unfair practice charges filed with PERB generally has increased as a result of various statutory expansions to PERB's jurisdiction. In 2014-2015, 695 new charges were filed with PERB.

#### **Dispute Resolutions and Settlements**

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process—the investigation. During this step of the process in fiscal year 2014-2015, 268 cases (28 percent of 954<sup>1</sup> completed charge investigations) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 334 days of settlement conferences for cases in which a complaint was issued. These efforts resulted in voluntary settlements (withdrawals) in 189 cases, approximately 67 percent of the 277 cases closed after issuance of a complaint and prior to a hearing.

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

#### **Administrative Adjudication**

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

In fiscal year 2014-2015, the Division had eight ALJs conducting formal hearings and writing proposed decisions. The Division's production of proposed decisions issued in fiscal year 2014-2015 (70 proposed decisions) was less than fiscal years 2012-2013 and 2013-2014 (76 proposed decisions per year) and greater than fiscal year 2011-2012 (61 proposed decisions).

For the second fiscal year in a row, the number of proposed decisions issued (70 proposed decisions) was greater than the number of formal hearings completed (69 formal hearings). Additionally, the number of pending proposed decisions to write at the end of the fiscal year

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<sup>1</sup> This number includes 173 HEERA cases filed in the previous fiscal year where 165 individual complaints were issued on each of those cases.

was also decreased from fiscal year 2013-2014 (47 proposed decisions to write) to 2014-2015 (42 proposed decisions to write). This decrease indicates that the pending backlog of cases has been incrementally reduced.

The total number of cases assigned in fiscal year 2014-2015 was 209 cases. Of the 209 cases, the ALJs closed a total of 163 cases and 42 cases were held in abeyance pending resolution or other reasons. Last fiscal year (2013-2014), 156 cases were assigned to the ALJs and the previous fiscal year (2012-2013) 193 cases were assigned. This current increase in case assignments shows an upswing in cases assigned during the fiscal year which will translate into increased formal hearing activity for the upcoming fiscal year.

Over the last three fiscal years, the regional distribution of the caseload has been focused primarily in the PERB Glendale office. Slightly over 50 percent of all PERB unfair practice formal hearings have been held in the Glendale office, an increase from fiscal years 2010-2011 and 2011-2012. This trend is expected to continue.

### **Board Decisions**

Proposed decisions issued by Board agents may be appealed to the Board itself. During the 2014-2015 fiscal year, the Board issued 74 decisions as compared to 87 during the 2013-2014 fiscal year. The Board also considered 19 requests for injunctive relief as compared to 25 during the 2013-2014 fiscal year. A summary of injunctive relief requests filed compared to prior years is included in the Appendices at page 27.

### **Litigation**

Fiscal year 2014-2015 was the first time in three years where PERB saw a decrease in the number of litigation projects.<sup>2</sup> Specifically, 83 litigation-related assignments were completed by PERB attorneys (compared to approximately 254 last fiscal year, 146 the year before that, and 139 the year before that). Despite the decrease in litigation projects, the number of active litigation cases increased in fiscal year 2014-2015. A total of 32 litigation cases, including new and continuing matters, were handled during the 2014-2015 fiscal year (compared to 21 last fiscal year and 26 the year before). A summary of these cases is included in the Appendices, beginning at page 66.

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

## **Representation Activity**

For fiscal year 2014-2015, 110 new representation petitions were filed, which is a slight decrease from the 114 petitions filed in the prior year. The fiscal year total includes 35 recognition petitions, 6 severance requests, 9 decertification petitions, 13 requests for amendment of certification, 39 unit modification petitions, 3 petitions for certification, and 5 organizational security petitions. In addition to the 334 days of informal conference in unfair practice charge cases, PERB attorneys held 25 days of informal conference and 8 days of formal hearing in representation matters.

Election activity increased, with 11 elections conducted in fiscal year 2014-2015, compared to 9 in the prior fiscal year. The 11 elections conducted by PERB included 5 decertification elections, 3 organizational security-rescission elections, and 3 representation elections. More than 2,014 employees were eligible to participate in these elections, in bargaining units ranging in size from 4 to 623 employees.

## **Mediation/Factfinding/Arbitration**

During the 2014-2015 fiscal year, PERB received 120 mediation requests under EERA/HEERA/Dills. The number of mediation requests under EERA/HEERA remained steady from the prior year (116 such requests were filed in 2013-2014). Of those requests, 98 were approved for mediation. Subsequently, 23 of those mediation cases were approved for factfinding.

During this same period of time, 41 factfinding requests were filed under the MMBA. Of those requests, 34 were approved. The number of factfinding requests under the MMBA decreased from the prior year (65 such requests were filed in 2013-2014).

## **State Mediation and Conciliation Service Division**

SMCS lost two Conciliators during the prior fiscal year and was not able to complete the recruitment and hiring processes until April 2015. At that time, two new Conciliators were hired for an effective start date of May 1, 2015. This meant that the division was short-staffed by two full-time employees for the entire fiscal year, as the two new employees were in training for the last two months of the year.

The recruitment process from which the two new employees were hired highlighted the declining number of interested and eligible candidates for the position of Conciliator. The classification, which has not been updated in several decades, is undergoing a comprehensive review that was initiated in June 2015.

The improved economy for public sector entities began impacting workload in the 2013-2014 fiscal year, and was fully felt in this fiscal year, as mediation requests fell to numbers closer to those in non-recession cycles.

SMCS received a total of 671 new cases between July 1, 2014 and June 30, 2015, and closed 717. The closed cases include:

Contract Impasses

- 102 EERA/HEERA
- 70 MMBA
- 5 Transit
- 9 State Trial Courts
- 1 State of California

Grievances and Disciplinary Appeals

- 215 EERA/HEERA
- 130 MMBA
- 15 Transit
- 4 State Trial Courts
- 10 City/County
- 50 Private Sector

Other

- 54 representation and election cases
- 39 workplace conflict or training/facilitation assignments
- 13 miscellaneous cases related to education, outreach, and internal mediation or program administration projects

**Compliance**

PERB staff commenced compliance proceedings regarding 33 unfair practice cases, in which a final decision resulted in a finding of a violation of the applicable statute. This is a slight increase in activity over the prior year (29 compliance proceedings were initiated in 2013-2014).

## **IV. APPENDICES**

## **Introduction of Board Members, Legal Advisors and Managers**

### **Board Members**

**Anita I. Martinez** has been employed with PERB since 1976. In May 2011, Governor Edmund G. Brown Jr. appointed her to a three-year term as Board Member and Chair of the Board. Ms. Martinez was reappointed to a new five-year term in January 2014.

Prior to her Board Member and Chair appointment, Ms. Martinez served as the PERB San Francisco Regional Director since 1982. Her duties included supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of informal settlement conferences, representation hearings, representation elections, interest based bargaining training for PERB constituents and PERB staff training.

Before joining PERB, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, *California Public Sector Labor Relations*, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her BA in Political Science from the University of San Francisco. Ms. Martinez's term expires December 2018.

**A. Eugene Huguenin** was appointed to the Board by Governor Edmund G. Brown Jr. in May 2011. Prior to his appointment, Mr. Huguenin practiced labor, employment, and education law in the Sacramento-area. He advised and represented public employees and their organizations in judicial and administrative proceedings, and consulted on educational policy and procedures. From 2005 to 2009, he served as a commissioner on the Fair Political Practices Commission.

Before relocating to Sacramento in 2000, Mr. Huguenin practiced labor and education law in Los Angeles and Burlingame for more than 20 years, advising and representing the California Teachers Association (CTA) and its locals throughout the state. From 1973 to 1979, Mr. Huguenin consulted for CTA on labor relations issues. Prior to joining CTA, he was employed in the Seattle area by a local teachers association and a national accounting firm.

Mr. Huguenin is a member of the Los Angeles County Bar Association, the State Bar of California, and the American Bar Association. He received a Bachelor's degree in Business Administration in 1966, and a Juris Doctor in 1969, from the University of Washington. Mr. Huguenin's term expires December 2015.

**Priscilla S. Winslow** was appointed to the Board by Governor Edmund G. Brown Jr. on February 1, 2013. She previously served as Legal Advisor to Board Member A. Eugene Huguenin beginning July 2012.

Prior to coming to PERB, Ms. Winslow was the Assistant Chief Counsel of the California Teachers Association where she worked from 1996 to 2012, representing and advising local chapters and CTA on a variety of labor and education law matters.



Prior to her employment at CTA, Ms. Winslow maintained a private law practice in Oakland and San Jose representing individuals and public sector unions in employment and labor law matters. In addition to practicing law, Ms. Winslow taught constitutional law at New College of California, School of Law as an adjunct professor from 1984 to 1993.

From 1979 to 1983 Ms. Winslow served as Legal Advisor to PERB Chairman Harry Gluck.

Ms. Winslow is a member of the Labor & Employment Law Section of the State Bar of California and served as Chair of that section in 2000-2001. She is also a member of the American Constitution Society. She received a Bachelor of Arts degree in History and Philosophy from the University of California, Santa Cruz, and a Juris Doctor degree from the University of California, Davis. Ms. Winslow's term expires December 2017.

**Eric R. Banks** was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, and reappointed in February 2015. Prior to his appointment, Mr. Banks worked at Ten Page Memo, LLC as a partner providing organizational consulting services. He served in multiple positions at the Service Employees International Union, Local 221 from 2001 to 2013, including President, Advisor to the President, Chief of Staff, and Director of Government and Community Relations, representing public employees in San Diego and Imperial Counties. Prior to his work at Local 221, Mr. Banks was Policy Associate for State Government Affairs at the New York AIDS Coalition, in Albany, New York, from 2000 to 2001. He worked in multiple positions at the Southern Tier AIDS Program, in Upstate New York from 1993 to 2000, including Director of Client Services, Assistant Director of Client Services, and Case Manager. Mr. Banks received his Bachelor's degree in 1993 from Binghamton University. Mr. Banks' term expires December 2016.

**Mark C. Gregersen** was appointed to the Board by Governor Edmund G. Brown on February 6, 2015. Mr. Gregersen's career in public sector labor relations spans over 35 years. Prior to his appointment, Mr. Gregersen was a principal consultant at Renne Sloan Holtzman Sakai LLP. He has also served as director of labor and work force strategy for the City of Sacramento and director of human resources for a number of California cities and counties. He has held similar positions for local government in the states of Nevada and Wisconsin. Mr. Gregersen has also served as an assistant county manager for the County of Washoe in Nevada.

Mr. Gregersen received a Bachelor's degree in business administration from the University of Wisconsin-Madison, and received a Master of Business Administration degree from the University of Wisconsin-Oshkosh.

Mr. Gregersen's term expires December 2019 with Senate confirmation occurring in late 2015 or early 2016.

## **Legal Advisors**

**Sarah L. Cohen** was appointed as Legal Advisor to Board Chair Anita I. Martinez in July 2011. Previously, Ms. Cohen served as Industrial Relations Counsel IV in the Office of the Director - Legal Unit at the Department of Industrial Relations, where she worked from 1994 to 2011. Prior to entering state service, Ms. Cohen was a legal services attorney in the Employment Law Office at the Legal Aid Foundation of Los Angeles from 1988 to 1994. Ms. Cohen received her Juris Doctor degree from the University of California, Hastings College of the Law. Ms. Cohen also holds a Bachelor of Arts degree from the University of California, Los Angeles.

**Maximiliano C. Garde** was appointed as Legal Advisor to Member A. Eugene Huguenin in June 2013. Previously, Mr. Garde had served as an Attorney at La Raza Centro Legal in San Francisco and prior to that as a Law Clerk with the California Teachers Association in Burlingame. Mr. Garde received his Juris Doctor from the University of California, Hastings College of the Law and received a Bachelor of Arts degree in Sociology from the University of California, Berkeley.

**Scott Miller** was appointed as Legal Advisor to Board Member Eric R. Banks in May 2013. Mr. Miller is a 2007 graduate of the University of California, Los Angeles School of Law's Public Interest Law and Policy Program and, from 2008-2013, practiced labor and employment law as an associate attorney at Gilbert & Sackman. He holds a Bachelor of Arts in English literature and a Masters in history from Kansas State University.

**Russell Naymark** has served as Legal Advisor to Board Member Priscilla S. Winslow since November 2013.

Prior to coming to PERB, Mr. Naymark was an associate at the law firm of Weinberg, Roger & Rosenfeld, where he worked in the Sacramento office from 2011 to 2013, representing and advising various public and private sector unions on a variety of labor law matters.

Prior to his employment at the Weinberg firm, Mr. Naymark served as Assistant General Counsel and Counsel for SAG-AFTRA (formerly Screen Actors Guild) in Los Angeles from 2005 to 2011, where he represented actors and other screen talent.

Prior to his employment with SAG, Mr. Naymark served as District Counsel for Communication Workers of America, AFL-CIO, District Nine in Sacramento from 2001-2005, where he represented employees predominately in the telecommunications and cable industries.

Mr. Naymark is a member of the Labor & Employment Law Section of the State Bar of California. He received a Bachelor of Arts degree in Political Economy from Princeton University, and a Juris Doctor degree from the University of California, Davis.

**Katharine M. Nyman** was appointed as Legal Advisor to Member Mark C. Gregersen in June 2015. Previously, Ms. Nyman served as Regional Attorney in the Office of the General Counsel at PERB, where she worked from 2007 to 2015. Ms. Nyman received her Juris Doctor from the

University of the Pacific (UOP), McGeorge School of Law, and received a Bachelor of Science degree in Environmental Design from the University of California, Davis.

### **Administrators**

**J. Felix De La Torre** was appointed General Counsel in February 2015. Prior to his appointment, Mr. De La Torre served as Chief Counsel for Service Employees International Union, Local 1000, where he was the Chief Counsel from 2012 to 2015, Assistant Chief Counsel from 2010 to 2012, and a Senior Staff Attorney from 2008 to 2010. From 2000 to 2008, Mr. De La Torre was a shareholder and partner at Weinberg, Roger and Rosenfeld, where he represented both public and private sector employees in a wide range of labor and employment matters, including federal and State court litigation, labor arbitrations, collective bargaining, union elections, unfair labor practices, and administrative hearings. Mr. De La Torre also served as a member of the Board of Directors for the AFL-CIO Lawyers Coordinating Committee and the Sacramento Center for Workers Rights. In addition, Mr. De La Torre was as a staff attorney at the California Rural Legal Assistance Foundation (CRLAF) and, before that, the State Policy Analyst for the Mexican American Legal Defense and Educational Fund (MALDEF). Mr. De La Torre is also an Instructor at the University of California (U.C.) Davis Extension in the Labor Management Certificate Program. Mr. De La Torre is a 1999 graduate of U.C. Davis' King Hall School of Law.

**Wendi L. Ross**, Acting General Counsel (May 2014 – February 2015), Interim General Counsel (December 2010 – April 2011), joined PERB as Deputy General Counsel in April 2007 and has more than 25 years of experience practicing labor and employment law. Ms. Ross was employed for over ten years by the State of California, Department of Human Resources as a Labor Relations Counsel. Prior to that position, she was employed as an Associate Attorney with the law firms of Pinnell & Kingsley and Thierman, Cook, Brown & Prager. Ms. Ross received her Bachelor of Arts degree in Political Science-Public Service from U.C. Davis and her law degree from UOP, McGeorge School of Law. She has served as the Chair of the Sacramento County Bar Association, Labor and Employment Law Section and previously taught an arbitration course through the U.C. Davis Extension.

**Shawn P. Cloughesy** is the Chief Administrative Law Judge for PERB. He has over 20 years' experience as an Administrative Law Judge with two state agencies (PERB and the State Personnel Board) conducting hundreds of hearings involving public sector labor and employment matters. Prior to being employed as an administrative law judge, Mr. Cloughesy was a Supervising Attorney for the California Correctional Peace Officers Association, practicing and supervising attorneys who practiced before PERB and other agencies. Mr. Cloughesy graduated from McGeorge School of Law in 1985.

**Loretta van der Pol** is the Chief of the State Mediation and Conciliation Service Division. She joined the agency in March 2010, after working for eight years as a Senior Employee Relations Manager for the Orange County Employees Association, an independent labor union. Prior to working for the union, Ms. van der Pol worked as an analyst, supervisor and mid-level manager for twenty years. Nearly half of those years were spent in the line organizations of electric and water utilities, and in facilities maintenance and operations. The amount of labor relations work involved in those positions lead to her full transition into human resources. She

has several years of experience as chief negotiator in labor negotiations and advocacy on both sides of the table. Most of her professional working life has also involved providing workplace training in conflict management, interest-based bargaining, employee performance management, and statutory compliance requirements. She also facilitates interest-based contract negotiations and workplace interpersonal conflict intervention. Ms. van der Pol earned her undergraduate degree in Social Sciences from Chapman University, and is currently working on a Master of Public Administration degree at California State University, Fullerton.

**Mary Ann Aguayo** joined PERB in January 2014 as its Chief Administrative Officer. Her primary responsibilities include managing the Board's fiscal, technology, human resources, procurement, facilities, and security and safety programs.

Prior to assuming her current role, Mary Ann spent over 20 years managing various administrative offices and programs within State agencies. Beginning her career at the State Personnel Board, she recently served as the Chief Administrative Officer for the Department of Water Resources' State Water Project Operations. This position included oversight of administrative services for over 1,100 employees and several multi-million dollar contracts.

Mary Ann holds a Bachelor of Arts degree in Business Administration with a concentration in Human Resources Management from California State University, Sacramento. She is a graduate of the University of California, Davis' Executive Program, and in January 2014 obtained her certification as a Senior Professional in Human Resources.

## **History of PERB's Statutory Authority and Jurisdiction**

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

As of July 1, 2001, PERB acquired jurisdiction over the MMBA of 1968, which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes specified peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include TEERA, establishing collective bargaining for supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Act of 2000 and the Court Interpreter Act of 2002.

PERB's jurisdiction and responsibilities were changed in late June 2012 by the enactment of Senate Bill 1036, which enacted the relevant part of the In-Home Supportive Service Employer-Employee Relations Act (IHSSEERA). The IHSSEERA is within the jurisdiction of PERB to administer and enforce, with respect to both unfair practices and representation matters. The IHSSEERA initially covers only eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, Santa Clara, San Diego, and San Mateo. On July 1, 2015, the County of San Bernardino, the County of Riverside, the County of San Diego, and the County of Los Angeles transitioned to the Statewide Authority under the IHSSEERA. The transition brought Los Angeles County under PERB's jurisdiction for the first time, while the other three counties were formerly subject to PERB's jurisdiction under the MMBA.

Since 2001, more than two million public sector employees and their employers have been included within the jurisdiction of the collective bargaining statutory schemes administered by PERB. The approximate number of employees under these statutes is as follows: 680,000 work for California's public education system from pre-kindergarten through and including the community college level; 230,000 work for the State of California; 100,000 work for the University of California, California State University, and Hastings College of Law; 366,000 work under the auspices of the IHSSEERA statewide; and the remaining public employees work for California's cities, counties, special districts, trial courts, and the Los Angeles County Metropolitan Transportation Authority.

Effective July 1, 2012, Senate Bill 1038 repealed and recast existing provisions of law establishing the State Mediation and Conciliation Service (SMCS) within the Department of Industrial Relations. The legislation placed SMCS within PERB, and vested PERB with all of

the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department of Industrial Relations and exercised or carried out through SMCS.

Governor's Reorganization Plan 2, submitted to the Legislature on May 3, 2012, stated that PERB would be placed under the California Labor and Workforce Development Agency. Pursuant to Government Code section 12080.5, the change became effective on July 3, 2012.

## **PERB's Major Functions—Detailed Description**

### **Unfair Practice Charges**

The investigation and resolution of unfair practice charges is the major function performed by PERB's Office of the General Counsel. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA. Unfair practice charges can be filed online, as well as by mail, facsimile, or personal delivery.

An unfair practice charge alleges an employer or employee organization engaged in conduct that is unlawful under one of the statutory schemes administered by PERB. Examples of unlawful employer conduct are: refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; and promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of an applicable statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the Dills Act, EERA, HEERA, MMBA, TEERA, Trial Court Act, Court Interpreter Act, or IHSSEERA has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, the Board agent must dismiss it. The charging party may appeal the dismissal to the Board itself. Under regulations adopted effective July 1, 2013, the Board can designate whether or not its decision in these cases will be precedential or non-precedential.

If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent may file an answer to the complaint.

Once a complaint is issued, usually another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 60 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled. A hearing generally occurs within 90 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision.

Proposed decisions that are not appealed to the Board itself are binding upon the parties to the case, but may not be cited as precedent in other cases before the Board.

Final decisions of the Board itself are both binding on the parties to a particular case and precedential, except as otherwise designated by a majority of the Board members issuing dismissal decisions pursuant to PERB Regulation 32320, subdivision (d). Text and headnotes for all but non-precedential Board decisions are available on our website ([www.perb.ca.gov](http://www.perb.ca.gov)) or by contacting PERB. On the PERB website, interested parties can also sign-up for electronic notification of new Board decisions.

## **Representation**

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications that have an internal and occupational community of interest. In most situations, if only one petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If two or more employee organizations are competing for representational rights of an appropriate bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent may hold an informal settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation, and in some cases a hearing, and issues an administrative determination or a proposed decision. That determination or decision sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB may conduct a representation election, unless the applicable statute and the facts of the case require the employer to grant recognition to an employee organization as the exclusive representative. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of “No Representation” appears on the ballot in every representation election.

PERB staff also assists parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA, HEERA, and the MMBA.

If the parties are unable to reach an agreement during negotiations under EERA, HEERA, or the Dills Act, either party may declare an impasse and request the appointment of a mediator. A Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, a SMCS mediator assists the parties in reaching an agreement. If settlement is not reached during mediation under EERA or HEERA, either party may request the initiation of statutory factfinding procedures. PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.



If the parties reach impasse during negotiations under the MMBA, and a settlement is not achieved through impasse dispute resolution procedures authorized by applicable local rules, only the employee organization may request the initiation of statutory factfinding procedures under the MMBA. If factfinding is requested, PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

A summary of PERB's 2014-2015 representation activity is on page 28.

### **Appeals Office**

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. The office maintains case files, issues decisions rendered, and prepares administrative records for litigation filed in California's appellate courts. The Appeals Office is the main contact with parties and their representatives while cases are pending before the Board itself.

### **Office of the General Counsel**

The legal representation function of the Office of the General Counsel includes:

- defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in the State appellate courts, as well as preparing the administrative record for litigation filed in California's appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order, or ruling, or with a subpoena issued by PERB;
- seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- defending the jurisdiction of the Board, submitting motions, pleadings, and amicus curiae briefs, and appearing in cases in which the Board has a special interest.

A summary of PERB's 2014-2015 litigation activity begins at page 66.

### **State Mediation and Conciliation Service**

SMCS was created in 1947, and mediates under the provisions of all of the California public and quasi-public sector employment statutes, as well as the National Labor Relations Act. This is a non-adjudicatory function within PERB that performs mediation and related work specific to the promotion of harmonious labor-management relations in both the public and private sectors of the state.

The processes are generally very informal, with efforts directed toward compromise and/or collaboration in achieving settlements. The core functions of SMCS involve work that is performed at no charge to the parties, including:

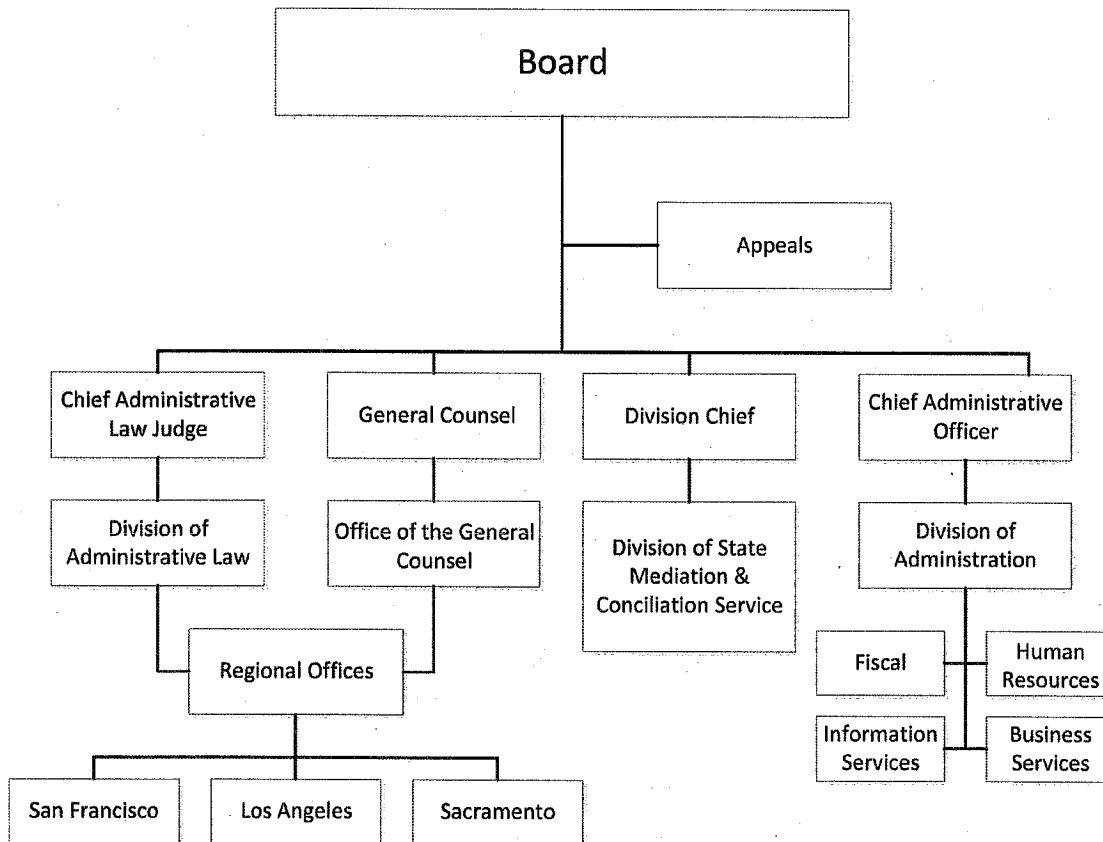
- Mediation to end strikes and other severe job actions;
- Mediation of initial and successor collective bargaining agreement disputes;
- Mediation of grievances arising from alleged violations of collective bargaining agreements and other local rules;
- Mediation of discipline appeals;
- Supervision of elections for decertification/certification of labor organizations, agency shop, and others; and
- Providing general education and information about the value of mediation in dispute resolution.

Chargeable services are also available. These include:

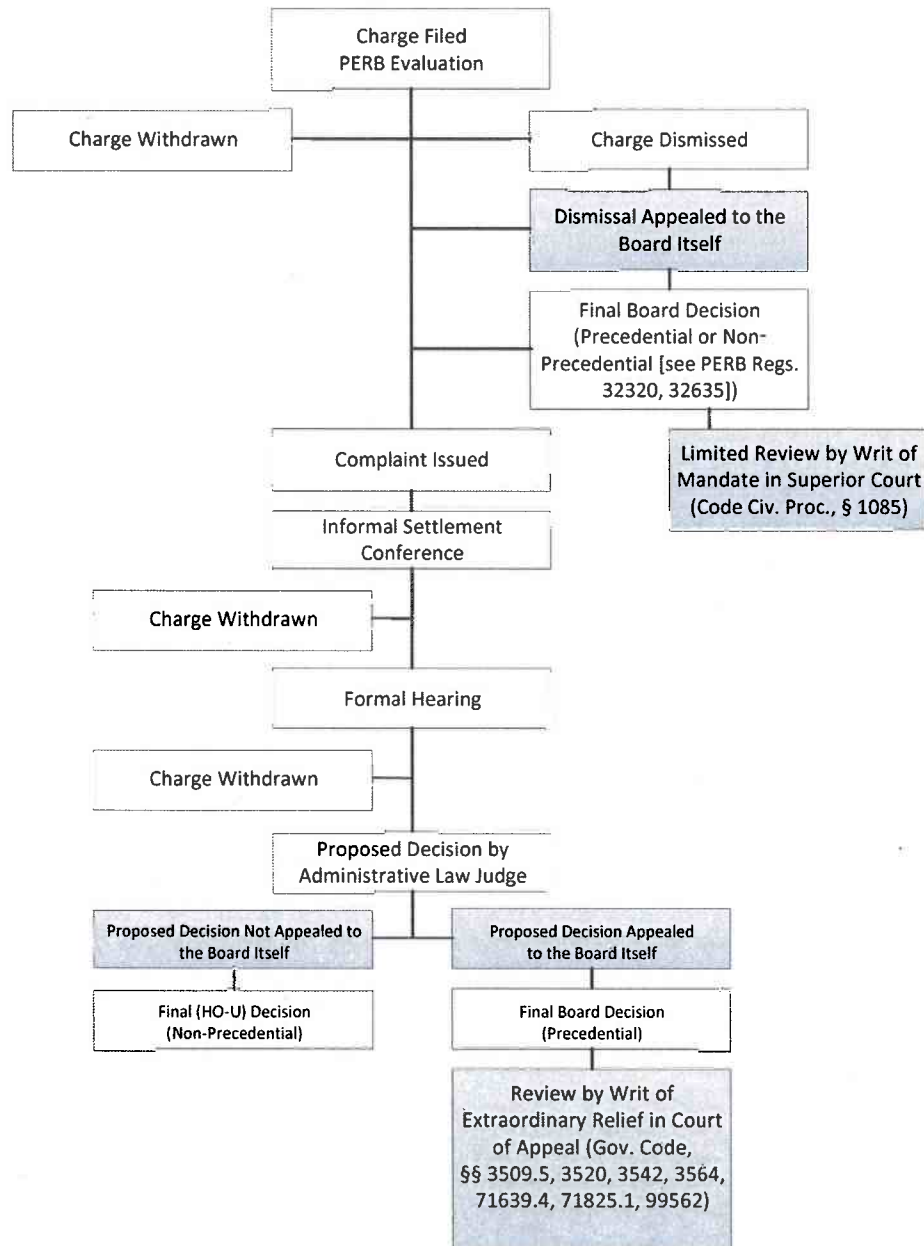
- Training and facilitation in interest-based bargaining, implementing effective joint labor-management committees, and resolving conflict in the workplace; and
- Assistance with internal union/employee organization elections or processes, or similar activities for labor or management that are not joint endeavors.

# Public Employment Relations Board

## Organizational Chart



## Unfair Practice Charge Flow Chart



## UNFAIR PRACTICE CHARGE (UPC) STATISTICS

### I. 2014-2015 by Region

Region	Total
Sacramento	190
San Francisco	214
Los Angeles	291
<b>Total</b>	<b>695</b>

### II. 2014-2015 by Act

Act	Total
Dills Act	72
EERA	272
HEERA	71
MMBA	260
TEERA	0
Trial Court Act	8
Court Interpreter Act	7
IHSSEERA	1
Non-Jurisdictional	4
<b>Total</b>	<b>695</b>

### III. Prior Year Workload Comparison: Charges Filed

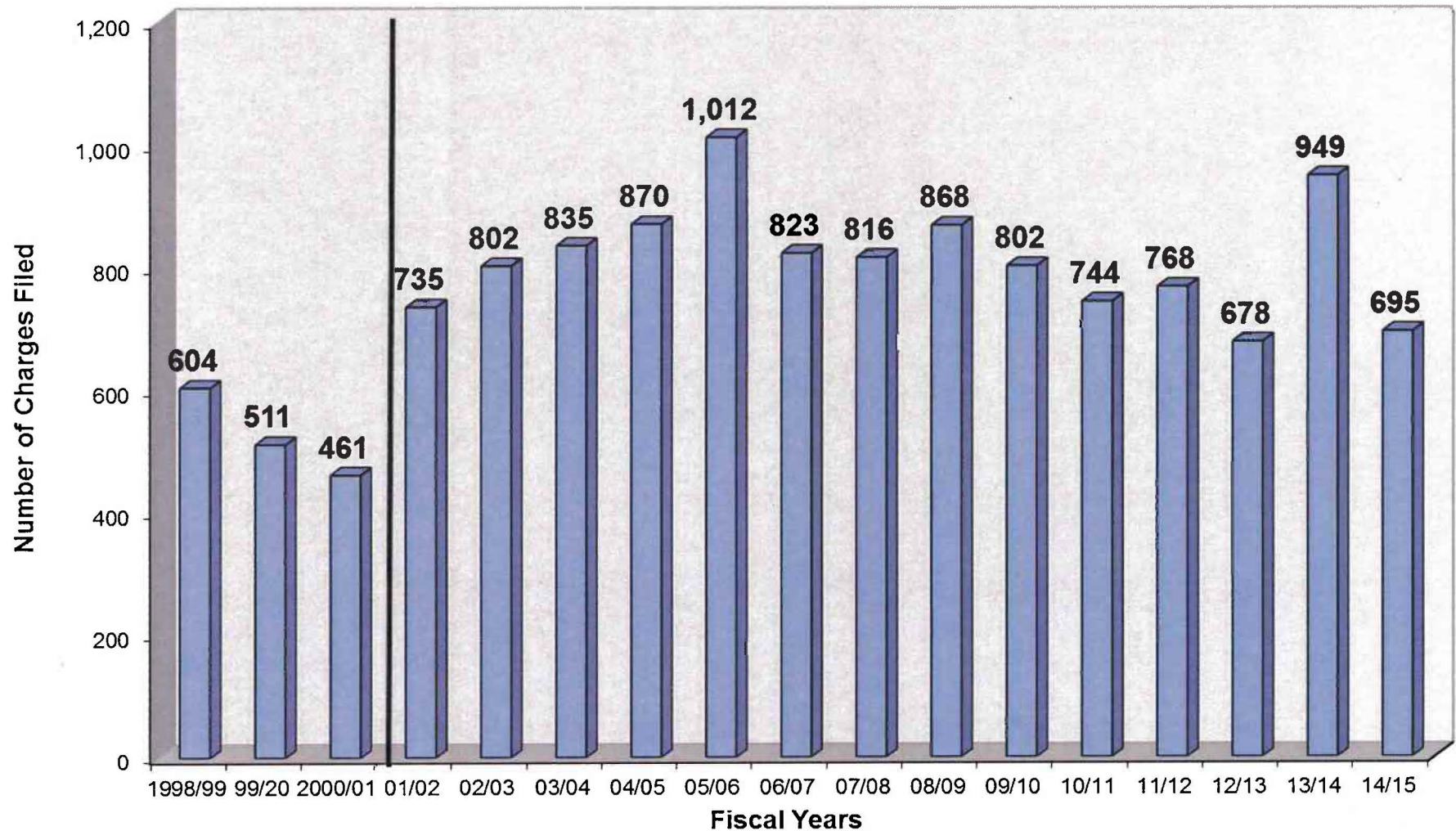
	2011/2012	2012/2013	2013/2014	2014/2015	4-Year Average
<b>Total</b>	768	678	949*	695	773

### IV. Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	79	73	301	453
San Francisco	111	68	103	282
Los Angeles	79	73	138	290
<b>Total</b>	<b>269</b>	<b>214</b>	<b>542</b>	<b>1,025</b>

\*173 Unfair Practice Charges were filed by the same individual on behalf of himself and/or other University of California employees regarding agency fee issues.

# Unfair Practice Charge Filings



Notes: The vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001). In Fiscal Year 2001-2002, the total number (935) was reduced by 200 for a similar set of filings. In Fiscal Year 2004-2005, the total number of charges filed (1,126) was adjusted to discount 256 nearly identical charges filed by a single group of employees.

## REQUESTS FOR INJUNCTIVE RELIEF (IR REQUESTS)

### Workload Comparison: IR Requests Filed

	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	8-Year Average
<b>Total</b>	28	19	13	16	21	17	25	19	20

## 2014-2015 REPRESENTATION CASE ACTIVITY

### I. Case Filings

Case Type	Filed
Request for Recognition	35
Severance	6
Petition for Certification	3
Decertification	9
Amended Certification	13
Unit Modification	39
Organizational Security	5
Arbitration	0
Mediation Requests (EERA/HEERA/Dills)	120
Factfinding Requests (EERA/HEERA)	23
Factfinding Requests (MMBA)	41
Factfinding Approved (MMBA)	34
Compliance	33
<b>Totals</b>	<b>361</b>

### II. Prior Year Workload Comparison: Cases Filed

	2011-2012	2012-2013	2013-2014	2014-2015	4-Year Average
Fiscal Year	294	347	350	361	338

### III. Elections Conducted

Amendment of Certification	0
Decertification	5
Fair Share Fee Reinstatement	0
Fair Share Fee/Agency Fee Rescission	2
Representation	4
Severance	0
Unit Modification	0
<b>Total</b>	<b>11</b>



## Elections Conducted: 7/1/2014 to 6/30/2015

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Winner</i>	<i>Unit Size</i>
<i>Decertification</i>		<i>Subtotal:</i>		
		5		
LA-DP-00401-M	WEST VALLEY MOSQUITO & VECTOR CONTROL	Laboratory	No Representation	8
SF-DP-00311-H	UNIVERSITY OF CALIFORNIA	UC Santa Barbara Skilled Crafts	State Employees Trades Council-Unit	86
LA-DP-00398-M	CITY OF CALEXICO	Wall Classified	Calexico Municipal Employees	58
SF-DP-00313-H	UNIVERSITY OF CALIFORNIA	Trades/Crafts	SETC-United	623
LA-DP-00399-E	INGLEWOOD UNIFIED SCHOOL DISTRICT	Wall Classified	CalPro Local 2345, Council 36	451
<i>Organizational Security - Rescission</i>		<i>Subtotal:</i>		
		3		
SF-OS-00200-E	KENWOOD ESD	Wall Certificated		13
SA-OS-00150-M	COUNTY OF SISKIYOU	Trades/Crafts		70
SA-OS-00149-M	COUNTY OF TULARE	General Employee Bargaining Unit		414
<i>Representation</i>		<i>Subtotal:</i>		
		3		
LA-RR-01230-E	PASADENA USD	Certificated Substitutes	Pasadena Substitute Teachers United	216
SA-RR-01149-M	ESCALON CONSOLIDATED FPD	Firefighter	No Representation	4
SF-RR-00956-E	BRENTWOOD UNION SCHOOL DISTRICT	Operations, Support Services	California School Employees Association	71
<i>Total Elections:</i>		11		

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2317a-S*	<i>CDF Firefighters v. State of California (Department of Forestry &amp; Fire Protection, State Personnel Board)</i>	The complaint alleged that the State Personnel Board (SPB) had a duty to bargain over its proposed amendments to its rules regarding disciplinary procedures for civil service employees.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> On remand from a superior court, the Board held that the SPB has no duty to bargain over its proposed amendments to its rules regarding disciplinary procedures for civil service employees because by adopting those rules, SPB was acting in its capacity as regulator of state employment, and not as a “state employer.”
2380a-M	<i>Selma Firefighters Association, IAFF, Local 3716 v. City of Selma</i>	The City filed a request for reconsideration of PERB Decision No. 2380-M.	<b>Precedential decision.</b> The Board denied the request for reconsideration, on the grounds that there were no prejudicial errors of fact, and the City merely sought to re-argue the legal contention raised earlier that it did not engage in surface bargaining.
2387-M	<i>Diane Lewis v. City of Oakland</i>	The charging party, an officer and member of the union’s bargaining team, excepted to the dismissal of the complaint and underlying unfair practice charge, which alleged that the City of Oakland had laid her off in retaliation for her union activity. The City cross-expected to the ALJ’s conclusion that the evidence established a prima facie case of discrimination.	<b>Precedential decision.</b> The Board affirmed the ALJ’s dismissal of the charge and complaint and rejected the City’s cross exception, finding that the evidence stated a prima facie case of discrimination, but also rejected the charging party’s exceptions, finding that, because of a budget shortfall and operational needs, the City established that it would have selected the charging party for layoff regardless of her protected activity.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2388-M*	<i>International Association of Firefighters, Local 1319, AFL-CIO v. City of Palo Alto</i>	The ALJ concluded that although charging party established a prima facie case that the employer violated the MMBA by unilaterally adopting rules for administration of employer-employee relations, viz., submitting a charter amendment to voters to repeal provisions for binding interest arbitration of collective bargaining impasses with police and firefighter employee organizations, without prior good faith consultation thereon, the employer established an affirmative defense that the charging party had waived by inaction its right to such consultation.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> The Board upheld the ALJ's conclusion that charging party had established a prima facie case, and reversed the ALJ's conclusion that the charging party had waived its right to consult. The Board ordered the employer to (1) rescind the action referring to voters a measure to repeal provisions for binding interest arbitration of collective bargaining impasses with police and firefighter employee organizations, and (2) meet and consult with representatives of charging party over modification or repeal of rules or regulations for the administration of employer-employee relations, including without limitation procedures for the resolution of collective bargaining disputes.
2389	<i>Constantino Gabrie v. Los Angeles Community College District</i>	Charging party alleged that the employer violated the MMBA and other employment rights of charging party arising under statutes not administered by the Board, when it refused to provide him retiree health benefits pursuant to a settlement agreement under which he had agreed to retire. PERB's Office of the General Counsel assessed charging party's allegations under EERA, and dismissed, concluding that charging party did not timely file his charge, that the charge failed to allege a prima facie retaliation claim under EERA, and that PERB lacked jurisdiction over alleged violation of charging party's rights arising under statutes not administered by PERB.	<b>Non-precedential decision.</b> The Board affirmed dismissal, concluding that charging party's only protected conduct under EERA occurred after, rather than before, the alleged retaliation, and that charging party failed to establish good cause for the Board to consider a new allegation on appeal that the employer engaged in further adverse conduct when it sought declaratory relief vis-à-vis its retiree health benefits obligations under the settlement agreement with charging party.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2390	<i>Sondra Davis v. Los Angeles Unified School District</i>	The ALJ concluded that charging party failed to establish a nexus between her protected conduct and the employer's adverse actions and thus failed to prove a prima facie case of retaliation under the EERA. The ALJ also concluded that even if the charging party had established a prima facie case, the employer proved up its affirmative defense, viz., that it had a lawful alternative reason for the adverse actions and acted because of that reason when it terminated and took other adverse action against charging party.	<b>Precedential decision.</b> The Board affirmed the ALJ's proposed decision which it adopted as the decision of the Board itself, subject to the Board's discussion of the charging party's exceptions. The Board considered and rejected charging party's exceptions as, variously, untimely, unpersuasive and/or repetitive of claims already determined by the ALJ.
2391-H	<i>Wenjiu Liu v. Trustees of the California State University (East Bay)</i>	The complaint alleged that the Trustees of the California State University (East Bay) (CSUEB) retaliated against charging party because of his protected activity, including filing grievances and filing an unfair practice charge.	<b>Precedential decision.</b> The Board upheld the ALJ's dismissal of the retaliation charges, on the grounds that CSUEB demonstrated that it had, and acted because of, an alternative, non-discriminatory reason for denying charging party tenure and promotion, and that charging party's improper workplace conduct gave the employer cause for non-discriminatory discipline.
2391a-H*	<i>Wenjiu Liu v. Trustees of the California State University (East Bay)</i>	Charging party filed a request for reconsideration of PERB Decision No. 2391-H.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> The Board denied the request for reconsideration on the grounds that the evidence submitted by charging party does not meet the requirements under PERB Regulation 32410(a), either because it is not relevant to the issues sought to be reconsidered under PERB Regulation 32410(a)(4), and/or it does not impact or alter the decision of the previously decided case under PERB Regulation 32410(a)(5).

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2392-C	<i>Service Employees International Union, Local 721 v. San Bernardino County Superior Court</i>	The ALJ concluded that the charging party failed to establish that the employer's Employee Relations Rules (ERR) were unreasonable, that is, they were neither inconsistent with, nor did they fail to effectuate the purposes of, the Trial Court Act. The ALJ found that the employer's ERR and the existing MOU's extension language provided for window periods for filing decertification petitions and that none of those window periods was ever eliminated or shortened. Thus, the ALJ concluded that the employer's ERR did not interfere with the employees' right to choose an employee organization to represent them before the employer. Moreover, the ALJ found that charging party's decertification petition was filed outside the window period provided by the employer's ERR and concluded therefore that the petition had been properly dismissed.	<b>Precedential decision.</b> The Board affirmed the ALJ's findings, reasoning and conclusions to dismiss the charge. The Board ruled that ERR were not unreasonable and covered the matter in dispute, that application of PERB's own rules was therefore inappropriate, that taken together the respective MOUs and the ERR afforded charging party appropriate window periods within which to file a decertification petition, and the charging party failed to file its decertification petition within one of those window periods.
2393-M	<i>Sacramento Area Fire Fighters, IAFF Local 522 v. County of Sacramento</i>	The complaint alleged that respondent violated the MMBA when it implemented a blanket "No Union Logo" policy prohibiting bargaining unit employees from wearing firefighter uniform apparel bearing the union insignia while on duty.	<b>Precedential decision.</b> The ALJ concluded that respondent did not engage in unlawful interference because employees do not have the guaranteed right to wear public safety firefighter apparel (t-shirts and caps) that bear the union logo and dismissed the complaint and underlying charge.  The Board reversed, holding that respondent interfered with guaranteed employees' rights by implementing a blanket "No Union Logo" policy.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2394-C	<i>Service Employees International Union, Local 521 v. Santa Clara County Superior Court</i>	The ALJ concluded that the employer had no duty under the Trial Court Act to bargain over the decision to implement furloughs of all employees on court closure days pursuant to former Government Code section 68106. The ALJ also determined that the employer remained obligated to bargain effects of its furlough decision under section 68106, but that SEIU had not made a valid demand for effects bargaining.	<b>Precedential decision.</b> The Board affirmed the ALJ's determination that the employer did not violate the Trial Court Act or PERB regulations because it had no duty to bargain the employer's decision to implement furloughs under former Government Code section 68106, and because the charging party made no demand to bargain over the effects of the furlough decision.
2395	<i>Carol Reed v. San Mateo County Community College District</i>	The complaint alleged that respondent violated EERA when it issued charging party a notice of intent to discipline/demote and denied her appeal of a written reprimand because of her exercise of protected rights.	<b>Precedential decision.</b> The ALJ concluded that charging party failed to prove retaliation and dismissed the complaint and underlying charge.  While the matter was on appeal to the Board, parties reached a settlement of their dispute. The Board granted charging party's request to withdraw her exceptions and, by operation of law, the proposed decision became final.
2396-M	<i>Municipal Employees Agency for Negotiations v. City of Livermore</i>	The complaint alleged that respondent violated the MMBA when it unilaterally implemented a change in policy, eliminating paid meal periods for employees in certain bargaining unit classifications.	<b>Precedential decision.</b> The ALJ concluded that the respondent violated its duty to bargain in good faith.  The Board affirmed the proposed decision and adopted it as the decision of the Board itself as supplemented by a discussion of the respondent's exceptions.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2397	<i>Fremont Unified School District and Fremont Unified District Teachers Association, CTA/NEA</i>	The Association filed a unit modification petition to include behavioral intervention specialists in the bargaining unit for certificated employees.	<b>Precedential decision.</b> The Board held that behavioral intervention specialists were not "certificated employees" within the meaning of section 3545(b)(3) of EERA, because the position did not require a credential as defined by Education Code section 44002. Therefore, this position could not be added to the certificated unit because EERA section 3545(b)(3) prohibits classified employees being in the same bargaining unit as certificated employees.
2398-H	<i>University Council-American Federation of Teachers v. Regents of the University of California</i>	The complaint alleged that the Regents of the University of California (UC) repudiated the agreement between it and University Council-AFT (UC-AFT) regarding the classification of lecturers and adjunct professors when UC classified part-time instructors as non-bargaining unit adjunct professors.	<b>Precedential decision.</b> The Board held that UC unlawfully repudiated the agreement between it and UC-AFT regarding the classification of lecturers and adjunct professors by failing to classify as lecturers part-time instructors at the UCLA School of Law where their duties consisted only of teaching, and not research.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2399-M	<i>Service Employees International Union, Local 1021 v. County of Amador</i>	The Office of the General Counsel dismissed that portion of the charge which alleged that the County had violated the MMBA and PERB regulations by accepting and processing a decertification petition filed by a rival organization at a time when a collective bargaining agreement was in place. The charging party appealed the partial dismissal.	<b>Non-precedential decision.</b> The Board affirmed the partial dismissal of the unfair practice charge. Although the County and the representative had tentatively agreed to terms and the incumbent's membership had ratified the tentative agreement, the Board reasoned that because the County's governing body had not yet adopted the tentative agreement, the contract bar rule established by PERB regulations was not in place. Under PERB precedent, the operative date for the contract bar rule is the date of ratification by both parties, where ratification is a condition precedent of the agreement and where the parties had ground rules requiring ratification before any tentative agreements would be final.
2400-H	<i>Steven Culwell v. Trustees of the California State University</i>	The complaint alleged that the University had suspended an employee in retaliation for his protected conduct. The proposed decision found that the evidence established a prima facie case of discrimination, but that the University had proved as an affirmative defense that it would have suspended the employee anyway, because he had made threatening statements and gestures, in violation of a "zero-tolerance" policy against workplace violence, and because the employee had previously been disciplined for similar instances of misconduct. The charging party excepted to the proposed decision.	<b>Precedential decision.</b> The Board affirmed the ALJ's dismissal of the complaint and unfair practice charge. Because the charging party's exceptions focused on whether he had established a prima facie case rather than on the University's affirmative defense, the Board affirmed the dismissal, reasoning that the charging party's exceptions failed to identify any material error of fact, law, or procedure to warrant reversal.



## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2401	<i>Jefferey L. Norman &amp; Christopher Gillotte v. Jurupa Unified School District</i>	The complaint alleged that the District violated EERA when the District's attorney purportedly represented the president of the National Education Association-Jurupa in a deposition noticed by Gillotte in an administrative proceeding he was engaged in against the District.	<b>Non-precedential decision.</b> The Board affirmed the dismissal of the charge, holding that the District counsel's explaining the mechanics of depositions to an employee non-party witness, who also happens to be a union officer, is not tantamount to providing support or legal advice to an employee organization.
2401a	<i>Jefferey L. Norman &amp; Christopher Gillotte v. Jurupa Unified School District</i>	Charging party filed a request for reconsideration of PERB Decision No. 2401-E.	<b>Non-precedential decision.</b> The Board denied the request for reconsideration on the grounds that charging parties simply reiterated the same facts and arguments made on appeal of the original decision, and failed to show that the Board made a prejudicial error of fact in its decision. Charging parties also suggest the Board has made various errors of law, which may not serve as grounds for reconsideration.
2402-M	<i>Solano Probation Peace Officers' Association v. County of Solano</i>	The ALJ concluded that under the totality-of-circumstances test, the employer did not violate the MMBA or PERB regulations by failing to meet and confer in good faith when the employer sought "across the board" concessions from several bargaining units, nor did the employer violate its duty to provide information by failing to supply "target savings" information sought by charging party.	<b>Precedential decision.</b> The Board determined that the employer did not violate the MMBA or PERB regulations by seeking "across the board" concessions, by failing to supply "target savings" information or by offering binding arbitration as an incentive to reach an agreement.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2403	<i>California School Employees Association and its Chapter 32 v. Bellflower Unified School District / Bellflower Unified School District v. California School Employees Association and its Chapter 32</i>	In cases cross filed by employer and employee organization and consolidated for hearing, the ALJ concluded that the employer violated EERA section 3543.5(a), (b) and (c) by unilaterally imposing furlough days on the classified employee bargaining unit and by discriminating against certain classified bargaining unit members because of the employee organization's position in bargaining. The ALJ also concluded that the employer failed to establish that the employee organization had negotiated in bad faith.	<b>Precedential decision.</b> The employer filed exceptions after which the parties negotiated a resolution of their dispute and tendered jointly a request to dismiss with prejudice both pending cases. The Board deemed mutual withdrawal of the unfair practice charges and dismissal of PERB complaints to be consistent with the purposes of EERA and granted the parties' request.
2404	<i>Carlos E. Perez v. Los Angeles Community College District</i>	The complaint alleged that respondent violated EERA when it issued charging party a confidential letter placing him on administrative leave pending a fitness-for-duty examination, which directed him not to contact faculty members, staff or students about the subject of the letter.	<b>Precedential decision.</b> The ALJ concluded that respondent's directive to charging party constituted unlawful interference with protected rights.  The Board affirmed the proposed decision and adopted it as the decision of the Board itself as supplemented by a discussion of the respondent's exceptions.
2405	<i>Brian Crowell v. Berkeley Federation of Teachers, Local 1078</i>	The charge alleged that respondent breached its duty of fair representation, guaranteed under EERA, in connection with respondent's participation in a peer assistance and review program.	<b>Non-Precedential decision.</b> The Board affirmed the dismissal of the charge by the Office of the General Counsel for failure to state a prima facie case, i.e., that respondent's conduct was without a rational basis or devoid of honest judgment.

## 2014-2015 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2405a	<i>Brian Crowell v. Berkeley Federation of Teachers, Local 1078</i>	Charging party requested reconsideration of decision affirming dismissal of his charge.	<b>Precedential decision.</b> The Board denied the petition for reconsideration, holding that the petition for reconsideration procedure is not available to challenge a decision of the Board itself affirming the Office of the General Counsel's dismissal of an unfair practice charge.
2406-S	<i>Wayne McKay v. Service Employees International Union, Local 1000</i>	The charge alleged that respondent retaliated against him and breached its duty of fair representation, guaranteed under the Dills Act, in connection with charging party's inquiries and meeting requests concerning accrued leave that had been debited from his paycheck by DGS.	<b>Non-Precedential decision.</b> The Board affirmed the dismissal of the charge by the Office of the General Counsel on timeliness grounds and for failure to state a prima facie case, i.e., that respondent's conduct was without a rational basis or devoid of honest judgment.
2407-H	<i>Patrick Pelonero &amp; Ron Williams v. Trustees of the California State University (San Marcos)</i>	The complaint alleged that respondent violated HEERA when it denied charging parties overtime opportunities made available to other employees because of their exercise of protected rights.	<b>Precedential decision.</b> The ALJ concluded that charging parties failed to prove retaliation and dismissed the complaint and underlying charge.  The Board affirmed the proposed decision and adopted it as the decision of the Board itself as supplemented by a discussion of the charging parties' exceptions.
2408-H	<i>Wenjiu Liu v. Trustees of the California State University (East Bay)</i>	The complaint alleged that the California State University (East Bay) (CSUEB) interfered with charging party's rights to utilize the grievance process when it refused to implement an agreed-upon remedy.	<b>Precedential decision.</b> The Board upheld the allegation that CSUEB failed to implement the resolution of a grievance that required a written apology to charging party for the alleged misconduct of a CSUEB dean, but dismissed the remaining interference allegations.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2409-C*	<i>Service Employees International Union, Local 1021 v. Sonoma County Superior Court</i>	The complaint alleged that Sonoma County Superior Court interfered with rights of employees and employee organizations when it denied union representation at a meeting convened by the Court pursuant to employee's request for reasonable accommodation for her disability.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> The Board held that the right to representation in all matters of employer-employee relations includes the right to have a union representative present upon the employee's request at an interactive process meeting convened to explore possible reasonable accommodations to an employee's disability. <i>Trustees of the California State University</i> (2006) PERB Decision No. 1853 is overruled.
2410-M	<i>Robert Hample v. Santa Barbara County Probation Peace Officers Association</i>	The charge alleged that respondent breached its duty of fair representation, guaranteed by MMBA, when it failed to hold a valid election for executive board members, failed to provide charging party with representation, retaliated against him for complaining about the union president's lack of responsiveness and failed to provide an accounting of union dues expenditures.	<b>Non-Precedential decision.</b> The Board affirmed the dismissal of the charge by the Office of the General Counsel for failure to state a prima facie case, i.e., that respondent's conduct was without a rational basis or devoid of honest judgment.
2411	<i>Brian Crowell v. Berkeley Unified School District</i>	The charge alleged that respondent violated EERA by giving charging party an unsatisfactory performance evaluation, referring him to a peer assistance and review program and issuing him a notice of dismissal because of his exercise of protected rights.	<b>Precedential decision.</b> The Board reversed the dismissal of the charge by the Office of the General Counsel and remanded the matter for issuance of a complaint, holding that the filing of a curriculum complaint is protected activity.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2412-M	<i>Milpitas Employees Association v. City of Milpitas</i>	The ALJ concluded that the employer had a duty under the MMBA to meet and confer, that the employer failed to provide reasonable notice of its decision to outsource bargaining unit work, but that both by agreement and by inaction, the union had waived the right to meet and confer, and dismissed the complaint.	<b>Precedential decision.</b> The charging party filed exceptions, after which the parties negotiated a resolution of their dispute and tendered jointly a request to dismiss with prejudice the complaint. The Board deemed withdrawal of the unfair practice charge and dismissal of PERB complaint to be consistent with the purposes of MMBA and granted the parties' request.
2413-M	<i>International Brotherhood of Electrical Workers, Local 1245 v. Turlock Irrigation District</i>	The complaint alleged that the District unilaterally terminated a past practice of compensating employees who were mistakenly denied overtime assignments when they were skipped over on the overtime call-out list.	<b>Precedential decision.</b> The ALJ dismissed the complaint, having determined that there was no past practice regarding payment for missed overtime assignments. Following the filing of exceptions, the Board granted the charging party's request to withdraw its exceptions and dismiss the charge with prejudice. The proposed decision was therefore vacated.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2414-M	<i>Service Employees International Union, Local 521 v. County of Tulare</i>	Subject to a Memorandum of Understanding (MOU) the parties had agreed to a provision that would freeze merit and step increases during the term of that agreement, and upon its expiration, employees would be restored to the suspended salary and promotion schedule. In negotiations for a successor agreement, the parties were unable to agree on whether to continue the freeze on pay increases and promotions. After reaching impasse the County imposed its proposal to continue the freeze on merit and step increases. The ALJ concluded that because negotiations for a successor agreement had resulted in a bona fide impasse, the County was free to impose a continuation of the freeze.	<b>Precedential decision.</b> The Board reversed the proposed decision and determined that the parties' agreement contained an enforceable promise to restore employees to the previous salary and promotion schedule, even if this obligation did not mature until other terms of the MOU had expired. The Board rejected the County's defense that it was privileged to impose terms and conditions unilaterally after negotiations for a successor agreement had resulted in impasse. The Board explained that, even after bargaining to impasse as to future wages and benefits, the County could not impose retroactive terms that extinguished its outstanding contractual obligations for wages and benefits under the previous agreement.
2415	<i>Juana Lorena Hernandez v. San Francisco Unified School District</i>	Charging party alleged that the District retaliated against her for exercising rights protected by the EERA. PERB's Office of the General Counsel dismissed charging party's allegations on the basis that she had failed to demonstrate that the employer had taken adverse action against her and, even if the employer had done so, charging party failed to demonstrate that the employer had an unlawful motive or that the employer's conduct was provoked by her exercise of protected rights. The Office of the General Counsel further declined to attribute the possible unlawful motive of charging party's co-worker to the employer under a "cat's paw" theory of liability.	<b>Non-precedential decision.</b> The Board affirmed dismissal of the charge. The Board reaffirmed <i>Redlands Unified School District</i> (1982) PERB Decision No. 235, which held that sporadic performance of "quasi-supervisory" functions is "insufficient to confer supervisory status" upon classroom teachers. The Board reviewed charging party's allegations, to wit, that a supervisory classroom teacher had acted against her because of charging party's protected activity, and concluded that charging party's allegations did not establish that the classroom teacher had engaged in quasi supervisory functions sufficient to confer supervisory status on the classroom teacher.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2416-H	<i>Robert Pellegrini v. Regents of the University of California (San Francisco)</i>	The charge alleged that the UC violated section 3571(a) of HEERA by retaliating against charging party for protected activity.	<b>Non-precedential decision.</b> The Board affirmed dismissal of the charge on the grounds that charging party included no explanation or grounds for the appeal.
2417-S	<i>Charles Rachlis v. California Association of Professional Scientists</i>	The complaint alleged that the union violated sections 3515.5 and 3519.5(b) of the Dills Act by failing to reasonably apply disciplinary procedures when it terminated charging party's union membership based on allegations that he advocated and supported the decertification of the union.	<b>Precedential decision.</b> The Board reversed the proposed decision and dismissed the complaint, concluding that an internal union discipline panel reasonably dismissed member's motion to disqualify the panel and permitted member a hearing on the merits, thereby using a fair procedure that granted him substantial justice.
2418-M	<i>Service Employees International Union United Healthcare Workers West v. Fresno County In-Home Supportive Services Public Authority</i>	The ALJ dismissed a complaint and unfair practice charge which alleged that a public agency had bargained in bad faith and unlawfully imposed a no-strikes clause and a separability/savings clause, both of which had been tentatively agreed to in negotiations. The charging party excepted to the proposed decision.	<b>Precedential decision.</b> The Board affirmed the administrative law judge's dismissal of the surface bargaining allegation but reversed the dismissal of the two unilateral change allegations. Because the parties' tentatively-agreed to proposals for no strikes language and a separability/ savings clause that referenced "this Agreement" involved statutory rights that the representative had not waived the Authority was not privileged to impose either of the two tentative agreements, even after bargaining in good faith to impasse.
2419-M	<i>Dora Barnes v. Service Employees International Union, Local 1021</i>	The charge alleged that respondent breached its duty of fair representation, guaranteed under MMBA, by forming a new chapter to represent social worker classifications in the bargaining unit by department, thereby splitting representation of the social worker classification.	<b>Non-precedential decision.</b> The Board affirmed the dismissal of the charge by the Office of the General Counsel for failure to state a prima facie case, i.e., that respondent's conduct was without a rational basis or devoid of honest judgment.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2420	<i>Christopher Gillotte v. Jurupa Unified School District</i>	The complaint alleged that the District violated EERA section 3543.5(a) by terminating charging party's employment in retaliation for his protected activity.	<b>Precedential decision.</b> The Board upheld the dismissal of the complaint, concluding that in light of charging party's repeated instances of misconduct, both before and after his protected conduct, the District proved that it would have taken the same actions even if charging party had not participated in protected conduct.
2421	<i>Catherine Lily Bastug v. California School Employees Association &amp; its Santa Barbara Chapter 37</i>	The charge alleged that respondent breached its duty of fair representation, guaranteed under EERA, in connection with a reduction in hours from 3.5 to 3 hours per day that resulted from a seniority-based layoff/displacement process.	<b>Non-precedential decision.</b> The Board affirmed the dismissal of the charge by the Office of the General Counsel on timeliness grounds and for failure to state a prima facie case, i.e., that respondent's conduct was without a rational basis or devoid of honest judgment.
2422-H	<i>Regents of the University of California and University Council-American Federation of Teachers</i>	A Board agent denied a unit modification petition to include newly-created Professor of Practice and Visiting Professor of Practice classifications in an existing unit of the University's Non-Academic Senate instructional employees.	<b>Precedential decision.</b> The Board affirmed the proposed decision which denied the unit modification petition. Although it was undisputed that one Professor of Practice was engaged primarily in instruction, he was also assigned to perform lay or non-academic research duties. Two other employees in the newly-created classifications had engaged solely in research duties and thus also had insufficient community of interest with employees in the Non-Academic Senate Instructional Unit. The Board also declined to consider modifying the Instructional Unit to include vacant positions because, in the absence of any assigned duties, there was no evidence of a community of interest.



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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2423-M*	<i>San Bernardino County Public Attorneys Association v. County of San Bernardino (Office of the Public Defender)</i>	The complaints alleged that the Public Defender violated the MMBA by denying representation rights by implementing a policy prohibiting deputy district attorneys from representing deputy public defenders in investigatory interviews; by threatening employees with discipline if they did not participate in an investigatory interview without representation; and by failing to bargain in good faith by unilaterally implementing this policy.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> The Board held that the Public Defender's policy prohibiting the Association from appointing deputy district attorneys to represent deputy public defenders in employer-initiated investigatory interviews and other personnel matters interferes with the right of representation. Even though the employer established a business necessity for the rule, it had alternatives to the rule because it had the right to forego the interview. The unilateral adoption of this policy also violated the duty to bargain.
2424-M	<i>Talai Smith v. City of Inglewood</i>	The complaint, which named the exclusive representative as the charging party, alleged that respondent violated MMBA when it unilaterally implemented a change in its reclassification policy.	<b>Precedential decision.</b> Although the exclusive representative withdrew prior to the formal hearing, the ALJ allowed the affected employee to proceed in place of the exclusive representative and amended the complaint on his own motion to allege a violation of a local rule governing reclassification. The ALJ ultimately dismissed the (b) and (c) violations in the original complaint for lack of standing and dismissed the (a) violation in the original complaint and the local rules violation in the amended complaint for failure of proof.  The Board affirmed the dismissal of the complaint and underlying charge but did not adopt the proposed decision as the decision of the Board itself, holding that (1) the affected employee had no standing to pursue a bad faith bargaining complaint even if she had been properly joined; (2) the ALJ had no authority

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			to sua sponte amend the complaint to allege a violation of a local rule; and (3) not all local rules are subject to PERB's jurisdiction.
2425	<i>Sondra June Shorter v. United Teachers Los Angeles</i>	The charging party appealed the dismissal of her unfair practice charge alleging that the exclusive representative had violated its duty of fair representation by failing to provide the employee with the benefits, protections and services guaranteed to her by the collective bargaining agreement, and by failing to provide her with adequate representation in extra-contractual pre-disciplinary and disciplinary proceedings that resulted in her termination.	<b>Non-precedential decision.</b> The Board affirmed the dismissal of the unfair practice charge.
2426	<i>Babette Dershem v. California School Employees Association</i>	A school employee alleged that the exclusive representative had violated its duty of fair representation when it decided, on the advice of its attorney, not to proceed to arbitration with a grievance asserting the employee's eligibility for certain retirement benefits under a settlement agreement negotiated with the employer by the union's attorney. The appeal largely reiterated arguments already adequately considered and rejected by the Office of the General Counsel and failed to identify any material issue of fact, law or procedure warranting reversal of the dismissal.	<b>Non-precedential decision.</b> The Board affirmed the dismissal of the charge.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2427-M*	<i>County of San Luis Obispo v. San Luis Obispo Government Attorneys' Union and San Luis Obispo Deputy County Counsel Association</i>	The County alleged that that two unions representing County employees had failed and refused to bargain regarding a proposal to change pension contribution formulas and a proposal to change the County's prevailing wage formula. An ALJ determined that the County's pension contribution proposal involved deferred compensation, a negotiable subject, and was not a "vested right" that was removed from the scope of representation, because the governing pension plan included no specific right to the formula the County proposed to change. The ALJ similarly concluded that the unions had refused to bargain over the prevailing wage proposal by asserting that, once the formula had been negotiated, it "vested" and could not be altered to the detriment of employees. The unions excepted to the ALJ's findings and conclusions as to both allegations.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> The Board affirmed the proposed decision's conclusion that the unions had failed and refused to bargain in good faith over the pension contribution formula proposal, because the unions' had admitted in their pleadings that they refused to bargain over this subject and because the pension formula was not a vested right beyond the scope of mandatory bargaining. The Board reversed the ALJ's conclusion that the unions had failed and refused to bargain over the County's proposal to change the prevailing wage formula because, although the unions had incorrectly asserted that previously negotiated formula had "vested," they also gave other reasons that adequately explained their rejection of this proposal.
2428-M	<i>Debra E. Roy v. Service Employees International Union, United Healthcare Workers West</i>	Charging party alleged that the employee organization violated the MMBA when it deducted fees from her paycheck without her authorization. Charging party also challenged the constitutionality of MMBA section 3502.5(a) based on Supreme Court's decision in <i>Harris v. Quinn</i> (2014) 134 S.Ct. 2618. PERB's Office of the General Counsel declined to address charging party's constitutional challenge to MMBA section 3502.5(a) based on PERB's lack of jurisdiction to declare a statute unconstitutional or to refuse to enforce a	<b>Non-precedential decision.</b> The Board affirmed the dismissal. The Board concurred that it lacks jurisdiction to declare unconstitutional the statutes it enforces or to refuse to enforce these statutes on constitutional grounds absent a determination to that effect by a California appellate court. The Board also concluded that charging party failed to state with sufficient specificity how the employee organization's conduct was fraudulent or what portions of the payroll deduction authorization were fraudulently procured. The Board also declined to consider

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		statute on constitutional grounds absent a determination by an appellate court that the statute is unconstitutional. Based on a payroll deduction authorization form signed by charging party, the Office of the General Counsel concluded that charging party failed to allege sufficiently that the employee organization had deducted membership dues without charging party's authorization.	evidence tendered by charging party for the first time on appeal, concluding that charging party had failed to demonstrate good cause for failing to tender the evidence the Office of the General Counsel during the earlier investigation of her charge.
2429-M	<i>Orange County Attorneys Association v. County of Orange</i>	The Association's charge alleged that the County violated the MMBA by failing to negotiate in good faith during successor agreement negotiations and that the County unlawfully imposed terms on the Association's bargaining unit.	<b>Precedential decision.</b> The parties submitted a joint request for dismissal. The Board granted the request finding it to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.
2430-M	<i>Service Employees International Union, Local 521 v. County of Kern</i>	A proposed decision concluded that the County had violated its duty to bargain by unilaterally subcontracting the work of maintenance and groundskeeping employees exclusively represented by the charging party, and by failing to provide timely and complete responses to requests for information about its subcontracting agreements. However, the proposed decision dismissed an allegation that the County had unlawfully entered into subcontracting agreements. The charging party filed exceptions with the Board but then requested leave to withdraw its exceptions after reaching a settlement agreement.	<b>Precedential decision.</b> The Board determined voluntary settlement of the dispute was consistent with the MMBA's purpose of promoting harmonious labor relations and granted the charging party's request to withdraw its exceptions.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2431-M	<i>Santa Clara County Correctional Peace Officers Association v. County of Santa Clara</i>	The exclusive representative of a unit of correctional employees, including some peace officers, appealed the dismissal of its unfair practice charge alleging that the County had unilaterally altered the terms of the parties' expired memorandum of understanding and/or the County's established practice governing reimbursement of employees for training and development expenses.	<b>Precedential decision.</b> The Board determined that it had jurisdiction to hear the charge. Although the MMBA limits PERB's jurisdiction as to "persons" who are peace officers, it does not preclude organizations representing such persons from having disputes considered by PERB. The Board reversed the dismissal and remanded to the Office of the General Counsel for issuance of a complaint. Dismissal was inappropriate because the representative had asserted plausible legal theories based on the expired MOU language governing tuition reimbursements and the County's established practice, as codified by its own reimbursement forms.
2432	<i>Robin Robinson v. Los Angeles Unified School District</i>	The charging party filed exceptions to a proposed decision which dismissed allegations that the District had terminated her in retaliation for filing a grievance and requesting union assistance in resolving workplace problems.	<b>Precedential decision.</b> The Board affirmed the dismissal of the complaint and unfair practice charge because the charging party's exceptions failed to comply with the requirements of PERB regulations and identified no error of fact, law, or procedure to warrant reversal.
2433-M	<i>National Union of Healthcare Workers v. Salinas Valley Memorial Healthcare System</i>	The complaint alleged that the Salinas Valley Memorial Healthcare System (Hospital) refused to negotiate with National Union of Healthcare Workers (NUHW) over the timing, number and identity of employees to be laid off, and over the impact and effects of the layoffs on remaining employees.	<b>Precedential decision.</b> The Board affirmed the dismissal, finding that NUHW failed to prove that the Hospital had refused to negotiate over the number, timing and related effects of layoff employees or over the effects of the layoff on those employees who remained in the Hospital's employ, or had prematurely proceeded with the layoff prior to reaching impasse.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2434	<i>Anaheim Union High School District v. American Federation of State, County and Municipal Employees, Local 3112 / American Federation of State, County and Municipal Employees, Local 3112 v. Anaheim Union High School District</i>	In two cases consolidated for formal hearing, the exclusive representative and the school district charged each other with surface bargaining in violation of EERA; and the exclusive representative alleged that the school district dismissed the union vice-president and member of the bargaining team because of his exercise of protected rights.	<p><b>Precedential decision.</b> The ALJ concluded that both the exclusive representative and the school district violated their respective duties to bargain in good faith; the school district committed a per se violation of the duty to bargain in good faith by refusing to meet with the bargaining team if it included the vice president; and the exclusive representative failed to prove retaliation.</p> <p>The Board affirmed the proposed decision and adopted the proposed decision as the decision of the Board itself as supplemented by a discussion of the exclusive representative's exceptions and the school district's cross-exceptions.</p>
2435-M	<i>Blaine Drewes v. City of Livermore</i>	The charge alleged that the City violated MMBA by applying an unreasonable requirement permitting only employee organizations to file a petition to modify an existing bargaining unit, thereby effectively prohibiting individual employees from filing such petitions.	<b>Non-precedential decision.</b> The Board affirmed the dismissal of the charge, because it is well established an individual does not have standing to file a unit modification petition with PERB. The similar local rule is reasonable.
2436-M	<i>Fresno County Prosecutors Association v. County of Fresno</i>	The ALJ concluded that the employer engaged in surface bargaining and as well in per se bad faith bargaining, in violation of its duty under the MMBA and PERB regulations to meet and confer in good faith with charging party.	<b>Precedential decision.</b> The employer filed exceptions after which the parties negotiated a resolution to their dispute and tendered jointly a request to dismiss with prejudice the complaint. The Board deemed withdrawal of the unfair practice charge and dismissal of the PERB complaint to be consistent with the purposes of MMBA and granted the parties' request.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2437-H	<i>John Joseph Carvalho v. California Faculty Association</i>	The charge alleged that the Association breached its duty of fair representation by refusing to arbitrate charging party's grievance over denial of his request for tenure and for allegedly colluding with the California State University in denying tenure.	<b>Non-precedential decision.</b> The Board affirmed dismissal of the charge, holding that charging party failed to allege facts sufficient to state a prima facie charge of a breach of duty of fair representation. Charging party's appeal merely reiterates facts alleged in the unfair practice charge and restates arguments made to the PERB's Office of the General Counsel, failing to state "the specific issues of procedure, fact, law or rationale to which the appeal is taken."
2438*	<i>United Teachers Los Angeles v. Los Angeles Unified School District</i>	The complaint alleged that the District violated EERA by refusing to provide to United Teachers of Los Angeles (UTLA) the names and work locations of unit members who were temporarily reassigned during the District's investigation of the employees' alleged misconduct without first providing each employee with an opportunity to opt out of disclosure to UTLA.	<b>Precedential decision—*JUDICIAL APPEAL PENDING.</b> The Board affirmed the proposed decision and held that the District violated EERA by conditioning complying with UTLA's request for the names and work locations of reassigned unit members on the employee agreeing that such information could be provided. Employees' privacy interests were outweighed by the union's need for the information in order to adequately represent unit members.
2439	<i>Yvonne Harriet Lewis v. California School Employees Association &amp; its Chapter 610</i>	The charge alleged that the union violated EERA by breaching its duty of fair representation when it failed to adequately challenge her layoff by the Center Joint Unified School District.	<b>Non-precedential decision.</b> The Board upheld the dismissal, holding that the charging party failed to allege facts sufficient to state a prima facie charge of a breach of duty of fair representation, and that charging party's appeal failed to state "the specific issues of procedure, fact, law or rationale to which the appeal is taken."

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2440	<i>California School Employees Association &amp; its Capistrano Chapter 224 v. Capistrano Unified School District</i>	A school district excepted to a proposed decision which concluded that the district had violated EERA when its supervisor continued a conversation with a classified employee about a new workplace program after the employee said that, "if this is going to be disciplinary," she wanted a representative.	<b>Precedential decision.</b> The Board affirmed the proposed decision and ordered make-whole relief, including expungement of a written reprimand issued to the employee for her conduct at the unlawful interview.
2441	<i>Poway Unified School District and Poway School Employees Association</i>	The Association filed a unit modification petition seeking to add substitute employees to the existing classified unit. The Hearing Officer determined that of the 135 classifications petitioned for; only 12 were filled by a substitute employee at the time of the hearing. Of 12 filled classifications, the Hearing Officer determined that those substitutes shared a sufficient community of interest with the rest of the classified bargaining and placed them in the bargaining unit.	<b>Precedential decision.</b> The Board affirmed the proposed decision. There was no evidentiary support for the employer's contention that the petitioned-for substitutes were casual employees such that their exclusion from the bargaining unit was appropriate. Rather, the record established that the substitutes at issue had a reasonable expectation of continued employment.



## 2014-2015 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS\*

\*Administrative Determinations decided by the Board itself are **precedential decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-415-M	<i>City &amp; County of San Francisco and Office of Community Investment &amp; Infrastructure and Service Employees International Union, Local 1021 / City &amp; County of San Francisco and Office of Community Investment &amp; Infrastructure and International Federation of Professional &amp; Technical Employees, Local 21</i>	The Board declined to consider joint employer issues raised in an administrative appeal from a decision regarding factfinding when the same allegations were included in an unfair practice charge pending before PERB's Office of the General Counsel.	The Board affirmed the administrative determination because, unlike an administrative appeal, PERB's unfair practice proceedings include the opportunity for sworn testimony and the development of a detailed factual record on which a decision can be made. The Board explained that the unfair practice process is thus more appropriate for considering complex factual and legal issues included in an unfair practice charge.
Ad-416-C	<i>Service Employees International Union, Local 721 v. San Bernardino County Superior Court</i>	Charging party attempted service on the employer with a statement of exceptions both by fax and mail. Part of the charging party's fax transmittal to the employer was illegible. PERB Regulation 32130(c) requires that a respondent file its response to exceptions within twenty (20) days after receipt of service by fax. PERB received employer's response to the exceptions twenty three (23) days after charging party's service by fax. PERB's Appeals Assistant denied the employer's response as untimely filed. Employer appealed.	The Board reasoned that because the charging party's service by fax was illegible and thus defective, the only service perfected by charging party was by mail. With service by mail a party is entitled to the extra five (5) days pursuant to PERB Regulation 32130(c). Therefore, the Board concluded that the employer's response to exceptions, received on the 23 <sup>rd</sup> day after service by mail, was timely filed.

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### ADMINISTRATIVE DETERMINATIONS\*

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-417	<i>California School Employees Association &amp; its Chapter 392 v. Jurupa Unified School District</i>	In a case in which the exclusive representative alleged that the respondent retaliated against an employee in violation of EERA, the ALJ dismissed the complaint and underlying charge in a proposed decision, which neither party excepted to. The affected employee filed a request for extension of time within which to file exceptions and a statement of exceptions, which the Appeals Assistant denied because the affected employee was not a party.	The Board denied the affected employee's administrative appeal from the Appeals Assistant's determination, holding that the affected employee lacked party status to file a request for extension of time or a statement of exceptions. The Board ordered that the proposed decision become final.
Ad-418-M	<i>Workforce Investment Board of Solano County and Service Employees International Union, Local 1021</i>	PERB's Office of the General Counsel concluded that employer is a public agency within the MMBA, subject both to PERB's jurisdiction and the factfinding provisions of MMBA and PERB regulations. The Office of the General Counsel also approved the employee organization's request that a dispute over "mid-term layoffs" be submitted to factfinding. Employer appealed.	Board ruled that: (1) employer is not a private corporation, but a public agency within the MMBA, subject both to PERB's jurisdiction and the factfinding provisions of MMBA and PERB regulations; and (2) employee organization's declaration of impasse over "mid-term layoffs" was sufficient basis to invoke factfinding under the MMBA and PERB's regulations.

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### ADMINISTRATIVE DETERMINATIONS\*

\*Administrative Determinations decided by the Board itself are **precedential decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-419-M	<i>City &amp; County of San Francisco and Service Employees International Union, Local 1021</i>	The City appealed from a PERB administrative determination that factfinding procedures defined in the MMBA applied to a bargaining dispute concerning the effects on employees' terms and conditions of employment of the City's decision to institute biometric time clocks at the City's Fine Arts Museums.	The Board affirmed the administrative determination and held that MMBA factfinding procedures apply to bargaining disputes over all matters within the scope of representation, including the effects on terms and conditions of employment of an employer's implementation of a matter of managerial prerogative. Resumption of negotiations after union requests factfinding does not moot the request. Employer could withdraw its declaration of impasse, but did not do so here.
Ad-420-M	<i>San Francisco Housing Authority and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local Union 38</i>	Employee organization petitioned to have maintenance mechanic employees reassigned to a different bargaining unit. PERB's Office of the General Counsel determined that while PERB's unit modification procedures permit the transfer of positions or classifications between bargaining units, petitions seeking such transfer must be filed jointly by all the affected exclusive representatives. Since the organization representing status quo did not join in the petition, the Office of the General Counsel dismissed the petition. Employee organization seeking transfer appealed.	The Board affirmed the Office of the General Counsel's determination, concluding that under PERB Regulation 61450(b)(3) unit modification petitions seeking to transfer represented employees or classifications to a different bargaining unit must be joined by all affected exclusive representatives, and failure to obtain such joinder is a basis for dismissing the petition.

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### ADMINISTRATIVE DETERMINATIONS\*

\*Administrative Determinations decided by the Board itself are **precedential decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-421-M	<i>City of Parlier v. International Union of Operating Engineers, Stationary Engineers, Local 39</i>	The union appealed from a PERB administrative determination dismissing a representation petition, on the grounds that rules that purport to exclude confidential employees from units that include non-confidential employees are repugnant to the MMBA.	The Board upheld the dismissal of the representation petition because: (1) the Board lacks jurisdiction to consider a representation petition where a city has adopted local rules that address petitions by employee organizations for recognition as exclusive representatives; and (2) the appropriate avenue for challenging a city's election-related rules as being unreasonable, or alleging the rule is not consistent with or does not effectuate the purposes of the express provisions of the MMBA, is an unfair practice charge, not a representation petition before PERB.
Ad-422-M	<i>City of Monterey Park and Monterey Park City Employees Association and Service Employees International Union, Local 721</i>	Following the investigation of a decertification petition, the Office of the General Counsel issued an administrative determination concluding that the decertification petition had been timely filed with the requisite proof of support and that a decertification election would be conducted to determine the employee organization, if any, to be certified as the exclusive representative of the bargaining unit in question.	While an appeal by the incumbent exclusive representative from the Office of the General Counsel's administrative determination was pending before the Board, the Office of the General Counsel requested that the matter be recalled to the Office of the General Counsel for further processing, which request was granted by the Board.

## 2014-2015 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS\*

\*Administrative Determinations decided by the Board itself are **precedential decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-423-M	<i>City of Folsom and Stationary Engineers, Local 39</i>	The City appealed from and requested a stay of an administrative determination ordering it to proceed to factfinding over a dispute involving employee classification and compensation, allegedly covered by an existing agreement.	The Board denied the City's appeal and request for a stay of the administrative determination, explaining that the Legislature intended to make MMBA factfinding available for any dispute over any matter within the scope of representation, so long as the employee organization's request is timely and the dispute is not subject to one of the statutory exceptions. The Board thus declined to consider the City's argument that the dispute in question was subject to an existing collective bargaining agreement.
Ad-424-M	<i>Service Employees International Union, Local 1021 v. City of Fremont</i>	The employer and two employee organizations entered into a consent election agreement, providing for a representation election to be conducted by SMCS. Subsequently one of the organizations filed an unfair practice charge with PERB against the employer and sought on that basis a stay of the election. PERB's Office of the General Counsel stayed the representation election pending adjudication of the unfair practice charge.	The Board lifted the stay, concluding that: (1) by entering the consent election agreement, the organization seeking the stay had waived those claims advanced in its stay motion which were grounded in conduct occurring prior to execution of the election agreement; (2) the remaining claims advanced in the stay motion were insufficient basis to stay the election; and (3) the purposes of the MMBA would be best served by dissolving the stay of election so that the parties could resolve the pending question concerning representation pursuant to the election agreement.

## 2014-2015 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS\*

\*Administrative Determinations decided by the Board itself are **precedential decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-425-M	<i>Sheehan Gillis v. City of Oakland (Oakland Fire Department)</i>	Charging party e-filed an appeal from PERB's Office of the General Counsel's dismissal of his MMBA unfair practice charge against the employer, but failed to include a proof of service. Thereafter, charging party re-filed his appeal together with proof of service at a PERB Regional Office but not at PERB Headquarters. After granting several extensions, PERB's Appeals Assistant determined that charging party had not timely filed an appeal in conformance with PERB regulations and dismissed his appeal.	Under PERB Regulation 32136, a late filing may be accepted for good cause. The Board has excused a late filing sent to the wrong PERB office, but otherwise filed, served, and received in advance of the filing deadline. The Board concluded that in this instance, good cause would excuse the filing of the appeal at a regional office because: (1) charging party had properly e-filed a timely albeit incomplete appeal together with a timely filed proof of service and had also filed a signed original appeal and proof of service at a PERB Regional Office and (2) the employer suffered no prejudice.
Ad-426-M	<i>Lassen County In-Home Supportive Services Public Authority and California United Homecare Workers</i>	Lassen County In-Home Supportive Services Public Authority appeals from a PERB administrative determination ordering the parties to proceed with selection of the factfinding panel.	The Board reversed the administrative determination, holding that the date of the "appointment or selection of a mediator," which triggers the window period within which a union must request factfinding under the MMBA, is not rescinded when the mediator notifies the parties he or she is unable to keep the original mediation date and attempts to reschedule the mediation.

## 2014-2015 DECISIONS OF THE BOARD

### ADMINISTRATIVE DETERMINATIONS\*

\*Administrative Determinations decided by the Board itself are **precedential decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-428	<i>Children of Promise Preparatory Academy and Group of Employees and Inglewood Teachers Association</i>	PERB's Office of the General Counsel stayed a decertification election based on unfair practice charges brought against the employer by the incumbent employee organization. The Office of the General Counsel concluded that if true, the charging party's allegations (that the employer refused to provide requested contact information for its bargaining unit members; refused to provide information relevant to bargaining; and refused to bargain in good faith), established unlawful conduct that would so affect the election process as to prevent employees from freely selecting their exclusive representative.	The Board affirmed, concluding that the Office of the General Counsel's determination was appropriate under current Board precedent.

## 2014-2015 DECISIONS OF THE BOARD

### REQUESTS FOR JUDICIAL REVIEW

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
There were no Requests for Judicial Review considered by the Board this fiscal year.			



## 2014-2015 DECISIONS OF THE BOARD

### REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
IR-58	<i>Sweetwater Union High School District v. Sweetwater Education Association, CTA/NEA</i>	The District requested that PERB enjoin the Association from threatening to strike and engaging in preparations for a strike prior to the exhaustion of statutory impasse procedures.	<b>In this case, the Board issued a precedential written decision providing the basis for denying the request.</b> The Board denied the request for injunctive relief, holding that a union's preparations for a lawful strike undertaken before impasse procedures have been exhausted do not constitute "reasonable cause" to believe that an unfair practice has been committed sufficient to justify PERB seeking injunctive relief from the courts, especially where the parties continued to negotiate and there was no evidence the union lacked genuine intent to reach agreement. <i>South Bay Union School District</i> (1990) PERB Decision No. 815, disavowed.

## 2014-2015 DECISIONS OF THE BOARD

### REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 664	<i>Los Rios Classified Employees Assn. v. Los Rios Community College District</i>	Whether the Los Rios Community College District should be enjoined for allegedly engaging in the following conduct: failing or refusing to bargain in good faith, retaliating and/or discriminating against LRCEA and its members, interfering with protected rights, and unilaterally implementing a change to the amount that employees pay for health benefits.	Request denied.
I.R. 665	<i>Long Beach Firefighters Association, Local 372 v. City of Long Beach</i>	Whether the City of Long Beach should be enjoined for allegedly violating the MMBA by announcing its intention to unilaterally transfer bargaining unit work to non-unit employees.	Request denied.
I.R. 666	<i>State of California (CalHR) v. International Union of Operating Engineers, Local 39</i>	Whether IUOE, Local 39 should be enjoined from engaging in a pre-impasse strike, since the parties had not yet completed the mediation process.	Request withdrawn.
I.R. 667	<i>State of California (CalHR) v. International Union of Operating Engineers, Local 39</i>	Whether IUOE, Local 39 should be enjoined from causing "essential bargaining unit employees" from striking for an undetermined period of time.	Request withdrawn.
I.R. 668	<i>Federated University Police Officers' Association v. Regents of UC</i>	Whether the Regents of the University of California (Davis), should be enjoined from unilaterally implementing a new policy to be used when investigating personnel complaints.	Request withdrawn.

## 2014-2015 DECISIONS OF THE BOARD

### REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 669	<i>Richard C. White v. San Bernardino Public Employees Association</i>	Whether the Association violated Mr. White's rights as a union member.	Request denied.
I.R. 670	<i>United Food &amp; Commercial Workers Local 1428 v. County of San Bernardino</i>	Whether the pending decertification election between the San Bernardino Public Employees Association and SEIU should be stayed, based on the County's alleged violations of the MMBA and its local rules with respect to UFCW's Petition for Severance.	Request denied.
I.R. 671	<i>City of Vacaville v. International Union of Operating Engineers, Stationary Engineers, Local 39, AFL-CIO</i>	Whether IUOE should be enjoined from calling for and conducting a strike, based on the City's allegations that it would be an unlawful strike involving "essential" employees.	Request granted in part.
I.R. 672	<i>Lori Edwards v. Lake Elsinore Unified School District</i>	Whether the District retaliated against Edwards, because of her protected activity of filing PERB charges in the past.	Request denied.
I.R. 673	<i>San Francisco County Superior Court v. Service Employees International Union Local 1021</i>	Whether SEIU violated the Trial Court Act by engaging in an unlawful one-day strike: (1) without advance notice; (2) in violation of a contractual no-strike clause; and (3) which included employees that are "essential" as that term is defined in <i>County Sanitation District No. 2 v. Los Angeles County Employees Association</i> (1985) 38 Cal.3d 564.	Request denied.

## 2014-2015 DECISIONS OF THE BOARD

### REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 674	<i>Service Employees International Union Local 1021 v. City of Fremont</i>	Whether the City is still failing to meet its bargaining obligations, and showing unlawful favoritism towards another employee organization (Fremont Association of City Employees [FACE]).	Request denied.
I.R. 675	<i>County of San Bernardino v. California Nurses Association</i>	Whether a strike consisting of essential employees constitutes an imminent threat to public health and safety.	Request granted in part.
I.R. 676	<i>Sacramento City Teachers Association v. City of Sacramento</i>	Whether the District violated EERA by unilaterally changing terms and conditions of employment of current employees, specifically health and dental benefits, without providing SCTA notice or an opportunity to negotiate.	Request denied.
I.R. 677	<i>Statewide University Police Association v. Trustees of the California State University</i>	Whether CSU violated HEERA by interfering with the Union's ability to represent bargaining unit members and retaliating against a union representative for engaging in protected activities.	Request withdrawn.
I.R. 678	<i>Service Employees International Union, Local 521 v. State of California (Department of Social Services (DSS) and Department of Human Resources (CalHR))</i>	Whether Respondents violated IHSSEERA by objecting to various provisions of a newly-negotiated memorandum of understanding between SEIU and the County of San Mateo In-Home-Supportive Services Public Authority.	Request denied.

## 2014-2015 DECISIONS OF THE BOARD

### REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 679	<i>Gamez &amp; Ramirez v. San Bernardino Public Employees Association</i>	Whether the Association violated Ms. Gamez and Ms. Ramirez's rights as bargaining unit members.	Request denied.
I.R. 680	<i>Orange County Employees Association v. County of Orange</i>	Whether PERB should seek injunctive relief to enjoin the County from implementing a new ordinance that regulates the way the County bargains labor agreements with its unions. OCEA alleges that, by approving and executing the ordinance, the County unilaterally changed the terms and conditions of employment in violation of the MMBA.	Request denied.
I.R. 681	<i>San Bernardino Public Employees Association Teamsters Local Union 1932 v. City of Chino Hills</i>	Whether the City failed to follow its local rules when approving a rival employee organization's decertification petition that was set for an election on June 22, 2015.	Request denied.
I.R. 682	<i>County of Santa Clara v. Service Employees International Union, Local 521</i>	Whether SEIU announced a strike for an indefinite period beginning as early as June 30, 2015 and prior to the conclusion of bargaining or declaration of impasse.	Request granted in part.

## 2014-2015 LITIGATION CASE ACTIVITY

1. *San Diego Housing Commission v. PERB; SEIU Local 221*, December 2012, San Diego Superior Court Case No. 37-2012-00087278-CU-MC-CTL (PERB Case Nos. LA-IM-116-M). Issue: Whether PERB erred by interpreting the new MMBA factfinding procedures created by AB 646 as applicable to an impasse in the parties' negotiations over the impact and effects of a layoff. On December 17, 2012, the San Diego Housing Commission (SDHC or Commission) filed a petition for writ of mandate and complaint for declaratory relief (Petition), and noticed an ex parte hearing to stay the factfinding process. On or about February 25, 2013, the Commission filed an amended petition. The Commission then filed a motion for summary judgment. PERB filed its opposition to the Commission's motion on January 16, 2014. On January 31, 2014, the court granted the Commission's motion for summary judgment. The Superior Court entered judgment on SDHC's motion for summary judgment and writ of mandate on April 22, 2014. SDHC set a motion for attorney fees under section 1021.5. SDHC also filed a memorandum of costs. PERB filed a motion to tax costs on June 4, 2014. Oral argument was conducted on June 27, 2014, and the Court denied SDHC's motion for attorney fees and partially granted PERB's Motion to Tax Costs, awarding SDHC only approximately \$500 in costs. Both parties have filed various appeals of the Superior Court's orders.
2. *City of Long Beach v. PERB; IMAW Local 1930, District 947*, January 3, 2013, California Court of Appeal, Second Appellate District, Division One, Case No. B245981; PERB Decision No. 2296-M (PERB Case No. LA-CE-537-M). Issue: Whether the Board clearly erred in Decision No. 2296-M (affirming a proposed ALJ decision finding that the City violated the MMBA by unilaterally imposing a five-day furlough on employees represented by IMAW, and directing the City to make whole the affected employees). On January 3, 2013, the City filed a petition for writ of extraordinary relief. Briefing was completed on July 31, 2013. On May 14, 2014, the Court issued an "Order to Show Cause" asking PERB to file a written Return by June 3, 2014. PERB and IMAW both filed Responses/Returns on June 3, 2014. The City filed its response on June 23, 2014. Oral argument was held on August 20, 2014. The Court's unpublished opinion was issued on August 29, 2014, denying the City's petition and awarding IMAW costs. The case is now complete.
3. *Glendale City Employees Assn. v. PERB; City of Glendale*, February 8, 2013, California Court of Appeal, Second Appellate District, Division P, Case No. B246938; (PERB Case No. LA-CE-672-M). Issue: Whether the Superior Court erred by sustaining the City's demurrer and dismissing the writ petition seeking to direct the Board to vacate PERB Decision No. 2251 (affirming a Board Agent's dismissal of the

*Glendale City Employees Association's* (GCEA) charge, which alleged per se violations of the City's duty to meet and confer in good faith and surface bargaining during negotiations for a successor MOU, including changes to pension contributions). The GCEA filed a notice of appeal in the Court of Appeal on February 18, 2013 and its record on appeal on July 25, 2013. Briefing was completed on December 5, 2013. On March 14, 2014, the GCEA filed a letter bringing to the Court's attention the Board's recent decision in *City of San Jose* (2013) PERB Decision No. 2341-M (*City of San Jose*), contending that it significantly changed the pleading standards for a claim of surface bargaining. On April 9, 2014, PERB filed a motion for permission to file supplemental briefing regarding the effect of the *City of San Jose* case, and to continue oral argument for that purpose. The Court of Appeal granted PERB's request for supplemental briefing. Oral argument occurred on May 6, 2014. On June 13, 2014, the Court of Appeal issued a non-published decision affirming the Superior Court's ruling granting the City's demurrer. On July 3, 2014, PERB requested that the Court of Appeal's decision be published. On July 11, 2014, the Court of Appeal denied PERB's publication request.

4. *PERB v. City of Fremont (SEIU Local 1021)*, April 22, 2013, Alameda Superior Court, Case No. RG 13677821 (PERB Case No. SF-CE-1028-M). Issues: Whether the City should be enjoined from withdrawing recognition and refusing to bargain with SEIU following a "disaffiliation" election—conducted in March 2013 by an individual City employee—based on claims that the City interfered with the representational rights of SEIU and its members in a bargaining unit known as the Fremont Association of City Employees ("FACE") by processing and approving a defective decertification petition for which the City itself would run the election pursuant to local rules, and that the City subsequently advised the decertification petitioner how to proceed with the disaffiliation process. SEIU's IR Request No. 633 was granted by the Board on April 15, 2013. A complaint for injunctive relief was filed in Alameda Superior Court on May 1, 2013. On May 3, 2013, PERB filed an Ex Parte Application for Temporary Restraining Order (TRO) and Order to Show Cause (OSC) re Preliminary Injunction. On May 7, 2013, the Court issued the TRO "Granting in Part and Denying in Part," PERB's requested relief. On May 10, 2013, SEIU filed a Motion to Intervene, which was granted by the Court. On May 29, 2013, the Superior Court issued an order granting preliminary injunction. On June 5, 2013, the City filed with the Superior Court a notice of appeal of the order granting preliminary injunction. On July 12, 2013, SEIU filed an Ex Parte Application for OSC re Contempt and Motion for Monetary Sanctions regarding the City's refusal to negotiate a successor MOU. The City opposed SEIU's application, asserting that the preliminary injunction was automatically stayed by the City's appeal. On July 23, 2013, the Superior Court issued an order denying SEIU's Ex Parte Application for OSC re Contempt and Motion for Monetary Sanctions. On August 26, 2013, PERB filed an Ex Parte Application for a 90-day extension of the

preliminary injunction. The court summarily denied the application on August 30, 2013. On November 27, 2013, SEIU filed a memorandum of costs that it had incurred in helping prepare the record to support PERB's petition for writ of supersedeas. The City thereafter filed a Motion to Tax SEIU's Costs, which was heard on April 9, 2014, taken under submission, and granted in full on April 11, 2014 because only PERB, and not SEIU, was granted costs on appeal. PERB filed a Request for Dismissal on July 27, 2015. This case is now closed.

5. *County of Riverside v. PERB; SEIU Local 721*, May 10, 2013, Riverside Superior Court, Case No. RIC1305661 (PERB Case No. LA-IM-127-M). Issues: Whether AB 646 is unconstitutional on its face or as applied, and whether the General Counsel's (GC) office misinterpreted the factfinding provisions of the MMBA as applying to an impasse in bargaining over the effects of a new policy requiring criminal background checks for County IT professionals. On May 13, 2013, the County served PERB with a writ petition and complaint for injunctive and declaratory relief seeking to invalidate the statutory factfinding provisions enacted by AB 646, and the GC office determination that SEIU's factfinding request was timely and sufficient. PERB filed an answer to the petition/complaint on June 12, 2013. Ruling from the bench on September 13, 2013, the court denied PERB's anti-SLAPP motion, and denied the County's Motion 1, in which the County claimed that AB 646 is unconstitutional. However, the court granted the County's Motion 2, in which the County claimed that AB 646 factfinding does not apply to impasses in bargaining over the effects of a non-negotiable decision (in this case, to implement a new background check policy for IT professionals), or to other similar "single-subject" bargaining disputes. The court also issued a 30-day stay of discovery, and ordered the parties to meet and confer re the balance of the case and return for a status conference on October 16, 2013. The County and PERB filed competing Proposed Orders embodying the court's rulings from the bench. On or about October 2, 2013, counsel for SEIU withdrew the underlying factfinding request. On November 14, 2013, the Superior Court entered its final orders as to Motion Nos. 1 and 2, denying the former and granting the latter, and orders denying PERB's anti-SLAPP motion and motion for sanctions. On November 15, 2013, PERB filed a notice of appeal from the order on Motion No. 2, and invoked the automatic stay of Code of Civil Procedure section 916(a) as to the writ and mandatory injunction entered pursuant to thereto. On December 18, 2013, the County filed a notice of appeal as to the ruling on Motion No. 1, and requested voluntary dismissal of its final cause of action for breach of the settlement agreement. Final judgment in the case was entered on December 26, 2013. Notice of entry of the "one, final judgment" was filed and served on December 31, 2013. The trial court issued and confirmed tentative rulings granting PERB's motion to tax costs in its entirety, and denying the County's request for \$150,000 in attorney fees under Code of Civil Procedure section 1021.5, but granting the County's motion seeking \$15,000 in attorney fees



under the anti-SLAPP statute based on its denial of PERB's anti-SLAPP motion. The fee orders have now been issued by the Superior Court and these matters will in fact be consolidated into the current appeal.

6. *PERB v. SEIU Local 1021 (City of Hayward)*, August 9, 2013, Alameda Sup. Ct. Case No. RG 13691249; IR Request No. 640 [UPC Nos. SF-CO-320-M, SF-CE-1075-M, SF-CE-1092-M, SF-CE-1098-M]. Issue: Whether SEIU should be enjoined from calling for and conducting a strike beginning on August 12, 2013, based on the City's allegations that it would be an unlawful pre-impasse strike involving "essential" employees, whereas the Union has filed numerous UPCs and claims the strike would be a lawful UPC strike and that all statutory impasse procedures have been exhausted. After extensive negotiations with the parties, including two informal conferences to discuss the issue of any "essential employees" who should not be permitted to strike, the Board granted the City's IR request in part, and directed the General Counsel's office to proceed to court to obtain an injunction based on the parties' stipulation as to the essentiality of certain classifications of City employees. On August 13, 2013, the Superior Court granted PERB's Ex Parte Application for a TRO against a strike by "essential" City employees, as designated in the parties' stipulation. A CMC was conducted on May 22, 2014, and the Superior Court Judge issued a stay of proceedings. On November 21, 2014, there was a hearing at which time the Judge set a pre-trial conference for January 22, 2016 with trial scheduled for February 1, 2016.
7. *CDF Firefighters (CDF) v. State of California (Department of Forestry & State Personnel Board (SPB))*, August 26, 2013, Sacramento Sup. Ct. Case No. 34-2013-80001607, PERB Decision No. 2317-S [UPC No. SA-CE-1896-S]. Issue: Whether the Board erred in Decision No. 2317-S by affirming a Board Agent's dismissal of a charge filed by CDF Firefighters (CDFF) alleging that SPB violated the Dills Act by unilaterally amending the regulations under which SPB conducts disciplinary proceedings for employees represented by CDFF, without meeting and conferring in good faith. The Board held that the charge was properly dismissed by the Board agent because SPB does not have a duty to meet and confer with exclusive representatives of non-SPB employees. After having erroneously filed a petition for writ of extraordinary relief in the California Court of Appeal for the Third Appellate District, CDFF filed a petition for writ of traditional writ of mandamus in Sacramento Superior Court on August 26, 2013. PERB's answer to the petition was filed on September 25, 2013. Briefing was completed on August 18, 2014, and oral argument occurred on September 12, 2014. On October 15, 2014, the Court granted CDFF's Writ Petition and ordered that PERB Decision No. 2317-S be set aside and reissued. On December 5, 2014, the court issued a Judgment Granting Writ of Mandate in Part and Denying Writ in Part. On December 19, 2014, the Board set aside Decision No. 2317-S, and issued Decision No. 2317a-S.

8. *PERB v. City of Fremont (SEIU Local 1021)*, October 15, 2013, California Court of Appeal, First Appellate District, Division Four, Case No. A139991; Alameda Superior Court Case No. RG 13677821; IR Request No. 633 [UPC No. SF-CE-1028-M]. Issue: Whether the trial court abused its discretion by refusing to renew the preliminary injunction it issued in May 2013, requiring the City of Fremont to maintain the status quo pending completion of PERB's administrative proceedings. The ruling challenged on appeal was apparently based on a finding that the preliminary injunction was mandatory in nature and, thus, subject to the automatic stay of Code of Civil Procedure section 916, subdivision (a), upon the filing by the City of its appeal in Court of Appeal Case No. A138888, and the Superior Court's refusal to lift the stay upon a showing by PERB that the preliminary injunction was clearly a prohibitory injunction, designed and intended to maintain the status quo that existed before the events alleged in the UPC began in November 2012. On October 15, 2013, PERB filed a notice of appeal from the August 30, 2013 Superior Court order refusing to extend the preliminary injunction. The Court of Appeal approved use of the Superior Court record prepared as a clerk's transcript for the City's appeal in Case No. A138888. Briefing was completed on May 28, 2014. Oral argument has not yet been scheduled. PERB filed a Request for Dismissal on July 27, 2015, which the court granted on August 11, 2015. The case is now closed.
9. *Los Angeles Unified School District v. PERB; CSEA Ch. 500*, October 18, 2013, California Court of Appeal, Second Appellate District, Division Four, Case No. B251986; PERB Decision No. 2326 [UPC No. LA-CE-5419-E]. Issue: Whether the Board clearly erred in its Decision No. 2326, in concluding that LAUSD committed an unfair practice in violation of EERA by implementing, as part of its last, best and final offer, a bargaining proposal by which it had sought to retain unfettered discretion over a mandatory subject of bargaining, a provision to which CSEA had previously agreed to, but refused to agree in the current course of bargaining. LAUSD filed a petition for writ of extraordinary relief on October 18, 2013. The administrative record was filed on December 11, 2014. LAUSD's corrected opening brief was filed on March 10, 2014. PERB's brief was originally due on May 29, 2014, under a stipulated extension of time (EOT), but PERB requested and was granted a further extension. PERB's brief was filed on Friday, June 11, 2014. CSEA's Respondent's Brief was filed on June 14, 2014. LAUSD's Reply Brief was filed on October 7, 2014. The petition was denied on February 2, 2015.
10. *County of Riverside v. PERB; SEIU Local 721 (Factfinding)*, November 15, 2013, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E060047; Riverside Superior Court Case No. RIC 1305661 [UPC No. LA-IM-127-M]. Issue: Whether the trial court abused its discretion by issuing a permanent injunction and writ of mandate, with statewide effect, directing PERB to dismiss all pending

MMBA factfinding requests arising from any bargaining dispute involving less than a comprehensive MOU, and to deny all such requests in the future. In the County's cross-appeal, the issue is whether the trial court erred as a matter of law by rejecting the plaintiff's claim that AB 646 is unconstitutional. On November 15, 2013, PERB filed a notice of appeal. SEIU filed its own notice of appeal on January 2, 2014. On December 18, 2013, the County filed a notice of appeal. PERB's form of final judgment was entered in the Superior Court on December 26, 2014, and additional notices of appeal from rulings adverse to PERB were subsequently filed. The court ordered a briefing schedule for the cross-appeals, including any appeals that may arise after the hearing on the attorney fees/costs motions. SEIU and PERB's Opening Briefs were filed on or about October 6, 2014. The County filed its Opposition to PERB's Request for Judicial Notice on October 14, 2014. On October 27, 2014, the Court reserved its determination as to the request for judicial notice until briefing has been completed. The County's Opening/Opposition Brief was filed on January 28, 2015. SEIU filed its Appellant's Reply brief on April 28, 2015. PERB filed its Appellant's Reply Brief/Cross-Respondent's Brief; Appellant's Reply in Support of Its Request for Judicial Notice on May 20, 2015. The County's Reply Brief was filed on August 6, 2015, along with a Request for Judicial Notice. On August 21, 2015, the League of California Cities and the California State Association of Counties filed an amicus brief in support of the County. PERB filed its Answer on September 8, 2015. The parties await a decision.

11. *County of Riverside v. PERB; John Brewington*, November 18, 2013, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E060017, PERB Decision No. 2336-M [UPC No. LA-CE-261-M]. Issue: Whether the Board clearly erred in Decision No. 2336-M [holding that the County failed to comply with the Board's final remedial orders in a prior case, *County of Riverside* (2009) PERB Decision No. 2090-M, in which the Board held that the County had unlawfully retaliated against Brewington for engaging in protected activities, and ordering the County to pay Brewington his full salary and benefits dating back to May 5, 2008, when the proposed decision affirmed by the Board in 2009 would have become final but for the County's unsuccessful petition for writ of extraordinary relief in the same Court of Appeal, Case No. E050056]. On November 18, 2013, the County served PERB with a petition for writ of extraordinary relief from Decision No. 2336-M. The administrative record was filed on January 31, 2014. Briefing was completed on September 2, 2014. The Court of Appeal summarily denied the County's Writ Petition three days later on September 5, 2014. On September 19, 2014, the County filed a "Request for Rehearing" with the Court. The County's Request was denied on October 2, 2014.

12. *San Diego Housing Commission v. PERB; SEIU Local 221*, July 7, 2014, California Court of Appeal, Fourth Appellate District, Division One, Case No. D066237; San Diego County Superior Court, Case No. 37-2012-00087278-CU-MC-CTL; Factfinding [PERB Case No. LA-IM-116-M]. Issue: Whether the San Diego Superior Court erred by granting the Commission's motion for summary judgment and determining that PERB's factfinding determination as to a "single issue" was erroneous. PERB filed its Notice of Appeal on July 7, 2014. SDHC subsequently filed its appeal of the Superior Court's Order denying attorney fees and also filed a notice of appeal regarding the Superior Court's granting in part PERB's Motion to Tax Costs. PERB filed its Opening Brief on March 23, 2015; SDHC's Respondent's/Opening Brief was filed on July 7, 2015, and PERB filed its Respondent's Briefs on September 8, 2015. SDHC must file its Reply Brief by November 9, 2015.
13. *County of Fresno v. PERB; SEIU Local 521 (Factfinding)*, July 16, 2014, Fresno County Sup. Ct., Case No. 14 CE CG 02042, PERB Order No. Ad-414-M [PERB Case No. SA-IM-136-M]. Issues: Whether PERB erred by interpreting the new MMBA factfinding procedures created by AB 646 as applicable to an impasse in the parties' negotiations. The County's Petition for Writ of Mandate challenges the Board's decision in *County of Fresno* (2014) PERB Order No. Ad-414-M—which affirmed that factfinding under the MMBA is appropriate for single-issue disputes and is not limited to bargaining over an entire contract. On July 21, 2014, the petition was personally served on PERB. On July 23, 2014, the County sought ex parte relief from the Superior Court to stay further proceedings in the underlying factfinding matter for an indefinite period. PERB opposed this request for a stay; SEIU Local 521 offered a 30-day stay. The court granted the stay for 90 days, until October 21, 2014. PERB's Answer was filed on August 19, 2014. After SEIU Local 521 withdrew its fact finding request, the County filed a request for dismissal of the complaint. The court granted the County's request for dismissal on August 24, 2015. The case is now closed.
14. *Glendale City Employees Association v. PERB; City of Glendale*, July 17, 2014, California Supreme Court, Case No. S219922, California Court of Appeal, Second Appellate District, Division P, Case No. B246938; Los Angeles Superior Court Case No. BS137172; PERB Decision No. 2251 [UPC No. LA-CE-672-M]. Issue: Should the California Supreme Court grant GCEA's Petition for Review of the Court of Appeal's decision affirming the Superior Court denial of GCEA's petition for writ of mandate as to PERB Decision No. 2251 (affirming a Board Agent's dismissal of the GCEA's charge, which alleged per se violations of the City's duty to meet and confer in good faith and surface bargaining during negotiations for a successor MOU, including changes to pension contributions). GCEA's Petition for Review was filed on July 17, 2014. PERB's Answer to Petition for Review was filed with the Supreme Court on August 6, 2014. GCEA's Reply was filed on August 18, 2014. The Supreme Court

granted itself an extension of time until October 15, 2014, to determine whether to grant/deny the petition. On September 24, 2014, the California Supreme Court denied GCEA's Petition for Review, as well as PERB's Publication request. The case is now complete.

15. *Bellflower Unified School District v. PERB; CSEA Ch. 32*, July 29, 2014, California Court of Appeal, Second Appellate District, Division Two, Case No. B257852, PERB Decision No. 2385-E [PERB Case No. LA-CE-5508-E]. Issues: Whether the Board clearly erred in Decision No. 2385-E [holding that the Bellflower Unified School District violated EERA when it failed and refused to bargain in good faith over the impact and effects of its decision to close a school and abolish classified positions]. The District's Writ Petition was filed on July 29, 2014. On July 30, 2014, PERB requested an extension of time to file the Administrative Record. The Administrative Record was filed on September 8, 2014. The Petitioner's Opening Brief was filed on October 13, 2014. PERB and CSEA's respective Respondent's Briefs were filed on or about November 14, 2014. The District's Reply Brief was filed on December 8, 2014. On April 20, 2015, the Court of Appeal summarily denied the Petition for Writ of Review.
16. *Lewis v. PERB; City of Oakland*, September 3, 2014, California Court of Appeal, First Appellate District, Division Two, Case No. A142856; PERB Decision No. 2387-M [PERB Case No. SF-CE-808-M]. Issues: Whether the Board clearly erred in Decision No. 2387-M [affirming a proposed ALJ decision finding that although Lewis had established a prima facie case of retaliation, the City had selected her for layoff because of non-discriminatory reasons]. The Petitioner's Writ Petition was filed on September 3, 2014. The Administrative Record was filed on October 28, 2014. The Petitioner filed a 60-day Application for Extension of Time to file her Opening Brief on February 2, 2015. The Court granted only a 30-day extension of time for Petitioner's Opening Brief, making it due on January 2, 2015. On December 29, 2014, Petitioner filed a second Application for Extension of Time to file her Opening Brief and the Court granted this extension of time to February 2, 2015. On February 2, 2015, Ms. Lewis informed the Court of Appeal that she had settled her case and would not be filing an opening brief. On February 26, 2015, Ms. Lewis filed a Request for Dismissal with the Court. The court granted the Request for Dismissal on April 1, 2015. The case is now closed.
17. *City of Palo Alto v. PERB; International Association of Firefighters, Local 1319, AFL-CIO*, September 5, 2014, California Court of Appeal, Sixth Appellate District, Case No. H041407; PERB Decision No. 2388-M [PERB Case No. SF-CE-869-M]. Issues: Whether the Board clearly erred in Decision No. 2388-M [holding that the City violated the MMBA when it approved a ballot measure repealing binding interest arbitration for impasse disputes, without first noticing and then meeting and consulting with the

IAFF]. The City's Writ Petition was filed on September 5, 2014. The Administrative Record was filed on November 14, 2014. Petitioner's Opening Brief was filed on December 19, 2014. PERB and the IAFF were both granted a 45-day extension of time to file their respective Respondent's Brief. PERB and IAFF filed their respective Respondent's Brief on March 13, 2015. The City filed its Reply Brief on April 27, 2015. On May 13, 2015, the League of California Cities filed an Application to File an Amicus Brief along with the proposed brief. The court has not yet granted the application.

18. *PERB v. International Union of Operating Engineers, Stationary Engineers Local 39; City of Vacaville*, September 15, 2014, Solano County Superior Court, Case No. FCS 044181; IR Request No. 671 [UPC No. SF-CO-347-M]. Issues: Whether IUOE should be enjoined from calling for and conducting a strike, based on the City's allegations that it would be an unlawful strike involving "essential" employees. The Board granted the City's IR request, in part, and directed the General Counsel's office to proceed to court to obtain an injunction prohibiting the 33 "essential" employees identified in the complaint from engaging in strike activities during work hours. A TRO was issued by the Solano County Superior Court on September 17, 2014, enjoining 33 "essential" employees from striking during working hours. The Preliminary Injunction hearing was set for October 1, 2014, but the parties reached an agreement for a successor MOU prior to the hearing. PERB has since filed a dismissal of the action, and the matter is now closed.
19. *PERB v. California Nurses Association; County of San Bernardino*, December 3, 2014, San Bernardino Sup. Ct. Case No. CIVDS 1417971; IR Request No. 675 [PERB Case No. LA-CO-191-M]. Issue: Whether CNA should be enjoined from calling a two-day strike, following a ten-day strike notice served on the County, because such would entail a work stoppage by "essential employees" within the meaning of *County Sanitation Dist. No. 2 of Los Angeles County v. Los Angeles County Employees' Assn.* (1985) 38 Cal.3d 564 (*County Sanitation*). The Board granted the County's IR request in part, on December 3, 2014, and directed the General Counsel's office to proceed to Superior Court to obtain injunctive relief. On December 8, 2014, the court granted PERB's Ex Parte Application for a TRO prohibiting certain "essential" County employees, as listed in Exhibit A to the Ex Parte Application, from striking during work hours. The TRO was extended twice via joint stipulation. In addition, on December 12, 2014, the County filed a Notice of Hearing and Application for Leave to Intervene and a Complaint for Injunctive Relief. The parties stipulated to the County's intervention request. The parties reached a tentative agreement on a successor MOU, which CNA's membership ratified on March 27, 2015. The County Board of Supervisors subsequently approved the agreement. PERB filed a Request for Dismissal of this case and it was dismissed on May 19, 2015. This case is now closed.

20. *County of San Bernardino v. California Nurses Association; PERB*, December 4, 2014, San Bernardino Sup. Ct. Case No. CIVDS 1418227; Court of Appeal, Fourth Appellate District, Division One, Case No. D067084; IR Request No. 675 [PERB Case No. LA-CO-191-M]. Issue: Whether the County could obtain injunctive relief separate and apart from PERB as to CNA's two-day strike. The County filed its own Ex Parte Application seeking to enjoin more nurses than requested by PERB from striking during CNA's two-day strike. The court denied the County's application acknowledging PERB's exclusive initial jurisdiction and noting that PERB had an ex parte hearing set for Monday, December 8, 2014. On December 8, 2014, the County filed a Petition for Writ of Mandate in the Court of Appeal, Fourth Appellate District, Division One. The County's Petition was denied on December 9, 2014. The County filed a Request for Dismissal and this case was dismissed on May 22, 2015. This case is now closed.
21. *CAL FIRE Local 2881 v. PERB; State of California (State Personnel Board)*, February 17, 2015, Sacramento Superior Court, Case No. 34-2015-80002020; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Board erred in Decision No. 2317a-S [by affirming a Board Agent's dismissal of a charge filed by Local 2881 alleging that SPB violated the Dills Act by unilaterally amending the regulations under which SPB conducts disciplinary proceedings for employees represented by Local 2881, without meeting and conferring in good faith. The Board vacated Decision No. 2317-S and held that the charge was properly dismissed by the Board Agent because SPB does not have a duty to meet and confer with exclusive representatives with respect to the regulations it promulgates when acting in its capacity as a regulator of State employment, and not as a State employer]. As noted above, in the related case, on October 15, 2014, the Court granted Local 2881's Writ Petition and ordered that PERB Decision No. 2317-S be set aside and reissued. On December 5, 2014, the court issued a Judgment Granting Writ of Mandate in Part and Denying Writ in Part. On December 19, 2014, the Board set aside Decision No. 2317-S, and issued Decision No. 2317a-S. PERB and SPB filed their respective Answers in this case on or about March 24, 2015. The parties await a hearing date from the court.
22. *Liu v. PERB; Trustees of California State University*, February 20, 2015, Court of Appeal, First Appellate District, Division Four, Case No. A144287; PERB Decision No. 2408-H [PERB Case No. SF-CE-1009-H]. Issue: Whether the Board clearly erred in Decision No. 2408-H [affirming a proposed ALJ decision finding that Liu had failed to establish that CSU had interfered with his ability to file grievances, except for one allegation in which Liu was able to establish interference by CSU]. Liu filed a Motion for "Holding this Case and Wait[ing] for SF-CE-995-H" and Notice of Appeal on February 20, 2015. On February 26, 2015, the Court dismissed this case stating that

neither the motion nor Petitioner's purported "Notice of Appeal" of the PERB decision constitutes a petition for writ of review. This case is now closed.

23. *Sonoma County Superior Court v. PERB*, March 5, 2015, Sacramento County Superior Court Case No. 34-2015-80002035; PERB Decision No. 2409-C [PERB Case No. SF-CE-39-C] Issue: Whether the Board erred in Decision No. 2409-C [by reversing a Board Agent's dismissal of a charge filed by SEIU Local 1021 alleging that Sonoma County Superior Court violated the Trial Court Employment Protection and Governance Act (TCEPGA) when it denied an employee's request for union representation at an ADA interactive process meeting with management. The Board held that public employees have a right to union representation when meeting with management to engage in the interactive process]. This case was filed in the Sacramento County Superior Court on March 5, 2015. PERB filed a Demurrer before on April 2, 2015. Real Party in Interest filed a Demurrer on or about April 10, 2015. The Demurrer hearing is scheduled for November 6, 2015.
24. *County of Tulare v. PERB; SEIU Local 521*, March 30, 2015, Fifth District Court of Appeal, Case No. F071240; PERB Decision No. 2414-M [PERB Case No. SA-CE-748-M]. Issue: Whether PERB erred in Decision No. 2414-M [by reversing a proposed ALJ decision, and instead holding that: (1) in bargaining the 2009-2011 MOU, SEIU Local 521 and the County of Tulare intended to create a contractual right to merit-based promotions and salary increases effective after expiration of the MOU; (2) terms in the 2009-2011 MOU constitute a waiver of the County's statutory right to implement the terms of its final offer at impasse of a successor MOU (which included suspension of the merit-based promotions and salary increases); and (3) SEIU-represented County employees have a constitutionally-vested right to future merit-based promotions and salary increases]. The Certified Administrative Record was filed on May 8, 2015. The County filed its Opening Brief, along with its Request for Judicial Notice and Exhibits, on June 12, 2015. PERB and SEIU obtained an extension of time to file their respective briefs to be due on or before August 14, 2015. PERB's brief was filed on August 14, 2015. The County's reply brief was filed on September 8, 2015. On September 18, 2015, the League of California Cities and California State Association of Counties filed an Amicus Curiae Application/Brief in support of the County. PERB's response is due October 23, 2015.
25. *Bellflower Unified School District v. PERB; CSEA Ch. 3*, April 30, 2015, Supreme Court of California, Case No. S226096 California Court of Appeal, Second Appellate District, Division Two, Case No. B257852, PERB Decision No. 2385-E [PERB Case No. LA-CE-5508-E]. Issues: Whether the Board clearly erred in Decision No. 2385-E [holding that the Bellflower Unified School District violated EERA when it failed and refused to bargain in good faith over the impact and effects of its decision to close a school and abolish classified positions]. On April 30, 2015, Petitioner filed a Petition



for Writ of Review with the Supreme Court. PERB and CSEA filed their respective Answer to Petition for Review on or about May 19, 2015. The Court denied the petition for review on July 8, 2015. This case is now closed.

26. *Liu v. PERB; Trustees of the California State University*, May 14, 2015, Court of Appeal, First Appellate District, Division Four, Case No. A145123; PERB Decision Nos. 2408-H and 2391a-H [PERB Case Nos. SF-CE-1009-H and SF-CE-995-H]. Issues: Whether Board Decisions Nos. 2408-H and 2391a be reversed based on alleged statements made by an ALJ and Board's error. On May 14, 2015, Petitioner filed a Petition for Review. On May 19, 2015, the Court requested the Administrative Record from PERB. Given the extraordinarily large file, PERB filed a Request for Extension of Time seeking a 90-day extension. The court approved 60 days without prejudice, making the record due on July 28, 2015. The record will be filed on case SF-CE-995-H only; the court denied the file request for case SF-CE-1009-H as moot since the Supreme Court denied review in Case No. S225383 on May 13, 2015. On May 27 and 29, 2015, Petitioner filed four separate motions with the court: (1) that the Dean Swartz report of May 12, 2011, be transferred to the appellate court and be made public; (2) request that PERB removes all decisions related to SF-CE-995-H from its website; (3) request for an order of settlement conference; and (4) Liu wishes PERB record submission deadline be extended to August 18, 2015. On June 10, 2015, the Court issued the following Order: "Motion C. Request That Dean Swartz Review Report of May 12, 2011 To Be Transferred To The Appellate Court And To Be Made Public" [sic] is denied due to an insufficient showing of relevance. "Motion D. Request That PERB Removes All Decisions Related To SF-CE-995-H From Its Website" is denied. "Motion E. Request For An Order Of Settlement Conference" is denied without prejudice to both parties requesting a settlement conference under Local Rule 3 of the First Appellate District. "Letter I. Liu Wishes PERB Record Submission Deadline Extended to August 18, 2015" is denied. On June 22, 2015, PERB filed a Request for Second Extension of Time of the Administrative Record which was granted to August 27, 2015. Liu's opening brief is due on October 22, 2015.
27. *County of San Bernardino v. PERB; San Bernardino County Public Attorneys Association*, June 10, 2015, Court of Appeal, Fourth Appellate District, Division 2, Case No. E063736, PERB Decision No. 2423-M [PERB Case Nos. LA-CE-431-M and LA-CE-554-M]. Issue: Whether the Board erred in Decision No. 2423-M (holding that the San Bernardino County Office of the Public Defender violated the MMBA by implementing a blanket policy that prohibits a Deputy District Attorney from representing a Deputy Public Defender in a disciplinary investigatory interview; and by requiring its Deputy Public Defenders to participate in investigatory interviews—without representation—under threat of discipline). The County of San Bernardino, Office of the Public Defender, filed its Petition for Writ of Extraordinary Relief on June

10, 2015. Under an extension of time, PERB filed the Administrative Record on August 8, 2015, and a supplemental record on August 19, 2015. The County's opening brief was filed on September 24, 2015. PERB's and the Union's briefs are due on October 29, 2015.

28. *San Luis Obispo Deputy County Counsel Association and San Luis Obispo Government Attorneys' Union v. PERB; County of San Luis Obispo*, June 24, 2015, California Court of Appeal, Second Appellate District, Case No. B265012; PERB Decision 2427-M [PERB Case No. LA-CO-123-M & LA-CO-124-M]. Issue: Whether the Board erred in Decision No. 2427-M when it affirmed the ALJ's conclusion that Petitioners violated the MMBA in refusing to bargain over the County's pension cost-sharing proposal; holding that employee contribution levels and distribution under the County pension plan were not vested. In addition, the Board found no vested right to the absence of a prevailing wage offset obtained through concessions. The Unions filed a Petition for Writ of Extraordinary Relief and Supporting Memorandum on July 24, 2015 with the Second Appellate District, Division 6. The Administrative Record was filed on September 4, 2015. The Union's opening brief is due on November 12, 2015.
29. *PERB v. Service Employees International Union, Local 521; County of Santa Clara*, June 29, 2015, Santa Clara County Sup. Ct. Case No. 115 CV 282467; IR Request No. 682 [PERB Case No. SF-CO-366-M]. Issue: Whether a pre-impasse strike by Service Employees International Union, Local 521, should be enjoined in its entirety or, alternatively, whether the court should enjoin only essential employees whose absence creates a substantial and imminent threat to the health or safety of the public. On Tuesday, June 23, 2015, the County of Santa Clara gave PERB its 24-hour notice it would seek injunctive relief against SEIU, Local 521, who announced its members were striking on June 30, 2015. On Wednesday, June 24, 2015, the County began a piecemeal filing of its IR Request. On Thursday, June 25, 2015, SEIU filed its response. The Board granted the request, in part, on June 28, 2015. In the ex parte hearing (discussed below), the court acknowledged PERB's exclusive jurisdiction and granted a TRO using PERB's complaint and its Exhibit A (essential employee list). The court then set a hearing on June 30, 2015, for further proceedings. The court, however, canceled that hearing after the parties reached a tentative agreement in their negotiations. The matter is now closed.
30. *County of Santa Clara v. Service Employees International Union, Local 521; PERB*, June 29, 2015, Santa Clara County Sup. Ct. Case No. 115-CV-282408; IR Request No. 682 [PERB Case No. SF-CO-366-M]. Issue: Whether the County of Santa Clara may bypass PERB by unilaterally seeking an injunction from the Superior Court to block a pre-impasse strike by Service Employees International Union, Local 521. On Friday, June 26, 2015, the County of Santa Clara informed PERB that it planned to petition the court on Monday, June 29, 2015, to enjoin a strike by SEIU if PERB did

not agree to seek an injunction on that date. PERB informed the County that, subject to Board approval, it planned to seek the injunction on Tuesday, June 30, 2015. As a consequence, on Sunday, June 28, 2015, the County provided 24-hour notice to the parties of ex parte appearance the next morning. On Monday, June 29, 2015, PERB appeared in court to oppose the County's effort to seek an injunction and, thereby, circumvent the Board's jurisdiction. In the ex parte hearing, the court recognized PERB's exclusive jurisdiction and granted a TRO using PERB's complaint and its Exhibit A (essential employee list). The court then set a hearing on June 30, 2015, for further proceedings. The court, however, canceled that hearing after the parties reached a tentative agreement in their negotiations, effectively mooting the injunctive relief request.

#### OF INTEREST LITIGATION

31. *El Dorado County Deputy Sheriff's Association v. County of El Dorado; El Dorado County Employees' Association, UPE Local 1*, June 23, 2014, Court of Appeal, Third Appellate District, Case No. C075615; *El Dorado Deputy Sheriffs Association v. County of El Dorado*, El Dorado County Sup. Ct., Case No. PC20120637 [PERB Case No. SA-LT-6-M]. Issues: Did the Superior Court err in *El Dorado Deputy Sheriffs Association v. County of El Dorado* when it failed to give deference to the Board's decision in *County of Santa Clara* (2013) PERB Decision No. 2321-M. PERB's Application to File an Amicus Brief and Proposed Brief was filed on October 9, 2014. On October 10, 2014, the Court granted PERB's Application to File an Amicus Brief and filed the brief the same day. On October 31, 2014, Petitioner and Appellant El Dorado Deputy Sheriff's Association filed a Response to PERB's Amicus Brief. On May 22, 2015, the court directed the parties to submit supplemental briefs addressing specific questions. Appellant's supplemental brief was due on or before June 16, 2015. As none of the questions pertain to PERB's interests, PERB is not required to respond. On June 16, 2015, Plaintiff and Appellant El Dorado County Deputy Sheriff's Association filed a supplemental brief. On July 7, 2015, Defendant and Respondent County of El Dorado filed a supplemental brief. The matter now awaits oral argument.

