



2022-2023 ANNUAL REPORT

California Public Employment Relations Board

October 15, 2023

TABLE OF CONTENTS

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

LETTER FROM THE CHAIR

October 15, 2023

Dear Members of the State Legislature and fellow Californians:

We are pleased to submit the 2022 – 2023 Public Employment Relations Board (PERB) Annual Report. PERB is committed to conducting agency activities with transparency and accountability, and this report describes PERB activities, case dispositions, and other achievements for the Board's divisions in the past fiscal year. The report also describes PERB's statutory authority, jurisdiction, purpose, and duties.

The Board issued 60 decisions in the 2022 – 2023 fiscal year. The [Board's docket](#) continues to reflect a historical low number of cases to be decided and decisions continue to be issued at the Board level within six months. Other highlights from 2022 – 2023 include:

- [623 unfair practice charges filed](#)
- [93 representation petitions filed](#)
- [74 approved requests for mediation under EERA and HEERA](#)
- [29 factfinding requests](#)
- 408 days of informal settlement conferences
- [75 formal hearings completed by administrative law judges](#)
- [70 proposed decisions issued by administrative law judges](#)
- [460 cases filed with State Mediation and Conciliation Service](#)

LETTER FROM THE CHAIR, CONT'D

The past year marked the fourth consecutive year that public transit districts subject to the labor relations provisions found in the Public Utilities Code were added to PERB's jurisdiction. Senate Bill 957 (Chapter 240, Statutes of 2022) gave PERB jurisdiction over disputes relating to employer-employee relations of the Santa Cruz Metropolitan Transit District and Assembly Bill 2524 (Chapter 789, Statutes of 2022) gave PERB jurisdiction over the Santa Clara Valley Transportation Authority for those exclusive representatives that have elected to move one or more of its bargaining units to the jurisdiction of PERB.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric R. Banks", with a stylized, sweeping underline.

Eric R. Banks, Chairperson

DID YOU KNOW?

- The three-member Educational Employment Relations Board (EERB) officially opened for business on April 1, 1976. In that same year, the Board conducted the first election under the EERA in May and the first formal unfair practice hearing in October.
- With the enactment of the State Employer-Employee Relations Act in 1978 the EERB was renamed the Public Employment Relations Board.
- Effective January 1, 1981, the Board was expanded from three members to five members.
- PERB conducted the first statewide conference featuring labor-management cooperation in the public sector in 1989.
- PERB's silver anniversary in 2001 saw its jurisdiction nearly double with the addition of the Meyers-Milias-Brown Act giving PERB oversight of over 5,000 cities, counties, and special districts.

STATUTORY AUTHORITY AND JURISDICTION

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

In fiscal year 2022–2023 more than 2.5 million public sector employees and over 5,000 public employers fell under the jurisdiction of PERB. The approximate number of employees under these statutes is as follows:

- 700,000 work for the public education system from pre-kindergarten through and including the community college level;
- 250,000 work for the State;
- 430,000 work for the University of California, California State University, and Hastings College of Law; and
- 1,300,000 work for cities, counties, special districts, and In-Home Support Service agencies,
- with the remainder working in the trial courts, Judicial Council, and certain transit districts.

In addition, PERB has jurisdiction over approximately 40,000 childcare providers who participate in a state-funded early care and education program.

PERB ADMINISTERS THE FOLLOWING STATUTES :

- (1) [Educational Employment Relations Act](#) (EERA) (Government Code § 3540 et seq.)
- (2) [State Employer-Employee Relations Act](#) (Dills Act) (Government Code § 3512 et seq.)
- (3) [Higher Education Employer-Employee Relations Act](#) (HEERA) (Government Code § 3560 et seq.)
- (4) [Meyers-Milias-Brown Act](#) (MMBA) (Government Code § 3500 et seq.)
- (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.)

STATUTES UNDER PERB JURISDICTION

(CONT'D):

8. [Judicial Council Employer-Employee Relations Act](#) (JCEERA) (Government Code, § 3524.50 et seq.)
9. [Public Employee Communications Chapter](#) (PECC) (Government Code § 3555 et seq.)
10. [Prohibition on Public Employers Deterring or Discouraging Union Membership](#) (PEDD) (Government Code § 3550 et seq.)
11. [Building a Better Early Care and Education System Act](#) (Welfare and Institutions Code § 10420 et seq.)
12. [Orange County Transportation District Act \(OCTDA\)](#) (Public Utilities Code § 40122.1)
13. [San Francisco Bay Area Rapid Transit District \(BART\)](#) (Public Utilities Code § 28848 et. seq.)
14. [Sacramento Regional Transit District Act \(SacRTD Act\)](#) (Public Utilities Code § 102398 et. seq.)
15. [Santa Cruz Metropolitan Transit District Act \(SC Metro\)](#) (Public Utilities Code § 98160 et. seq.)
16. [Santa Clara Valley Transportation Authority \(VTA\)](#) (Public Utilities Code § 100300 et. seq.)

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

HISTORY OF PERB'S STATUTORY AUTHORITY AND JURISDICTION

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

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

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

PERB's jurisdiction and responsibilities were changed in late June 2012 by the passage of the In-Home Supportive Service Employer- Employee Relations Act (IHSSEERA). IHSSEERA initially covered eight counties with an additional four counties added in July 2015. In June of 2017, IHSSEERA was repealed, returning the IHSS providers to coverage under the MMBA.

HISTORY OF PERB'S STATUTORY AUTHORITY AND JURISDICTION (CONT'D)

In 2012, the Governor's Reorganization Plan 2 placed PERB under the California Labor and Workforce Development Agency. Senate Bill 1038 moved the State Mediation and Conciliation Service (SMCS) from the Department of Industrial Relations and placed it within PERB. SMCS was formed in 1947 after the federal enactment of the Taft-Hartley Act.

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

In 2018, Judicial Council Employer-Employee Relations Act (JCEERA) established collective bargaining for employees of the Judicial Council and added approximately 500 employees to PERB's jurisdiction. As a result of Senate Bill 866, PERB is responsible for the administration and enforcement of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), which is codified at Chapter 11 of Title 1 of the Government Code, section 3550 et seq.

HISTORY OF PERB'S STATUTORY AUTHORITY AND JURISDICTION (CONT'D)

Another significant expansion of PERB's jurisdiction occurred in 2019. First, the Building a Better Early Care and Education System Act, Assembly Bill 378, expanded PERB's jurisdiction beyond public sector employees by giving PERB jurisdiction over the collective bargaining relationship between approximately 40,000 family childcare providers, their provider organization, and the state. Assembly Bill 355 gave PERB jurisdiction over unfair practice charges for the Orange County Transportation Authority.

In 2020, AB 2850 gave PERB jurisdiction over disputes relating to employer-employee relations between the San Francisco Bay Area Rapid Transit District (BART) and its employees. Then in 2021, Senate Bill 598 gave PERB jurisdiction over disputes relating to employer-employee relations of the Sacramento Regional Transit District (SacRT) for those exclusive representatives that have elected to move one or more of its bargaining units to the jurisdiction of the Public Employment Relations Board for unfair practice charges.

2022 marked the fourth consecutive year that public transit districts subject to the labor relations provisions found in the Public Utilities Code were added to PERB's jurisdiction. Senate Bill 957 gave PERB jurisdiction over disputes relating to employer-employee relations of the Santa Cruz Metropolitan Transit District and Assembly Bill 2524 gave PERB jurisdiction over the Santa Clara Valley Transportation Authority for those exclusive representatives that have elected to move one or more of its bargaining units to the jurisdiction of PERB.

PURPOSE AND FUNCTIONS

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

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

BOARD MEMBERS (2022-2023)

Eric R. Banks was reappointed to the Board as Chairperson in January of 2022. In January of 2021, Governor Gavin Newsom designated Banks as Chairperson of the Board; the first openly gay person to hold the position. He was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, February 2015, and February 2017. Prior to his appointment, Mr. Banks was a partner at Ten Page Memo, LLC, providing organizational consulting services.

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

Mr. Banks' term expires December 2026.

BOARD MEMBERS (2022-2023)

Arthur A. Krantz was appointed to the Board by Governor Edmund G. Brown Jr. on February 27, 2018. He was reappointed by Governor Gavin Newsom in January 2021 for another five-year term. For more than 20 years prior to his appointment, Mr. Krantz represented unions, employees, and nonprofits in litigation, arbitration, and administrative cases, and he worked on law reform, organizing, negotiation, and strategic campaigns to effect social change. He did this work as an associate and partner at Leonard Carder, LLP.

With fellow Board member Erich Shiners, Mr. Krantz serves as co-editor-in-chief of California Public Sector Labor Relations, a LexisNexis legal treatise. He has also served as a pro bono asylum attorney, a lecturer and practitioner-advisor at UC Berkeley School of Law, and an Executive Committee Member of the California Lawyers Association Labor and Employment Law Section. Mr. Krantz received his Bachelor of Arts from Yale University and his Juris Doctor from NYU School of Law, where he was a Root Tilden Public Interest Scholar. After law school, he served as a judicial law clerk for the Honorable Ellen Bree Burns at the United States District Court, District of Connecticut.

Mr. Krantz's term expires December 2025.

BOARD MEMBERS (2022-2023)

Lou Paulson was appointed to the Board by Governor Gavin Newsom on February 6, 2019. Prior to his appointment Mr. Paulson served as the President of the California Professional Firefighters and as Vice President of the California Labor Federation.

He also had a 34-year career in the Fire Service, 26 of those with the Contra Costa County Fire Protection District. Mr. Paulson has participated on many Local and National Boards and Commissions including the UC Berkeley Labor Center Advisory Board and the National Fire Protection Board of Directors.

Mr. Paulson has lectured and taught nationally and internationally on labor relations and leadership. He received a Bachelor of Science degree from San Francisco State University.

Mr. Paulson's term expires December 2023.

BOARD MEMBERS (2022-2023)

Adrin Nazarian was appointed to the Board by Governor Gavin Newsom on February 21, 2023. Prior to joining PERB, Nazarian served as a California State Assemblymember from 2012 to 2022.

He was Chief of Staff for Los Angeles City Councilmember Paul Krekorian from 2010 to 2012 and served as Chief of Staff for Assemblymember Paul Krekorian in the California State Assembly from 2006 to 2010. He received his Bachelor of Arts degree in Economics from the University of California, Los Angeles.

Mr. Nazarian's term expires December 2027.

BOARD MEMBERS (2022-2023)

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

Mr. Shiners served as Legal Advisor to PERB Chair Alice Dowdin Calvillo from 2008 to 2011. During law school he held internships at the National Labor Relations Board in Washington D.C. and the Agricultural Labor Relations Board in Sacramento and served as a judicial extern for Justice M. Kathleen Butz of the California Court of Appeal, Third District.

Mr. Shiners is a member of the Executive Committee of the Labor and Employment Law Section of the California Lawyers Association, and, with fellow Board member Arthur Krantz, a co-editor-in-chief of the Section's publication, California Public Sector Labor Relations. He holds a Bachelor of Arts degree in History from Sacramento State University, and a Juris Doctor degree from University of the Pacific, McGeorge School of Law.

Mr. Shiners' term expired December 2022.

MAJOR FUNCTIONS

The major functions of PERB include:

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

UNFAIR PRACTICE CHARGES

The investigation and resolution of unfair practice charges (UPC) is the major function performed by PERB's Office of the General Counsel. UPCs may be filed by an employer, employee organization, or employee.

Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA.

A UPC alleges an employer or employee organization engaged in conduct that is unlawful under one of the statutory schemes administered by PERB.

Examples of unlawful employer conduct include:

- refusing to negotiate in good faith with an employee organization;
- disciplining or threatening employees for participating in union activities; and
- promising benefits to employees if they refuse to participate in union activity.

Examples of unlawful employee organization conduct include:

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

UNFAIR PRACTICE CHARGES (CONT'D)

A UPC filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of an applicable statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the applicable statute has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, the Board agent must dismiss it. The charging party may appeal the dismissal to the Board itself.

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

Once a complaint is issued, usually another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 60 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB Administrative Law Judge (ALJ) is scheduled. A hearing generally occurs within 90 to 120 days from the date of the informal conference.

UNFAIR PRACTICE CHARGES (CONT'D)

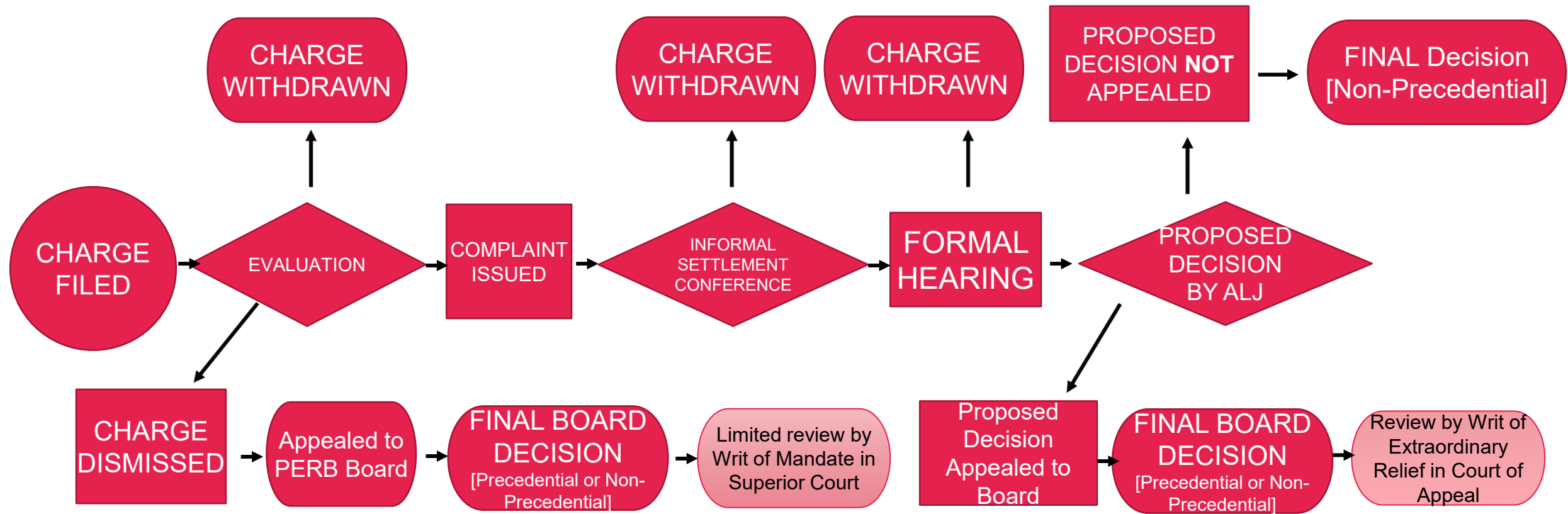
Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision. Proposed decisions that are not appealed to the Board are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Final decisions of the Board are both binding on the parties to a particular case and precedential in other cases, unless designated as non-precedential by a majority of the Board members pursuant to PERB Regulation 32320, subdivision (d).

Text and headnotes for all but non-precedential Board decisions are available on our website (<https://perb.ca.gov/decisions/>) or by contacting PERB.

On the website, interested parties can also [sign-up for electronic notification of new Board decisions](#).

UPC FLOW CHART



REPRESENTATION

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

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

Once a bargaining unit has been established, PERB may conduct a representation election, unless the applicable statute and the facts of the case require the employer to grant recognition to an employee organization as the exclusive representative. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of “No Representation” appears on the ballot in every representation election.

REPRESENTATION (CONT'D)

PERB staff also assists parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA, HEERA, and the MMBA. If the parties are unable to reach an agreement during negotiations under EERA, HEERA, or the Dills Act, either party may declare an impasse and request the appointment of a mediator. A Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, an SMCS mediator assists the parties in reaching an agreement. If settlement is not reached during mediation under EERA or HEERA, either party may request the initiation of statutory factfinding procedures.

PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

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



APPEALS OFFICE

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations.

The office:

- maintains case files,
- issues decisions rendered, and
- assists in the preparation of administrative records for litigation filed in California's appellate courts.

The Appeals Office is the main contact with parties and their representatives while cases are pending before the Board itself.

OFFICE OF THE GENERAL COUNSEL

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

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

STATE MEDIATION AND CONCILIATION SERVICE (SMCS)

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

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

The mediation and representation services provided by the SMCS division of PERB are not to be confused with those provided by PERB's Office of the General Counsel.

SMCS' work is performed strictly on the basis of mutual consent, except as required by statute, such as the Public Utilities Code. Mediation is confidential and non-adjudicatory, with emphases on compromise and collaboration toward settlement. SMCS welcomes opportunities to speak with labor and management organizations and communities to provide information about the benefits of harmony in labor/management relationships through the effective use of mediation in their disputes.

SMCS (CONT'D)

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

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

Other services are also available. These include:

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

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

ADMINISTRATIVE OPERATIONS

The Division of Administration provides services to support PERB operations and its employees, including:

- strategic policy development,
- administration, and
- communication with the State's control agencies to ensure operations are compliant with State and Federal requirements.

A full range of services are provided for both annual planning/reporting cycles and ongoing operations in:

- fiscal,
- human resources,
- technology,
- facility,
- procurement,
- audits,
- security, and
- business services areas.

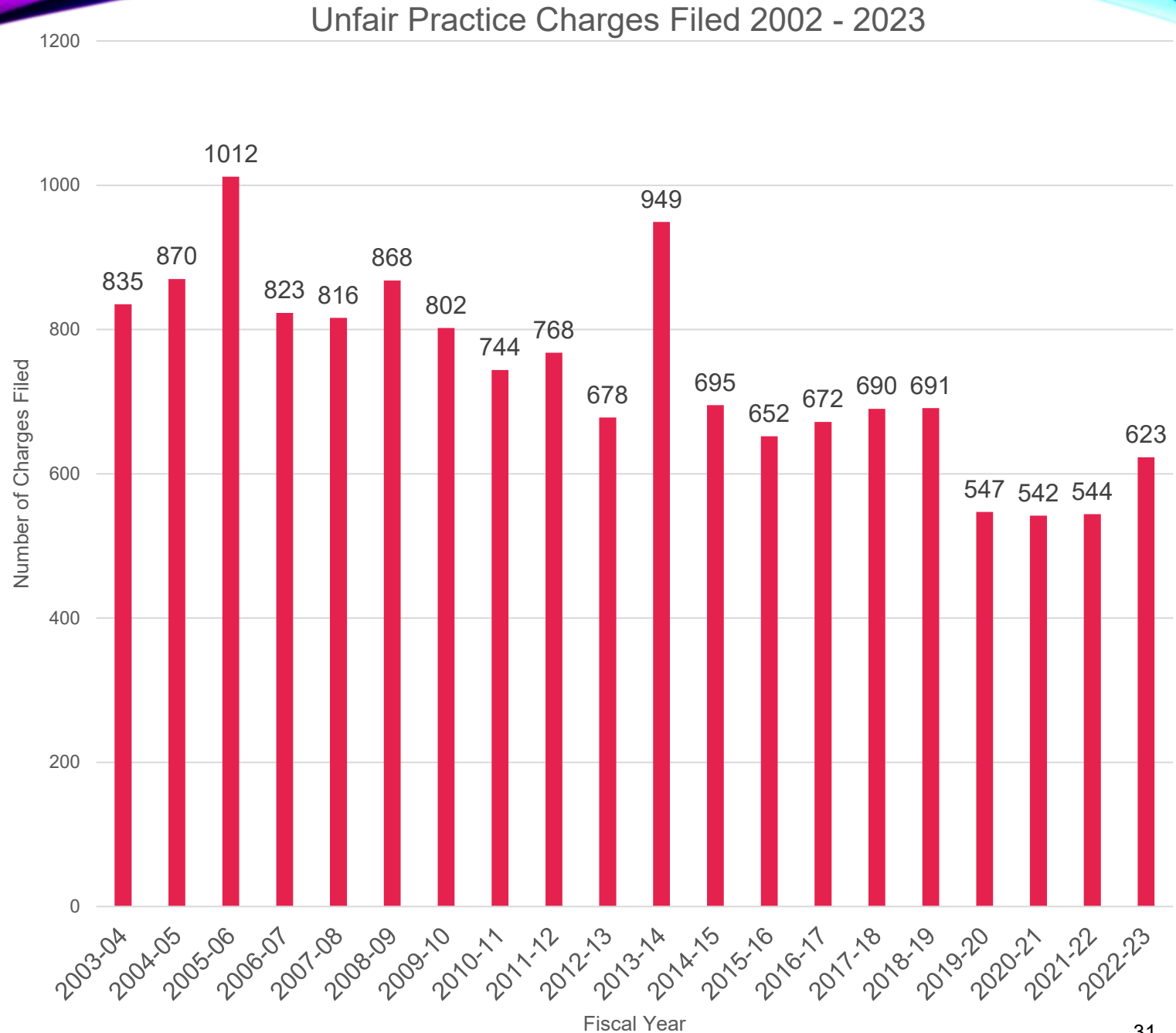
CASE DISPOSITIONS



UNFAIR PRACTICE CHARGE FILINGS

In Fiscal Year 2022-2023, parties filed 623 new charges with PERB. The chart shows UPC filings over the past 20 years, which includes the following adjustment: in FY 2004-05, 1,126 filings were reduced by 256 due to similar charges filed by one group of employees. The spike in FY 2013- 14 was due to 173 filings by the same individual on behalf of himself and/or other employees.

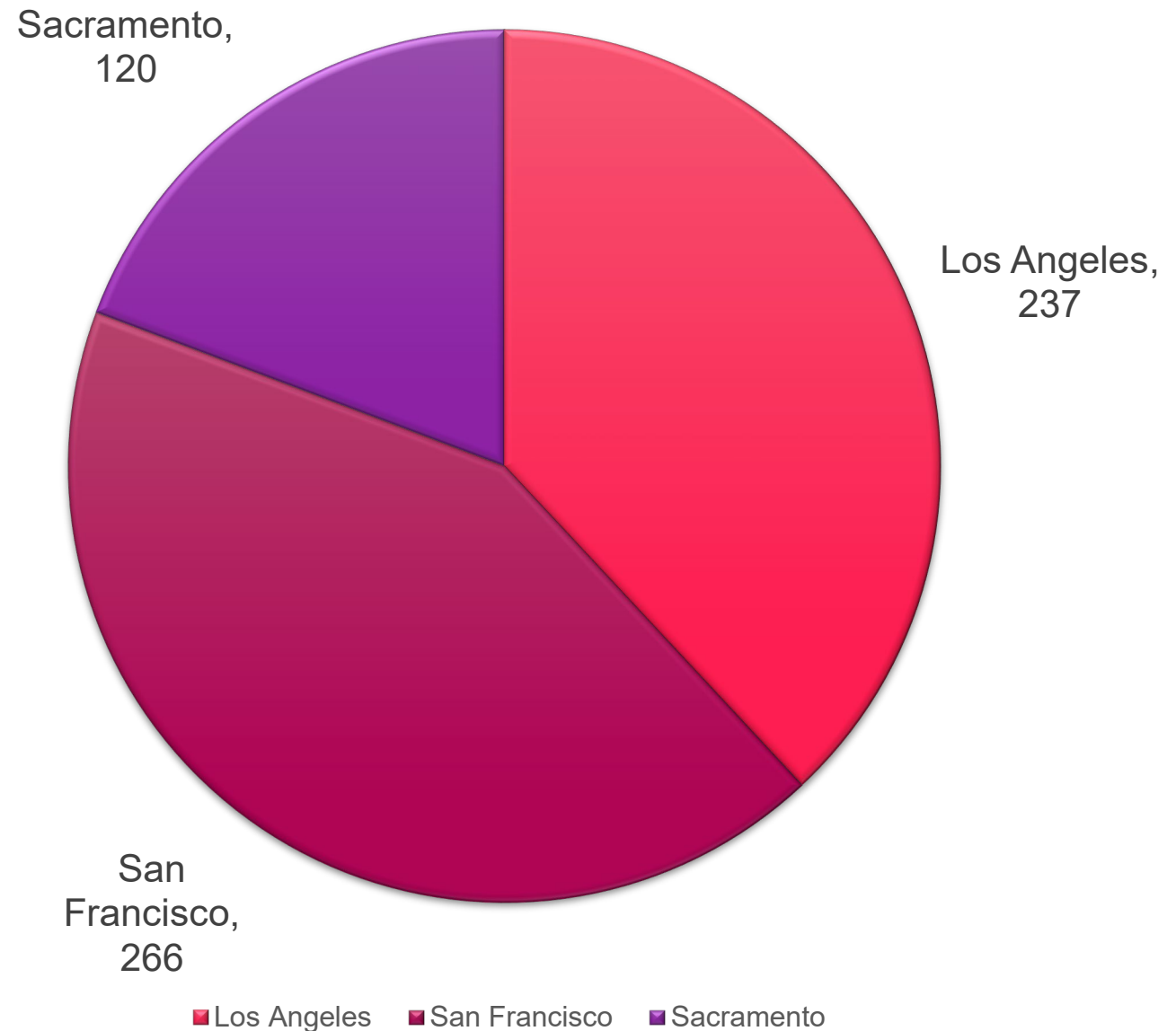
The impact of COVID-19 on charge filings over recent fiscal years has resulted in a significant drop in the five-year average (589) when compared to the 20-year average of 741 charges.



Unfair Practice Charges by Region

UNFAIR PRACTICE CHARGES BY REGION

Regionally, of the 623 UPC filings for Fiscal Year 2022-2023, the San Francisco Regional Office received the most charges (266), the Los Angeles Regional Office followed with 237, and the Sacramento Regional Office again received nearly one in every five charges filed (120).



2022 – 2023 UNFAIR PRACTICE CHARGES BY TYPE OF ACT

Act	Total UPCs
Dills Act	41
EERA	229
HEERA	94
MMBA	231
TEERA	3
Trial Court Act	6
Court Interpreter Act	4
Childcare Act	0
Judicial Council Act	0
PUC Transit Districts	9
Non-Jurisdictional	6
Total	623

UPC FIVE YEAR
WORKLOAD
COMPARISON:
CHARGES FILED
BY FISCAL YEAR

2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2023	5 Year Average
691	547	542	544	623	589

DISPUTE RESOLUTIONS AND DISPOSITIONS

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process—the investigation. During the investigative step in Fiscal Year 2022 – 2023, the parties withdrew 147 cases entirely and 18 partially, many through a PERB Informal Settlement Conference.

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

Overall, of the 593 charge dispositions in Fiscal Year 2022 – 2023, 291 had complaints issued, 147 had charges withdrawn, and 125 were dismissed. In addition, 12 had complaints issued with a partial dismissal and 18 had complaints issued with a partial withdrawal.

The following Dispositions by Region table provides regional data for the 593 UPC dispositions in FY 2022 – 2023. The San Francisco Regional Office was responsible for about 43 percent of case dispositions; the Los Angeles Regional Office was responsible for about 35 percent of case dispositions; and the Sacramento Regional Office for about 22 percent of case dispositions.

DISPOSITIONS BY REGION

	Withdrawal	Dismissal	Complaint	Complaint/ Partial Dismissal	Complaint/ Partial Withdrawal	Total
Sacramento	30	26	67	2	3	128
San Francisco	79	47	120	6	4	256
Los Angeles	38	52	104	4	11	209
Total	147	125	291	12	18	593

ADMINISTRATIVE ADJUDICATION

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

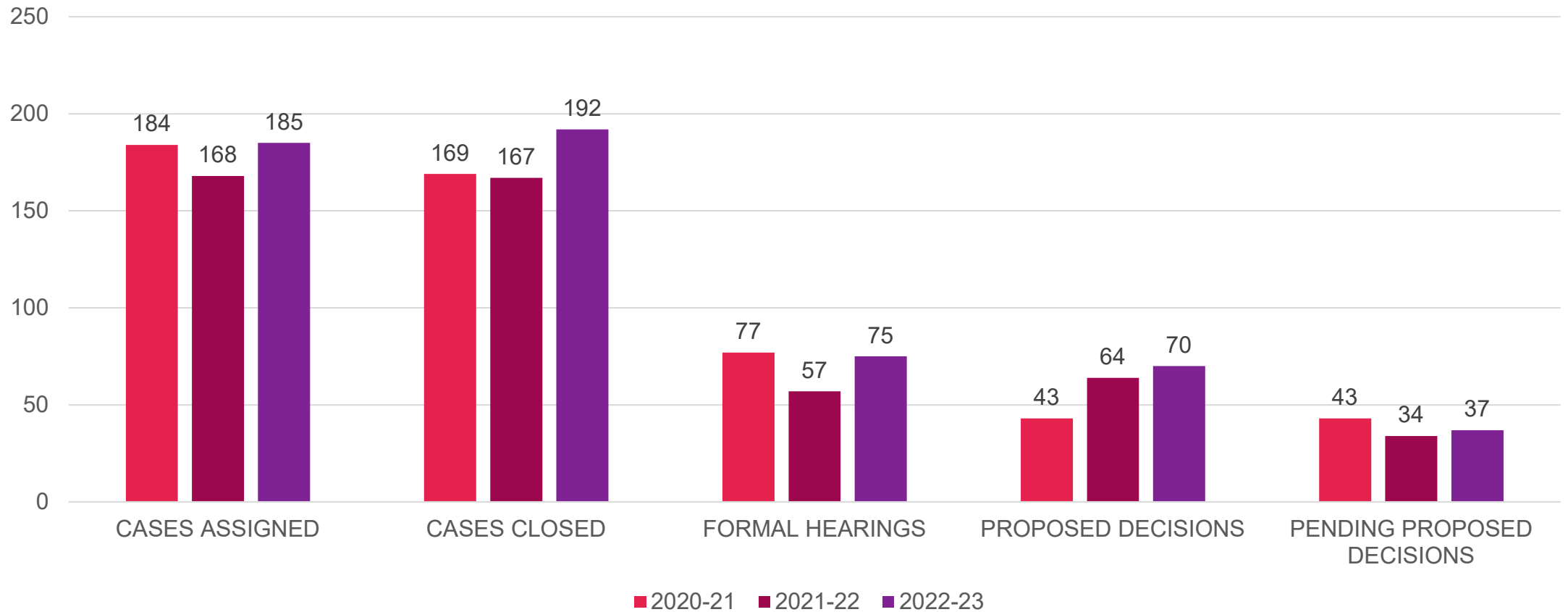
In Fiscal Year 2022 – 2023, the Division had an average of ten ALJs conducting formal hearings and writing proposed decisions. The ALJs' issued 70 proposed decisions, an increase from the prior year (64 proposed decisions). The average time it took to issue a proposed decision decreased from 174 days in 2021 – 2022 to 150 days in 2022 – 2023.

The number of formal hearings completed increased 29% from 2021 – 2022 (58) with 75 completed in 2022 – 2023. In Fiscal Year 2022 – 2023, the Division ended with 37 pending proposed decisions to write, up slightly from 34 pending at the end of the prior Fiscal Year.

In Fiscal Year 2022 – 2023 there were 185 cases assigned and 192 cases closed, compared to 168 cases assigned and 167 closed in Fiscal Year 2020 – 2021. PERB ALJs closed 15% more cases in FY 2022 – 2023.

Regionally speaking, the Los Angeles Regional Office in once again had the highest percentage of hearing activity, which is consistent with most prior years. In Fiscal Year 2022 – 2023, Los Angeles Regional conducted 41 percent of PERB's completed formal hearings, with the San Francisco Regional Office at 32 percent and Sacramento at 27 percent.

ADMINISTRATIVE ADJUDICATION ACTIVITY

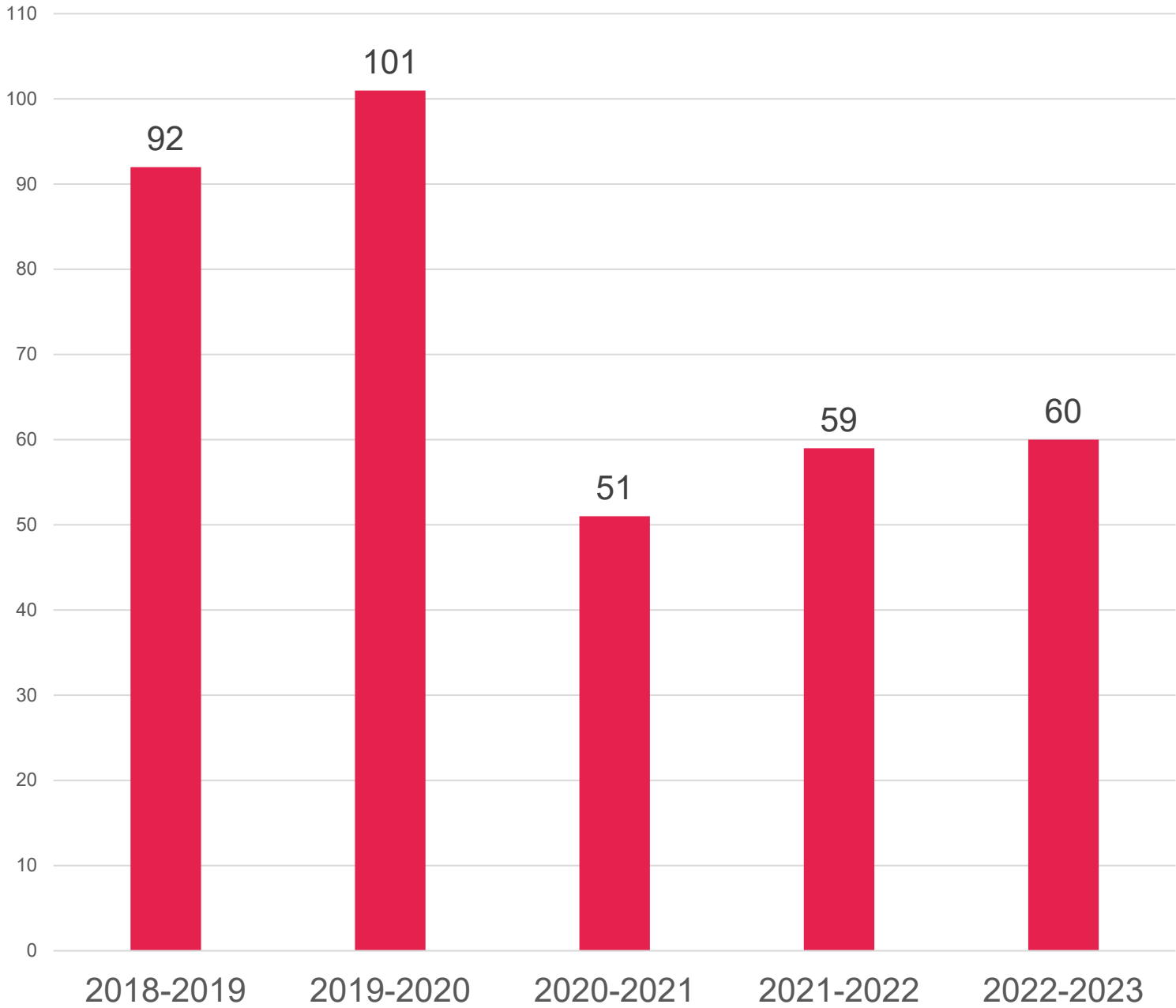


Board Decisions Issued - Five Year Snapshot

BOARD
DECISIONS

Proposed decisions, charge dismissals, and administrative determinations issued by Board agents may be appealed to the Board itself. During FY 2022 – 2023 the Board issued 60 decisions, one more than FY 2021 – 2022, and bringing the average to 73 over the past five years.

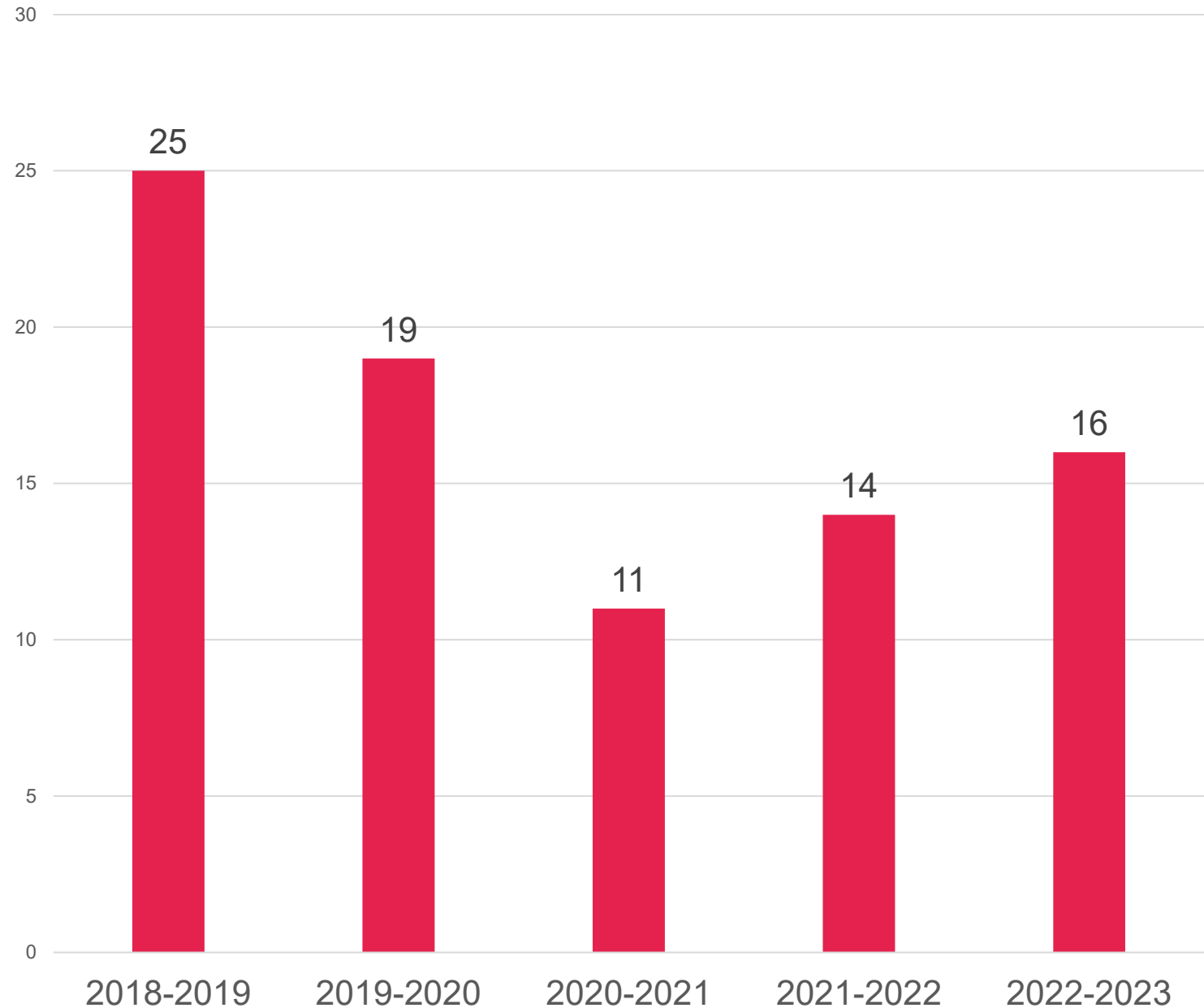
The Board’s docket remains historically low and decisions are being issued within six months of filings being complete.



Injunctive Relief Requests Filed - Five Year Snapshot

INJUNCTIVE RELIEF REQUESTS

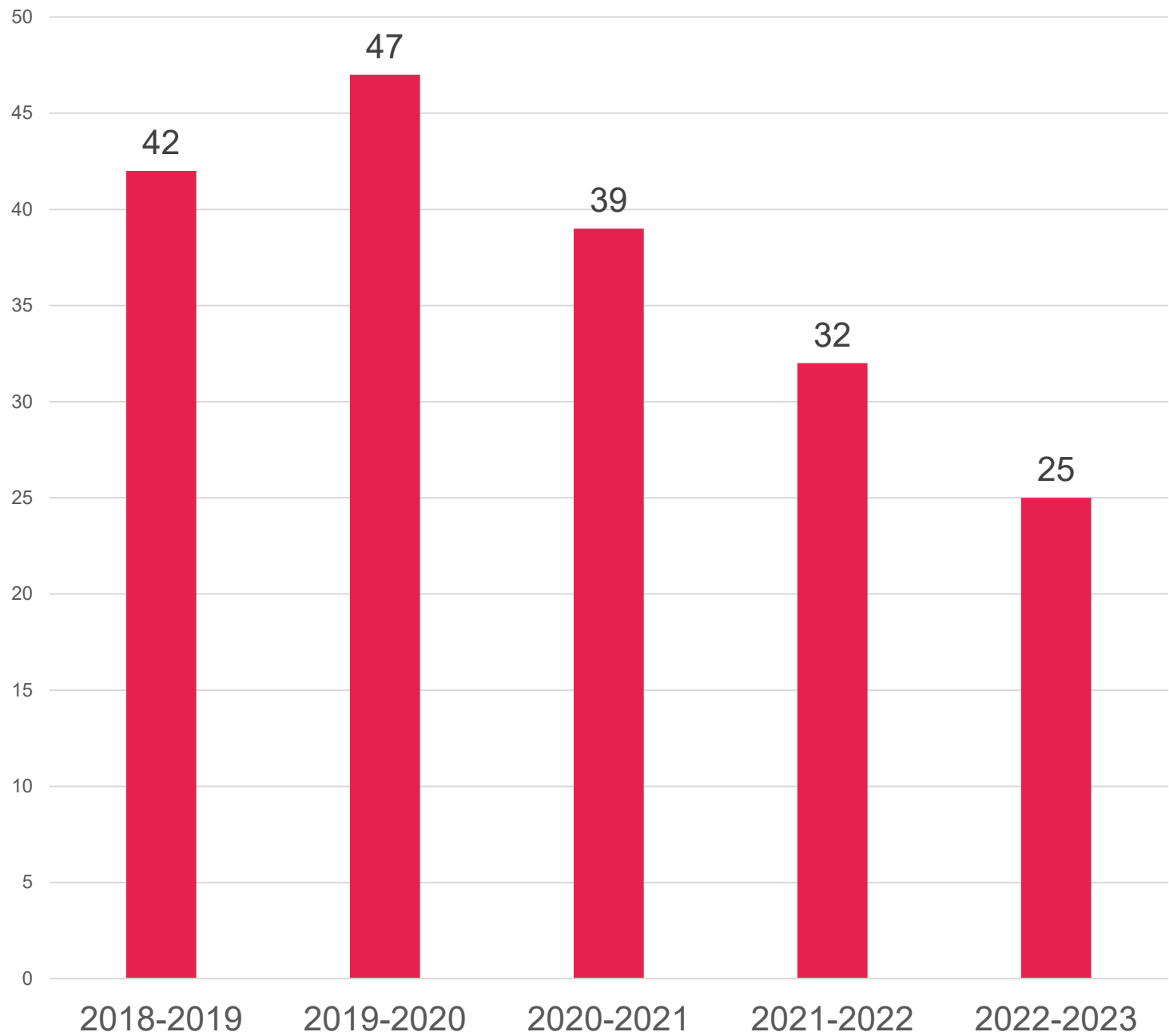
The Board considered 16 requests for injunctive relief in Fiscal Year 2022 – 2023, compared to 14 in Fiscal Year 2021 – 2022. Injunctive relief requests filed over the past five fiscal years and investigated by the General Counsel are shown and averaged 17 per year over the five-year period.



LITIGATION

PERB’s litigation projects decreased in FY 2022 – 2023. PERB’s Regional Attorneys completed 9 litigation-related projects (compared to 81 litigation projects last fiscal year). The number of active litigation cases also decreased. A total of 25 litigation cases, including new and continuing matters, were handled during the Fiscal Year (compared to 32 last year). A listing of these cases is provided beginning on page 54.

PERB’s court litigation primarily involves: (1) injunctive relief requests at the superior court level to immediately stop unlawful actions; (2) defending decisions of the Board at the appellate level; and (3) defending the Board’s jurisdiction in all courts.



REPRESENTATION ACTIVITY

Representation Related Cases Filed by Fiscal Year

2018–2019	2019-2020	2020-2021	2021-2022	2022-2023	5 Year Average
89	71	91	134	93	96

PERB received 93 new representation petitions in Fiscal Year 2022 - 2023 compared to 134 in the prior Fiscal Year. As shown, the total number of petitions for FY 2022 – 2023 includes: 51 unit modification petitions, 22 recognition petitions, 11 decertification petitions, 6 requests for amendment of certification, 1 petition for certification, and 7 severance requests.

Elections Conducted in Fiscal Year 2022 – 2023 by Type

Election Type	Number Conducted
Amendment of Certification	0
Decertification	6
Representation	1
Severance	0
Unit Modification	0

Representation Related Case Filings

Case Type	Number Filed
Request for Recognition	21
Severance Petition	7
Petition for Certification	1
Decertification	11
Amended Certification	6
Unit Modification	47
Totals	93

REPRESENTATION ACTIVITY

Six elections were conducted by PERB in Fiscal Year 2022 – 2023, matching the number conducted the prior Fiscal Year. Nearly 1270 employees were eligible to participate in these elections, with 992 employees in the largest bargaining unit and 26 in the smallest.

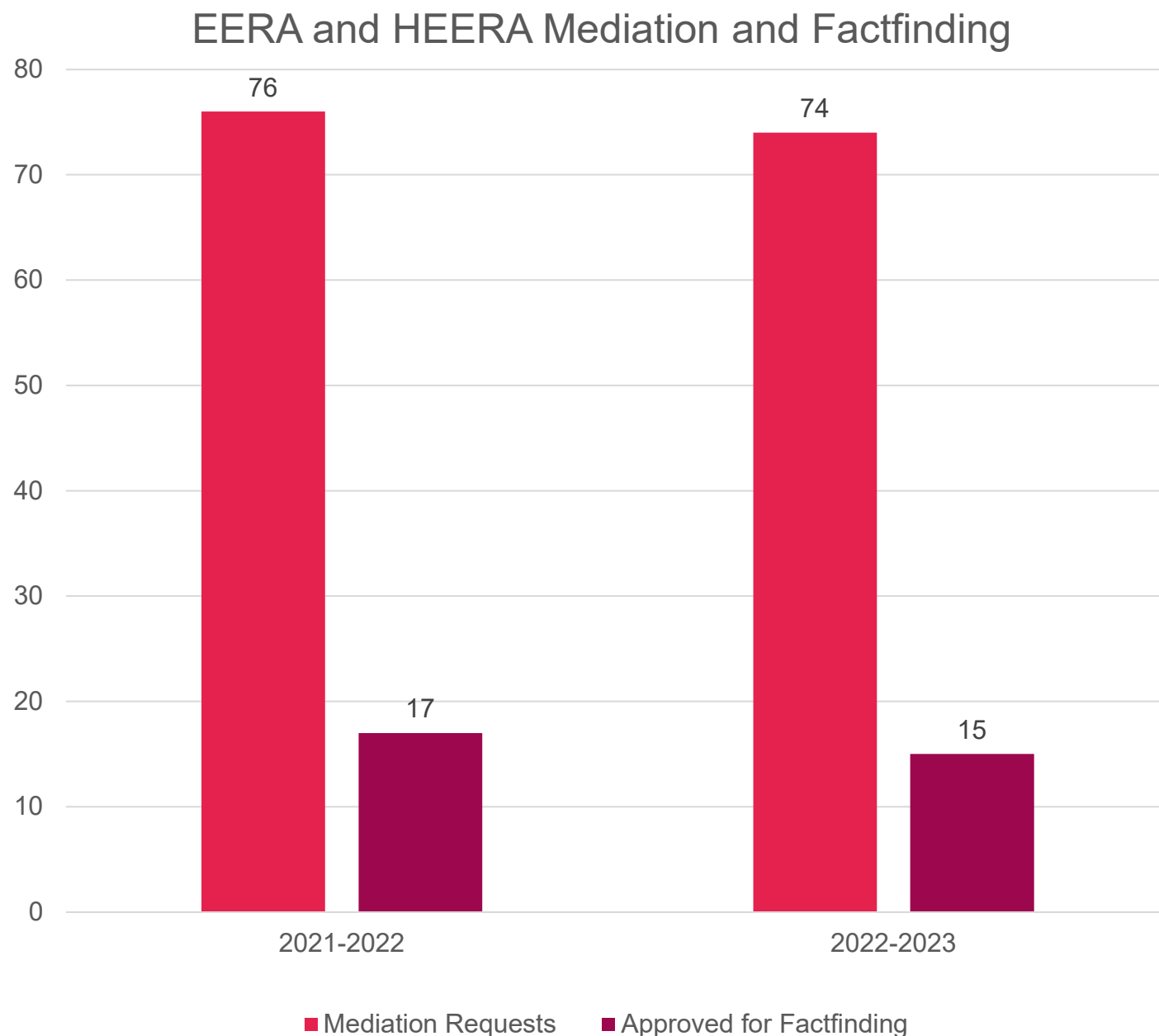
Case Number	Employer	Unit Type	Winner	Unit Size
LA-DP-465-E	Gompers Preparatory Academy	Certificated Employees	No Representation	50
SA-DP-283-E	Fresno Unified School District	Health & Social Service Professionals	Fresno Teachers Association	64
LA-DP-461-M	San Bernardino County Employees' Retirement Association	General and Professional	SEIU Local 721	50
SA-DP-282-E	Stockton Unified School District	Police	Stockton Unified School District Police Officers' Association	26
LA-DP-460-E	Pasadena Area Community College District	All full-time and part-time faculty	Pasadena City College Faculty Association	992
SA-RR-1197-M	John C. Fremont Healthcare District	Technical, Service & Maintenance and Clerical	AFSCME Local 2703	88

EERA AND HEERA MEDIATION AND FACTFINDING

During Fiscal Year 2022 – 2023, PERB received 85 impasse mediation requests under EERA and HEERA.

The number of mediation requests under EERA and HEERA remained the same as the prior year.

Subsequently, 74 of those requests were approved for mediation, and 17 of those impasse cases (20 percent) were approved for factfinding.



MMBA MEDIATION AND FACTFINDING

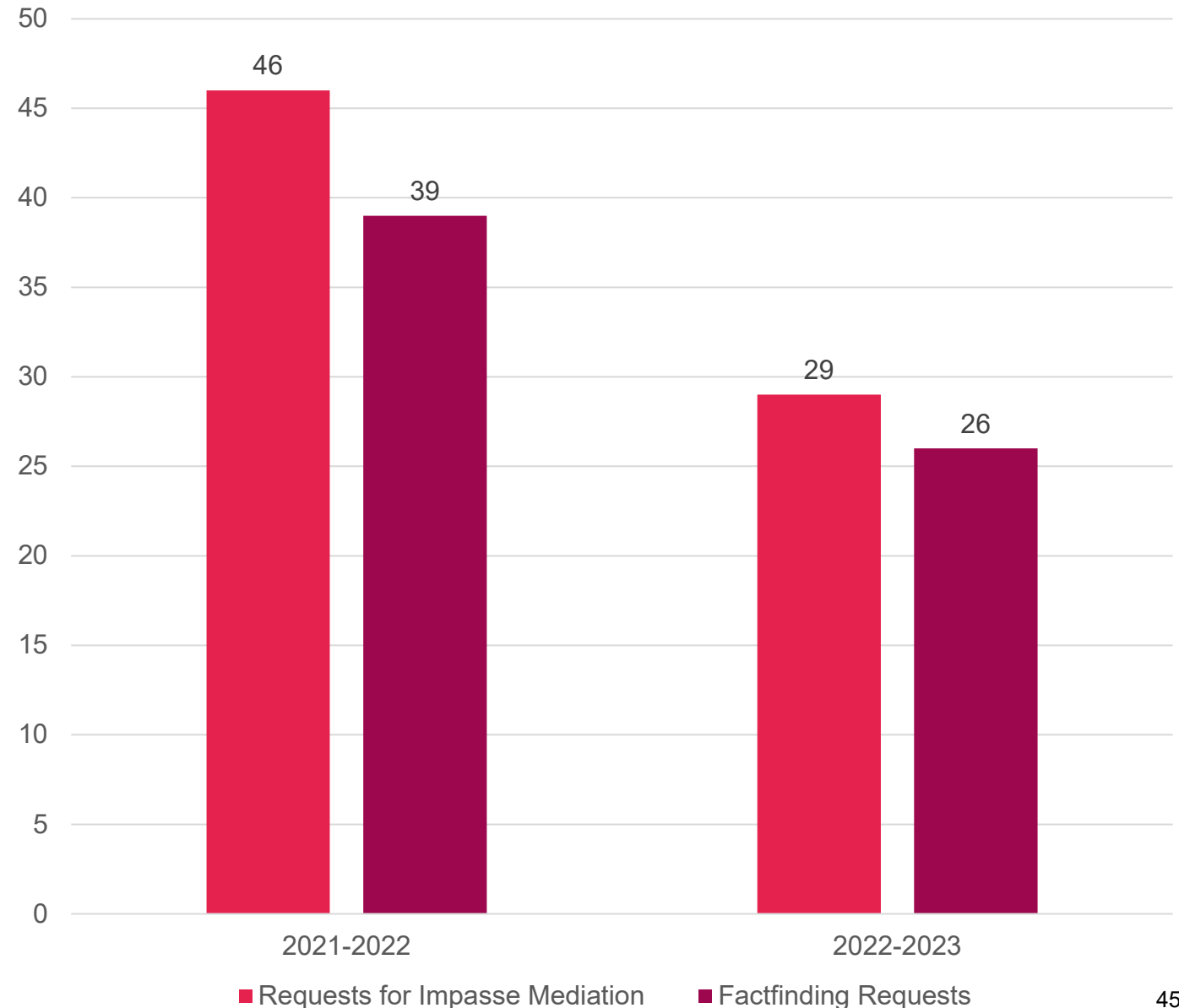
During this period, 29 factfinding requests and 26 requests for impasse mediation were filed under the MMBA.

MMBA impasse mediation requests are filed directly with SMCS and do not require certification prior to mediation.

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

MMBA impasses not resolved in mediation may go to factfinding pursuant to the provisions set forth in the statute and are at the discretion of the employee organization.

MMBA Mediation and Factfinding



COMPLIANCE

In Fiscal Year 2022-2023, PERB initiated compliance proceedings in 47 unfair practice cases in which a final decision resulted in a finding of a violation of the applicable statute. This is an increase in compliance activity over the prior year (41 compliance proceedings were initiated in Fiscal Year 2021 – 2022) and above the five-year average of 42.



SMCS CASE DISPOSITIONS

The Division of State Mediation and Conciliation Service (SMCS) received a total of 460 new cases in Fiscal Year 2022 – 2023 and closed 478. The tables provide information on SMCS's activities in Fiscal Year 2022 – 2023.

Contract Impasses and Other Contract Mediations	
EERA and HEERA	89
MMBA	53
Transit	6
Trial Courts	3
State of California	0
Los Angeles City and County	1

Grievances and Disciplinary Appeals	
EERA and HEERA	166
MMBA	51
Transit	2
State Trial Courts	2
Los Angeles City and County	1
Private Sector (PUC, Other SMCS Specified)	11

Other	
Representation and Election Cases	26
Workplace Conflict or Training and Facilitation Assignments	41
Miscellaneous Cases Related to Education, Outreach, and Internal Mediation or Program Administration Projects	8
Requests for Lists of Arbitrators from Panel of Independent Arbitrators	334

LEGISLATION

PERB monitors legislation concerning labor relations statutes under PERB's jurisdiction. In Fiscal Year 2022-2023, three bills were signed into law by Governor Newsom.

Senate Bill 931 (Chapter 823, Statutes of 2022)

- SB 931 subjects a public employer to civil penalties and attorney's fees for violating Government Code section 3550 which prohibits a public employer from deterring or discouraging public employees or applicants from becoming or remaining members of an employee organization.

Senate Bill 957 (Chapter 240, Statutes of 2022)

- SB 957 gave PERB jurisdiction over disputes relating to employer-employee relations of the Santa Cruz Metropolitan Transit District.

Assembly Bill 2524 (Chapter 789, Statutes of 2022)

- AB 2524 gave PERB jurisdiction over disputes relating to employer-employee relations of the Santa Clara Valley Transportation Authority for those exclusive representatives that have elected to move one or more of its bargaining units to the jurisdiction of the Public Employment Relations Board for unfair practice charges.

RULEMAKING

PERB initiated and continued work on several rulemaking packages in Fiscal Year 2022-2023. The Board initiates the rulemaking packages in response to legislative changes, judicial decisions, PERB's Case Processing Efficiencies Initiative, or the need to update obsolete rules.

- **Judicial Council Employer-Employee Relations Act (JCEERA)** - PERB initiated rulemaking to fully implement JCEERA, which authorizes specified employees of the Judicial Council to unionize. JCEERA was enacted through Assembly Bill 83 (Chapter 835, Statutes of 2017). These regulations became effective July 1, 2023.
- **Expedited Case Processing Regulations** - update the Board's rules that govern expedited case processing. This rulemaking package became effective August 8, 2023.
- **Request for Reasonable Accommodation Regulations** - update the Board's rules that govern requests for reasonable accommodations. Work on this rulemaking package is expected to continue through FY 2023 - 2024.
- **Transit Regulations** - revise and update existing regulations covering transit jurisdictions, which is expected to be completed in FY 2023 - 2024.
- **Special Remedies under the Public Employee Communication Chapter** - add the Board's rules that govern special remedies under the Public Employee Communication Chapter added by Senate Bill 270 (Chapter 330, Statutes of 2021) and the Prohibition on Public Employers Deterring or Discouraging Union Membership added by Senate Bill 931 (Chapter 823, Statutes of 2022). This rulemaking package is expected to be completed in FY 2023 - 2024.

ADMINISTRATIVE LEADERSHIP

Joshua Golka was appointed Executive Director by the Board in October 2018. Prior to joining PERB, Mr. Golka was previously the California Legislative Affairs Manager for the American Federation of State, County, and Municipal Employees, where he led the organization's state legislative and budgetary strategy.

He brings over fifteen years of experience providing political, legislative, and budgetary analysis and representation before the California legislature, state departments, boards and commissions, coalition groups and the media. He is a graduate of University of Pacific, McGeorge School of Law and holds a Master of Business Administration from Indiana University, Kelley School of Business, as well as a Master of Global Management from Thunderbird School of Global Management.

J. Felix De La Torre was appointed General Counsel in February 2015. Prior to his appointment, he served as Chief Counsel for SEIU Local 1000, where he worked from 2008 to 2015. From 2000 to 2008, he was a partner and shareholder at [Van Bourg], Weinberg, Roger and Rosenfeld, where he represented both public and private sector employees in a wide range of labor and employment matters, including federal and state court litigation, labor arbitrations, collective bargaining, union elections, unfair labor practices, and administrative hearings.

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

ADMINISTRATIVE LEADERSHIP (CONT'D)

Shawn P. Cloughesy is the Chief Administrative Law Judge for PERB. He has over 25 years experience as an Administrative Law Judge with two state agencies (PERB and the State Personnel Board) conducting hundreds of hearings involving public sector labor and employment matters.

Prior to being employed as an administrative law judge, Mr. Cloughesy was a Supervising Attorney for the California Correctional Peace Officers Association, practicing and supervising attorneys who practiced before PERB and other agencies.

Gerald Fecher is the Director of the State Mediation and Conciliation Service Division. Mr. Fecher joined SMCS in 2009 when it was a part of the Department of Industrial Relations. He served as a Presiding Mediator for SMCS from 2013 to 2020 before becoming Interim Director in 2020. Prior to SMCS, he was a business representative with the International Brotherhood of Electrical Workers, Local 465, in San Diego from 1997 to 2009.

Fecher holds a Juris Doctor degree from Temple University Beasley School of Law, and during his law school tenure, interned at the National Labor Relations Board Region 21 Resident Office, in San Diego. He has served twice as President of the San Diego Chapter of the Labor and Employment Relations Association (LERA). Fecher is the author of all three editions of the CPER Pocket Guide to Public Sector Mediation in California.

ADMINISTRATIVE LEADERSHIP (CONT'D)

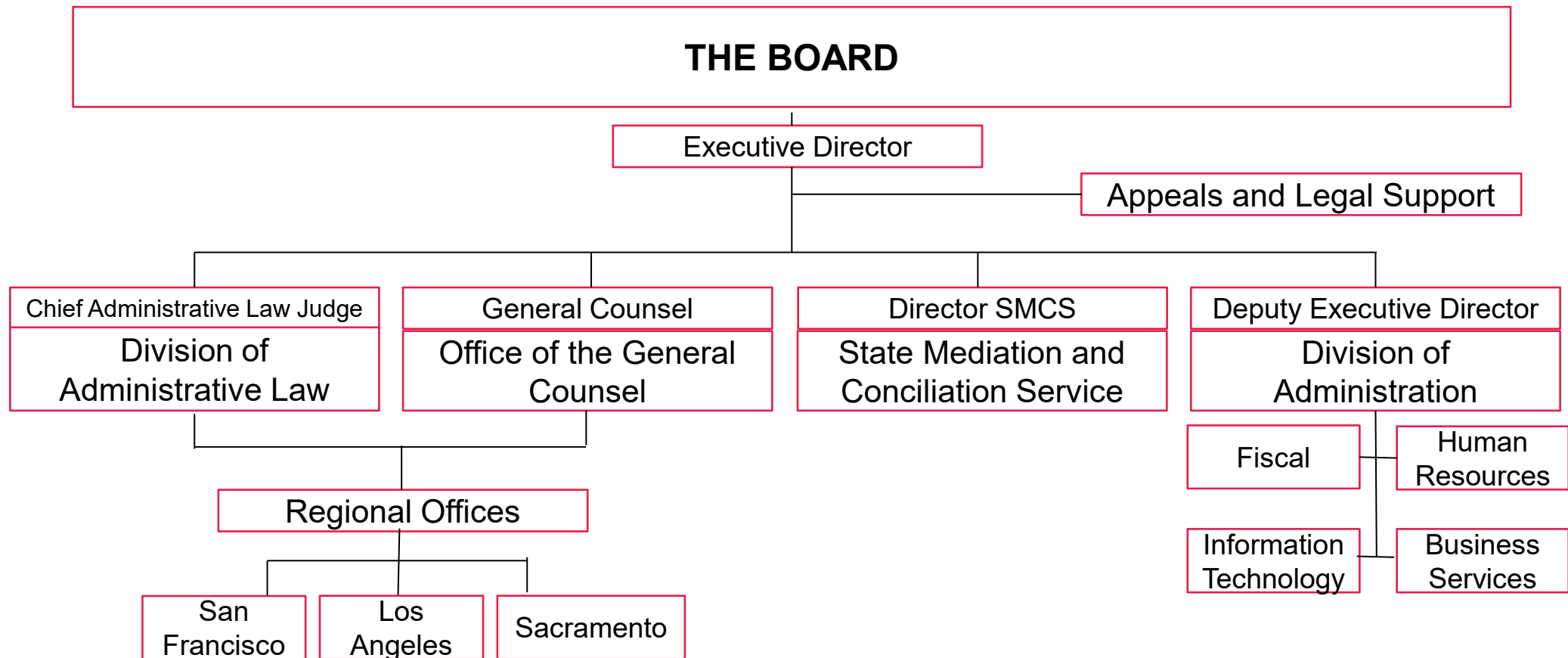
Wendi L. Ross, Deputy General Counsel [Acting General Counsel (May 2014 – February 2015); Interim General Counsel (December 2010 – April 2011)], joined PERB in April 2007 and has more than 30 years of experience practicing labor and employment law. Ms. Ross was previously employed by the State of California, Department of Human Resources as a Labor Relations Counsel. Prior to that position, she was employed as an Associate Attorney with the law firms of Pinnell & Kingsley and Thierman, Cook, Brown & Prager.

Ms. Ross received her Bachelor of Arts degree in Political Science-Public Service from U.C. Davis and her law degree from UOP, McGeorge School of Law. She has served as the Chair of the Sacramento County Bar Association, Labor and Employment Law Section and previously taught an arbitration course through the UC Davis Extension.

Susan Davey was hired as the Deputy Executive Director in March 2020. Previously, Ms. Davey was a Labor Relations Manager II at the State Compensation Insurance Fund and, before that, she worked at the California Department of Public Health as a Labor Relations Manager I. She has worked in state civil service since 2005 serving in various administrative roles for the Department of State Hospitals, including as the Hospital Administrative Resident and Accounting Administrator.

Ms. Davey earned her law degree from San Joaquin College of Law in 2014 and holds Masters Degrees in Business Leadership Studies and Peacemaking and Conflict Studies. She has a certificate in Labor-Management Relations from the U.C. Davis Extension, as well as a certificate in Workplace Mediation from Fresno Pacific University.

ORGANIZATIONAL CHART



2022-2023 LITIGATION ACTIVITY

2022-2023 LITIGATION ACTIVITY

Rebecca Wu v. Public Employment Relations Board; Twin Rivers United Educators, Filed: December 30, 2019, Sacramento County Superior Court, Case No. 34-2019-80003289 [PERB Case No. SA-CO-618-E]. Issue: Wu challenged the Board's decision sustaining the Board agent's refusal to issue a complaint in her unfair practice charge alleging that Twin Rivers United Educators violated EERA by not representing her in a misclassification dispute. (Petition denied.)

People of the State of California ex rel. International Assn. of Firefighters, Local 1319, AFL-CIO v. City of Palo Alto, Filed: March 10, 2020, Santa Clara County Superior Court, Case #20CV365036. Issue: Whether the court should order the City of Palo Alto to restore the pre-amendment portion of Article V of the City's Charter requiring mandatory binding interest arbitration of collective bargaining impasses with police and firefighter employee organizations? (Active)

Rebecca Wu v. Public Employment Relations Board; Twin Rivers United Educators, Filed: September 11, 2020, California Court of Appeal, Third Appellate District, Case No. C092640; Sacramento County Superior Court, Case No. 34-2019-80003289 [PERB Case No. SA-CO-618-E]. Issue: Whether the Superior Court properly sustained Twin Rivers United Educator's demurrer. On December 28, 2022, the court issued an unpublished decision affirming the order by the Sacramento County Superior Court, which sustained a demurrer without leave to amend to Wu's complaint against PERB. The court granted PERB's request for publication on 1/19/2023. (Petition denied.)

2022-2023 LITIGATION ACTIVITY

State of California, Correctional Health Care Service v. Public Employment Relations Board: Kevin M. Healy, Filed: May 12, 2021, California Court of Appeal, First Appellate District, Division 5, Case No. A162617; PERB Decision No. 2760-S [PERB Case No. SF-CE-290-S]). Issue: Whether the Board erred when it held that the California Correctional Health Care Service retaliated against employee Kevin Healy by refusing to promote him for engaging in protected conduct, which included serving as a union steward. (Petition denied.)

County of San Joaquin v. Public Employment Relations Board: California Nurses Association, Filed: May 12, 2021, California Court of Appeal, Third Appellate District, Case No. C094069; PERB Decision No. 2761-M [PERB Case No. SA-CE-1141-M]) Issue: Whether the Board erred by concluding that the County violated the MMBA when it barred nurses from returning to work after a strike, based on a minimum-shift guarantee in a contract with a strike-replacement company. (Board Decision affirmed 9/7/2022.)

2022-2023 LITIGATION ACTIVITY

County of Sonoma v. Public Employment Relations Board; Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association, Filed July 22, 2021, California Court of Appeal, First Appellate District, Division Three, Case No. A163100; PERB Decision No. 2772-M [PERB Case Nos. SF-CE-1816-M, SF-CE-1817-M]). Issue: Whether the Board erred by finding the County violated the MMBA by refusing to meet and confer in good faith with the Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association before placing a county ordinance on the ballot. The ordinance changed the County's Independent Office of Law Enforcement Review and Outreach, including expanding its authority to investigate peace officers in several ways. (Remanded to PERB for further analysis.)

Public Employment Relations Board v. Clovis Unified School District; Association of Clovis Educators, CTA/NEA, Filed August 30, 2021, Fresno County Superior Court, Case No. 21CECG02548; IR Request No. 804 [PERB Case Nos. SA-CE-3040-E and SA-CE-3047-E]. Issue: Whether injunctive relief is necessary to restore the status quo based on the Clovis Unified School District's conduct of potentially violating EERA by interfering with ACE's organizing campaign, dominating and assisting a competing employee organization, failing to meet and confer with ACE, surveilling ACE's activity, retaliating against an ACE organizer, and failing to act with strict neutrality between the two organizations. (Dismissed.)

2022-2023 LITIGATION ACTIVITY

Alliance Marc & Eva Stern Math and Science High School, et al. v. Public Employment Relations Board; United Teachers Los Angeles, Filed: December 6, 2021, California Court of Appeal, Second Appellate District, Division 2, Case No. B316745; PERB Decision No. 2795 [PERB Case Nos. LA-CE-6362-E, LA-CE-6366-E, LA-CE-6372-E and LA-CE-6377-E]. Issue: Whether the Board erred by finding e-mails sent by Alliance deterred or discouraged support for the union since the e-mails had a strong tendency to influence employee choice about whether to authorize representation. Alliance argues that Government Code section 3550 on its face, or as applied by PERB, violates the free speech protections under the U.S. and California Constitutions. (Petition summarily denied.)

Visalia Unified School District v. Public Employment Relations Board; California School Employees Association, Filed: March 9, 2022, California Court of Appeal, Fifth Appellate District; Case No. F084032; PERB Decision No. 2806 [SA-CE-2979-E]. Issue: Whether the Board erred in finding that the District terminated Gladys Ramirez in retaliation for her exercise of EERA-protected rights. (Active.)

2022-2023 LITIGATION ACTIVITY

Alliance High School, et al v. Public Employment Relations Board; United Teachers Los Angeles, Filed: March 29, 2022, California Court of Appeal, Second Appellate District, Division 2, Case No. B319352; PERB Decision Nos. 2719 and 2809 [PERB Case Nos. LA-CE-6600-E & LA-RR-1281-E, LA-RR-1282-E, and LA-RR-1283-E]. Issue: Whether the Board erred by finding Alliance's reorganization did not render the bargaining units inappropriate or excuse Alliance from recognizing or negotiating with UTLA, thereby finding Alliance refused to bargain in violation of the EERA. In addition, whether the Board erred when it denied Alliance's request to reconsider certifying the union at three of its charter schools, and granted UTLA's request for an amended certification at one school because it included a classification that was not listed in the petition. (Petition summarily denied.)

Bellflower Unified School District v. Public Employment Relations Board; California School Employees Association, Chapter 32, Filed: April 22, 2022, California Court of Appeal, Second Appellate District, Division 8, Case No. B319777; PERB Decision Nos. 2544a [PERB Case Nos. LA-CE-5955-E]. Issue: Whether the Board erred when it determined the District failed to comply with its remedial orders, including an attorney's fees award ordered in 2019 for its filing a frivolous reconsideration request. (Withdrawn upon compliance by Respondent.)

2022-2023 LITIGATION ACTIVITY

Palomar Health v. National Nurses United, California Nurses Association (CNA); Public Employment Relations Board, Filed: May 10, 2022, California Court of Appeal, Fourth Appellate District, Case No. D080962; San Diego County Superior Court, Case No. 37-2022-00017624-CU-MC-NC [LA CE-1581-M]. Issue: Whether the Court should dismiss Palomar's complaint for injunctive relief against CNA on the basis that PERB has exclusive initial jurisdiction over the dispute. (Active.)

County of Fresno v. Fresno County Public Safety Association, Filed: May 16, 2022, Fresno County Superior Court, Case No. CECG01506. Issue: Whether the Court should enjoin certain essential employees in the correctional officer classification from participating in a strike. (Injunction dissolved 8/9/2022.)

Cerritos Community College District v. Public Employment Relations Board: Cerritos College Faculty Federation American Federation of Teachers, Local 6215, Filed: June 6, 2022, California Court of Appeal, Second Appellate District, Division One, Case No. B320779; PERB Decision Nos. 2819 [PERB Case Nos. LA-CE-6378-E]. Issue: Whether the Board erred when it affirmed the ALJ's decision that the District violated its duty to bargain in good faith with Cerritos College Faculty Federation, American Federation of Teachers, Local 6215, over proposals concerning: (1) standards and procedures regarding discipline short of suspension or dismissal for full-time faculty; (2) the use of reassignment, assignment loss, and mandatory training as discipline for faculty; (3) misconduct investigations, including information the District will disclose to the Federation and accused faculty member during such investigations; and (4) provisions for paid administrative leave. (Petition summarily denied.)

2022-2023 LITIGATION ACTIVITY

Victor Valley Union High School District v. Public Employment Relations Board; Victor Valley Teachers Assn., Filed: July 6, 2022, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E079318; PERB Decision No. 2822 [PERB Case No. LA-CE-6562-E]. Issue: Whether the Board erred by finding that the District violated EERA when, during a deposition, its attorney asked Victor Valley Teachers Association President questions about: (1) confidential communications she had with a bargaining unit member concerning a disciplinary matter in which she advised that member; and (2) confidential communications she had with other bargaining unit members and union personnel about the disciplinary matter. (Petition withdrawn by Respondent.)

State of California (California Correctional Health Care Service) v. PERB: Union of American Physicians and Dentists, Filed: July 27, 2022, California Court of Appeal, Third Appellate District, Case No. C096667; PERB Decision No. 2823-S [PERB Case No. SA-CE-2168-S]. Issue: Whether the Board erred when it ordered CCHCS to issue retroactive pay increases to compensate primary care providers for the additional time they spent performing new duties relating to the new programs, and the Board's order that, if CCHCS and UAPD cannot agree on the amount of the new pay differential, PERB's General Counsel would impose a retroactive pay increase on the parties, up to a cap of five percent. (Petition summarily denied.)

2022-2023 LITIGATION ACTIVITY

County of Sonoma v. PERB; Sonoma County Deputy Sheriffs' Association and Sonoma County Law Enforcement Association, Filed: August 2, 2022, California Supreme Court, Case No. S275725; California Court of Appeal, First Appellate District, Division Three, Case No. A163100; PERB Decision No. 2772-M [PERB Case Nos. SF-CE-1816-M, SF-CE-1817-M]). Issue: Whether the state Supreme Court should review the following important legal issues: (1) When PERB must determine whether a managerial decision requires collective bargaining with the employees' exclusive representative under the MMBA, should PERB: (a) apply this Court's test in *International Association of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Bd.* (2011) 51 Cal.4th 259 (*Richmond Firefighters*), which preserves long-standing labor law precedent that requires bargaining over changes to certain subjects, such as wages, regardless of whether the change is adverse or beneficial to employees; or (b) as in the Opinion, apply this Court's test in *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623 (*Claremont*), which overturns labor law precedent by requiring bargaining only if the change "significantly and adversely" affects working conditions; or (c) apply a test that harmonizes these decisions? (2) Are separation of powers principles violated when an administrative agency does not command a legislative body to perform a legislative act, but instead declares voter-approved amendments to a general law county's ordinance void and unenforceable as to certain individuals unless and until procedural irregularities in the ordinance's passage are remedied? (3) When PERB finds an employer's governing board adopted a resolution placing a voter initiative on the ballot without first bargaining over its effects on employment terms, and the voters proceed to approve the initiative, can PERB declare the amendments void as to the employees represented by the challenging union, or must any invalidation occur in two stages, with PERB declaring void only the act of placing the matter on the ballot, leaving it for a court to subsequently void the amendments in a quo warranto action? (Supreme Court denied review; Depublication request denied.)

2022-2023 LITIGATION ACTIVITY

Steven Malloy v. Public Employment Relations Board; Regents of the University of California, San Francisco, Filed: September 27, 2022, California Court of Appeal, First Appellate District, Case No. A166174; [PERB Case Nos. SF-CO-1221-H]. Issue: Whether the Administrative Law Judge erred by issuing orders that deny Malloy's requests for disability accommodations. As accommodations, Malloy requested that PERB appointment counsel to represent him at the formal hearing and a protective order insulating him from providing testimony. (Denied)

Stephen Malloy v. Public Employment Relations Board; Regents of the University of California, San Francisco, Filed: January 17, 2023, California Court of Appeal, First Appellate District, Case No. A166976; [PERB Order No. a499h; Case Nos. SF-CO-1221-H]. Issue: Whether the Board erred in PERB Order No. Ad-499-H when it upheld an ALJ's ruling that denied Malloy's requests for disability accommodations. As accommodations, Malloy requested that PERB appoint counsel to represent him at the formal hearing and issue a protective order insulating him from providing testimony. (Petition dismissed by the court.)

Kern County Hospital Authority v. PERB: Service Employees International Union, Local 521, Filed: January 23, 2023, California Court of Appeal, Fifth Appellate District, Case No. F085586; PERB Decision No. 2847-M [PERB Case No. LA-CE-1451-M]. Issue: Whether the Board erred when it held the Authority violated the MMBA by unilaterally changing a policy wherein the Authority claimed to now have the right not to process group, class, and consolidated grievances. (Active)

2022-2023 LITIGATION ACTIVITY

Imperial County Deputy District Attorneys' Association v. Public Employment Relations Board; County of Imperial, Filed: February 17, 2023, California Court of Appeal, Fourth Appellate District, Division One, Case No. D081634; PERB Decision No. 2851-M [PERB Case No. LA-CE-1537-M]. Issue: Whether the Board erred when it upheld the ALJ's dismissal of the complaint after concluding, among other things, that the County did not make an unlawful unilateral change or retaliate by withholding from bargaining unit employees' paychecks contributions for a supplemental pension benefit. (Petition summarily denied.)

Rebecca Wu v. Public Employment Relations Board; Twin Rivers United Educators, Filed: February 21, 2023, California Supreme Court, Case No. S278551; California Court of Appeal, Third Appellate District, Case No. C092640; Sacramento County Superior Court, Case No. 34-2019-80003289 [PERB Case No. SA-CO-618-E]. Issue: Whether the Court of Appeal erred by upholding the demurrer sustained by the superior court. (Petition denied)

Freedom Foundation v. Turner et al., Filed: May 1, 2023, United States District Court, Central District of California, Case No. 2:23-cv-03286-PA-JPR. Issue: Whether section 3556 of the Government Code (PECC) violates the First Amendment based on: (1) viewpoint-based discrimination; (2) content-based discrimination; (3) prior restraint on speech; and (4) denial of access to government-held information. (Active)

2022-2023 LITIGATION ACTIVITY

Stephen Malloy v. Public Employment Relations Board; Regents of the University of California, San Francisco, Filed: May 26, 2023, Supreme Court of California, Case No. 280195, [California Court of Appeal, First Appellate District, Case No. A166976]; [PERB Order No. Ad-499-H; Case Nos. SF-CO-1221-H]. Issue: Whether the Board erred in PERB Order No. Ad-499-H when it upheld an ALJ's ruling that denied Malloy's requests for disability accommodations. As accommodations, Malloy requested that PERB appoint counsel to represent him at the formal hearing and issue a protective order insulating him from providing testimony. (Review denied.)

Imperial Irrigation District v. Public Employment Relations Board; International Brotherhood of Electrical Workers, Filed: June 7, 2023, California Court of Appeal, Fourth Appellate District, Division One, Case No. D082257; PERB Decision No. 2861-M [PERB Case No. LA-CE-1482-M] Issue: Whether the Board erred when it held that the District violated the MMBA when it refused and failed to meet and confer in good faith with IBEW over the Sequestration Policy, unilaterally implemented the Sequestration Policy, and failed to respond to the two RFIs. (Withdrawn by Respondent.)

DECISIONS OF THE BOARD

Dispositions are current as of publication of the annual report. Pending judicial appeals may impact the dispositions of some decisions. Please visit [PERB.ca.gov](https://perb.ca.gov) for up-to-date information.

DECISION NO. 2772A-M

**SONOMA COUNTY DEPUTY
SHERIFFS' ASSOCIATION V.
COUNTY OF SONOMA;
SONOMA COUNTY LAW
ENFORCEMENT
ASSOCIATION V. COUNTY
OF SONOMA**

PRECEDENTIAL

Description: In *County of Sonoma v. Public Employment Relations Board* (2022) 80 Cal.App.5th 167, the Court of Appeal remanded this matter to the Board to reconsider: (1) whether certain Measure P provisions had “a significant and adverse effect on the wages, hours, or working conditions” of Association-represented employees, per the test set forth in *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623; and (2) the appropriate remedy.

Disposition: The Board concluded that the County failed to give the Associations notice and an opportunity to meet and confer over certain Measure P amendments before placing the measure on the November 2020 ballot. As a remedy, the Board ordered the County to cease and desist from such conduct in the future and to post a notice of its violations. The Board declined to order restoration of the status quo ante because the parties subsequently reached letters of agreement resolving all meet-and-confer issues arising out of the Measure P amendments the Board found could not be adopted or implemented without bargaining.

DECISION NO. 2824-I

***CALIFORNIA FEDERATION
OF INTERPRETERS, LOCAL
39000, THE NEWSPAPER
GUILD-COMMUNICATION
WORKERS OF AMERICA V.
REGION 3 COURT
INTERPRETER
EMPLOYMENT RELATIONS
COMMITTEE***

NON-PRECEDENTIAL

Description: California Federation of Interpreters, Local 39000, the Newspaper Guild-Communication Workers of America (CFI) alleges that the Region 3 Court Interpreter Employment Relations Committee (Committee) violated the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) by failing to respond to CFI's requests to bargain. The proposed decision found that the Committee, which eventually commenced negotiations with CFI, did not violate its duty to meet and confer in good faith, because its conduct did not amount to either a per se violation or a violation based on the totality of the circumstances, and did not interfere with any protected rights. CFI filed exceptions to the proposed decision.

Disposition: In a non-precedential decision, the Board affirmed the proposed decision, finding that CFI failed to demonstrate that the Committee violated the duty to meet and confer in good faith or interfered with any rights protected by the Court Interpreter Act. The Board therefore dismissed the complaint and underlying unfair practice charge.

DECISION NO. 2825-S

***YOULANDA O. WILLIAMS V.
SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1000***

NON-PRECEDENTIAL

Description: Youlanda Williams alleged that Service Employees International Union Local 1000 violated the Dills Act by breaching its duty of fair representation. PERB's Office of the General Counsel (OGC) issued Williams a warning letter and, after she failed to amend her charge or otherwise respond to the warning letter, OGC dismissed the charge for failure to allege a prima facie case of any unfair practice. Williams timely appealed.

Disposition: In a non-precedential decision, PERB affirmed OGC's conclusions and dismissed the unfair practice charge without leave to amend.

DECISION NO. 2825A-S

**YOULANDA O. WILLIAMS V.
SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1000**

NON-PRECEDENTIAL

Description: Youlanda Williams asked the Board to reconsider its decision in *Service Employees International Union Local 1000 (Williams)* (2022) PERB Decision No. 2825-S, wherein the Board affirmed a dismissal letter issued by PERB's Office of the General Counsel (OGC). In the underlying unfair practice charge, Williams alleged that Service Employees International Union Local 1000 breached its duty of fair representation. OGC issued Williams a warning letter, Williams did not respond by the deadline established in the warning letter, and OGC dismissed the charge for failure to allege a prima facie case. On appeal, the Board found no basis to disturb OGC's conclusions. In her reconsideration request, Williams argued that her failure to respond to the warning letter was an unintentional oversight, and the Board should excuse it.

Disposition: In a non-precedential decision, the Board denied Williams' reconsideration request.

DECISION NO. 2826-M

***PHILIP STEPHEN FAY V.
TAHOE-TRUCKEE
SANITATION AGENCY***

PRECEDENTIAL

Description: This case came before the Board on exceptions by the Tahoe-Truckee Sanitation Agency and cross-exceptions by Philip Stephen Fay to the proposed decision of an administrative law judge, which concluded that the Agency violated the Meyers-Milias-Brown Act (MMBA) when it issued Fay a disciplinary memorandum and terminated his employment in retaliation for his protected activities. While the matter was pending before the Board on the Agency's exceptions and Fay's cross-exceptions, the parties notified PERB that they settled this matter, and requested to withdraw their exceptions and have the complaint, underlying amended unfair practice charges, and the entire matter dismissed with prejudice.

Disposition: The Board granted the parties' request to withdraw, finding it to be in the parties' best interest and consistent with the purposes of the MMBA to promote harmonious labor relations, and dismissed the matter with prejudice. The Board noted that Fay's cross-exceptions raised the issue of whether PERB should adopt the practice of augmenting monetary damages by compound, rather than by simple, interest. The Board did not reach the issue in light of the parties' request to withdraw, but noted it does not foreclose the possibility of considering whether PERB should adopt that method of calculating interest in a future case.

DECISION NO. 2827-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021 V. MARIN
MUNICIPAL WATER
DISTRICT***

NON-PRECEDENTIAL

Description: Service Employees International Union Local 1021 (SEIU) appealed the partial dismissal of its unfair practice charge by PERB's Office of the General Counsel (OGC). The charge, as amended, alleges that Marin Municipal Water District violated the Meyers-Milias-Brown Act (MMBA) by unilaterally changing its promotional process and the parties' grievance procedure, refusing to provide necessary and relevant information, and interfering with protected rights. OGC issued a complaint on the interference allegation and dismissed the remaining allegations for failure to state a prima facie case. SEIU timely appealed the partial dismissal, arguing that rather than dismiss the allegations, the charge should be placed in abeyance pending arbitration. The Board disagreed, finding that even if a charging party could assert deferral as a basis to avoid dismissal, here SEIU did not pursue the matter to arbitration. Because the respondent employer did not assert that deferral to arbitration was appropriate, and has no obligation to arbitrate here, placing the charge in abeyance pending arbitration was not appropriate.

Disposition: In a non-precedential decision the Board affirmed the partial dismissal. The allegations were therefore dismissed without leave to amend.

DECISION NO. 2828-P

***SUMUDU DARSHANA
JAYASURIYA V. SERVICE
EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021***

NON-PRECEDENTIAL

Description: Sumudu Darshana Jayasuriya (Charging Party) appealed the dismissal of his amended unfair practice charge alleging that SEIU Local 1021 breached its duty of fair representation by a variety of conduct, including: not pursuing his grievances over his employer's decision to deny him a promotion; failing to update him about the status of grievances; settling a grievance rather than pursuing it to arbitration; not sharing the results of grievances with unit members; not placing one of his grievances on a fast-track toward resolution; negotiating changes to the sick leave policy without affording unit members the chance to vote; failing to distribute proceeds of a backpay award to unit members; only supporting the claims of unit members who were close to the union's leadership; and allowing a recalled union officer to continue conducting union business. The Office of the General Counsel dismissed the charge on the grounds that it failed to state a prima facie case. Charging Party appealed.

Disposition: The Board affirmed OGC's decision dismissing Charging Party's unfair practice charge. The amended unfair practice charge was dismissed without leave to amend.

DECISION NO. 2829-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021 V. ALAMEDA
HEALTH SYSTEM***

NON-PRECEDENTIAL

Description: An administrative law judge found that Alameda Health System (AHS) violated the MMBA by unilaterally changing its enforcement of dependent eligibility requirements for medical coverage, without first affording SEIU an adequate opportunity to meet and confer. SEIU filed exceptions to the proposed decision but then asked to withdraw its exceptions and proceed to compliance proceedings. The Board afforded AHS an opportunity to respond to this request, but it declined to do so. Nor did AHS file exceptions of its own.

Disposition: In a nonprecedential decision, the Board found that there was no conflict with the MMBA's purposes to grant SEIU's unopposed request. In the absence of any exceptions from AHS, the Board deemed the proposed decision final. The Board granted SEIU's request to withdraw its exceptions and remanded the matter to the Office of the General Counsel for compliance proceedings.

DECISION NO. 2830-S

***PROFESSIONAL
ENGINEERS IN
CALIFORNIA
GOVERNMENT V. STATE OF
CALIFORNIA (STATE
WATER RESOURCES
CONTROL BOARD)***

NON-PRECEDENTIAL

Description: Professional Engineers in California Government (PECG) asserted that the State of California, State Water Resources Control Board (Water Board) refused to provide PECG with information about alleged wrongdoing by a PECG-represented Water Board employee. PECG claimed that, without this information, it was unable to meaningfully represent the employee in an investigatory interview. The complaint alleged that the Water Board thereby failed to bargain in good faith and interfered with union and employee rights protected under the Dills Act. The ALJ found that the Water Board established a statute of limitations defense to PECG's bad faith bargaining claim. The ALJ then dismissed the entire complaint, treating the interference claims as purely derivative of the bad faith bargaining claim. PECG excepted to the proposed decision.

Disposition: The Board determined that the ALJ should have analyzed the interference claims as independent unfair practice allegations. In cases in which a charging party accuses an employer of providing too little information to allow meaningful representation, interference with representational rights is independent, as it can be established even in the absence of bad faith bargaining or any other violation. The Board therefore reversed the proposed decision in part and remanded to the ALJ to determine whether the Water Board interfered with protected rights by providing too little information to allow meaningful representation at an investigatory interview.

DECISION NO. 2830A-S

***PROFESSIONAL
ENGINEERS IN
CALIFORNIA
GOVERNMENT V. STATE OF
CALIFORNIA (STATE
WATER RESOURCES
CONTROL BOARD)***

NON-PRECEDENTIAL

Description: In an earlier decision in this case, State of California (*State Water Resources Control Board*) (2022) PERB Decision No. 2830-S, the Board had partially reversed a proposed decision and remanded to the ALJ to consider an unresolved issue: whether Respondent State of California (State Water Resources Control Board) interfered with rights protected by the Dills Act by failing to provide Professional Engineers in California Government (PECG) with sufficient information for it to meaningfully represent a Water Board employee in an investigatory interview. Following remand, the ALJ issued a second proposed decision and concluded that the Water Board interfered with protected rights in conducting the investigatory interview. The ALJ ordered the Water Board to post a notice and to cease and desist from further interference but rejected PECG's request for litigation sanctions and rescission of discipline issued against the employee. PECG excepted to the remedy.

Disposition: The Board rejected PECG's exceptions. The Board found no cause to order the Water Board to rescind the employee's discipline because the Water Board did not rely on information or admissions obtained during the unlawful interview or employee's conduct at the interview. The Board did not award litigation sanctions because the Water Board's position was not frivolous. The Board, however, supplemented the proposed remedial order by directing the Water Board to continue refraining from any reliance on information or admissions obtained during the unlawful interview or employee conduct during the interview.

DECISION NO. [2831](#)

**WAYMAN WASHINGTON V.
LOS ANGELES UNIFIED
SCHOOL DISTRICT**

NON-PRECEDENTIAL

Description: Wayman Washington alleged that his former employer, Los Angeles Unified School District, violated the Educational Employment Relations Act (EERA) by discharging him from his position as a substitute teacher under false pretenses and then telling the California Employment Development Department that he was discharged for misconduct. The Office of the General Counsel (OGC) dismissed the amended charge for failure to establish a prima facie case of any EERA violation. Washington timely appealed.

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

DECISION NO. 2832

***ANNETTE (BARUDONI)
DEGLOW V. LOS RIOS
COMMUNITY COLLEGE
DISTRICT***

NON-PRECEDENTIAL

Description: In two separate charges, Annette Deglow alleged that Los Rios Community College District retaliated for protected activity by using the Workers' Compensation Medical Utilization Review process to deny her access to necessary medical treatment. The two charges reference different Workers' Compensation claims, but otherwise are nearly identical. PERB's Office of the General Counsel (OGC) dismissed the two charges for failure to state a prima facie case of any EERA violation. Deglow timely appealed.

Disposition: In a non-precedential decision, PERB affirmed OGC's conclusions and dismissed the unfair practice charges without leave to amend.

DECISION NO. 2833

***PITTSBURG EDUCATION
ASSOCIATION, CTA/NEA V.
PITTSBURG UNIFIED
SCHOOL DISTRICT***

PRECEDENTIAL

Description: An administrative law judge issued a proposed decision finding that the Pittsburgh Unified School District violated EERA by changing Adult Education teachers' summer work hours and for the first time requiring them to apply to teach summer courses, without affording Pittsburgh Education Association notice and a prior opportunity to meet and negotiate. The District excepted to the proposed decision.

Disposition: The Board affirmed the ALJ's finding of a unilateral change violation as to the application requirement but reversed the ALJ's finding as to the change in summer work hours.

DECISION NO. 2833A

***PITTSBURG EDUCATION
ASSOCIATION, CTA/NEA V.
PITTSBURG UNIFIED
SCHOOL DISTRICT***

NON-PRECEDENTIAL

Description: Charging Party Pittsburg Education Association, CTA/NEA requested reconsideration of *Pittsburg Unified School District* (2022) PERB Decision No. 2833, asserting that the decision contained two prejudicial errors of fact.

Disposition: In a non-precedential decision, the Board considered the factual assertions at issue and found the Association did not show the underlying decision contains factual errors. The Board therefore denied the reconsideration request.

DECISION NO. 2834

***UNIVERSITY
PROFESSIONAL &
TECHNICAL EMPLOYEES
COMMUNICATION
WORKERS OF AMERICA
LOCAL 9119 V. BUTTE-
GLENN COMMUNITY
COLLEGE DISTRICT***

PRECEDENTIAL

Description: An administrative law judge (ALJ) sustained one of three claims Charging Party UPTE brought against Butte-Glenn Community College District, finding that the District responded inadequately to a request for information (RFI). Specifically, the ALJ found the District assessed and answered the RFI as if it arose under the California Public Records Act (CPRA) and consequently failed to explore means of obtaining requested information that was not in its central course database. The ALJ ordered the District to provide, upon UPTE's request, all outstanding responsive information. The District filed exceptions on the RFI claim. The ALJ ruled against UPTE on two other claims, but neither party excepted to those findings.

Disposition: The Board rejected the District's exceptions. First, the Board found that UPTE did not have to reassert or clarify its RFI after receiving the District's response, because a union need not do so if it is sufficiently clear that the response did not fully satisfy the request, as it was in this case. Second, the Board held that when requested information exists in some form, the fact that the employer cannot retrieve it from a centralized database—and instead may have to compile it from various sources (including employees' memories)—does not excuse the employer from producing it, unless the employer can prove doing so would be unduly burdensome and has offered to bargain to alleviate the burden. Here, the District did not notify UPTE that its request was unduly burdensome, thereby waiving any such argument.

DECISION NO. 2835-H

***TEAMSTERS LOCAL 2010 V.
REGENTS OF THE
UNIVERSITY OF
CALIFORNIA***

PRECEDENTIAL

Description: After a hearing officer granted Teamsters' unit modification petition to accrete the Administrative Officer II (AO2) classification into its Clerical and Allied Services Bargaining Unit, the University sent a communication to AO2s that included a set of four Frequently Asked Questions (FAQs) and answers. One of the FAQs addressed union membership and one addressed union dues. The complaint alleged that the University violated the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), the Higher Education Employer-Employee Relations Act (HEERA), and PERB Regulations by distributing a communication to employees in the AO2 classification concerning their choice whether to join or support Teamsters Local 2010, without first meeting and conferring with Teamsters. After an ALJ held a formal hearing, the Board transferred the record to the Board itself for decision pursuant to PERB Regulation 32320, subdivision (a)(1).

Disposition: The Board found that the University violated PEDD section 3553 by sending the FAQs to AO2s without first providing Teamsters an opportunity to meet and confer over the communication. The Board also found that the University violated PEDD section 3550 by distributing the FAQs because they tended to influence employee free choice about whether to join or support Teamsters, and the University failed to prove a business necessity for their distribution. Finally, the Board denied Teamsters' request for attorney fees and costs given that, at the time of the parties' post-hearing briefs the Board had not yet interpreted section 3553, and the University's section 3550 affirmative defense was not clearly foreclosed by existing PERB precedent.

DECISION NO. 2836

***MONIQUE M. LUKENS V.
UNITED TEACHERS LOS
ANGELES***

NON-PRECEDENTIAL

Description: Charging Party Monique Lukens alleges that United Teachers Los Angeles breached its duty of fair representation under the Educational Employment Relations Act by conduct including: “burying” Lukens’ motions to UTLA membership; not enforcing her “no collection of DNA” motion; engaging in racial discrimination against Caucasians; supporting the District’s measures to defund school police; bargaining with the District over vaccine mandates, mask requirements, and other safety measures related to COVID-19; monitoring and/or silencing Lukens in the online member chat; failing to assist unit members assigned to online teaching with reasonable accommodations; and causing Lukens emotional distress and health complications. PERB’s Office of the General Counsel dismissed the allegations because they failed to state a prima facie case of a breach of the duty of fair representation or any other unfair practice. Lukens timely appealed the dismissal of the charge.

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

DECISION NO. 2837

***C. L. FELICIJAN & W.
HETMAN V. SANTA ANA
EDUCATORS ASSOCIATION***

NON-PRECEDENTIAL

Description: Christine L. Felicijan and Wayne Hetman (Charging Parties) alleged that the Santa Ana Educators Association violated the Educational Employment Relations Act (EERA) when it: (1) did not appear at two grievance meetings despite agreeing to represent Charging Parties in the grievance proceedings; (2) without explanation to Charging Parties, did not approve or deny their arbitration request within the 15-day time limit for demanding arbitration under the contractual grievance procedure; (3) failed to ensure that Charging Parties' employer, Santa Ana Unified School District, removed derogatory materials from Charging Parties' personnel files despite informing Charging Parties that it had negotiated for the materials to be removed, and (4) failed to assist Hetman in challenging the District's use of certain personnel information against Hetman in his lawsuit against the District. The administrative law judge (ALJ) concluded that the Association breached its duty of fair representation by failing to respond to Felicijan's request to arbitrate three grievances. The ALJ found two of these grievances lacked merit or were untimely, and thus declined to order make-whole relief as to those grievances. The ALJ found Felicijan would have prevailed on the third grievance and, as a remedy, ordered the Association to pay Felicijan 4.5 hours of pay plus interest. The ALJ dismissed the remaining allegations. Charging Parties excepted to (1) the proposed decision's finding that their request to arbitrate a fourth grievance was untimely; and (2) the ALJ's failure to grant make-whole relief for all of Charging Parties' grievances. Charging Parties also claimed the ALJ was biased against Hetman and asked that his dismissed allegations be re-tried before a different ALJ.

Disposition: The Board reversed the ALJ's conclusion that Charging Parties' request for arbitration of the fourth grievance was untimely, but found no remedy was warranted for the Association's failure to respond to that request because the grievance lacked merit. The Board otherwise affirmed the proposed decision. The Board also denied Hetman's request for a new hearing, finding Charging Parties failed to establish the ALJ was biased against Hetman.

DECISION NO. 2837A

***C.L. FELICIJAN & W.
HETMAN V. SANTA ANA
EDUCATIONS
ASSOCIATION***

NON-PRECEDENTIAL

Description: Charging Parties Christine L. Felicijan and Wayne Hetman requested the Board reconsider its decision in Santa Ana Educators Association (Felicijan and Hetman) (2022) PERB Decision No. 2837. In that non-precedential decision, the Board found that the Santa Ana Educators Association violated the Educational Employment Relations Act when, among other conduct, it did not approve or deny Felicijan's request to arbitrate four grievances within the 15-day time limit for demanding arbitration under the contractual grievance procedure. The Board found Felicijan would have prevailed on one grievance and ordered make-whole relief for that grievance, but found the other grievances lacked merit and awarded no make-whole relief for them. The Board also dismissed the allegation that the Association breached its duty of fair representation by failing to assist Hetman with issues related to purported derogatory documents in his personnel file. In their request for reconsideration, Charging Parties claimed the decision contained prejudicial errors of fact and incorrectly failed to order make-whole relief for all four grievances.

Disposition: In a non-precedential decision, the Board denied Charging Parties' request for reconsideration, finding it failed to establish either ground for reconsideration under PERB Regulation 32410, subdivision (a).

DECISION NO. 2838

***CHRISTINE L. FELICIJAN V.
SANTA ANA UNIFIED
SCHOOL DISTRICT***

NON-PRECEDENTIAL

Description: Charging Party Christine L. Felicijan alleged that Santa Ana Unified School District refused to consult with her to develop an accommodation plan, as required by the District's Administrative Regulation 4032 (AR 4032), in retaliation for Felicijan's EERA-protected activities. Following a hearing on the merits, the ALJ dismissed the complaint on the grounds that PERB lacks jurisdiction over the reasonable accommodation process as set forth in the Americans With Disabilities Act (ADA) and the California Fair Employment and Housing Act (FEHA). Felicijan filed exceptions to the proposed decision.

Disposition: In a non-precedential decision, the Board found that PERB has jurisdiction over the narrow question of whether the District refused to consult with Felicijan as required by AR 4032 in retaliation for her EERA-protected activities. However, the Board affirmed the dismissal of the complaint because Felicijan had failed to prove by a preponderance of the evidence that the District had refused to consult with her as required by AR 4032 and because the record lacked evidence demonstrating retaliatory animus.

DECISION NO. 2838A

***CHRISTINE L. FELICIJAN V.
SANTA ANA UNIFIED
SCHOOL DISTRICT***

NON-PRECEDENTIAL

Description: Christine L. Felicijan filed a request that the Board reconsider its decision in *Santa Ana Unified School District* (2022) PERB Decision No. 2838 (non-precedential). In that decision, the Board found Felicijan failed to prove that Santa Ana Unified School District had refused to consult with her as required by its Administrative Regulation in retaliation for Felicijan's EERA-protected activities and dismissed the complaint. In her motion for reconsideration, Felicijan claims the Board made prejudicial errors of fact, arguing that the Board erred while weighing and interpreting the record evidence and in making credibility determinations. The request registers disagreement the Board's determinations and seeks to have the Board try again, which are not appropriate grounds for reconsideration.

Disposition: In a non-precedential decision, the Board denied the request.

DECISION NO. 2839-M

***VENTURA COUNTY
PROFESSIONAL PEACE
OFFICERS ASSOCIATION V.
VENTURA COUNTY
PROBATION AGENCY***

NON-PRECEDENTIAL

Description: Ventura County Professional Peace Officers Association filed exceptions to a proposed decision of an administrative law judge (ALJ). The proposed decision dismissed the Association's unfair practice charge, which alleged that Ventura County Probation Agency violated the Meyers-Milias-Brown Act (MMBA) and the County's local rules by issuing a March 23, 2020 Essential Services Probation Agency memorandum without affording the Association notice and an opportunity to bargain over the decision or its effects, and thereafter refusing to negotiate upon demand of the Association.

The March 23 Memorandum discussed the Agency's initial planned response to state and local health orders arising from the global COVID-19 pandemic, including designating essential and non-essential services, and by extension, positions. The Memorandum further directed that employees whose positions were declared nonessential, but not on a telework schedule nor redeployed to another County agency, could remain at home and use personal leave time.

The proposed decision dismissed the complaint and underlying unfair practice charge, finding no violation of the MMBA or the County's local rules because the decision underlying the March 23 Memorandum was not within the scope of bargaining, and because the bargainable effects of the Memorandum were covered by an existing County policy. The Association filed timely exceptions, and the Agency filed a timely response, urging the Board to affirm the dismissal of the complaint and adopt the proposed decision.

Disposition: The Board affirmed the proposed decision and dismissed the complaint and underlying unfair practice charge.

DECISION NO. 2840-M

***GEOFFREY LYNCH V. CITY
AND COUNTY OF SAN
FRANCISCO (SAN
FRANCISCO GENERAL
HOSPITAL)***

NON-PRECEDENTIAL

Description: Geoffrey Lynch alleged that his employer, City and County of San Francisco (San Francisco General Hospital), violated the Meyers-Milias-Brown Act by terminating Lynch's employment. The Office of the General Counsel (OGC) dismissed the charge for failure to timely amend the unfair practice charge after issuance of a warning letter. Lynch timely appealed.

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

DECISION NO. 2841-M

***GEOFFREY LYNCH V.
SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021***

NON-PRECEDENTIAL

Description: Geoffrey Lynch alleged that his union, Service Employees International Union Local 1021, violated the Meyers-Milias-Brown Act by breaching the duty of fair representation. The Office of the General Counsel (OGC) dismissed the charge for failure to timely amend the unfair practice charge after issuance of a warning letter. Lynch timely appealed.

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

DECISION NO. 2842-M

***MADERA PROBATION
PEACE OFFICERS
ASSOCIATION V. COUNTY
OF MADERA***

NON-PRECEDENTIAL

Description: An administrative law judge (ALJ) sustained one of two claims Madera County Probation Peace Officers Association brought against the County of Madera. First, the ALJ found that the County did not retaliate against two deputy probation officers when it removed them from special assignments as paid rangemasters. Second, the ALJ found the County unilaterally implemented a rangemaster rotation policy without affording the Association adequate notice and an opportunity to bargain. The County excepted to some of the ALJ's conclusions on the unilateral change issue, and the Association cross-excepted on the retaliation claim.

Disposition: In a non-precedential decision, the Board affirmed the proposed decision.

DECISION NO. 2843-M

***ASSOCIATION OF ORANGE
COUNTY DEPUTY
SHERIFFS V. COUNTY OF
ORANGE***

NON-PRECEDENTIAL

Description: Association of Orange County Deputy Sheriffs (AOCDS) alleged that the County of Orange violated the Meyers-Milias-Brown Act and PERB Regulations by ceasing to collect and remit employee pension contributions, and ceasing to pay employer pension contributions, on compensation for time spent in on call status or working as a canine handler. The administrative law judge (ALJ) dismissed the complaint, finding AOCDS had actual notice of the upcoming change but failed to request effects bargaining within a reasonable time, and therefore waived any right to effects bargaining. The ALJ also denied the County's request for attorney fees and costs as litigation sanctions against AOCDS. AOCDS excepted to the dismissal while the County cross-excepted to the denial of litigation sanctions.

Disposition: In a non-precedential decision, the Board affirmed the proposed decision.

DECISION NO. 2844

*ANNETTE (BARUDONI)
DEGLOW V. LOS RIOS
COMMUNITY COLLEGE
DISTRICT*

NON-PRECEDENTIAL

Description: Deglow appealed the dismissal of her unfair practice charge alleging that the District violated the Educational Employment Relations Act (EERA) by failing to correct Deglow's hire date, thus depriving her of a step increase, in retaliation for her protected activities. The Office of the General Counsel (OGC) summarily dismissed the charge for failure to state a prima facie case, based on application of the litigation sanction the Board articulated in *Los Rios Community College District and Los Rios College Federation of Teachers, Local 2279* (2021) PERB Decision No. 2776. OGC found that the underlying basis for the present charge—that the District has failed to correct Deglow's hire date in retaliation for protected activity—is the same dispute previously litigated and dismissed in prior matters. Deglow appealed.

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

DECISION NO. 2845-M

***JUDIETH SULLIVAN-
OJUOLA V. CITY OF
SUNNYVALE***

NON-PRECEDENTIAL

Description: Judieth Sullivan-Ojuola (Sullivan) excepted to the proposed decision of an administrative law judge (ALJ). Sullivan filed an unfair practice charge against her former employer, the City of Sunnyvale, for allegedly rejecting her from probation in retaliation for activities protected by the Meyers Milius Brown Act (MMBA). The ALJ found that Sullivan failed to establish a causal nexus between her protected activity and her rejection from probation. The ALJ further found that in any event, the City established its affirmative defense that it rejected her from probation for a legitimate business reason, viz., Sullivan's deficient work performance. Sullivan filed exceptions challenging several of the ALJ's factual findings and arguing that she had established nexus through evidence of disparate treatment. The City filed no exceptions and urged the Board to affirm the proposed decision.

Disposition: The Board affirmed the ALJ's factual findings and the conclusion that the City did not violate the MMBA. The Board found that Sullivan did not establish a prima facie case of retaliation because all the evidence she marshaled to show nexus either happened before she engaged in protected activity or failed to support the inferences Sullivan argued.

DECISION NO. 2846-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021 V. CITY AND
COUNTY OF SAN
FRANCISCO***

PRECEDENTIAL

Description: Service Employees International Union Local 1021 (SEIU) appealed a partial dismissal of its unfair practice charge by PERB's Office of the General Counsel (OGC), which alleged that the City and County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA), the Prohibition on Public Employers Deterring or Discouraging Union Membership, and PERB Regulations by adopting a policy requiring employees to be vaccinated against COVID-19 and implementing various measures to enforce the policy. OGC dismissed the allegations that the City violated the MMBA and PERB Regulations by: (1) unilaterally deciding to adopt the mandatory COVID-19 vaccination policy; (2) requiring employees to disclose their vaccination status; and (3) refusing to allow employees to submit SEIU-created vaccination ascertainment forms in lieu of the City's form. SEIU appealed the partial dismissal, arguing that: (1) OGC erred in analyzing the decisional bargaining allegation regarding the mandatory COVID-19 vaccination policy; (2) the allegation that the City required employees to disclose their vaccination status adequately stated a prima facie case of both unilateral change and direct dealing violations; and (3) the allegation that the City required employees to use a City-generated self-certification form instead of an alternate form SEIU created stated a prima facie case of interference with MMBA-protected rights.

Disposition: The Board affirmed the dismissal of the direct dealing allegation, but reversed the dismissal of the remaining allegations and remanded the matter to OGC to issue an amended complaint consistent with the decision.

DECISION NO. 2847-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 521 V. KERN
COUNTY HOSPITAL
AUTHORITY***

PRECEDENTIAL

Description: An administrative law judge found Kern County Hospital Authority claimed a categorical right not to process group, class, and consolidated grievances, thereby unilaterally announcing a new policy or policy interpretation without affording SEIU Local 521 adequate notice and an opportunity to bargain. The Authority excepted to certain conclusions, and SEIU cross-excepted to the ALJ's proposed remedy.

Disposition: The Board affirmed the proposed decision, finding that: (1) SEIU proved that the Authority implemented a new policy or applied or enforced existing policy in a new way; (2) the Authority did not prove its statute of limitations defense, as the record did not show that SEIU knew or should have known of the Authority's change more than six months prior to the date it filed its charge; (3) The parties' contract did not constitute a clear and unmistakable waiver; and (4) SEIU did not establish cause to broaden the ALJ's proposed remedy.

DECISION NO. 2848-M

***COACHELLA VALLEY
WATER DISTRICT
EMPLOYEES ASSOCIATION
V. COACHELLA VALLEY
WATER DISTRICT***

NON-PRECEDENTIAL

Description: An administrative law judge issued a proposed decision finding that the District violated the MMBA by unilaterally implementing a scale for calculating employees' overall performance evaluation score that impacted eligibility for merit increases. The District excepted to the proposed decision and the Union filed cross-exceptions. While exceptions were pending before the Board, the Union filed an unopposed request to withdraw the underlying unfair practice charge with prejudice after the parties resolved their dispute as part of successor contract negotiations.

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

DECISION NO. 2849

***AMERICAN FEDERATION
OF TEACHERS LOCAL 6262
V. SANTA CLARITA
COMMUNITY COLLEGE
DISTRICT***

NON-PRECEDENTIAL

Description: An administrative law judge dismissed allegations that the Santa Clarita Community College District violated EERA by repudiating an agreement with American Federation of Teachers Local 6262 requiring the District to place adjunct faculty on a new salary scale at a step that would ensure faculty did not suffer a pay decrease from the prior school year. The ALJ found the agreement's plain language and bargaining history showed that its provision requiring at least a 1% salary increase as a result of placement on the new salary scale was to be applied to the 2017-2018 salary scale in effect at the time the agreement was executed, not the 2017-2018 scale plus the 5.71% retroactive salary increases also provided for in the agreement.

Disposition: In a non-precedential decision, the Board affirmed the proposed decision.

DECISION NO. 2850

***ANNETTE (BARUDONI)
DEGLOW V. LOS RIOS
COMMUNITY COLLEGE
DISTRICT***

NON-PRECEDENTIAL

Description: Annette (Barudoni) Deglow filed an unfair practice charge alleging that the Los Rios Community College District terminated her voice accommodation program by modifying her teaching assignment because she engaged in activities protected by the Educational Employment Relations Act (EERA). The Office of the General Counsel dismissed the charge for failure to state a prima facie case of retaliation or any other unfair practice. Deglow appealed the dismissal.

Disposition: In a non-precedential decision, the Board affirmed the dismissal of the charge.

DECISION NO. 2851-M

***IMPERIAL COUNTY
DEPUTY DISTRICT
ATTORNEYS ASSOCIATION
V. COUNTY OF IMPERIAL***

NON-PRECEDENTIAL

Description: Charging Party Imperial County Deputy District Attorneys Association alleged that Respondent County of Imperial violated the MMBA by: (1) unilaterally changing terms and conditions of employment without affording the Association adequate notice and an opportunity to meet and confer; (2) failing or refusing to meet and confer in good faith; (3) retaliating against the Association and the employees it represents for activities the MMBA protects; and (4) interfering with such protected activities. After the ALJ found in the County's favor on each of these claims, the Association filed timely exceptions and the County responded.

Disposition: In a non-precedential decision, PERB affirmed the ALJ's findings of fact and conclusions of law and dismissed the case.

DECISION NO. 2852-H

***UNIVERSITY COUNCIL-
AMERICAN FEDERATION
OF TEACHERS V. REGENTS
OF THE UNIVERSITY OF
CALIFORNIA***

PRECEDENTIAL

Description: In November 2020, the University of California, Santa Cruz sent a letter to union leaders and representatives announcing that, beginning with winter quarter 2021, it would prohibit employees from concurrently holding academic instructor appointments that are exempt from the federal Fair Labor Standards Act (FLSA) and non-instructional staff appointments that are not exempt from the FLSA. University Council-American Federation of Teachers (UC-AFT) filed an unfair practice charge alleging that the University violated the Higher Education Employer-Employee Relations Act by unilaterally changing its concurrent appointment policy and modifying the Non-Senate Faculty bargaining unit without complying with the parties' collective bargaining agreement or PERB's unit modification regulations. After an ALJ held an evidentiary hearing, the Board transferred the record to the Board itself.

Disposition: The Board found in UC-AFT's favor as to both claims and ordered appropriate relief.

DECISION NO. 2853

*GUILLERMO ROCHA V.
HAYWARD UNIFIED
SCHOOL DISTRICT*

NON-PRECEDENTIAL

Description: Rocha appealed the dismissal of his unfair practice charge by PERB's Office of the General Counsel (OGC). Rocha's charge, as amended, alleged that his former employer, Hayward Unified School District, violated EERA by retaliating against him, creating a hostile workplace, underpaying him, refusing to allow him to work overtime, causing him to lose money, and terminating his employment. It further requested that OGC excuse his untimely allegations on equitable grounds. OGC dismissed the charge for multiple reasons, including its untimeliness and failure to state a prima facie case of any EERA violation.

Disposition: The Board found no reason to disturb OGC's conclusions and affirmed dismissal of the charge.

DECISION NO. 2854

***ANTELOPE VALLEY
COLLEGE FEDERATION OF
TEACHERS V. ANTELOPE
VALLEY COMMUNITY
COLLEGE DISTRICT***

PRECEDENTIAL

Description: The Antelope Valley Community College District adopted a calendar for the 2020-2021 academic year that eliminated the prior Winter session and expanded the Summer session by four weeks, thereby changing the distribution of instructors' workdays, holidays, and workload, without negotiating the changes with the instructors' exclusive representative, Antelope Valley College Federation of Teachers. The Administrative Law Judge found the District made an unlawful unilateral change and bypassed the Federation in violation of the Educational Employment Relations Act, but dismissed other bad faith bargaining allegations. The District filed exceptions challenging only the unilateral change ruling.

Disposition: The Board adopted the ALJ's proposed decision as supplemented by a clarifying Board decision and ordered appropriate relief.

DECISION NO. 2855

**SERVICE EMPLOYEES
INTERNATIONAL UNION,
LOCAL 99 V. THE
ACCELERATED SCHOOLS**

PRECEDENTIAL

Description: An administrative law judge considered whether The Accelerated Schools (TAS) violated EERA when it eliminated a union steward's Health Services Coordinator position, laid her off, and created an unrepresented Registered Nurse position to provide higher-level health care services. The ALJ concluded that these actions were not retaliation for protected activity. But the ALJ found TAS liable for not affording the steward's union adequate notice and an opportunity to meet and negotiate before the layoff, and the ALJ ordered back pay without reinstatement. Only the union excepted, claiming primarily that the ALJ should have upheld its retaliation claim and, in the alternative, that the ALJ should have ordered reinstatement to remedy the bargaining violation.

Disposition: The Board did not sustain the exceptions. The Board clarified that an employer that fails to bargain effects must generally provide back pay from the first date that employees began to experience harm until the earliest of: (1) the date the parties reach an agreement, typically as part of complying with PERB's effects bargaining order; (2) the date the parties reach a good faith final impasse, including exhaustion of any required or agreed upon post-impasse procedures; or (3) the date the union fails to pursue effects negotiations in good faith. The shorter back pay remedy originating in *Transmarine Navigation Corp.* (1968) 170 NLRB 389 (where back pay begins when the parties start effects negotiations and continues for the length of those negotiations or for two weeks, whichever is greater) effectuates the purposes of California public sector labor law only if the effects negotiations arose because of a decision to close a facility or cease offering a service. The Board overruled, in part, eight older decisions that had extended *Transmarine* beyond this scope.

DECISION NO. 2856-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021 V. ALAMEDA
HEALTH SYSTEM***

PRECEDENTIAL

Description: This case came before the Board on SEIU's exceptions to the proposed decision of an administrative law judge (ALJ), which dismissed the complaint in its entirety. The complaint, as amended, alleged that Alameda Health System (AHS) violated the Meyers-Milias-Brown Act (MMBA) by conduct including releasing an AHS employee from probation in retaliation for his protected activity, and interfering with MMBA protected rights by the release from probation and by several verbal and written communications in April 2020. SEIU filed timely exceptions, urging the Board to overturn the ALJ's dismissal of each interference allegation. AHS filed a timely response to SEIU's exceptions, asking the Board to affirm the proposed decision.

Disposition: The Board affirmed in part and reversed in part the ALJ's legal conclusions. The Board found that, in context, an AHS Board of Trustees member's statement during a public meeting that "political theater is not acceptable" fell outside the safe harbor for employer free speech and constituted unlawful interference under the MMBA. The Board otherwise affirmed the proposed decision's dismissal of the interference allegations, including because the harm caused by releasing an employee from probation shortly after he engaged in protected activity was outweighed by AHS's right to release an employee from probation for serious work performance issues, and because the ALJ properly addressed each of the remaining interference allegations under the employer speech standard.

DECISION NO. 2857

***CALIFORNIA SCHOOL
EMPLOYEES
ASSOCIATION-CHAPTER
176 V. BARSTOW
COMMUNITY COLLEGE
DISTRICT***

NON-PRECEDENTIAL

Description: California School Employees Association, Chapter 176 (CSEA) excepted to the proposed decision of an administrative law judge (ALJ). The underlying complaint alleged that the Barstow Community College District violated the Educational Employment Relations Act (EERA) by unilaterally implementing a new policy or process for allowing managerial non-bargaining unit employees to retreat into a bargaining unit classification in which they were permanently employed before their promotion (retreat policy), and to “bump” unit employees currently employed in that classification. The ALJ dismissed the complaint and underlying unfair practice charge, finding that though CSEA established a prima facie case of unilateral change, the District proved its retreat policy was superseded by the Education Code, and that its actions bumping an employee were fully covered by the parties’ memorandum of understanding (MOU), which the District followed. The ALJ also dismissed the related derivative interference violations. CSEA filed timely exceptions, challenging the ALJ’s dismissal of the unilateral change allegation based on the District’s affirmative defense of supersession, and in turn the dismissal of derivative interference allegations.

Disposition: In a non-precedential decision, the Board affirmed both the proposed decision’s factual findings and the dismissal of the complaint and underlying unfair practice charge. However, the Board departed from the ALJ’s analysis, vacating the ALJ’s supersession finding, and instead determining that the District did not violate EERA because it established that it had a binding past practice allowing interim managers to retreat to their bargaining unit positions.

DECISION NO. 2858-M

***OPERATING ENGINEERS
LOCAL UNION NO. 3, AFL-
CIO V. CITY AND COUNTY
OF SAN FRANCISCO***

PRECEDENTIAL

Description: Operating Engineers Local Union No. 3 (OE3) alleged that City and County of San Francisco (City) violated the MMBA by: (1) asserting that its Charter barred retroactive wage increases; and (2) refusing to bargain over a retroactive wage increase. The ALJ dismissed the complaint and the underlying charge.

Disposition: The Board reversed the proposed decision. The MMBA requires the City to interpret its Charter to allow good faith negotiations over proposals for retroactive wage adjustments, and here the City unlawfully interpreted its Charter. The Board directed the City, among other remedies, to pay the extra bargaining costs OE3 incurred because of the City's MMBA violation.

DECISION NO. 2859

***ADAM CYHAN V.
CALIFORNIA TEACHERS
ASSOCIATION***

NON-PRECEDENTIAL

Description: Charging Party Adam Cyhan appealed PERB's Office of the General Counsel's (OGC) dismissal of his unfair practice charge. The charge, as amended, alleges that the California Teachers Association (CTA) violated the Educational Employment Relations Act (EERA) by conduct that includes conspiring with Perris Secondary Educators Association (PSEA), and Cyhan's employer, Perris Union High School District, to violate his rights to select a representative of his own choice at a June 3, 2022 meeting, and failing to adequately represent him during that meeting. OGC dismissed the allegations because they failed to state a prima facie case of any unfair practice, including because CTA owes Cyhan no duty of fair representation as PSEA, not CTA, is the exclusive representative of employees in his bargaining unit. Cyhan timely appealed the dismissal of the charge.

Disposition: The Board affirmed OGC's dismissal of the amended unfair practice charge. The Board dismissed the amended unfair practice charge without leave to amend.

DECISION NO. 2860-M

***PAUL SANCHEZ V.
ORANGE COUNTY
EMPLOYEES ASSOCIATION***

NON-PRECEDENTIAL

Description: The amended complaint alleged that Respondent Orange County Employees Association (OCEA) breached its duty of fair representation under the MMBA by: (1) providing Charging Party Paul Sanchez with insufficient notice to consider and vote on whether to ratify a tentative agreement (TA) between OCEA and the County of Orange, and providing misleading and incomplete information about the TA; (2) denying Sanchez's requests for the ratification vote totals; and (3) failing or refusing to respond to Sanchez's requests for OCEA's policy regarding non-disclosure of contract ratification vote totals. After the ALJ resolved these claims in OCEA's favor and dismissed the amended complaint, Sanchez filed exceptions.

Disposition: In a non-precedential decision, the Board affirmed the proposed decision and dismissed the complaint and underlying unfair practice charge.

DECISION NO. 2861-M

***INTERNATIONAL
BROTHERHOOD OF
ELECTRICAL
WORKERS LOCAL
465 V. IMPERIAL
IRRIGATION DISTRICT***

PRECEDENTIAL

Description: The parties' dispute arose in the initial stages of the COVID-19 pandemic. On March 21, 2020, the District proclaimed a local emergency in response to the COVID-19, whereby it directed its staff to "take the necessary steps for the protection of life, health and safety" and approved the District General Manager to take "necessary actions." On March 26, the District notified IBEW of its plan to sequester a set of critical employees onsite at its facilities to ensure continued energy and water service to its communities, and on April 8, the parties began negotiations over a Sequestration Policy. From the outset and throughout bargaining, the District claimed it had the ability to unilaterally impose terms pursuant to MMBA section 3504.5, while it also stated that it preferred to reach an agreement with IBEW prior to implementing an employee Sequestration Policy. The parties exchanged several proposals and eventually narrowed their outstanding issues to only two, compensation and staffing methodology. On April 17, the District sent IBEW a fourth counterproposal and stated that it would likely be the District's last offer as implementation was imminent. IBEW sent the District a fifth counterproposal on the same day, but the District did not respond to it anytime thereafter. Instead, on April 20, the District implemented its Policy, which impacted unit employees' terms and conditions of employment including their hours of work, seniority, and overtime compensation. On April 25, the District began sequestering selected employees at its facilities in 21-day periods. During this time, employees worked daily 12-hour shifts, followed by 12-hour non-productive periods, and resided at worksites in individual recreational vehicles the District provided. The District never returned to the bargaining table after implementation. In the course of bargaining, IBEW also sent requests for information (RFIs) to the District on April 13 and April 16. The District never responded to either request.

The administrative law judge found that the District refused and failed to meet and confer in good faith with IBEW over the Policy, unilaterally implemented the Policy, and failed to respond to the two RFIs, in violation of the MMBA. The District excepted.

Disposition: The Board affirmed the ALJ's liability findings but departed from the proposed decision's reasoning with respect to the bad faith bargaining violations. The Board also modified the remedial order.

DECISION NO. 2862-M

***CALIFORNIA CITY
MISCELLANEOUS
EMPLOYEES ASSOCIATION
V. CITY OF CALIFORNIA
CITY***

NON-PRECEDENTIAL

Description: The California City Miscellaneous Employees Association appealed the partial dismissal of its unfair practice charge by PERB's Office of the General Counsel (OGC). The charge, as amended, alleges that the City of California City violated the Meyers-Milias-Brown Act (MMBA) by failing to process, respond to, or acknowledge certain grievances, government claims and public records requests. OGC issued a complaint alleging that the City unilaterally changed the grievance procedure, failed to respond to multiple requests for information, and relatedly interfered with employee and Association protected rights, but dismissed the allegations that the City violated the MMBA by failing to respond to certain government claims, violating section 3505.3, or discriminating against Association represented employees, finding that the Association had not stated a prima facie case of those allegations. The Association timely appealed OGC's partial dismissal of only the discrimination allegation.

Disposition: The Board affirmed OGC's dismissal of the discrimination allegation for failure to state a prima facie case.



DECISION NO. 2863

***ERICK GONZALEZ V.
UNITED TEACHERS LOS
ANGELES***

NON-PRECEDENTIAL

Description: Charging Party Erick Gonzalez appealed the dismissal of his amended unfair practice charge alleging that United Teachers Los Angeles (UTLA) breached its duty of fair representation under the Educational Employment Relations Act by advising that he resign and refusing to appeal to arbitration a Notice of Unsatisfactory Act and Notice of Suspension that Gonzalez's employer, the Los Angeles Unified School District, issued to him. PERB's Office of the General Counsel dismissed the charge, concluding that Gonzalez failed to assert how UTLA's decisions were arbitrary, discriminatory, or in made in bad faith.

Disposition: The Board affirmed OGC's dismissal.

DECISION NO. 2864

***ELIAS RUIZ V. TURLOCK
TEACHERS ASSOCIATION***

NON-PRECEDENTIAL

Description: Charging Party Elias Ruiz appealed the dismissal of his amended unfair practice charge alleging that his union, Turlock Teachers Association, breached its duty of fair representation under the Educational Employment Relations Act by negotiating a memorandum of understanding regarding COVID-19 testing and reporting and refusing to process his related grievances. PERB's Office of the General Counsel dismissed the charge, concluding that the allegations were untimely, not under PERB's jurisdiction, and failed to state a prima facie case of any unfair practice.

Disposition: The Board affirmed OGC's dismissal.

DECISION NO. 2865

***MT. SAN JACINTO
COLLEGE FACULTY
ASSOCIATION V. MT. SAN
JACINTO COMMUNITY
COLLEGE DISTRICT***

PRECEDENTIAL

Description: This case came before PERB on Mt. San Jacinto Community College District's exceptions to the proposed decision of an administrative law judge (ALJ). The ALJ found that the District violated the Educational Employment Relations Act (EERA) when it removed faculty members Rosaleen Gibbons and Farah Firtha as chairs of the Chemistry Department, refused to recognize their subsequent reelection as chairs, reassigned them to teach lower level classes for the Fall 2020 semester, and issued two counseling documents, each in retaliation for protected activities including raising safety concerns and alleging that their removal as chairs was retaliatory. The District excepted, challenging the bulk of the proposed decision's legal conclusions, and asserting that the ALJ erred in his ordered remedies. The Association urged the Board to deny the District's exceptions and thus affirm the proposed decision.

Disposition: The Board affirmed the conclusion that the District unlawfully retaliated against Gibbons and Firtha by removing them as department chairs, refusing to recognize their re-election, reassigning them to teach Introductory Chemistry for Fall 2020, and issuing each a counseling document. The Board largely affirmed the ALJ's ordered remedies, correcting one minor discrepancy and supplementing the remedy to include PERB's first ordered notice reading.

DECISION NO. 2866-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 721 V. COUNTY OF
RIVERSIDE***

NON-PRECEDENTIAL

Description: Service Employees International Union, Local 721 (SEIU) alleged that the County of Riverside violated the Meyers-Milias-Brown Act by subjecting its employee Tara Stoddart to a two-hour investigatory interview, issuing her verbal and written reprimands, and enforcing an unspecified photo policy preventing her from taking pictures of unsafe working conditions, in retaliation for engaging in protected activity. Following a formal hearing, the ALJ sustained the allegations with respect to the written reprimand, but dismissed all other allegations. The County excepted to the ALJ's finding of a retaliation violation; SEIU opposed the County's exceptions and cross-excepted on the dismissed claims.

Disposition: In a non-precedential decision, the Board affirmed in part and remanded in part the proposed decision. The Board affirmed the proposed decision's dismissal of the allegations that the County retaliated against Stoddart by interviewing her, verbally reprimanding her, and preventing her from taking photos of unsafe working conditions. However, it set aside the proposed decision's conclusion with respect to the written reprimand as, unlike the ALJ, it found no direct evidence that its issuance was unlawfully motivated. The Board remanded the matter, rather than dismissed the complaint, because the ALJ failed to make multiple credibility determinations that are necessary to resolving whether SEIU stated a prima facie case of unlawful retaliation, and, if so, whether the County proved its affirmative defense.

DECISIONS OF THE BOARD

Administrative Determinations

ORDER NO. AD-493

***STEVE H. GRAVES V. LOS
ANGELES COMMUNITY
COLLEGE DISTRICT***

NON-PRECEDENTIAL

Description: Steve H. Graves (Charging Party) appealed an administrative determination. PERB's Appeals Office rejected as untimely Charging Party's filing in response to the Office of the General Counsel's (OGC) dismissal of his unfair practice charge. Charging Party filed a timely appeal of the administrative determination, arguing in his brief appeal that he had good cause for late filing.

Disposition: The Board affirmed the Appeals Office's rejection of Charging Party's late filing, finding Charging Party did not establish good cause for late filing. The amended unfair practice charge remains dismissed without leave to amend.

ORDER NO. AD-494-M

***CITY AND COUNTY OF SAN
FRANCISCO AND SAN
FRANCISCO DEPUTY
SHERIFFS' ASSOCIATION
AND SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021***

NON-PRECEDENTIAL

Description: The City and County of San Francisco (City) appealed an administrative determination. PERB's Appeals Office rejected as untimely the City's response to an appeal by the San Francisco Deputy Sheriffs' Association of the Office of the General Counsel's (OGC) administrative determination rejecting the Association's severance petition. The City filed a timely appeal of the administrative determination, arguing that it had good cause for late filing its response.

Disposition: The Board affirmed the Appeals Office's rejection of the City's late filing, finding the City did not establish good cause for late filing.

ORDER NO. [AD-495-H](#)

***STEPHEN MALLOY V.
REGENTS OF THE
UNIVERSITY OF
CALIFORNIA, SAN
FRANCISCO***

NON-PRECEDENTIAL

Description: Charging Party Stephen Malloy filed an interlocutory appeal of an Administrative Law Judge's (ALJ) denial of his requests for disability accommodation. Malloy's accommodation requests seek PERB's appointment of counsel to represent Malloy at hearing and issuance of a protective order insulating Malloy from providing testimony. The ALJ certified Malloy's interlocutory appeal to the Board itself on August 26, 2022, pursuant to PERB Regulation 32200. The formal hearing for the case is scheduled to begin on October 10, 2022. Because the interlocutory appeal raises issues that could fundamentally impact the parties' ability to present their cases at hearing, the Board immediately stayed all activity in the Division of Administrative Law.

Disposition: In a non-precedential order, the Board stayed all proceedings in the Division of Administrative Law pending the Board's resolution of the interlocutory appeal.

ORDER NO. AD-496-M

***JAIME AVILA V. COUNTY
OF ORANGE (ORANGE
COUNTY SHERIFF'S
DEPARTMENT)***

PRECEDENTIAL

Description: The complaint alleged that the County of Orange discharged Charging Party Jaime Avila because he engaged in conduct protected by the MMBA. The ALJ deferred the dispute to binding arbitration under an MOU between the County and the union that represents Avila's bargaining unit. Avila asked PERB to reverse the ALJ's deferral order and find that the arbitration process, including the arbitration decision that ultimately issued, was repugnant to the MMBA.

Disposition: The Board affirmed the ALJ's deferral order, finding that the parties submitted the MMBA retaliation question as one of the issues for the arbitrator to resolve and that he did so, applying the statutory standard. The Board exercised its discretion to resolve Avila's post-arbitration repugnancy claim rather than remanding it to the ALJ and found that the arbitration process and decision were not repugnant to the MMBA. Accordingly, the Board dismissed the complaint and underlying unfair practice charge.

ORDER NO. AD-497-M

***CITY AND COUNTY OF SAN
FRANCISCO AND SAN
FRANCISCO DEPUTY
SHERIFFS' ASSOCIATION
AND SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021***

PRECEDENTIAL

Description: This matter came before the Board on the San Francisco Deputy Sheriffs' Association's appeal of an administrative determination by PERB's Office of the General Counsel (OGC). The Association filed a severance petition (Petition) seeking to sever five classifications from existing bargaining units in the City and County of San Francisco (City) currently exclusively represented by Service Employees International Union Local 1021 (SEIU). OGC issued an administrative determination finding that PERB has jurisdiction over the Petition because the City's local rules do not include a provision that can accomplish severance without an undue burden on the Association, and as a result PERB Regulations apply to "fill the gap." However, OGC found the Petition was untimely under PERB Regulations and dismissed the Petition. The Association appealed, arguing that the City's local rules required the City to apply PERB Regulations and process an earlier severance request the Association filed directly with the City, and that PERB erred by not correcting the City's failure to do. SEIU filed a timely response, urging that OGC should have dismissed the Petition for lack of jurisdiction as the City's local rules provide a process to remove classifications from a bargaining unit and become formally recognized as an exclusive representative, and further that whether an "undue burden" exists is a factual question that should be adjudicated through a formal hearing.

Disposition: The Board affirmed OGC's findings that PERB has jurisdiction over the Petition because the City's local rules do not include a provision that can accomplish severance without an undue burden, and that applying that PERB Regulations the Petition was untimely. The Board therefore dismissed the Petition.

ORDER NO. AD-498

***CALIFORNIA
SCHOOL
EMPLOYEES
ASSOCIATION-
CHAPTER 176 V.
BARSTOW
COMMUNITY
COLLEGE DISTRICT***

PRECEDENTIAL

Description: Barstow Community College District appealed an administrative determination. PERB's Appeals Office rejected as untimely the District's response to exceptions by the California School Employees Association, Chapter 176 (CSEA) to the proposed decision of an Administrative Law Judge (ALJ). The District's response was due on November 7, 2022 at 11:59 p.m., but was filed on November 8, 2022 at 12:01 a.m.

The District filed a timely appeal asserting good cause for its untimely filing. The District asserted that its counsel, while working remotely, discovered the digital pen he customarily signs documents with had a dead battery, and was delayed trying and failing to print, sign, and scan via his home printer and the looking for a replacement battery. The District argues these circumstances establish good cause for late-filing as an honest mistake arising from circumstances beyond the control of the District's counsel. CSEA filed a timely opposition to the District's appeal, arguing that the District failed to establish good cause for its late filing, including because PERB Regulations deem a document to have been signed when electronically filed, meaning even with a faulty pen and malfunctioning scanner, the District's counsel could have timely filed.

The Board noted that while the brief delay was not prejudicial, it nonetheless did not find that the District established good cause for late filing. A review of the current applicable PERB Regulations would have revealed that District counsel's customary practice of signing with his digital pen was not necessary. Under PERB Regulation 32092, subdivision (a), a digital pen is not required to execute a valid electronic signature. Under subdivision (b), PERB would have deemed the District's response to have been signed when it was electronically filed, even without the written signature of the digital pen. Therefore, the District's counsel could have timely submitted the District's response through e-PERB without spending time searching for a battery for his digital pen. Furthermore, it was within the District's counsel's control to ensure his digital pen was working or to have an extra battery readily available when he knew he planned to use this tool to file.

Disposition: The Board affirmed the Appeals Office's rejection of the District's late filing.

ORDER NO. AD-499-H

***STEPHEN MALLOY V.
REGENTS OF THE
UNIVERSITY OF
CALIFORNIA (SAN
FRANCISCO)***

PRECEDENTIAL

Description: Stephen Malloy requested two accommodations for his disability for formal hearing: appointment of counsel for his representation, and immunity from testifying in his case at PERB. The administrative law judge (ALJ) denied the two accommodation requests on the basis that they were unreasonable. Malloy appealed the rulings and the ALJ certified the appeal to the Board itself. Malloy later requested a stay of activity at all levels of PERB, which was denied. Malloy appealed that determination. These issues were consolidated for decision where the Board affirmed the denials of the requested accommodations and the request for a stay at all levels.

Disposition: Denials affirmed.

ORDER NO. AD-500

***PASADENA AREA
COMMUNITY COLLEGE
DISTRICT AND
CALIFORNIA FEDERATION
OF TEACHERS AND
PASADENA CITY COLLEGE
FACULTY ASSOCIATION***

PRECEDENTIAL

Description: California Federation of Teachers filed a decertification petition to replace Pasadena City College Faculty Association (PCCFA) as the exclusive representative of faculty members at Pasadena Area Community College District. A Board agent issued an administrative determination finding sufficient proof of support consisting of both electronically and physically signed authorization cards. PCCFA asked the Board agent to certify an interlocutory appeal, asserting that PERB Regulation 32700 bars use of electronic proof of support for decertification. The Board agent certified the interlocutory appeal for Board review.

Disposition: The Board held that PERB Regulation 32700 bars use of electronic proof of support to trigger a decertification petition. For most of PERB's history, the agency's regulations disallowed electronically signed proof of support. Recent revisions to PERB Regulations changed this rule only for "employees who are not exclusively represented by an employee organization." (PERB Reg. 32700(d)(4).) The revised regulation left PERB's longstanding requirement of original signatures unchanged for exclusively represented employees who wish to change or decertify their representative or sever themselves from a represented unit. The Board therefore reversed the administrative determination.

ORDER NO. AD-501-H

***STEPHEN MALLOY V.
REGENTS OF THE
UNIVERSITY OF
CALIFORNIA (SAN
FRANCISCO)***

NON-PRECEDENTIAL

Description: Stephen Malloy appealed the Board's decision Regents of the University of California (San Francisco) (2022) PERB Order No. Ad-499-H (non precedential). In that decision, the Board found that Malloy is a qualified individual with a disability but affirmed the denial of his requests for PERB to appoint counsel to represent Malloy and to insulate Malloy from providing testimony. In that decision the Board also affirmed a prior denial of Malloy's request for a stay of activity at all levels of PERB.

Disposition: Malloy's "Exceptions" were procedurally premature because a proposed decision has not yet issued based on a developed factual record. For the same reason, the Board explained that even if the filing was a request for reconsideration, such a request would also be procedurally improper. However, because Malloy is currently seeking immediate review of Regents of the University of California (San Francisco), supra, PERB Order No. Ad-499-H (non precedential) in the California Court of Appeal, the Board placed this case in abeyance pending resolution of the appellate litigation.

ORDER NO. AD-502

***PASADENA AREA
COMMUNITY COLLEGE
DISTRICT AND
CALIFORNIA FEDERATION
OF TEACHERS AND
PASADENA CITY COLLEGE
FACULTY ASSOCIATION***

PRECEDENTIAL

Description: California Federation of Teachers (CFT) filed a petition to decertify and replace Pasadena City College Faculty Association (PCCFA) as the exclusive representative of a bargaining unit at Pasadena Area Community College District. The unit consists of full-time (regular) faculty and part-time (temporary) faculty. Many part-time faculty work intermittently, meaning they work some terms but not others, or work for one term only. The Office of the General Council (OGC) issued an administrative determination concluding that faculty are eligible to vote in the election if they worked during either the Fall 2022 or Spring 2023 terms. PCCFA filed an interlocutory appeal, arguing that this standard would enfranchise many part-time faculty who do not have a reasonable expectation of future employment. OGC certified the appeal to the Board pursuant to PERB Regulation 32200.

Disposition: The Board partially sustained the appeal, holding as follows. Regular faculty may vote if they are employed in the unit on the eligibility cutoff date and are still employed when they cast their ballots. Because the District's part-time faculty are intermittent employees, they may vote if their work on behalf of the District includes serving in a unit position during two or more of the most recent six instructional terms, including at least one of the most recent three instructional terms. The Board overruled State of California (Department of Personnel Administration) and Association of Staff, Administrative and Financial Employees (1985) PERB Decision No. 532-S to the extent it can be read as requiring OGC to apply the same eligibility standards at the proof of support stage and the election stage.

ORDER NO. AD-503-M

***SERVICE EMPLOYEES
INTERNATIONAL UNION
LOCAL 1021 V. CITY AND
COUNTY OF SAN
FRANCISCO (SAN
FRANCISCO MUNICIPAL
TRANSPORTATION
AGENCY)***

NON-PRECEDENTIAL

Description: SEIU Local 1021(SEIU) charged that City and County of San Francisco Municipal Transportation Agency (City) unilaterally changed shift bid procedures for station agents without affording SEIU notice and an opportunity to bargain. After the City failed to answer the complaint, an ALJ found no good cause to excuse the City from default. The ALJ thus did not hold a formal hearing and instead issued a proposed decision, finding the City violated the MMBA and issuing a remedial order. The proposed decision became final when neither party filed exceptions to it. The Office of General Counsel (OGC) initiated compliance proceedings and later issued an administrative determination concluding that the City fully complied with the ALJ's remedial order. SEIU appealed, asking the Board to reverse and remand the case to OGC for further compliance proceedings.

Disposition: In a non-precedential decision, the Board denied the appeal.

DECISIONS OF THE BOARD

Judicial Review Decisions– NONE in 2022-2023

DECISIONS OF THE BOARD

Injunctive Relief Decisions – NONE in 2022-2023





PERB

California Public Employment
Relations Board