



**CALIFORNIA PUBLIC EMPLOYMENT  
RELATIONS BOARD**

# **ANNUAL REPORT**

FISCAL YEAR 2023 - 2024

# PERB AT A GLANCE

PERB 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.

More than 2.5 million public sector employees and over 5,000 public employers fall under the jurisdiction of PERB. The approximate number of employees under these statutes is:

- 700,000 in the public education system from pre-kindergarten through the community college level;
- 250,000 work for the State;
- 430,000 at the UC, CSU, and UC Law, San Francisco;
- 1,300,000 work for cities, counties, special districts, and In-Home Support Service agencies; and
- the rest at the trial courts, Judicial Council, and certain transit districts.

PERB also has jurisdiction over 40,000 state-funded early care and education childcare providers.

## Contents

|                                            |    |
|--------------------------------------------|----|
| PERB at a Glance .....                     | 2  |
| Letter from the Chair .....                | 4  |
| What's New .....                           | 5  |
| History of PERB .....                      | 6  |
| Statutes Under PERB Jurisdiction .....     | 8  |
| Organizational Structure .....             | 9  |
| Board Purpose and Functions.....           | 9  |
| Board Members .....                        | 10 |
| Major Functions of PERB.....               | 12 |
| Case Dispositions .....                    | 19 |
| Unfair Practice Charges .....              | 20 |
| Dispute Resolutions and Dispositions ..... | 21 |
| Administrative Adjudication .....          | 22 |
| Board Decisions.....                       | 23 |
| Litigation.....                            | 24 |
| Representation Activity .....              | 25 |
| Mediation and Factfinding .....            | 26 |
| Compliance .....                           | 27 |
| SMCS Case Dispositions .....               | 28 |
| Legislation.....                           | 29 |
| Rulemaking .....                           | 30 |
| Administrative Leadership.....             | 31 |
| Organizational Chart .....                 | 33 |
| 2023 - 2024 Litigation Activity .....      | 34 |
| 2023 - 2024 Board Decisions.....           | 40 |

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# LETTER FROM THE CHAIR

October 15, 2024

Dear Members of the State Legislature and fellow Californians:

I am pleased to submit the 2023 – 2024 Public Employment Relations Board (PERB) Annual Report. We are 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 itself issued 58 decisions in the fiscal year. Our [docket](#) continues to reflect a historical low number of cases to be decided. We have been able to reduce the time it takes to issue a decision to an average of four months. Other highlights from 2023 – 2024 include:

- 600 unfair practice charges filed
- 78 representation petitions filed
- 90 approved requests for mediation under EERA and HEERA
- 22 factfinding requests
- 69 formal hearings completed by administrative law judges
- 66 proposed decisions issued by administrative law judges
- 522 cases filed with State Mediation and Conciliation Service

We continue our efforts to make our process easier to navigate for our constituents. Our website is regularly updated with new content. In the past year, we have added a [Glossary](#) page and revised the [Frequently Asked Questions](#) page.

Finally, our jurisdiction continues to grow. Assembly Bill 1 (Chapter 313, Statutes of 2023) enacted the Legislature Employer-Employee Relations Act (LEERA). LEERA provides employees of the Legislature the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. LEERA becomes operative on July 1, 2026.

Please visit our website at <https://perb.ca.gov/> or contact PERB at (916) 322-3198 for any further information.

Respectfully submitted,



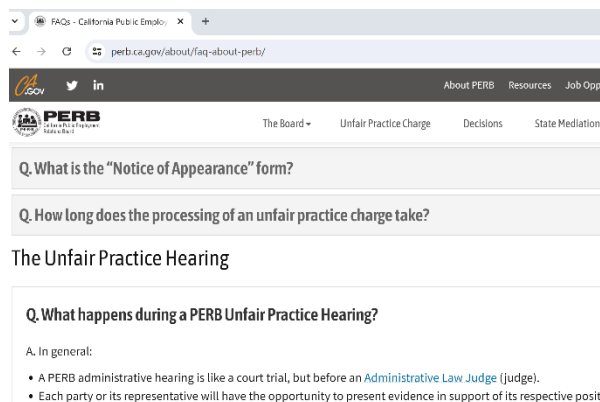
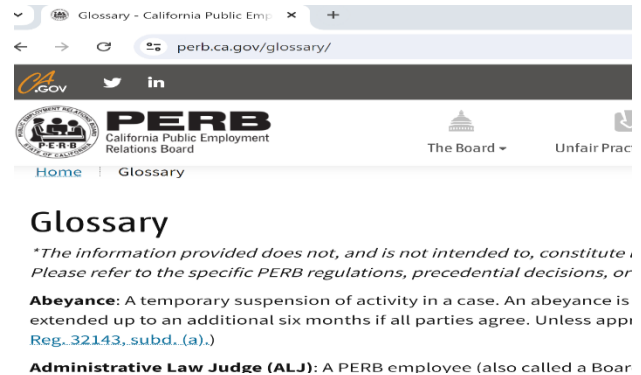
Eric R. Banks, Chairperson

# WHAT'S NEW

## Resources for Constituents

As a part of our ongoing Case Processing Efficiency Initiative and our general efforts to provide our constituents with more information and guidance, we have developed and improved the following resources:

**Glossary:** Located at <https://perb.ca.gov/glossary/>, the glossary provides constituents with well over 100 definitions of terms that may be unfamiliar as they navigate our process.



**Frequently Asked Questions:** Located at <https://perb.ca.gov/about/faq-about-perb/>. The FAQs provide constituents with answers to some of the most frequently asked questions we have encountered, including:

- Our jurisdiction;
- Our authority;
- Statutes of limitation;
- Filing charges and documents;
- The hearing process;
- And more.

## Ongoing Efforts:



### Plain Language Initiative

An ongoing effort to make sure our constituents can understand the information we give them. To meet Executive Order N-16-22, to embed equity in communications and service delivery.



### Surveys/Roundtables

To provide our constituents the ability to provide feedback on our process, systems, and services.



### Webinars/Videos

To deliver information and training to constituents in on-demand formats.

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# HISTORY OF PERB

PERB's origins begin in the late 1970s with the passage of three foundational laws governing public sector collective bargaining in California. In 1976, State Senator Albert S. Rodda authored the Educational Employment Relations Act (EERA). EERA established collective bargaining in California's public schools (K-12) and community colleges. EERA also established the Educational Employment Relations Board, which would later become the Public Employment Relations Board. In 1978, the State Employer-Employee Relations Act, known as the Ralph C. Dills Act, established collective bargaining for State employees. Assemblyman Howard Berman authored the Higher Education Employer-Employee Relations Act (HEERA) in 1979. It extended collective bargaining to the California State University, University of California, and Hastings College of Law.

Over twenty years later, in 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968. MMBA established collective bargaining for California's cities, counties, and local special districts. PERB's MMBA jurisdiction excludes individual peace officers, management employees, and the City and County of Los Angeles. This expansion doubled the number of public sector employees under PERB's jurisdiction.

**2023 marked the seventh consecutive year that at least one statute was added under PERB's jurisdiction.**

In 2004, the Legislature expanded PERB's jurisdiction with the passage of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). TEERA established collective bargaining for the Authority's supervisory employees. PERB was also given jurisdiction over the Trial Court Employment Protection and Governance Act and the Trial Court Interpreter Employment and Labor Relations Act.

The Legislature expanded PERB's jurisdiction again in June 2012 with 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. The Legislature repealed IHSSEERA in June of 2017. As a result, IHSS providers returned to coverage under the MMBA.

The Governor's Reorganization Plan 2 placed PERB under the California Labor and Workforce Development Agency in 2012. Senate Bill 1038 also moved the State Mediation and Conciliation Service (SMCS) from the Department of Industrial Relations to PERB. The Legislature formed SMCS 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). In 2018, Senate Bill 866 made PERB responsible for the administration and enforcement of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD). The Judicial Council Employer-Employee Relations Act (JCEERA) established collective bargaining for employees of the Judicial Council.

Another significant expansion of PERB's jurisdiction occurred in 2019. The Building a Better Early Care and Education System Act expanded PERB's jurisdiction beyond public sector employees. It gave PERB jurisdiction over the collective bargaining relationship between family childcare providers, their provider organization, and the state. Assembly Bill 355 gave PERB jurisdiction over the Orange County Transportation Authority.

In 2020, AB 2850 established PERB's jurisdiction over the San Francisco Bay Area Rapid Transit District (BART). Then in 2021, Senate Bill 598 gave PERB jurisdiction over the Sacramento Regional Transit District (SacRT). 2022 was the fourth consecutive year that the Legislature added public transit districts to PERB's jurisdiction. Senate Bill 957 gave PERB jurisdiction over the Santa Cruz Metropolitan Transit District. Assembly Bill 2524 gave PERB jurisdiction over the Santa Clara Valley Transportation Authority.

In 2023, the Legislature passed the Legislature Employer-Employee Relations Act (LEERA). PERB has jurisdiction over the Act, which takes effect in July of 2026.

# STATUTES UNDER PERB JURISDICTION

- [Educational Employment Relations Act](#) (EERA) (Government Code § 3540 et seq.)
- [State Employer-Employee Relations Act](#) (Dills Act) (Government Code § 3512 et seq.)
- [Higher Education Employer-Employee Relations Act](#) (HEERA) (Government Code § 3560 et seq.)
- [Meyers-Milias-Brown Act](#) (MMBA) (Government Code § 3500 et seq.)
- [Los Angeles County Metropolitan Transportation Authority Transit Employer- Employee Relations Act](#) (TEERA) (Public Utilities Code § 99560 et seq.)
- [Trial Court Employment Protection and Governance Act](#) (Trial Court Act) (Government Code § 71600 et seq.)
- [Trial Court Interpreter Employment and Labor Relations Act](#) (Court Interpreter Act) (Government Code § 71800 et seq.)
- [Judicial Council Employer-Employee Relations Act](#) (JCEERA) (Government Code, § 3524.50 et seq.)
- [Public Employee Communications Chapter](#) (PECC) (Government Code § 3555 et seq.)
- [Prohibition on Public Employers Deterring or Discouraging Union Membership](#) (PEDD) (Government Code § 3550 et seq.)
- [Building a Better Early Care and Education System Act](#) (Welfare and Institutions Code § 10420 et seq.)
- [Orange County Transportation District Act \(OCTDA\)](#) (Public Utilities Code § 40122.1)
- [San Francisco Bay Area Rapid Transit District \(BART\)](#) (Public Utilities Code § 28848 et. seq.)
- [Sacramento Regional Transit District Act \(SacRTD Act\)](#) (Public Utilities Code § 102398 et. seq.)
- [Santa Cruz Metropolitan Transit District Act \(SC Metro\)](#) (Public Utilities Code § 98160 et. seq.)
- [Santa Clara Valley Transportation Authority \(VTA\)](#) (Public Utilities Code § 100300 et. seq.)
- [Legislature Employer-Employee Relations Act \(LEERA\)](#) (Government Code, § 3599.50 et seq. operative July 1, 2026)

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

# ORGANIZATIONAL STRUCTURE

PERB is comprised of four distinct divisions and the Board itself. The four divisions are:

- the Office of the General Counsel
- the Division of Administrative Law
- the Division of State Mediation and Conciliation Service
- the Division of Administration

PERB is headquartered in Sacramento and has three regional offices:

- the Sacramento Regional Office (SRO) in Sacramento
- the Los Angeles Regional Office (LARO) in Glendale
- the San Francisco Regional Office (SFRO) in Oakland

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## BOARD PURPOSE AND FUNCTIONS

The Board itself:

- Consists of up to five members appointed by the Governor;
  - Subject to State Senate confirmation
  - Members serve a five-year term
  - The term of one member expires at the end of each calendar year
- Administers the statutes under PERB's jurisdiction;
- Acts as an appellate body to decide challenges to decisions issued by Board agents;

**The Board's powers and duties are described in Government Code § 3541.3.**

The Board can:

- hold elections to find out if employees want to have union representation in labor relations;
- prevent and remedy unfair labor practices while protecting the rights and responsibilities of employers, employees and employee organizations;
- bring an action in court to enforce PERB's decisions and rulings;
- and take other actions to fulfill the purposes of the Acts.

# BOARD MEMBERS

## **Eric R. Banks, Chair**

Eric R. Banks has been a Member of the Board since his first appointment by Governor Edmund G. Brown, Jr. in 2013. Under that administration, he was reappointed in 2015 and 2017. Governor Gavin Newsom designated Banks Chairperson in 2021 and reappointed him under that designation in January of 2022. Before his appointment, he 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 as Advisor to the President and Director of Government and Community Relations. He was also the first openly gay person to be elected President of that union. Before moving to California, Banks 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. He received a Bachelor of Science from Binghamton University.

Chair Banks' term expires December 2026.

## **Arthur A. Krantz, Board Member**

Arthur A. Krantz was first appointed to the Board by Governor Edmund G. Brown Jr. in 2018, and Governor Gavin Newsom reappointed him in January 2021 for a five-year term. For more than 20 years prior to his service on the Board, 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. Krantz did this work as an associate and partner at Leonard Carder, LLP. Prior to that, Krantz spent one year clerking for the Honorable Ellen Bree Burns at the United States District Court, District of Connecticut.

Krantz serves as co-editor-in-chief of California Public Sector Labor Relations. He frequently contributes to other publications and presents at conferences. Krantz has 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 & Employment Law Section. He received his B.A. from Yale University and his J.D. from NYU School of Law, where he was a Root Tilden Public Interest Scholar. During college, Krantz's work in a dining hall led him to serve as a shop steward and contract negotiating team member for UNITE HERE Local 35.

Mr. Krantz's term expires December 2025.

## **Lou Paulson, Board Member**

Lou Paulson was first appointed to the Board by Governor Gavin Newsom on February 6, 2019 and was reappointed to a second term by Governor Newsom on January 12, 2024. Prior to his appointment Lou 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.

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. 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 2028.

### **Adrin Nazarian, Board Member**

Adrin Nazarian was appointed 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.

### **Mark Krausse, Board Member**

Mark Krausse, of Clarksburg, was appointed by Governor Gavin Newsom on June 21, 2024. Krausse was Director of State Agency Relations for Pacific Gas and Electric since 2007. He was Executive Director of the Fair Political Practices Commission from 2000 to 2007. Krausse was Director of Government Relations for the Doctors Company from 1996 to 1997 and Senior Consultant in the California State Senate from 1994 to 1996. Krausse was Senior Consultant in the California State Assembly from 1991 to 1994 and an Associate Consultant in the California State Senate from 1988 to 1990. Krausse earned a Bachelor of Arts degree in Government from California State University, Sacramento and a Juris Doctor degree from the University of the Pacific, McGeorge School of Law.

Mr. Krausse's term expires December 2024.

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# MAJOR FUNCTIONS OF PERB

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 by the State Mediation and Conciliation Service (SMCS).

## Unfair Practice Charges

The major function performed by the Office of General Counsel is the investigation and resolution of unfair practice charges (UPCs). Employers, employee organizations or employees may file UPCs. Members of the public may also file a charge. Public charges can only be about alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA.

A UPC alleges an employer or employee organization engaged in unlawful conduct under one of the statutes PERB administers.

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 take part 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 fairly represent bargaining unit members.

A Board agent reviews a UPC to determine whether a prima facie violation is present. A charging party establishes a prima facie case by alleging enough 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. The Board agent gives the charging party 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.

A Board agent will issue a formal complaint if they determine that a charge states a prima facie case of a violation. The respondent may file an answer to the complaint.

After the complaint is issued, a different Board agent calls the parties together for an informal settlement conference. The settlement conference is usually held within 60 days of the date of the

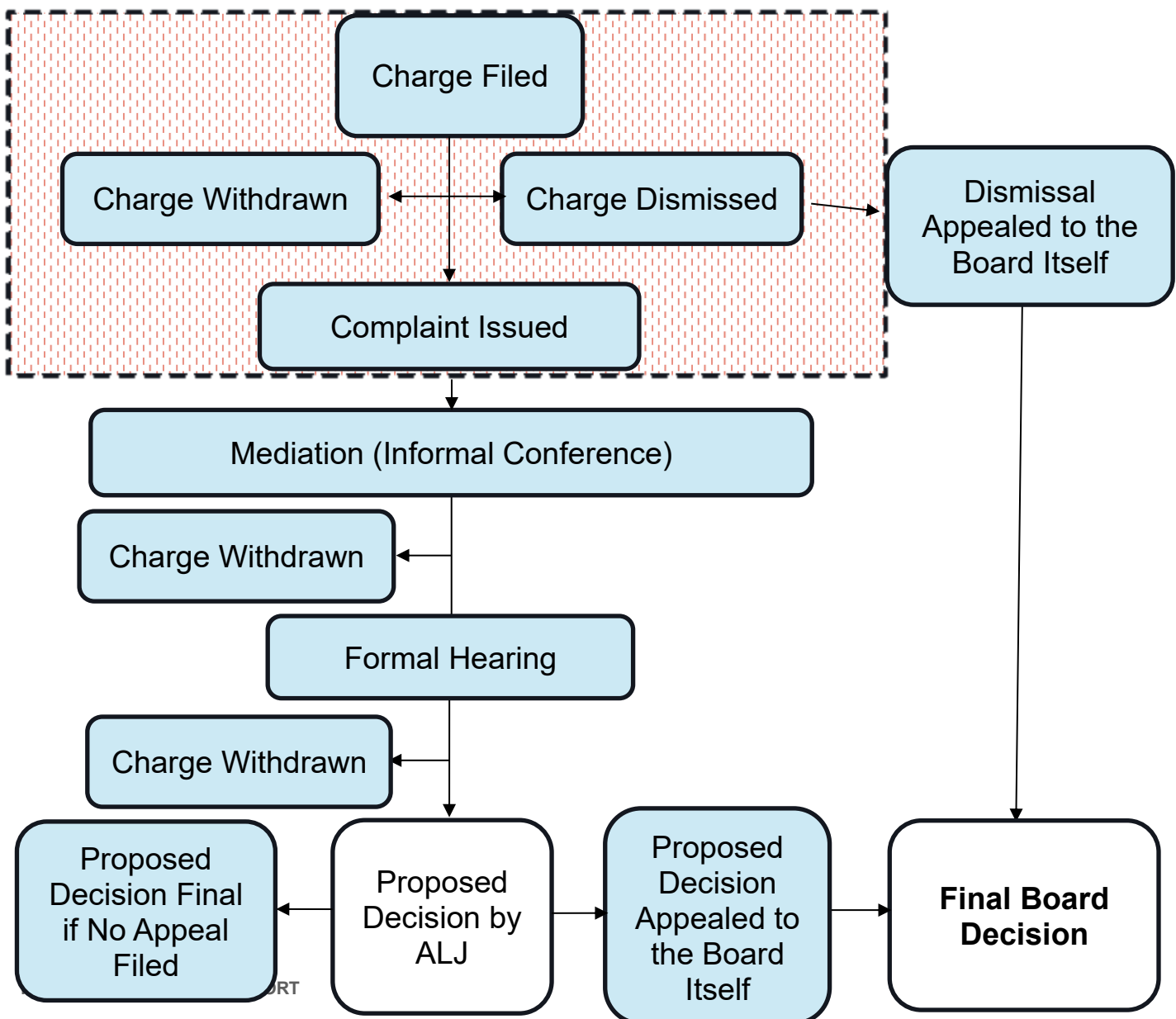
complaint. If settlement is not reached, an Administrative Law Judge (ALJ) schedules a formal hearing. A hearing generally occurs within 120 days from the date of the informal conference.

Following the hearing, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, change, reverse, or remand the proposed decision. Proposed decisions that are not appealed to the Board are binding upon the parties to the case. But constituents may not cite them as precedent in other cases before the Board.

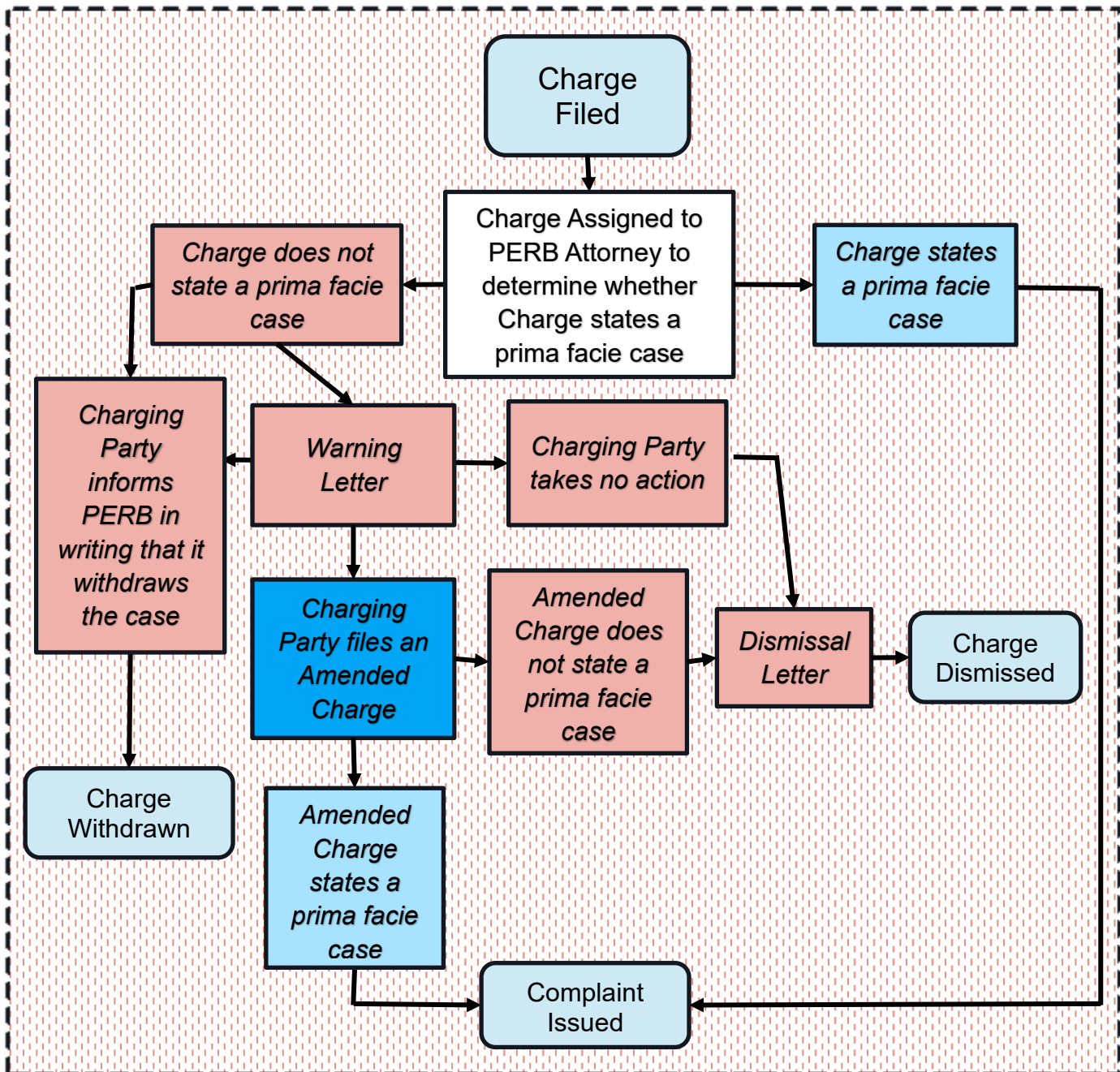
The Board can make a final decision precedential - binding on the parties to the particular case and used as support in other cases. The Board can also make decisions non-precedential pursuant to PERB Regulation 32320, subdivision (d).

Text and headnotes for all but non-precedential Board decisions are available on our website (<https://perb.ca.gov/decisions/>). Interested parties can also [sign-up for electronic notification of new Board decisions](#).

## THE UPC PROCESS OVERVIEW



## THE UPC PROCESS – CHARGE TO COMPLAINT DETAILED VIEW



## The Representation Process

The representation process begins when an employee organization files a petition to represent employees. The employees must be in classifications that have an internal and occupational community of interest. The employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit when:

- only one petition was filed,
- the petition has majority support, and
- the parties agree on the description of the bargaining unit.

If two or more employee organizations are competing for a bargaining unit, an election is mandatory.

A Board agent may hold an informal settlement conference if the employer or an employee organization disputes the appropriateness of the proposed bargaining unit. If the dispute cannot be settled, a Board agent:

- conducts a formal investigation,
- in some cases conducts 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.

After the establishment of the bargaining unit, PERB may conduct a representation election. A representation election is not needed if the statute requires the employer to grant recognition to an employee organization as the exclusive representative where the proof of support exceeds 50 percent of the bargaining unit.

PERB also conducts decertification elections. A decertification election can occur when a rival employee organization or group of employees obtains enough signatures to call for an election to remove the incumbent organization. The choice of “No Representation” appears on the ballot in every representation and decertification election.

PERB staff also helps 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.

## EERA, HEERA, OR THE DILLS ACT

If the parties are unable to reach an agreement during negotiations 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 help 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 a statutory factfinding procedures.

PERB appoints a factfinding chairperson. The panel also includes representatives of the employer and the employee organization. The panel makes findings of fact and advisory recommendations to the parties about settlement terms.

## MMBA

The employee organization may request the initiation of statutory factfinding procedures:

- If the parties reach impasse during negotiations, and
- a settlement is not achieved through dispute resolution procedures authorized by local rules.

If the employee organization requests factfinding, PERB appoints a factfinding chairperson. The panel also includes representatives of the employer and the employee organization. The panel makes findings of fact and advisory recommendations to the parties about settlement terms.

## Appeals

Parties may appeal a proposed decision to the Board itself. This is known as filing exceptions. A statement of exceptions must:

- explain why the proposed decision is incorrect;
- cite to exhibits and/or transcripts to support arguments about the facts; and
- cite to legal authority (cases, laws, regulations, etc.) to support legal arguments.

The specific requirements for a statement of exceptions are in PERB Regulation 32300.

A dismissal of an unfair practice charge may be appealed to the Board itself. The appeal must be in writing and must state the specific issue(s) of procedure, fact, law, or rationale (reason for) that is appealed and state the grounds for the appeal.

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

The Appeals 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.

## **Legal Representation Function of the 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;
- overseeing the preparation of the administrative record for litigation;
- 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 works to support PERB's mission through mediation, a form of alternative dispute resolution. SMCS works on the basis of mutual consent, except as required by statute. Mediation is confidential and non-adjudicatory, with emphasis on compromise and collaboration toward settlement.

SMCS mediates under the provisions of California's public sector employment statutes and the National Labor Relations Act. SMCS also mediates in the private sector 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).

For more than two decades, SMCS and FMCS have divided the work between the public and private sectors. The work has become more complex, requiring specialization, and resources in both agencies have been an issue.

Core functions, performed at no charge to the parties, include:

- 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 or for the decertification/certification of labor organizations.

Other services include:

- Training and facilitation in:
  - interest-based bargaining;
  - implementing effective joint labor-management committees; and
  - resolving conflict in the workplace;
- Upon request or ordered by settlement:
  - specialized training in various aspects of public sector collective bargaining; and
- Help with internal organization elections and processes.

SMCS also maintains a list of qualified private arbitrators. Upon mutual request by labor and management SMCS will provide a list of arbitrators with experience in labor relations.

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# CASE DISPOSITIONS

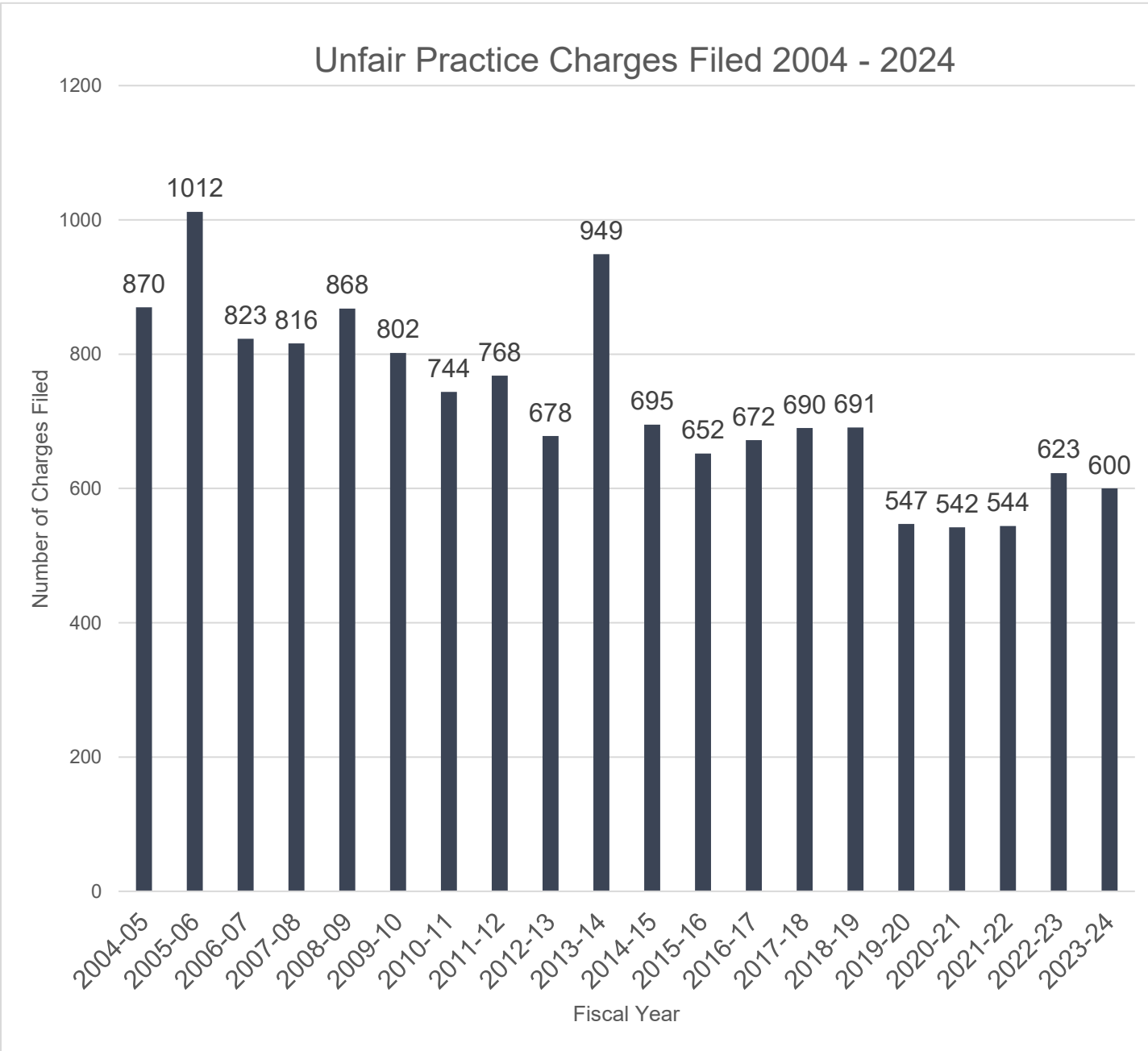
In the pages that follow you will find the 2023 – 2024 case dispositions for PERB's divisions, including:

- [Unfair Practice Charges](#)
- [Dispute Resolutions and Dispositions](#)
- [Administrative Adjudication Activity](#)
- [Board Decisions](#)
- [Litigation](#)
- [Representation Case Activity](#)
- [Mediation and Factfinding Activity](#)
- [Compliance Activity](#)
- [SMCS Case Dispositions](#)

# UNFAIR PRACTICE CHARGES

In Fiscal Year 2023-2024, parties filed 600 new unfair practice charges. 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 from 2019 through 2022 resulted in a significant drop in the five-year average (571) when compared to the 20-year average of 729 charges.



# DISPUTE RESOLUTIONS AND DISPOSITIONS

During the investigative step in Fiscal Year 2023– 2024, the parties withdrew 171 cases entirely and 11 partially, many through a PERB Informal Settlement Conference.

Overall, of the 622 charge dispositions in Fiscal Year 2023 – 2024, 301 had complaints issued, 172 had charges withdrawn, and 121 were dismissed. In addition, 18 had complaints issued with a partial dismissal and 11 had complaints issued with a partial withdrawal.

The following Dispositions by Region table provides regional data for the UPC dispositions. The Los Angeles Regional Office was responsible for about 41 percent of case dispositions; the San Francisco Regional Office was responsible for about 40 percent of case dispositions; and the Sacramento Regional Office for about 19 percent of case dispositions.

|                      | Withdrawal | Dismissal  | Complaint  | Complaint/<br>Partial<br>Dismissal | Complaint/<br>Partial<br>Withdrawal | Total      |
|----------------------|------------|------------|------------|------------------------------------|-------------------------------------|------------|
| <b>Sacramento</b>    | 34         | 14         | 65         | 3                                  | 1                                   | <b>117</b> |
| <b>San Francisco</b> | 79         | 41         | 118        | 8                                  | 5                                   | <b>251</b> |
| <b>Los Angeles</b>   | 58         | 66         | 118        | 7                                  | 5                                   | <b>254</b> |
| <b>Total</b>         | <b>171</b> | <b>121</b> | <b>301</b> | <b>18</b>                          | <b>11</b>                           | <b>622</b> |

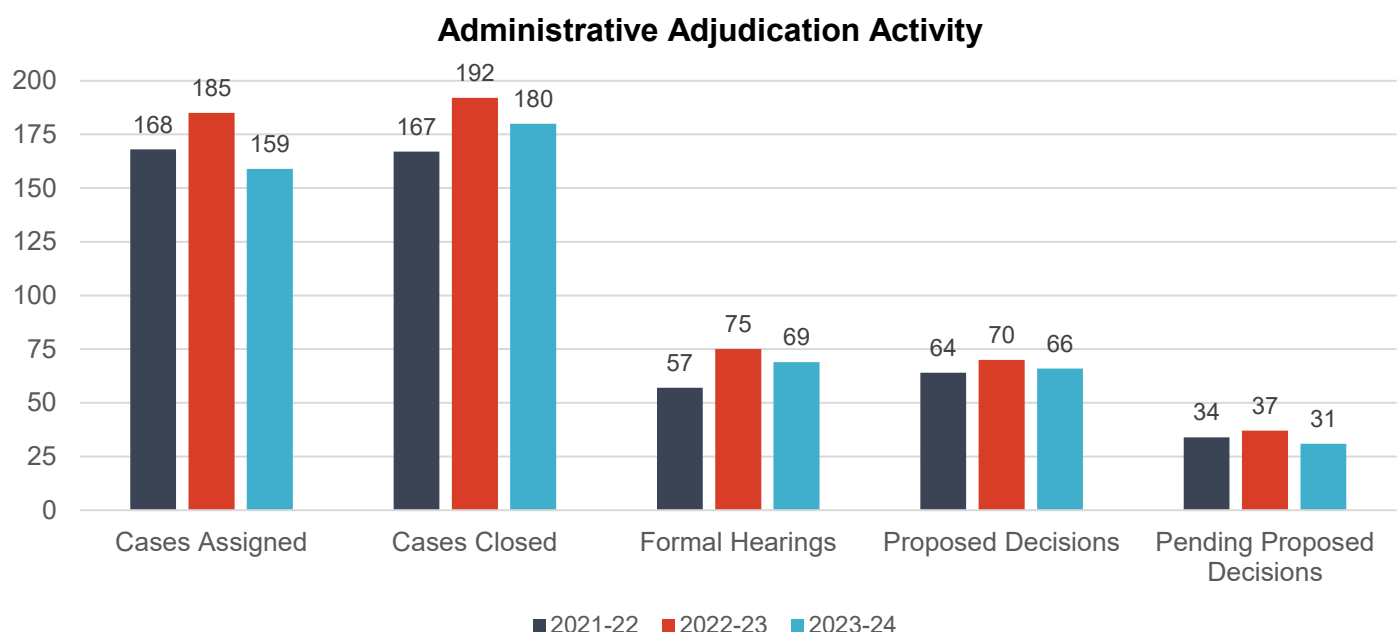
# ADMINISTRATIVE ADJUDICATION

Complaints not resolved through mediation go to the Division of Administrative Law. At this stage, an Administrative Law Judge (ALJ) holds a hearing.

This fiscal year, 159 cases were assigned to an ALJ, and 180 cases were closed. The Division's ten ALJs issued 66 proposed decisions, down from the prior year (70 proposed decisions). The average time it took to issue a proposed decision decreased from 150 days in 2022 – 2023 to 121 days in 2023 – 2024. The number of formal hearings completed decreased from 75 to 69. The Division ended the year with 31 pending proposed decisions to write.

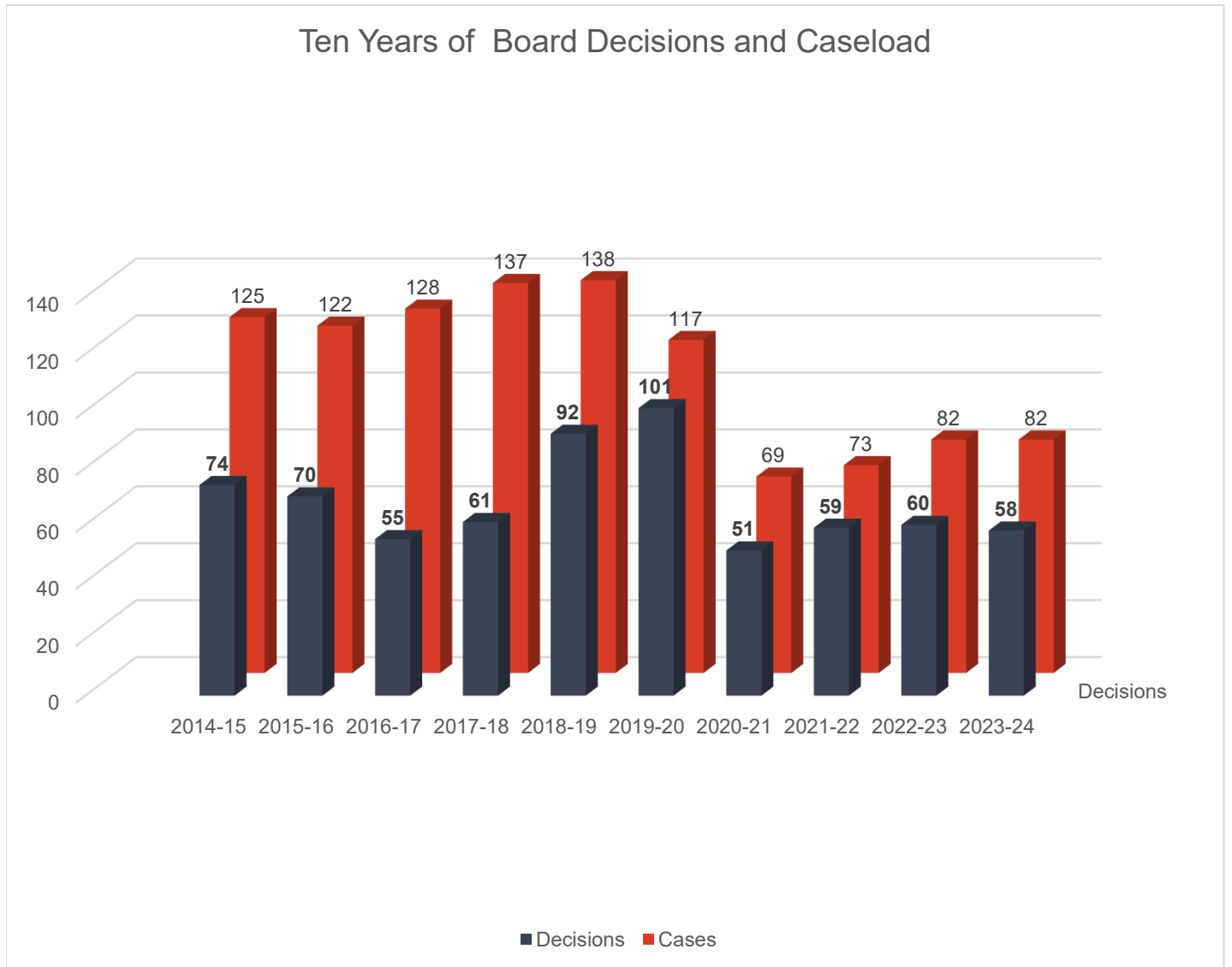
The Los Angeles Regional Office once again had the highest percentage of hearing activity, which is consistent with most prior years. In Fiscal Year 2023 – 2024, the Los Angeles Regional Office conducted 54 percent of PERB's completed formal hearings, with the San Francisco Regional Office at 28 percent and Sacramento at 18 percent.

|                            | 2021-22 | 2022-23 | 2023-24 |
|----------------------------|---------|---------|---------|
| Cases Assigned             | 168     | 185     | 159     |
| Cases Closed               | 167     | 192     | 180     |
| Formal Hearings            | 57      | 75      | 69      |
| Proposed Decisions         | 64      | 70      | 66      |
| Pending Proposed Decisions | 34      | 37      | 31      |



# BOARD DECISIONS

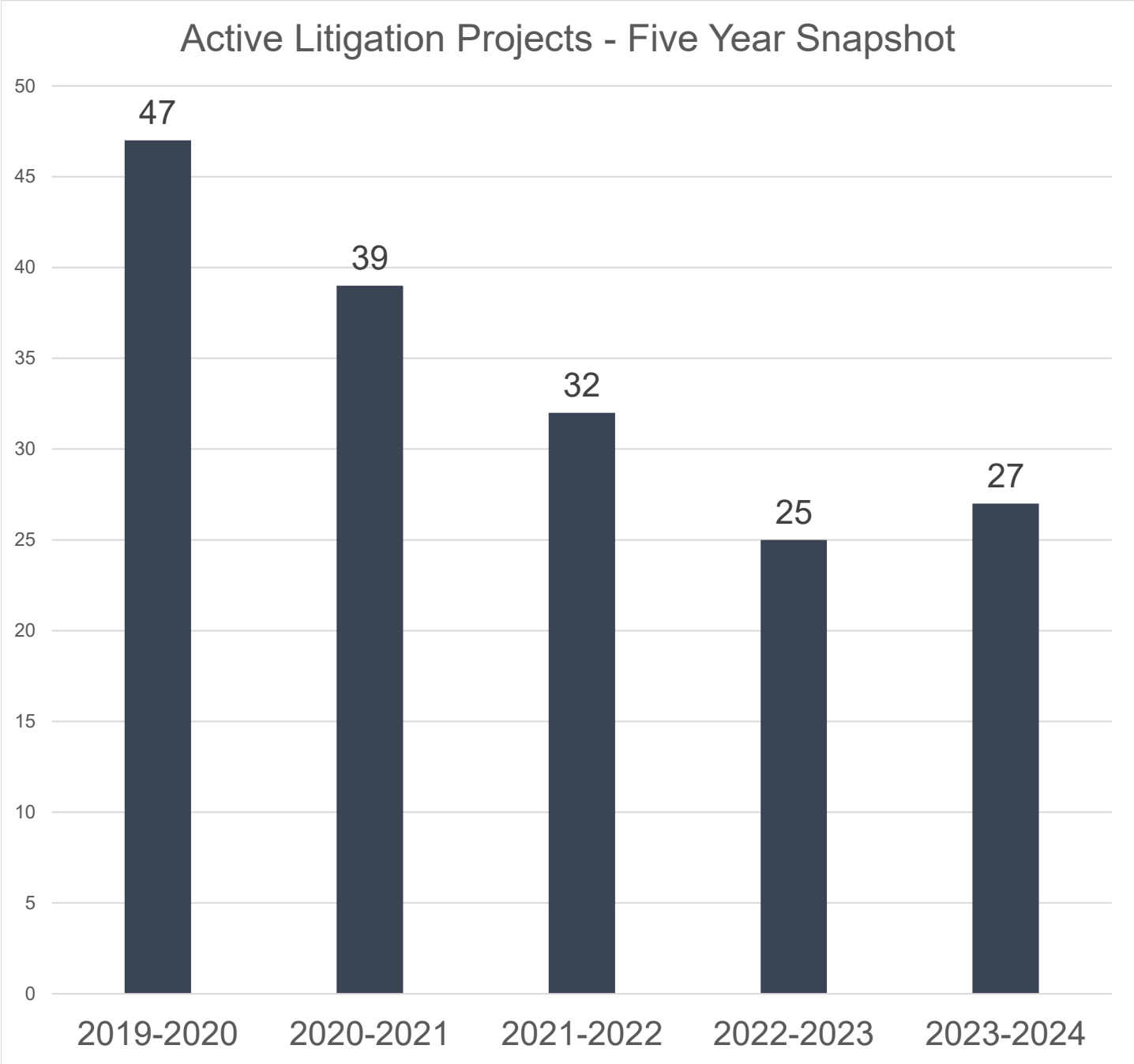
Proposed decisions, charge dismissals, and administrative determinations issued by Board agents may be appealed to the Board itself. During FY 2023 – 2024 the Board issued 58 decisions, slightly down from FY 2022 - 2023, and bringing the average to 73 over the past five years. The Board’s docket remains historically low and decisions are being issued within six months of filings being complete.





# LITIGATION

PERB’s litigation projects decreased in FY 2023 – 2024. PERB’s Regional Attorneys completed 74 litigation-related projects (compared to 109 litigation projects last fiscal year). The number of active litigation cases increased. A total of 27 litigation cases, including new and continuing matters, were handled during the Fiscal Year (compared to 25 last year). A listing of these cases is provided beginning on page 34.



# REPRESENTATION ACTIVITY

PERB received 78 new representation petitions in Fiscal Year 2023 - 2024 compared to 93 in the prior Fiscal Year. As shown, the total number of petitions for FY 2023 – 2024 includes: 37 unit modification petitions, 22 recognition petitions, 9 decertification petitions, 5 requests for amendment of certification, 0 petitions for certification, and 5 severance requests.

| Case Type                  | Number Filed |
|----------------------------|--------------|
| Request for Recognition    | 22           |
| Severance Petition         | 5            |
| Petition for Certification | 0            |
| Decertification            | 9            |
| Amended Certification      | 5            |
| Unit Modification          | 37           |
| Totals                     | 78           |

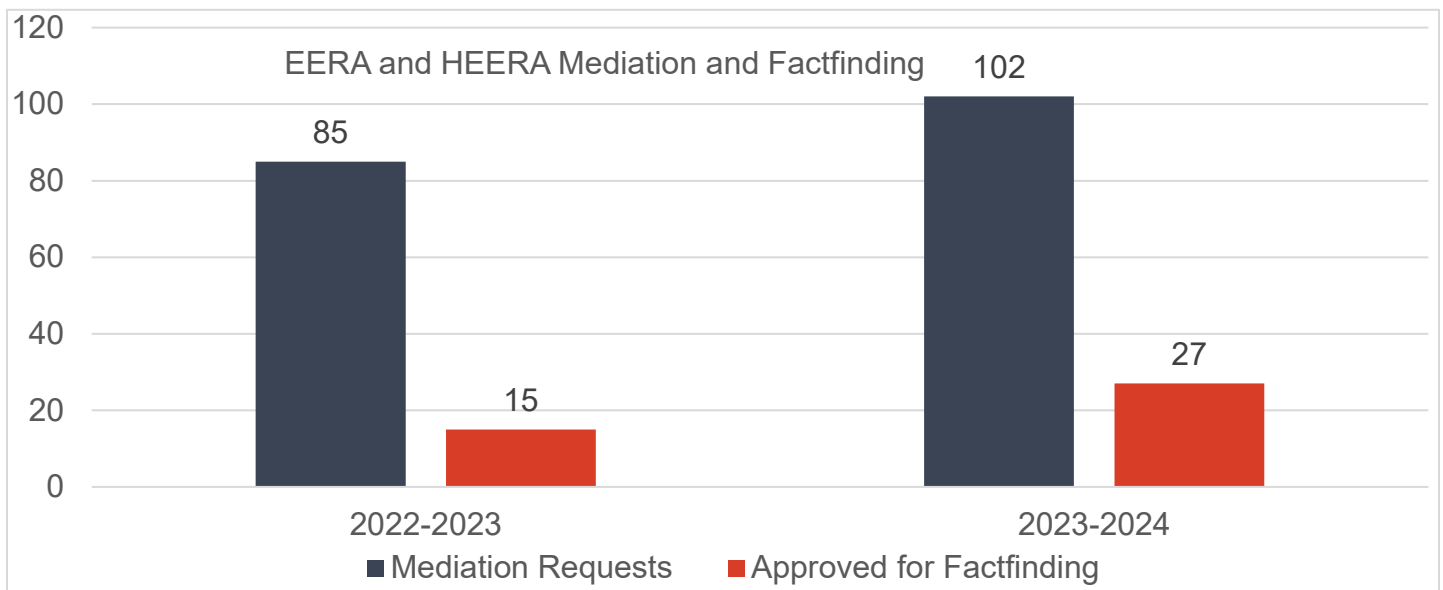
Four elections were conducted by PERB in Fiscal Year 2023 – 2024, which is two less than the prior Fiscal Year. About 21,242 employees were eligible to participate in these elections, with 20,007 employees in the largest bargaining unit and 12 in the smallest.

| Case Number | Employer                                    | Unit Type                                                                            | Winner                                                       | Unit Size |
|-------------|---------------------------------------------|--------------------------------------------------------------------------------------|--------------------------------------------------------------|-----------|
| SF-DP-347-E | Rio Dell Elementary School District         | Certificated Employees                                                               | Rio Dell Teachers Association/CTA-NEA                        | 23        |
| LA-SV-189-E | Chaffey Community College District          | Campus Police Officers                                                               | California School Employees Association, Chapter 431         | 12        |
| LA-PC-18-H  | Trustees of the California State University | Student Assistants                                                                   | California State University Employees Union, SEIU Local 2579 | 20,007    |
| LA-DP-463-E | Pasadena Area Community College District    | Faculty, Counselors, Librarians, Coordinators, Physicians, Nurses, and Psychiatrists | Pasadena City College Faculty Association                    | 1211      |

# MEDIATION AND FACTFINDING

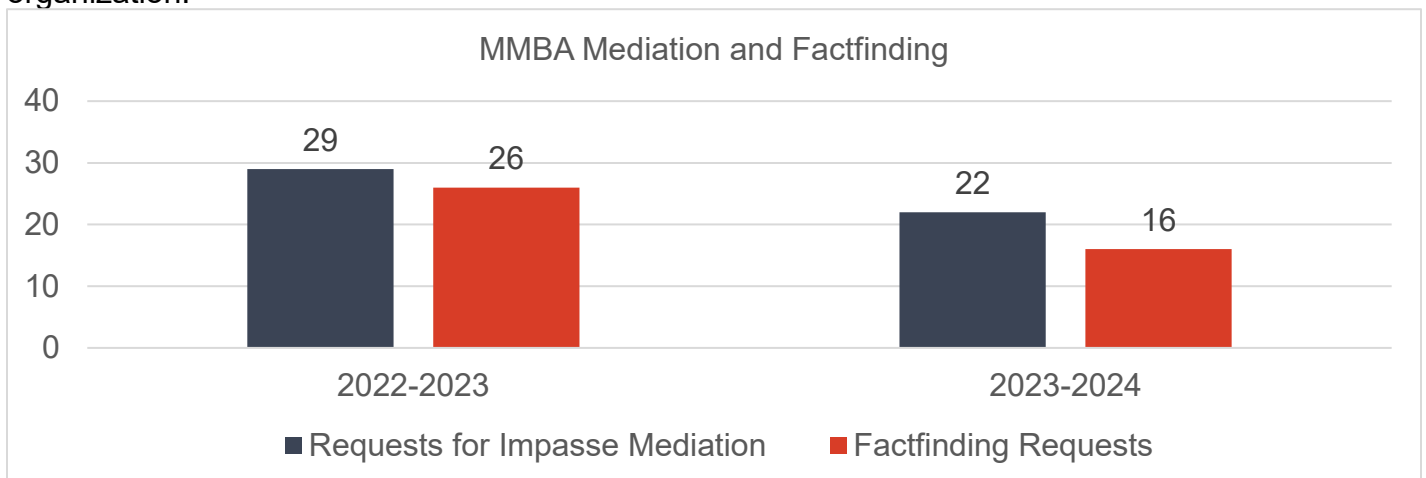
## EERA and HEERA Mediation and Factfinding

During Fiscal Year 2022 – 2023, PERB received 102 impasse mediation requests under EERA and HEERA. In the prior Fiscal Year, PERB received 85 impasse mediation requests under EERA and HEERA. Subsequently, 90 of those requests were approved for mediation, and 27 of those impasse cases (30 percent) were approved for factfinding.



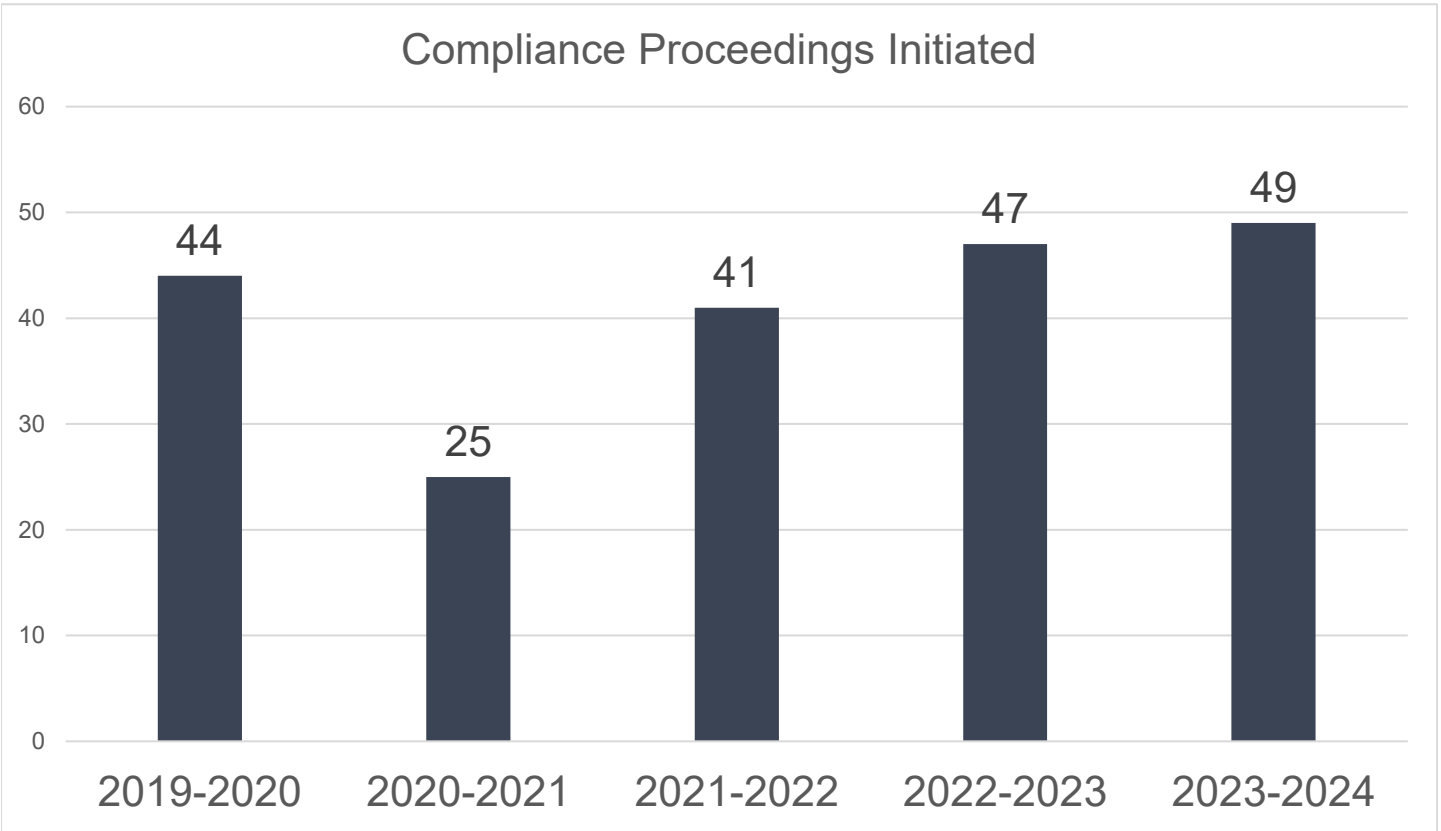
## MMBA Mediation and Factfinding

16 factfinding requests and 22 requests for impasse mediation were filed under the MMBA. MMBA impasse mediation requests are filed directly with SMCS and do not require certification prior to mediation. Mediation is not usually a required step in the MMBA impasse process, so many cases proceed directly to factfinding. MMBA impasses not resolved in mediation may go to factfinding pursuant to the provisions set forth in the statute and are at the discretion of the employee organization.



# COMPLIANCE

In Fiscal Year 2023-2024, PERB initiated compliance proceedings in 49 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 (47 compliance proceedings were initiated in Fiscal Year 2022 – 2023) and above the five-year average of 41.



# SMCS CASE DISPOSITIONS

The Division of State Mediation and Conciliation Service (SMCS) received a total of 522 new cases in Fiscal Year 2023 – 2024 and closed 518. The tables below provide information on SMCS' activities.

| Contract Impasses and Other Contract Mediations |    |
|-------------------------------------------------|----|
| EERA and HEERA                                  | 99 |
| MMBA                                            | 47 |
| Transit                                         | 1  |
| Trial Courts                                    | 7  |
| State of California                             | 3  |
| Los Angeles City and County                     | 2  |

| Grievances and Disciplinary Appeals        |     |
|--------------------------------------------|-----|
| EERA and HEERA                             | 166 |
| MMBA                                       | 86  |
| Transit                                    | 3   |
| State Trial Courts                         | 0   |
| Los Angeles City and County                | 8   |
| Private Sector (PUC, Other SMCS Specified) | 11  |

| Other                                                                                                         |     |
|---------------------------------------------------------------------------------------------------------------|-----|
| Representation and Election Cases                                                                             | 29  |
| Workplace Conflict or Training and Facilitation Assignments                                                   | 42  |
| Miscellaneous Cases Related to Education, Outreach, and Internal Mediation or Program Administration Projects | 18  |
| Requests for Lists of Arbitrators from Panel of Independent Arbitrators                                       | 344 |

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# LEGISLATION

PERB monitors legislation concerning labor relations statutes under PERB's jurisdiction. In Fiscal Year 2023-2024, two bills were signed into law by Governor Newsom.

## **Assembly Bill 1 (Chapter 313, Statutes of 2023)**

Assembly Bill 1, the Legislature Employer-Employee Relations Act (LEERA), provides employees of the Legislature the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. LEERA becomes operative on July 1, 2026.

## **Assembly Bill 1484 (Chapter 691, Statutes of 2023)**

Assembly Bill 1484 amended the Meyers-Milias-Brown Act (MMBA) to require inclusion of temporary employees who have been hired to perform the same or similar type of work that is performed by permanent employees in the same bargaining unit as permanent employees upon the request of the recognized employee organization. The bill also requires the public employer to promptly participate in collective bargaining to establish certain employment conditions for the newly added temporary employees if the parties' current memorandum of understanding does not address them.

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# RULEMAKING

PERB initiated and continued work on several rulemaking packages in Fiscal Year 2023-2024. 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. Current and recently completed rulemaking can be viewed at: <https://perb.ca.gov/laws-and-regulations/rulemaking/>

**[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 2024 - 2025.

**[Transit Regulations](#)** - revise and update existing regulations covering transit jurisdictions. Work on this package is complete and the regulations are effective October 1, 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 became effective July 1, 2024.

**[Legislature Employer-Employee Relations Act Regulations](#)** - The Board authorized staff to begin drafting the proposed regulations to implement and administer the Legislature Employer-Employee Relations Act in April 2024. The Act becomes operative on July 1, 2026 and work is expected to continue on the rulemaking package through 2024 - 2025.

**[Gender Neutral Language and Non-Substantive Grammatical Fixes](#)** - changes gendered language to gender neutral language and fixes other non-substantive grammatical issues. These changes became effective on July 27, 2023.

**[Participation in PERB Proceedings](#)** - proposed regulations contain the rules that govern participation in PERB proceedings. Work on this rulemaking package is expected to continue through FY 2024 - 2025.

**[Word Limits for Appeals of Dismissals Regulations](#)** - to add new PERB regulations implementing a word limit for appeals of dismissals, similar to other word limits for other appeals. Work on this rulemaking package is expected to continue through FY 2024 - 2025.

# ADMINISTRATIVE LEADERSHIP

## **Joshua Golka, Executive Director**

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 two decades 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, General Counsel**

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.

## **Shawn Cloughesy, Chief Administrative Law Judge (Retired July 31, 2024)**

Shawn Cloughesy had 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, Director, Division of State Mediation and Conciliation Service**

Gerald 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, and then Director in 2021. 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.

### **Susan Davey, Deputy Executive Director**

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.

### **Mary Weiss, Deputy General Counsel**

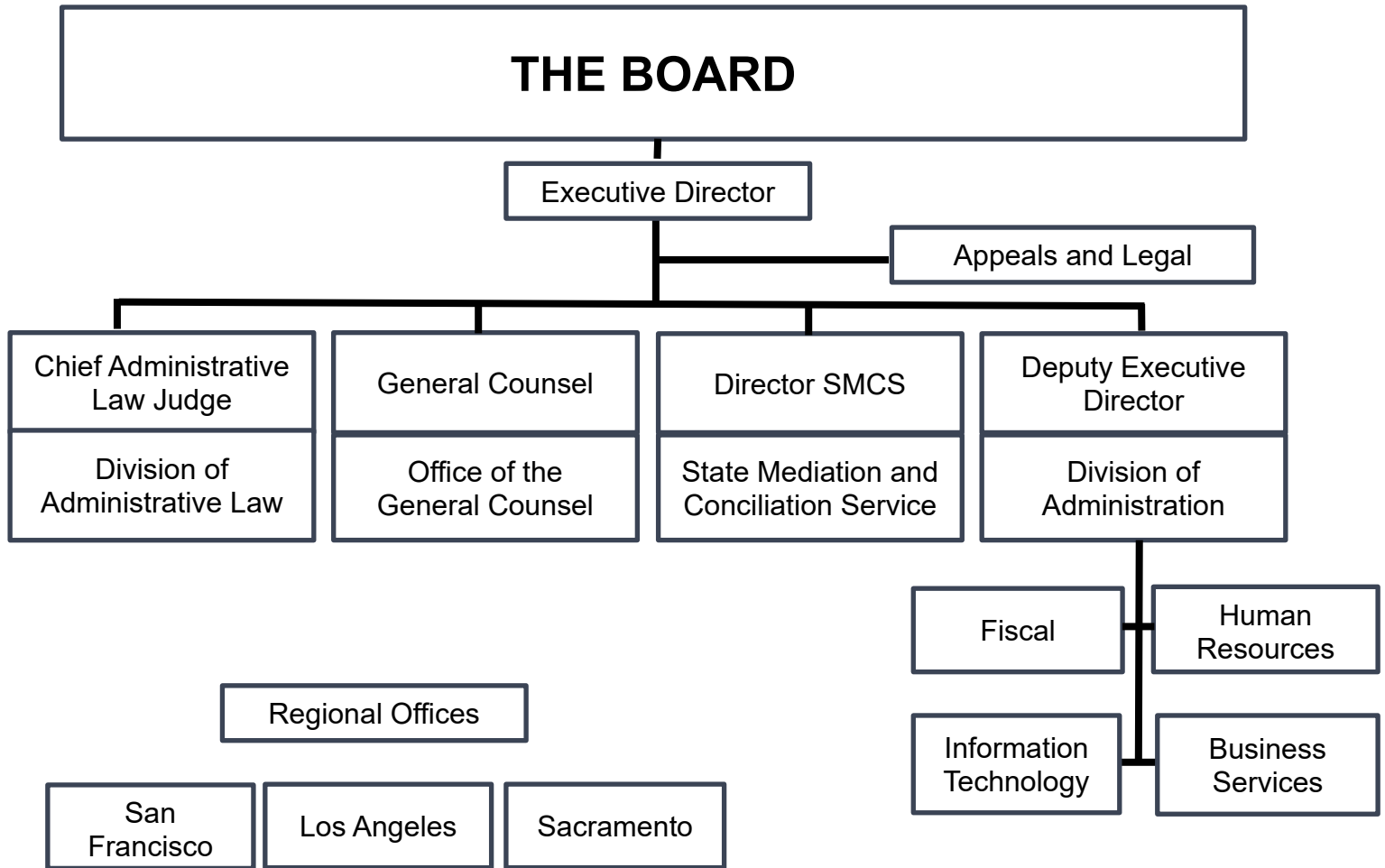
Mary Weiss joined PERB in 2004 and has 16 years of experience practicing public sector labor law at PERB. Ms. Weiss paused her PERB career from 2007 through 2011 to work on behalf of public entities constructing facilities under the Public Contract Code and to represent private clients in construction defect and other areas.

Ms. Weiss received her undergraduate degree in Urban and Regional Planning from California Polytechnic University, Pomona, and her law degree from Loyola Law School, Los Angeles. Ms. Weiss was a law clerk working exclusively on California civil appeals at Horvitz & Levy, LLP for three years. Prior to entering the legal field, Ms. Weiss was a civil engineering designer and drafter on federal and private projects at Parsons, Pasadena (10 years) and an aerospace drafter (3 years).

### **Eric J. Cu, Deputy Chief Administrative Law Judge**

Eric J. Cu has been appointed as the Interim Chief Administrative Law Judge, effective August 2024. He first became an ALJ for PERB in 2011 and has also served as a Senior ALJ and as the Deputy Chief ALJ. In all that time, Mr. Cu has presided over and decided more than 140 cases. Immediately before that, Mr. Cu was a Regional Attorney in PERB's Office of the General Counsel from 2005 to 2011, making him PERB's longest continuously-serving employee. From 2004 to 2005, Mr. Cu worked as an Associate with the law firm Rothner, Segall & Greenstone, where his practice focused on traditional labor and employment law in the public and private sector. Mr. Cu has also served as a volunteer Associate Editor for The Developing Labor Law treatise for 20 years. He graduated from Loyola Law School, Los Angeles, in 2004.

# ORGANIZATIONAL CHART



## 2023 - 2024 LITIGATION ACTIVITY

### ***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

**Case Information:** 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. (Quo Warranto Granted)

### ***Alliance Marc & Eva Stern Math and Science High School, et al. v. PERB; UTLA***

**Filed:** December 6, 2021

**Case Information:** 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-6363-E LA-CE-6364-E LA-CE-6365-E LA-CE-6366-E LA-CE-6372-E LA-CE-6373-E LA-CE-6374-E LA-CE-6375-E LA-CE-6376-E LA-CE-6377-E]

**Issue:** Whether the Board erred by finding e-mails sent by Alliance deterred or discouraged support for the union since the e-mails had a strong tendency to influence employee choice about whether to authorize representation. Alliance argues that Government Code section 3550 on its face, or as applied by PERB, violates the free speech protections under the U.S. and California Constitutions. (Active)

### ***Visalia Unified School District v. PERB; California School Employees Association***

**Filed:** March 9, 2022

**Case Information:** 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 an employee in retaliation for her exercise of EERA-protected rights. (Board Decision Partially Upheld)

### ***Alliance Judy Ivie Burton Technical Academy High School, et al v. PERB; UTLA***

**Filed:** March 29, 2022

**Case Information:** 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. (Board Decision Upheld)

### ***Palomar Health v. National Nurses United, California Nurses Association (CNA); PERB***

**Filed:** May 10, 2022

**Case Information:** 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. (Complaint Dismissed)

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

**Filed:** June 6, 2022

**Case Information:** California Court of Appeal, Second Appellate District, Division One, Case No. B320779; PERB Decision No. 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. (Board Decision Upheld)

***State of California (California Correctional Health Care Service) v. PERB: Union of American Physicians and Dentists***

**Filed:** July 27, 2022

**Case Information:** 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. (Board Decision Upheld)

***Palomar Health v. National Nurses United, California Nurses Association (CNA); PERB***

**Filed:** September 28, 2022

**Case Information:** 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 superior court erred when it denied CNA's anti-SLAPP motion against Palomar. (Superior Court Reversed)

***Stephen Malloy v. Public Employment Relations Board; Regents of the University of California, San Francisco***

**Filed:** January 17, 2023

**Case Information:** California Court of Appeal, First Appellate District, Case No. A166976; [PERB Order No. Ad-499-H; Case Nos. SF-CE-1221-H]

**Issue:** Whether the Board erred in PERB Order No. a499H 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. (Board Decision Upheld)

***Kern County Hospital Authority v. PERB: Service Employees International Union, Local 521***

**Filed:** January 23, 2023

**Case Information:** 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. (Board Decision Upheld)

***Imperial County Deputy District Attorneys' Association v. Public Employment Relations Board; County of Imperial***

**Filed:** February 17, 2023

**Case Information:** 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. (Board Decision Upheld)

***Freedom Foundation v. Turner et al.***

**Filed:** May 1, 2023

**Case Information:** 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. (Complaint Dismissed)

***Imperial Irrigation District v. Public Employment Relations Board; International Brotherhood of Electrical Workers***

**Filed:** June 7, 2023, **Case Information:** 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. (Board Decision Upheld)

***Paul Sanchez v. PERB: Orange County Employees Association***

**Filed:** August 17, 2023

**Case Information:** California Court of Appeal, Fourth Appellate District, Division 3, Case No. G062983; PERB Decision No. 2860; [PERB Case No. LA-CO-254-M]

**Issue:** Whether the Board erred when it upheld the dismissal of Mr. Sanchez' complaint by the ALJ. (Active)

***City and County of San Francisco v. PERB; IFPTE Local 21 and SEIU Local 1021***

**Filed:** August 23, 2023

**Case Information:** California Court of Appeal, First Appellate District, Case No. A168540; PERB Decision No. 2867-M [Case Nos. SF-CE-1663-M, SF-CE-1675-M, SF-CE-1676-M]

**Issue:** Whether the Board erred when it affirmed the Proposed Decision finding that two San Francisco City Charter provisions that prohibit municipal workers from striking are facially unlawful and as applied. (Active)

***Alliance Marc & Eva Stern Math and Science High School, et al. v. PERB; UTLA***

**Filed:** September 6, 2023

**Case Information:** California Supreme Court, Case No. S281714; 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-6363-E LA-CE-6364-E LA-CE-6365-E LA-CE-6366-E LA-CE-6372-E LA-CE-6373-E LA-CE-6374-E LA-CE-6375-E LA-CE-6376-E LA-CE-6377-E]

**Issue:** Whether the Second Appellate District erred by summarily denying Alliance's petition for writ of extraordinary relief, wherein Alliance challenged the Board's finding that 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 argued 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. (Remanded to Second Appellate District)

***State of California (California Department of Corrections and Rehabilitation) v. California Correctional Peace Officers Association; PERB [Amicus]***

**Filed:** September 8, 2023

**Case Information:** Sacramento Superior Court Case No. 34-2022-00327434-CU-PA-GDS [SA-CE-2173-S]

**Issue:** Whether an arbitrator has jurisdiction to overturn discipline upheld by the State Personnel Board where the arbitrator had determined that the employer violated the Dills Act. (Arbitration Award Partially Upheld)

***El Camino Hospital District v. PERB; SEIU UHCW-West***

**Filed:** September 15, 2023

**Case Information:** California Court of Appeal, Sixth Appellate District, Case No. H051384; PERB Decision Nos. 2868-M [PERB Case No. SF-CE-1698-M]

**Issue:** Whether the Board erred when it held that Silicon Valley Medical Development, LLC (SVMD) is an MMBA-covered employer, and that Respondents have a single-employer relationship, and therefore all three Respondents had a bargaining obligation. In addition, the District challenges the Board's sustaining of five other claims: outright failure to bargain when ECH refused to join negotiations over the former Verity clinics; unilateral changes to an employee dress code; a further unilateral change, and interference, via a new solicitation and distribution policy; failure to bargain over the effects of a work relocation; and failure to meet and confer prior to disseminating mass communications concerning employees' right to support their union or to refrain from doing so. (Active)

***Alliance Judy Ivie Burton Technical Academy High School, et al v. PERB; UTLA***

**Filed:** September 20, 2023

**Case Information:** California Supreme Court, Case No. S21925; 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 Second Appellate District erred by summarily denying Alliance's petition for writ of extraordinary relief, where Alliance had challenged the Board's finding that Alliance's reorganization did not render the bargaining units inappropriate or excuse Alliance from recognizing or negotiating with UTLA, thereby finding Alliance refused to bargain in violation of the EERA. In addition, whether the Board erred when it denied Alliance's request to reconsider certifying the union at three of its charter schools, and granted UTLA's request for an amended certification at one school because it included a classification that was not listed in the petition. (Active)

***County of Santa Clara v. Public Employment Relations Board; SEIU Local 521 et al.***

**Filed:** November 16, 2023

**Case Information:** California Court of Appeal, Sixth Appellate District, Case No. H051570; PERB Decision Nos. 2876-M [PERB Case No. SF-CE-1796-M]

**Issue:** Whether the Board erred when it held that the County violated the MMBA when it responded to the COVID-19 pandemic by changing policies and assignments without affording the unions adequate notice and opportunity to bargain over the County's decisions and/or their negotiable effects. (Active)

***Alliance College Ready Public Schools v. Public Employment Relations Board; UTLA***

**Filed:** November 21, 2023

**Case Information:** California Court of Appeal, Second Appellate District, Case No. B333393; PERB Decision No. 2879 (Case No. LA-CE-6728-E) and PERB Dec. No. Ad-491 (Case No. LA-RR-129)

**Issue:** Whether the Board erred when it found that Alliance's refusal to recognize UTLA as the exclusive bargaining representative at two schools violated EERA and PERB Order AD-491. (Active)

***State of California (California Correctional Health Care Services) v. PERB; AFSCME Local 2620***

**Filed:** March 8, 2024

**Case Information:** California Court of Appeal, Fifth Appellate District Case No. F087709; PERB Case No. 2888 [SA-CE-2198-S]

**Issue:** Whether the Board may change discipline ordered by the State Personnel Board after finding a state employer violated the Dills Act by retaliating against an employee. (Petition Dismissed as Premature)

***Sheet Metal, Air, Rail and Transportation v. PERB; North County Transit District and Group of Employees***

**Filed:** March 20, 2024

**Case Information:** California Court of Appeal, Fourth Appellate District, Case No. D083813; SMCS Case No. 23-3-226; [PERB Case No. LA-DP-470-M],

**Issue:** Whether SMCS erred when it denied SMART's motion to dismiss a decertification petition on the basis that PERB lacked jurisdiction over certain employees at North County Transit District. (Active)

***Palomar Health v. PERB; California Nurses Association***

**Filed:** April 12, 2024

**Case Information:** California Court of Appeal, Fourth Appellate District, Div. One, Case No. D083931, PERB Dec. No. 2895-M [LA-CE-1581-M]

**Issue:** Whether the Board erred when it found that Palomar maintained and enforced an unreasonable access rule, engaged in unlawful surveillance, unilaterally changed its past policy or practice to disallow the Unions access to certain non-patient care areas via its lawsuit, and interfered with protected rights by filing that lawsuit. (Active)

***County of Santa Clara v. PERB; Service Employees International Union, Local 521***

**Filed:** May 23, 2024

**Case Information:** California Court of Appeal, Sixth Appellate District, Case No. H052154, PERB Dec. No. 2900-M [SF-CE-1859-M]

**Issue:** Whether the Board erred when it held the County unlawfully refused to bargain with SEIU, Local 521, before the County Board of Supervisors approved by-law revisions for its medical staff, which included new standards for SEIU-represented physician assistants to receive or maintain practice privileges at County hospitals. (Active)

***Regents of the University of California v. UAW Local 4811; PERB***

**Filed:** June 3, 2024

**Case Information:** Orange County Superior Court, Case No. [Pending], PERB Case No. SF-CO-246-H

**Issue:** Whether UAW breached the "no-strike" clause in its CBA with the University, and whether the court should therefore enjoin UAW members from striking. (Active)

***Regents of the University of California v. UAW Local 4811;PERB***

**Filed:** June 28, 2024

**Case Information:** California Court of Appeal, Fourth Appellate District, Div. 4, Case No. [pending]; Orange County Superior Court, Case No. 30-2024-01403666-CU-MC-CXC, PERB Case No. SF-CO-246-H

**Issue:** Whether the trial court erred by (1) granting a temporary restraining order against UAW-represented members striking at UC, and/or (2) exercising jurisdiction over the strike. (Active)

# 2023 - 2024 BOARD DECISIONS

## Decision No. [2806a](#)

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

**Description:** On grant of employer's writ for extraordinary relief, the Court of Appeal invalidated portions of the Board's decision and the entirety of the Board's remedial order in *Visalia Unified School District* (2022) PERB Decision No. 2806, where the Board concluded that the Visalia Unified School District violated the Educational Employment Relations Act by terminating an employee in retaliation for her protected activities. The Court of Appeal issued a remittitur to PERB.

**Disposition:** Pursuant to the Court of Appeal's order, the Board vacated its remedial order in *Visalia Unified School District* (2022) PERB Decision No. 2806, as well as the following portions of the Discussion: the first sentence of the final paragraph of section II.D.2.a and all of sections II.D.3, II.D.4, II.E, III, and IV. The Board also ordered the unfair practice charge and complaint in Case No. SA-CE-2979-E dismissed with prejudice.

## Decision No. [2857a](#)

**Caption:** *California School Employees Association-Chapter 176 v. Barstow Community College District*

**Non-precedential**

**Description:** This case came before the Public Employment Relations Board (PERB or Board) on a request by California School Employees Association, Chapter 176 (CSEA) that the Board reconsider its decision in *Barstow Community College District* (2023) PERB Decision No. 2857 (non-precedential). In that decision, the Board affirmed the proposed decision of an administrative law judge (ALJ) that dismissed CSEA's underlying unilateral change allegation. However, the Board dismissed CSEA's charge on different grounds than the ALJ, vacating the ALJ's analysis that the Education Code superseded bargaining on the alleged unilateral change, and instead finding the Barstow Community College District established a past practice affirmative defense to CSEA's remaining allegations.

CSEA sought reconsideration of the Board's ruling that the District established past practice as an affirmative defense to CSEA's alleged unilateral change. The District opposed the request for reconsideration but separately requested that the Board designate the underlying decision as precedential.

**Disposition:** The Board found no prejudicial error of fact in the underlying decision or any other basis for reconsideration. The Board denied CSEA's request for reconsideration of *Barstow Community College District* (2023) PERB Decision No. 2857. The Board denied the District's request that Decision No. 2857 be re-designated as precedential.

**Decision No. [2860a-M](#)****Caption:** *Paul Sanchez v. Orange County Employees Association***Non-precedential**

**Description:** Charging Party Paul Sanchez asked the Board to reconsider its earlier decision in which the Board affirmed an ALJ's proposed decision dismissing claims that Orange County Employees Association (OCEA) breached its duty of fair representation under the MMBA by providing Sanchez with insufficient notice to consider and vote on whether to ratify a tentative agreement between OCEA and the County of Orange, providing misleading and incomplete information about the agreement, denying Sanchez's requests for the ratification vote totals, and failing to provide OCEA's policy regarding non-disclosure of contract ratification vote totals.

**Disposition:** In a non-precedential decision, the Board denied Sanchez's request for reconsideration.

**Decision No. [2867-M](#)****Caption:** *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. City and County of San Francisco***Precedential**

**Description:** In this consolidated case, Charging Parties International Federation of Professional & Technical Engineers, Local 21 and Service Employees International Union, Local 1021 (collectively, Charging Parties) challenged two San Francisco City Charter provisions that prohibit municipal workers from striking and that, among other things, mandate termination of striking employees. Charging Parties alleged that Respondents City and County of San Francisco and San Francisco Municipal Transportation Agency (collectively, the City or Respondents) maintained and enforced these provisions in violation of the Meyers-Milias-Brown Act (MMBA).

Specifically, Charter section A8.346 prohibits municipal employees from engaging in strikes, sets forth the procedures for terminating employees who the City find violated the section, and limits the seniority and compensation rights of such employees whom the City later rehires. This strike prohibition is reiterated in section A8.409-4, which states that any municipal employee who engages in a strike "shall be dismissed from his or her employment pursuant to Charter section A8.346." Additionally, a Declaration of Policy at the outset of Charter section A8.409 declares that "strikes by city employees are not in the public interest."

The underlying consolidated complaint, as amended, alleged that the Charter provisions conflict with the MMBA by constituting an absolute ban on strikes by employees, rendering the provisions unenforceable. The amended complaint further alleged that Respondents have required employees to sign a document acknowledging receipt of a form stating that any employee who participates in a strike shall be terminated, thereby interfering with employee rights and Charging Parties' right to represent employees.

After a formal hearing, the Administrative Law Judge (ALJ) found that the challenged Charter provisions conflict with the MMBA to the extent they prohibit striking. As a remedy, the ALJ found Charter section A8.346 unenforceable in its entirety and severed the reference to that section's strike prohibition from Charter section A8.409. The ALJ did not find that the City's requiring employees to sign an acknowledgement and receipt of the Charter provisions constitutes direct dealing.

**Disposition:** The Board affirmed the proposed decision's finding that the Charter's strike prohibition is unlawful facially and as applied. The Board further found unlawful the portion of the Declaration of Policy in A8.409 stating that City employee strikes are not in the public interest. The Board also affirmed the proposed decision's remedial order deeming the unlawful Charter provisions void and unenforceable and ordered a City-wide notice posting. Last, the Board exercised its discretion not to reach Charging Parties' exception regarding the dismissed direct dealing allegation as it would not impact the Board's order even were it meritorious.

**Decision No. [2868-M](#)**

**Caption:** *Service Employees International Union United Healthcare Workers West v. El Camino Hospital, et al.*

**Precedential**

**Description:** Service Employees International Union, United Health Care Workers West (SEIU) filed charges against three Respondents: (1) El Camino Healthcare District; (2) El Camino Hospital (ECH), a California nonprofit corporation whose sole member is the District; and (3) Silicon Valley Medical Development, LLC (SVMD), a single-member limited liability corporation wholly owned by ECH. The case arose when SVMD began operating five clinics it purchased from Verity, an NLRA-covered entity. SEIU had represented a bargaining unit at the former Verity clinics. SVMD acknowledged that it was a successor employer and had to bargain with SEIU, but four disputes nonetheless arose. First, the parties dispute whether SVMD is subject to the NLRA or the MMBA. Second, the parties dispute whether only SVMD must bargain over terms and conditions at the former Verity clinics, or whether all Respondents must do so. Third, the complaint alleged unlawful unilateral changes and interference. Finally, the complaint alleged that Respondents unlawfully disseminated unilateral mass communications concerning employee decisions whether to support SEIU. After an administrative law judge (ALJ) held a formal hearing, the ALJ transferred to a different state agency without having issued a proposed decision. The Board then resolved the case based on the record.

**Disposition:** First, the Board determined that SVMD is an MMBA-covered employer. Second, the Board concluded that Respondents have a single-employer relationship and therefore all three Respondents had a bargaining obligation. Third, the Board dismissed an allegation concerning allegedly unlawful discipline but sustained five central claims: outright failure to bargain when ECH refused to join negotiations over the former Verity clinics; unilateral changes to an employee dress code; a further unilateral change, and interference, via a new solicitation and distribution policy; failure to bargain over the effects of a work relocation; and failure to meet and confer prior to disseminating mass communications concerning employees' right to support their union or to refrain from doing so.

**Decision No. [2869](#)**

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

**Non-precedential**

**Description:** The complaint alleged that the South Orange County Community College District terminated Maria-Ester Nunez in retaliation for protected activities. An administrative law judge (ALJ) held a formal hearing and found in the District's favor. The ALJ concluded that Nunez did not establish a prima facie case of discrimination, and even if she had established discrimination to be a substantial or motivating cause of the adverse action against her, this would be a dual motive case and the District proved its affirmative defense, viz., that it would have taken the exact same action even absent protected activity. Nunez timely filed exceptions.

**Disposition:** In a non-precedential decision, the Board affirmed the ALJ's decision to dismiss the complaint and underlying charge. The Board found that although Nunez established a prima facie retaliation case, the District established its affirmative defense that it more likely than not would have terminated Nunez even if she had not engaged in protected activities.

**Decision No. [2870](#)**

**Caption:** *Gavin English v. Inglewood Unified School District*

**Non-precedential**

**Description:** An administrative law judge issued a proposed decision finding that the Inglewood Unified School District violated EERA when it decided not to renew Charging Party Gavin English's employment for the following school year because of his protected activities. While the District's exceptions were pending before the Board, Charging Party filed an unopposed request to withdraw the underlying unfair practice charge with prejudice after the parties executed a settlement agreement resolving their issues.

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

**Decision No. [2871-P](#)**

**Caption:** *American Federation of State, County & Municipal Employees Local 146 and Sacramento Regional Transit District*

**Precedential**

**Description:** American Federation of State, County & Municipal Employees Local 146 (AFSCME) filed a petition to represent a bargaining unit of 13 unrepresented Superintendents at Sacramento Regional Transit District. The parties stipulated that the Superintendents' duties are sufficient to qualify them as supervisors and/or managers. The District claimed Superintendents have no collective bargaining rights under its enabling statute, the Sacramento Regional Transit District Act (Sacramento RTD Act, PUC, § 102000 et seq). AFSCME disagreed. A hearing officer appointed by the State Mediation and Conciliation Service (SMCS) ruled in AFSCME's favor, and the District filed exceptions. In its response and cross-exceptions, AFSCME supported the hearing officer's decision but also asserted that the hearing officer should have found the District is estopped from making its argument since it has long recognized AFSCME as the exclusive representative of a separate supervisory unit.

**Disposition:** The Board affirmed the hearing officer's conclusion that Superintendents have collective bargaining rights under the Sacramento RTD Act and there is no need to resolve AFSCME's estoppel argument. The Board explained that federal law and practice are generally relevant to unit determinations under the PUC transit enabling acts unless the question presented is governed by an explicit provision of the applicable transit district statute, or considerations unique to public sector labor relations require a deviation from federal law. Federal law and practice are not relevant in this instance given that: (1) the Sacramento RTD Act does not share the NLRA's explicit exclusion of supervisors, nor its legislative history underlying the managerial exclusion; and (2) precedent from the Department of Industrial Relations, PERB, and the courts of appeal, as well as decades of practice, confirm that the federal supervisory and managerial exclusions are not relevant to the PUC transit enabling acts. The Board directed SMCS to continue processing AFSCME's petition.

**Decision No. [2872-S](#)****Caption:** *Youlanda O. Williams v. Service Employees International Union Local 1000***Non-precedential**

**Description:** Charging Party Youlanda Williams alleged that Respondent SEIU 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, which Williams twice amended. Thereafter, OGC dismissed the charge for failure to allege a prima facie case of any unfair practice. On appeal, Williams claimed her charge stated a prima facie case that SEIU breached its duty of fair representation when it refused to (1) arbitrate her grievance regarding office temperature, and (2) represent her in an informal meeting regarding the same issue.

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

**Decision No. [2873-H](#)****Caption:** *California State University Employees Union v. Trustees of the California State University (San Diego)***Non-precedential**

**Description:** Charging Party California State University Employees Union (CSUEU) alleged that the California State University (San Diego) (CSU) violated the Higher Education Employer-Employee Relations Act by refusing to process bargaining unit employee Sherry Velthuysen's Early Exit Program (EEP) application without providing CSUEU prior notice and an opportunity to bargain over the decision. Following a formal hearing, the ALJ sustained the allegations, finding that the CSU unilaterally changed a term or interpretation of the EEP when it denied Velthuysen's application because of her involvement in a prior settlement agreement, a reason not contemplated in the program terms. CSU excepted to the ALJ's finding of a violation; CSUEU opposed CSU's exceptions and cross-excepted to non-determinative portions of the proposed decision.

**Disposition:** In a non-precedential decision, the Board affirmed the proposed decision. The Board rejected the CSU's claims that it did not change the status quo, instead finding that the CSU deviated from the terms of the EEP when it excluded individuals whose previously established retirement dates arose from a prior settlement agreement. The Board also found that CSU did not satisfy its burden to establish waiver, both and because it failed to plead a waiver defense in its Answer and the language CSU cited did not amount to a clear and unmistakable waiver.

**Decision No. [2874](#)****Caption:** *Liz Kimery v. California School Employees Association, Chapter 183***Non-precedential**

**Description:** Charging Party Liz Kimery alleged that Respondent California School Employees Association, Chapter 183 (CSEA) violated the Educational Employment Relations Act by breaching its duty of fair representation. After PERB's Office of the General Counsel (OGC) issued Kimery a warning letter, Kimery amended the charge. OGC subsequently dismissed the charge for failure to state a prima facie case of any unfair practice. On appeal, Kimery alleged that the charge stated a prima facie case that CSEA breached its duty of fair representation by: (1) failing to conduct an adequate investigation of her case; (2) depriving her of "the necessary support for [her] to continue with [her] dispute or grievance with the [San Bernardino City Unified School District];" and (3) discriminating against her based on "racial animus."

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

**Decision No. [2875](#)****Caption:** *Oakland Education Association v. Oakland Unified School District***Precedential (Except Part IV, Order & Appendix)****Non-precedential (Part IV, Order & Appendix)**

**Description:** The complaint alleged that Oakland Unified School District violated its bargaining obligation to Oakland Education Association (OEA) when the District made two decisions without affording OEA adequate notice and opportunity to bargain over the decision and/or the effects thereof: (1) changing a policy that generally prohibited the District from implementing a school closure, merger, or consolidation without a planning period lasting at least nine months following a vote to approve the action; and (2) deciding to merge or close certain schools (including partial closure by truncating certain grades). The ALJ issued a proposed decision finding an effects bargaining violation as to the second claim. The District filed exceptions.

**Disposition:** In a decision that is precedential in part and non-precedential in part, the Board affirmed the ALJ's central holdings that a decision to close schools is a non-mandatory subject of bargaining and that the District violated its effects bargaining duty. The Board adjusted the proposed decision in several respects, such as explaining the nature of an employer's obligation to bargain over the amount of notice employees receive.

**Decision No. [2876-M](#)****Caption:** *Registered Nurses Professional Association & Service Employees International Union Local 521 v. County of Santa Clara***Precedential**

**Description:** The complaint alleged that the County of Santa Clara violated its bargaining obligations to Registered Nurses Professional Association (RNPA) and Service Employees International Union Local 521 (SEIU) when it responded to COVID-19 by changing policies and assignments without affording the unions adequate notice and opportunity to bargain over the County's decisions and/or their negotiable effects. The ALJ issued a proposed decision concluding that even though the pandemic qualified as an emergency, the County nonetheless violated its bargaining obligations. The parties filed cross-exceptions.

**Disposition:** In a precedential decision, the Board held that: (1) the County could take necessary measures to save lives without first reaching an impasse or agreement, though it had a duty to afford the unions notice and an opportunity to bargain in good faith to the extent practicable under the circumstances; and (2) the County failed to comply with this duty.

**Decision No. [2877](#)****Caption:** *Francine Stevens v. Sacramento City Unified School District***Non-precedential**

**Description:** Charging Party Francine Stevens (Stevens) alleged that Respondent Sacramento City Unified School District (District) violated the Educational Employment Relations Act (EERA) by retaliating against Stevens. PERB's Office of the General Counsel (OGC) dismissed some of the charge allegations because, among other reasons, they were untimely, not subject to PERB's jurisdiction, duplicative of previous PERB filings, and failed to state a prima facie case that the District retaliated against Stevens in violation of EERA. Stevens timely appealed the partial dismissal.

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

**Decision No. [2878-S](#)**

**Caption:** *Richard Louis Brown v. Service Employees International Union Local 1000*

**Non-precedential**

**Description:** Charging Party Richard Louis Brown alleged that Respondent Service Employees International Union Local 1000 (Local 1000) breached its duty of fair representation when it removed him from office, in violation of the Ralph C. Dills Act. Brown claimed Local 1000's conduct interfered with his right to participate in Local 1000 activities and negatively impacted his ability to communicate with his employer, the State of California. The Office of the General Counsel (OGC) subsequently dismissed the charge, as amended, for failure to state a prima facie case of any unfair practice. On appeal, Brown restated the basis for his charge and claimed PERB allowed Local 1000 to violate its internal procedures as well as the California Corporations Code.

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

**Decision No. [2879](#)**

**Caption:** *United Teachers Los Angeles v. Alliance College-Ready Public Schools*

**Precedential**

**Description:** Charging Party United Teachers Los Angeles (UTLA) alleged that Respondent refused to recognize and bargain with UTLA as the exclusive representative of certificated employees at two schools within the Alliance College-Ready Public Schools Network, in violation of the Board's order in *Alliance Morgan McKinzie High School et al.* (2022) PERB Order No. Ad-491. Both schools admitted that they failed and refused to bargain in good faith with UTLA to obtain judicial review of PERB Order No. Ad-491. They contended that the Board wrongly decided PERB Order No. Ad-491 and that changed circumstances, namely, a corporate reorganization, rendered the certified units inappropriate.

**Disposition:** The Board issued its decision based on a stipulated record pursuant to PERB Regulations 32215 and 32320, subdivision (a)(1), finding that Respondent's conduct violated the Educational Employment Relations Act (EERA). Specifically, the Board concluded that the reorganization did not affect the appropriateness of the units, nor did it excuse the two schools from recognizing or meeting and negotiating with UTLA. Therefore, Respondent's refusal to bargain with UTLA violated EERA.

**Decision No. [2880-H](#)**

**Caption:** *Teamsters Local 2010 v. Regents of the University of California*

**Precedential**

**Description:** Charging Party excepted to a proposed decision finding that Respondent's policy prohibiting union insignia on employer-provided vehicles did not interfere with employee protected rights, and that even had Charging Party proven a prima facie case, the University established its affirmative defense by showing special circumstances required the prohibition.

**Disposition:** Charging Party excepted to a proposed decision finding that Respondent's policy prohibiting union insignia on employer-provided vehicles did not interfere with employee protected rights, and that even had Charging Party proven a prima facie case, the University established its affirmative defense by showing special circumstances required the prohibition.

**Decision No. [2881](#)**

**Caption:** *Adult School Teacher United (ASTU) v. West Contra Costa Unified School District*  
**Precedential**

**Description:** The complaint alleged that West Contra Costa Unified School District failed to bargain in good faith with Adult School Teachers United (ASTU) over the following two decisions, and/or the effects thereof: (1) moving English as a Second Language (ESL) courses from remote instruction in the first 18 months of COVID-19 to a mixed schedule of remote and in-person classes in the 2021-2022 school year; and (2) implementing new assignment procedures for the 2021-2022 school year that changed whether and how ESL teachers would be allotted work opportunities, while also deviating from new seniority calculation methods contained in a tentative agreement for a new contract. The ALJ found in the District's favor on all claims.

**Disposition:** The Board affirmed in part and reversed in part, finding that the District implemented new assignment procedures without affording ASTU notice or an opportunity to bargain, while dismissing all other claims.

**Decision No. [2882-M](#)**

**Caption:** *Santa Ana Police Officers Association v. City of Santa Ana*  
**Non-precedential**

**Description:** Case No. LA-CE-1563-M came before the Public Employment Relations Board (PERB or Board) on the City of Santa Ana's exceptions and Santa Ana Police Officers Association's cross-exceptions to the proposed decision of an administrative law judge (ALJ). Case No. LA-CE-1620-M came before PERB on the City's exceptions to a separate proposed decision of the same ALJ. While these cases were pending before the Board, the parties executed a settlement agreement that resolved the disputes underlying the unfair practice charges along with several matters pending before other PERB divisions. Accordingly, the Association requested to withdraw the unfair practice charges with prejudice. The City did not oppose this request. Further, the parties jointly requested to withdraw their pending exceptions.

**Disposition:** The Board granted the Association's unopposed request to withdraw the unfair practice charges with prejudice, and the parties' joint request to withdraw their pending exceptions.

**Decision No. [2883](#)**

**Caption:** *Lisker v. San Francisco Community College District*  
**Non-precedential**

**Description:** David Lisker alleged that his employer, San Francisco Community College District, violated the Educational Employment Relations Act by taking numerous adverse actions against him because he engaged in EERA-protected activities. The administrative law judge (ALJ) dismissed the complaint after a hearing, finding there was no causal nexus between the dismissed adverse actions and Lisker's protected activity. Lisker timely filed exceptions.

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

**Decision No. [2884-H](#)**

**Caption:** *Teamsters Local 2010 v. Regents of the University of California*  
**Precedential**

**Description:** After PERB accreted the Administrative Officer II (AO2) classification into a clerical bargaining unit at the University of California, three University medical centers unlawfully changed AO2s' eligibility for incentive award programs (IAPs). The University and the union representing the clerical unit both acknowledged that AO2s were immediately eligible for an across-the-board wage increase under the parties' then-current contract, and the medical centers asserted that the contract became the status quo for IAPs, too. The ALJ found the University acted in a lawful manner, and the union filed exceptions.

**Disposition:** The Board affirmed, holding as follows. After a mid-contract accretion, the parties have a right to bargain over terms and conditions of employment for newly added employees. Depending on the length of such bargaining, one or more of the employer's wage adjustment cycles may occur before post-accretion negotiations are complete. To maintain the status quo during a cycle that occurs during post-accretion negotiations, the employer must normally afford newly added employees all contractually mandated wage adjustments. However, if it is unclear how one or more of the contract's wage adjustments apply to the newly added employees, then the status quo for that cycle is the adjustments the employees would have received had they remained unrepresented. Here, it was sufficiently clear how to apply the contract, and the University correctly implemented both the across-the-board increase and the contract's IAP provision.

**Decision No. [2885-M](#)**

**Caption:** *Evelyn Christian v. Public Employees Union, Local 1*  
**Non-precedential**

**Description:** Charging Party Evelyn Christian alleged that Respondent Public Employees Union, Local 1 (Local 1) violated the Meyers-Milias-Brown Act by breaching its duty of fair representation in deciding not to pursue a grievance. After PERB's Office of the General Counsel (OGC) issued Christian a warning letter, Christian amended the charge. OGC subsequently dismissed the charge on the ground that, even accepting Christian's allegations as true at the pleading stage, Local 1 considered her case and evaluated its merits before lawfully exercising discretion in deciding not to pursue it further. On appeal, Christian claimed her charge stated a prima facie case that Local 1 breached its duty of fair representation, improperly supporting her argument with multiple new factual allegations.

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

**Decision No. [2886](#)**

**Caption:** *Sacramento City Unified School District and Sacramento City Teachers Association*  
**Non-precedential**

**Description:** Charging party's appealed the dismissal of her unfair practice charges against Sacramento City Unified School District (Case No. SA-CE-3122-E) and against the Sacramento City Teachers Association (Case No. SA CO 666-E). The cases were consolidated because they arose from a related set of facts.

**Disposition:** Both appeals were denied, as PERB found no basis to disturb OGC's conclusions in either case. The Board also found the Charging party did not show good cause to present new

evidence on appeal. As such, the unfair practice charges in each case were dismissed without leave to amend.

**Decision No. [2887](#)**

**Caption:** *Rank and File Caucus v. Oakland Unified School District*

**Non-precedential**

**Description:** Charging Party Rank and File Caucus alleged that Respondent Oakland Unified School District (District) violated the Educational Employment Relations Act (EERA) by retaliating against Denise Huffstutler. After issuing a Warning Letter and attempting to contact Charging Party's representative by phone, PERB's Office of General Counsel (OGC) dismissed the charge because the charge did not demonstrate that Charging Party had standing to file the charge and Charging Party failed to state a prima facie case that the District retaliated against Huffstutler in violation of EERA.

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

**Decision No. [2888-S](#)**

**Caption:** American Federation of State, County & Municipal Employees Local 2620 v. State of California (California Correctional Health Care Services)

**Precedential**

**Description:** The complaint alleged that California Correctional Health Care Services (CCHCS) violated the Dills Act by: (1) denying a request for union representation from an employee, Sean Kane, during a meeting between Kane and his supervisor; and (2) terminating Kane in retaliation for protected activities, including his work on behalf of his union. While the parties litigated at PERB, Kane appealed his dismissal to the State Personnel Board (SPB), which found that Kane engaged in misconduct but directed CCHCS to reduce Kane's discipline to a one-month suspension. After SPB's decision became final, a PERB ALJ found that CCHCS unlawfully denied Kane's request for union representation and terminated him in retaliation for protected activities. The ALJ partially agreed with CCHCS on its affirmative defense, finding that it would have suspended Kane for one month based on his proven misconduct, absent his protected activities. The ALJ therefore matched SPB's remedy, ordering CCHCS to reduce Kane's penalty to a one-month suspension. In their exceptions, both parties asked the Board to rely on certain parts of SPB's decision.

**Disposition:** The Board explained that when PERB resolves a Dills Act discrimination charge after SPB has already resolved whether the state had adequate cause to issue discipline: (1) claim preclusion does not apply; and (2) issue preclusion can apply as to certain issues that are common to both cases, but SPB's decision does not necessarily control either the ultimate retaliation issue before PERB, or related remedial issues. The Board then applied PERB's retaliation framework to the record (including those SPB findings meriting preclusive effect) and found no sufficient basis to determine what level of discipline CCHCS would have imposed absent Kane's protected activities. The Board therefore remanded the matter for mediation and, absent a settlement, for further proceedings to determine what level of discipline CCHCS would have imposed absent Kane's protected activities. Finally, a two-member Board majority found that CCHCS did not unlawfully deny Kane's request for union representation, while one member wrote separately in favor of affirming the ALJ's decision on that claim.

**Decision No. [2889-H](#)****Caption:** *Ester Hessong, et al. v. Regents of the University of California (Irvine)***Non-precedential**

**Description:** Charging Parties, five UC Irvine (UCI) employees in two UAW-represented bargaining units, filed grievances alleging that UCI violated the applicable MOU for each bargaining unit by requiring Charging Parties to report their participation (if any) in a strike. UCI refused to process Charging Parties' grievances because UAW had filed a systemwide grievance regarding the same violations. Charging Parties allege that UCI violated HEERA by refusing to allow them to present grievances through a representative of their own choosing. PERB's Office of the General Counsel (OGC) dismissed the charge for failure to state a prima facie case.

**Disposition:** In a non-precedential decision, the Board reversed and remanded to OGC to issue a complaint. The applicable MOUs permitted Charging Parties to file their own grievances and pursue them via a representative of their own choosing, at all stages prior to arbitration. Therefore, the charge stated a prima facie case that UCI failed or refused to process Charging Parties' grievances in violation of HEERA's qualified right to self-representation.

**Decision No. [2889a-H](#)****Caption:** *Ester Hessong, et al. v. Regents of the University of California (Irvine)***Non-precedential**

**Description:** Charging Parties, five UC Irvine (UCI) employees, asked the Board to reverse the non-precedential designation of *Regents of the University of California (Irvine)* (2024) PERB Decision No. 2889-H (*Regents*). In *Regents*, the Board reversed a decision of PERB's Office of the General Counsel (OGC) dismissing Charging Parties' unfair practice charge. The charge alleged that UCI refused to allow Charging Parties to present grievances through a representative of their own choosing and to have their employer process such grievances at all stages prior to arbitration. Treating the charge allegations as true at the initial pleading stage, the Board found they stated a prima facie case that UCI violated HEERA by failing and/or refusing to process Charging Parties' grievances. The Board designated the decision as non-precedential after reviewing the criteria in PERB Regulation 32320, subdivision (d).

**Disposition:** In a non-precedential decision, the Board reaffirmed that the criteria in PERB Regulation 32320, subdivision (d) do not warrant designating *Regents* as precedential. The Board accordingly denied Charging Parties' request to reverse the non-precedential designation.

**Decision No. [2890-M](#)****Caption:** *Teamsters Local 542 v. El Centro Regional Medical Center***Precedential**

**Description:** This case came before the Board on exceptions by El Centro Regional Medical Center to the proposed decision of an administrative law judge, which concluded that the hospital violated the Meyers-Milias-Brown Act (MMBA) when it failed to pay the Laboratory Unit employees an annual raise because they engaged in protected activities. The ALJ also determined that the hospital's decision to not pay the wage increase was a unilateral change to the status quo, and that the hospital's refusal to pay the increase constituted discrimination and interference. The ALJ's proposed decision included a backpay award backpay for all current and former Laboratory Unit employees who had commenced employment before January 1, 2021, for an amount equal to two (2) percent of any wages earned between July 4, 2021 and July 26, 2022, augmented by interest at a rate of seven (7) percent per annum.

**Disposition:** The Board affirmed the ALJ's determinations, supplemented the ALJ's analysis, and modified one aspect of the remedy. The Board determined that, by failing to pay the Laboratory Unit employees the July 2021 wage increase, ECRMC unlawfully committed a unilateral change and engaged in unlawful discrimination and interference. Regarding remedies, the Board modified the remedy and adopted a new policy under which interest on backpay will be compounded on a daily basis (rather than annually). Consistent with the Board's practice, daily compounding interest will apply retroactively in the instant case and in all pending cases.

**Decision No. [2891-M](#)**

**Caption:** *Service Employees International Union Local 1021 v. City and County of San Francisco*  
**Precedential**

**Description:** The complaint alleged that the City and County of San Francisco violated the MMBA by refusing to provide SEIU with certain data it requested to investigate a class action grievance alleging that the City discriminated against African American employees, including by extending their probationary period and/or releasing them from probation. Among the categories of information that the City refused to provide was disaggregated race/ethnicity data for employees who the City released from probation or who had their probationary periods extended. After an ALJ issued a proposed decision in SEIU's favor, the City excepted as to liability, while SEIU's exceptions sought attorney fees for litigating its information request UPC and arbitrating its discrimination grievance.

**Disposition:** The Board denied both parties' exceptions. The City did not prove that disclosing disaggregated race/ethnicity information to SEIU would invade privacy in a manner that is serious in both its nature and scope, much less that there is a serious privacy invasion that outweighs SEIU's purpose in investigating potential discrimination. The Board did, however, order SEIU not to release or use the disaggregated information other than as needed to investigate and/or seek to prevent, lessen, ameliorate, or remedy potential workplace discrimination or other potential legal or contractual violations. The Board found no basis for attorney fees for litigating the UPC given that the case involved an issue of first impression before PERB. The Board also found no basis for the compliance officer to consider SEIU's request for attorney fees in arbitration given that SEIU had kept the UPC in abeyance until after the arbitration was complete.

**Decision No. [2892-M](#)**

**Caption:** *Bhanu Vikram v. Transport Workers Union of America Local 250-A*  
**Non-precedential**

**Description:** Charging Party Bhanu Vikram alleged that Respondent Transport Workers union of America, Local 250-A violated the Meyers-Milias-Brown Act (MMBA) by failing to fairly represent Vikram in a grievance arbitration challenging his dismissal from the San Francisco Municipal Transportation Agency. PERB's Office of General Counsel (OGC) dismissed the charge because it failed to state a prima facie violation of the duty of fair representation. Vikram timely appealed OGC's dismissal of the charge.

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

**Decision No. [2893](#)****Caption:** *Laureen Thompson v. Stockton Unified School District***Non-precedential**

**Description:** The complaint alleged that Respondent Stockton Unified School District violated the Educational Employment Relations Act (EERA) by: (1) issuing a Letter of Concern to Charging Party Laureen Thompson in retaliation for her protected activity; and (2) interfering with Thompson's EERA-protected rights by issuing Thompson a notice regarding union business conducted during work hours. After formal hearing, the Administrative Law Judge (ALJ) issued a proposed decision dismissing the complaint. The proposed decision found that Thompson failed to establish a prima facie retaliation claim and the memo concerning union business was narrowly tailored to allow union activity during breaks and non-work time. Thompson timely appealed the proposed decision.

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

**Decision No. [2894-S](#)****Caption:** *Service Employees International Union Local 1000 v. State of California (Department of Public Health)***Non-precedential**

**Description:** SEIU Local 1000 filed an unfair practice charge alleging that the State of California Department of Health (CDPH) retaliated against bargaining unit employees working in the Health Facility Evaluator Nurse (HFEN) classification series and interfered with their exercise of protected rights. PERB issued a complaint alleging that CDPH had: (1) refused to address vacancy issues, (2) refused to address recruitment and retention differentials as a solution to hiring and vacancy issues, (3) refused to consider reclassification as a solution to pay and vacancy issues, (4) failed to attend Joint Labor Management Committee (JLMC) meetings in order to avoid addressing employee concerns about their licenses, and (5) failed to reimburse employees for mileage and extended working hours for travel to distant facilities during uncompensated time. The complaint alleged that CDPH took these actions in response to employees raising workplace concerns and serving on JLMCs to advocate for proper safety, assignments, and pay.

After a hearing and briefing, the ALJ dismissed the retaliation claim, finding that although SEIU could prove some of the elements of a prima facie case, it ultimately failed to prove the nexus element of the retaliation claim. The ALJ alternately found that even if SEIU successfully established a prima facie case, the charge would still be dismissed because CDPH established its affirmative defense. The ALJ also dismissed the interference charge, finding that that a reasonable employee would not have been intimidated by CDPH's conduct.

**Disposition:** In a non-precedential decision, the Board upheld ALJ's factual and substantive legal determinations, and dismissed both the retaliation and interference claims.

**Decision No. [2895-M](#)****Caption:** *California Nurses Association and Caregivers and Healthcare Employees Union v. Palomar Health***Precedential**

**Description:** This case came before the Public Employment Relations Board (PERB or Board) on exceptions by Charging Parties California Nurses Association (CNA) and Caregivers & Healthcare Employees Union (CHEU) (collectively, Unions) and cross-exceptions by Respondent Palomar

Health (Palomar) to the proposed decision of an administrative law judge (ALJ). The underlying unfair practice charge and complaint, as amended, primarily allege that Palomar violated the MMBA by (1) maintaining and enforcing an unreasonable access rule, (2) engaging in unlawful surveillance, (3) unilaterally changing its past policy or practice to disallow the Unions access to certain non-patient care areas by filing a lawsuit to enjoin the Unions from being present in those areas, and (4) interfering with protected rights by filing that lawsuit.

The ALJ found that Palomar maintained and enforced an unreasonable access rule, engaged in unlawful surveillance, and interfered with protected rights by pursuing some parts of the lawsuit, but dismissed the unilateral change allegation, as well as the allegation that Palomar interfered with protected rights via the trespass cause of action in its lawsuit. Both the Unions and Palomar filed exceptions to the proposed decision. The Unions challenged the ALJ's dismissal of the unilateral change allegation, his conclusion that only part of the Lawsuit constituted interference under *Bill Johnson's Restaurants, Inc. v. NLRB* (1983) 461 U.S. 731 (*Bill Johnson's*), and perceived omissions in the remedy. Palomar challenged the ALJ's legal conclusions that Palomar violated the MMBA, one evidentiary determination, and several aspects of the ALJ's remedial order. After the proposed decision issued and while the parties' exceptions were pending, the Court of Appeal issued a published decision, remanding the lawsuit to the trial court with an order to dismiss it for lack of jurisdiction, as the lawsuit is preempted by the MMBA and subject to PERB's exclusive jurisdiction.

**Disposition:** The Board affirmed the ALJ's factual findings and affirmed in part and reversed in part the proposed decision's legal conclusions, sustaining each claim in the complaint to find that Palomar maintained and enforced an unreasonable access rule, engaged in unlawful surveillance, unilaterally changed its past policy or practice to disallow the Unions access to certain non-patient care areas via its lawsuit, and interfered with protected rights by filing that lawsuit. Notably, the Board applied the traditional *Bill Johnson's* analysis and concluded that the entirety of Palomar's lawsuit was without a reasonable basis and for an unlawful purpose, and thus constituted interference.

**Decision No. [2896-M](#)**

**Caption:** *The International Association Sheet Metal, Air, Rail, and Transportation Workers, Local 1701 v. City of Montebello*

**Non-precedential**

**Description:** PERB's Office of General Counsel dismissed a charge filed by Charging Party International Association of Sheet Metal, Air, Rail, and Transportation Workers, Local 1701 (SMART) alleging that Respondent City of Montebello violated the MMBA by: (1) not following overtime, seniority, ranks and rotational procedures; (2) refusing to pay approved overtime; and (3) not following due process. While SMART's appeal of the dismissal was pending before the Board, SMART filed an unopposed request to withdraw the underlying unfair practice charge after the parties executed a settlement agreement resolving their issues.

**Disposition:** The Board found the withdrawal of the 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. [2897-M](#)**

**Caption:** *International Association of Sheet Metal, Air, Rail and Transportation Workers v. City of Montebello*

**Non-precedential**

**Description:** PERB's Office of General Counsel dismissed a charge filed by Charging Party International Association of Sheet Metal, Air, Rail, and Transportation Workers, Local 1701 (SMART) alleging that Respondent City of Montebello violated the MMBA by failing to provide requested information regarding route changes and by failing to provide bid calendars. While SMART's appeal of the dismissal was pending before the Board, SMART filed an unopposed request to withdraw the underlying unfair practice charge after the parties executed a settlement agreement resolving their issues.

**Disposition:** The Board found the withdrawal of the 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. [2898-M](#)**

**Caption:** *Operating Engineers Local Union No. 3 v. Sacramento-Yolo Mosquito & Vector Control District*

**Non-precedential**

**Description:** Operating Engineers Local Union No. 3 (OE3) filed an unfair practice charge alleging that Sacramento-Yolo Mosquito and Vector Control District, violated the Meyers-Milias-Brown Act (MMBA) by failing to bargain over unilateral changes within the scope of representation. PERB issued a complaint, alleging that the District violated the MMBA by unilaterally implementing: (1) new job duties for its Ecological Management Technicians (EMTs), and (2) a COVID-19 Prevention Plan/Program, without providing OE3 notice or opportunity to bargain. After hearing and briefing, the Administrative Law Judge (ALJ) issued a proposed decision dismissing the EMT job duties claim as untimely and finding that the District violated the MMBA when it made changes to the COVID-19 Prevention Plan/Program. The ALJ found that the District did not change EMT job duties during the six-month limitations period, as the status quo for EMT job duties included operation of the unmanned drones. OE3 excepted to the ALJ's untimeliness finding; no party excepted to the COVID-19 Prevention Plan/Program violation.

**Disposition:** In a non-precedential decision, the Board affirmed the ALJ's dismissal of the EMT job duties claim. The Board found that EMTs regularly and consistently operated drones for several years prior to the limitations period. Though evidence of pre-implementation wavering intent can restart the limitations period for unilateral change violations, the Board declined to find that this exception applied to the EMT job duties claim. The parties bargained over updates to the EMT job description during the limitations period and did not reach agreement; however, the EMT job duties did not change from the status quo, which included the drone operation duties.

**Decision No. [2899-S](#)**

**Caption:** *David Byrd v. State of California (State Teachers' Retirement System)*

**Non-precedential**

**Description:** PERB's Office of the General Counsel (OGC) dismissed a charge filed by Charging Party David Byrd, alleging that Respondent State of California, California State Teachers' Retirement System violated the Ralph C. Dills Act by deducting service credit for the time Byrd participated in a

strike of the Oakland Education Association. OGC dismissed the charge because Byrd did not allege facts showing that he was an employee of the State of California.

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

**Decision No. [2900-M](#)**

**Caption:** *Service Employees International Union Local 521 v. County of Santa Clara*  
**Precedential**

**Description:** The complaint alleges that the County of Santa Clara unlawfully refused to bargain with Service Employees International Union Local 521 (SEIU) before its Board of Supervisors (BOS) approved the County medical staff organization's proposed bylaw revisions, which included new standards for SEIU-represented physician assistants to receive or maintain practice privileges at County hospitals. The administrative law judge (ALJ) found the County did not have a duty to bargain over the BOS decision to approve the bylaw revisions. However, the ALJ found the County violated its duty to bargain with SEIU, prior to the BOS vote, over the decision's effects on terms and conditions of employment. Both parties filed exceptions.

**Disposition:** The Board affirmed in part and reversed in part, finding that the County violated its bargaining duties both with respect to the BOS decision and the effects thereof. The Board held that while the County had a decision bargaining duty to the extent of its discretion, the County violated that duty when it flatly refused to bargain. As to effects bargaining, the County admitted that it had a duty to bargain certain effects, and that it refused to bargain. The Board declined the County's request to rule that certain proposals must be off limits in effects bargaining merely because the County did not have authority to make changes without action by the medical staff organization. Finally, the Board addressed SEIU's exceptions on remedial issues. The Board rejected SEIU's argument that the Board should amend its make-whole remedies to include, as a matter of course, attorney fees based on hours spent successfully litigating the case before PERB. However, the Board clarified that existing make-whole principles already provide bargaining and representation related damages, including increased costs and wasted or diverted resources.

**Decision No. [2901](#)**

**Caption:** *Merced City School District and Merced City Teachers Association, CTA/NEA*  
**Precedential**

**Description:** Merced City Teachers Association, CTA/NEA (MCTA) filed a Unit Modification Petition (Petition) under the Educational Employment Relations Act (EERA) to add 21 unrepresented preschool teachers employed by the Merced City School District to an existing unit of certificated District employees, which MCTA exclusively represents. After a PERB administrative hearing, the hearing officer denied the Petition, relying primarily on *Redondo Beach City School District* (1980) PERB Decision No. 114 (*Redondo Beach*). In his analysis, the hearing officer found that: (1) the preschool teachers did not share a community of interest with the existing bargaining unit, and (2) established practices and efficiency of operations weighed against modifying the unit.

**Disposition:** MCTA filed exceptions seeking to reverse the hearing officer's decision. MCTA excepted to the hearing officer's factual findings and legal conclusions, including, inter alia, the conclusion that preschool teachers do not have a community of interest with other bargaining unit employees. The Board reviewed the hearing officer's legal conclusions de novo, and distinguished *Redondo Beach* from the instant case. The Board found that the majority of factors weigh in favor of modifying the unit pursuant to MCTA's Petition, as the preschool teachers are certificated public

school employees whose primary work function is to educate students in classrooms, just like the other teachers in MCTA's bargaining unit.

Accordingly, The Board reversed the hearing officer's decision, holding that the District preschool teachers are classroom teachers, that they share a community of interest with certificated employees, and that they belong in the MCTA bargaining unit.

**Decision No. [2902-I](#)**

**Caption:** *Scott Pham v. Santa Clara County Superior Court*

**Non-precedential**

**Description:** PERB's Office of the General Counsel (OGC) dismissed a charge filed by Charging Party Scott Pham, alleging that Respondent Santa Clara County Superior Court violated the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) by retaliating against them for engaging in protected rights and interfering with their ability to exercise these rights. OGC dismissed the charge because Pham did not allege facts sufficient to state a prima facie case of a Court Interpreter Act violation.

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

**Decision No. [2903-M](#)**

**Caption:** *American Federation of State, County & Municipal Employees District Council 36 v. City of Upland*

**Non-precedential**

**Description:** In this consolidated case, American Federation of State, County & Municipal Employees District Council 36 (AFSCME) alleged that the City of Upland unreasonably processed its combined decertification and recognition petition as solely a decertification petition and maintained an unreasonable local rule, thereby violating the City's Employee Relations Ordinance (ERO), the Meyers-Milias-Brown Act (MMBA), and PERB Regulations. Upland City Employees Association (UCEA) argued (1) that AFSCME's petition was one for decertification only, (2) that AFSCME's petition was defective, and (3) that the City unreasonably processed AFSCME's petition, and in so doing violated the ERO and MMBA. The Board designated the decision as non-precedential after reviewing the criteria in PERB Regulation 32320, subdivision (d).

**Disposition:** In a non-precedential decision, the Board determined that AFSCME's intent to replace UCEA was clear from its very first petition, and that it had filed a combined decertification and recognition petition. Accordingly, the Board ordered that the City deem AFSCME's revised petition timely and process it pursuant to the ERO. Because the record evidence demonstrated that the revised petition met the requirements of the ERO, the Board ordered that the City must arrange for a combined decertification and recognition election.

**Decision No. [2904](#)**

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

**Precedential**

**Description:** Charging Party Association of Clovis Educators (ACE) filed four unfair practice charges relating to its campaign to become the exclusive representative of certificated employees at Clovis Unified School District. The first three charges alleged that the District violated EERA and the PEDD by, among other conduct: (1) dominating and interfering with the administration of the Clovis Unified Faculty Senate, an employee organization that is a joined party in all three charges against the

District; (2) providing the Senate with preferential treatment and extensive, unequal support; and (3) encouraging employees to support the Senate while deterring or discouraging them from joining ACE and from authorizing ACE to represent them. ACE filed its fourth charge against the Senate, alleging that the Senate violated EERA by, among other conduct: (1) soliciting and/or accepting unlawful support from the District; (2) causing or attempting to cause the District to violate EERA; and (3) otherwise interfering with teachers' protected activity. An administrative law judge (ALJ) consolidated the four cases and issued a proposed decision finding in ACE's favor as to most, but not all, allegations. The ALJ's proposed remedial order directed the District, among other acts, to rescind unlawful communications and policies and honor its duty to refrain from dominating, interfering with the administration of, or unlawfully supporting an employee organization, or encouraging employees to join one organization over another. The proposed remedial order directed the Senate to refrain from accepting unlawful support, interfering with protected activity, and attempting to cause the District to violate EERA. ACE was the only party to file exceptions to the proposed decision. ACE's exceptions primarily sought an additional remedy: to disestablish all relationships between the Senate and the District having to do with teachers' terms or conditions of employment.

**Disposition:** The Board sustained certain exceptions and rejected others, ruling in ACE's favor on the central issue of disestablishment. ACE proved the District dominated the Senate, and disestablishment is the standard remedy in cases involving domination. In the alternative, disestablishment is proper because other violations were egregious, recurrent, and persistent. The Board also affirmed two additional remedies to which the parties largely acceded: (1) proof of support for a petition to exclusively represent teachers shall remain valid for longer than normal given the egregious nature of the District's violations; and (2) the District must conduct spoken notice of the Appendix to the Board's decision under conditions which increase the likelihood that such notice will reach the greatest number of District.

#### **Decision No. [2905-M](#)**

**Caption:** *Operating Engineers Local 3, AFL-CIO v. Consolidated Irrigation District*  
**Precedential**

**Description:** The complaint alleged that Respondent Consolidated Irrigation District violated the Meyers-Milias-Brown Act by interfering with the protected rights of employees and Charging Party Operating Engineers Local 3, AFL-CIO (OE3), dominating or interfering with OE3's administration, and failing and refusing to meet and confer in good faith with OE3. As to the interference allegations, the complaint specifically alleged two claims: (1) that District agents held at least one meeting with an OE3 member to discuss instructions for talking to other unit members about executing a decertification petition and promising unit members that they would receive a raise in exchange for decertifying OE3; and (2) that a District employee, whether by actual, apparent, or ratified authority, or coercion, solicited signatures from OE3 members to support a petition to decertify OE3; informed unit members that they would receive a pay raise in exchange for their signatures in support of OE3's decertification; and submitted to PERB a petition in Case Number SA-DP-284-E, seeking to decertify OE3 as the exclusive representative of the unit. The complaint further alleged a violation of the Prohibition on Public Employers Deterring or Discouraging Union Membership. After a formal hearing, the administrative law judge sustained the bad faith bargaining claim and dismissed the remaining allegations.

**Disposition:** The Board affirmed the proposed decision as supplemented by additional discussion and adjusted the remedial order.

**Decision No. [2906](#)****Caption:** *Oakland Unified School District v. Oakland Education Association***Precedential**

**Description:** The complaint alleged that Oakland Education Association (OEA) held an unlawful pre-impasse strike. OEA argued that its strike was lawful because the District violated EERA as alleged in a separate unfair practice charge (the “school closure charge”). In a prior decision, the Board resolved the school closure charge in OEA’s favor, finding that the District violated EERA when it: (1) failed to afford OEA notice and an opportunity to bargain before implementing a change in a written District policy that had required a nine-month planning period before the District could implement a school closure decision; and (2) began implementing a school closure decision without observing the nine-month planning period and without affording OEA adequate notice and opportunity to engage in good faith effects negotiations. After the Board resolved the school closure charge, the parties submitted post-hearing briefs in this case, and the ALJ issued a proposed decision dismissing the complaint against OEA. The District filed exceptions, to which OEA responded.

**Disposition:** The Board affirmed the proposed decision. EERA includes a qualified right to strike. One qualification restricts pre-impasse strikes pressuring an employer to make concessions in collective bargaining. As a result, there is a presumption against pre-impasse strikes, but a union may rebut the presumption by showing that employer unfair practices materially provoked the strike. The Board found two independent reasons why OEA did not engage in an unlawful pre-impasse strike. First, the presumption did not apply given that the parties were not in contract bargaining, OEA had no duty to bargain effects since the District began implementing its changes without providing notice or an opportunity to bargain, and the District pointed to no other negotiation giving rise to a duty to bargain. In the alternative, OEA rebutted the presumption because District unfair practices materially provoked the strike.

**ADMINISTRATIVE DECISIONS****Order No. [Ad-504-M](#)****Caption:** *Consolidated Irrigation District and Group of Employees and Operating Engineers Local 3, AFL-CIO***Precedential**

**Description:** This case came before the Board on Consolidated Irrigation District’s appeal of an administrative determination (AD) by PERB’s Office of the General Counsel (OGC). In November 2021, Operating Engineers Local 3, AFL-CIO (OE3), was certified as the exclusive representative of employees in the District’s Water Irrigation Specialist Unit (Unit). In January 2023, before OE3 had negotiated a first contract with the District, a group of employees filed a petition to decertify OE3 as the Unit’s exclusive representative. In March 2023, OE3 filed a blocking charge, alleging that the District violated the Meyers-Milias-Brown Act and the Prohibition on Public Employers Deterring or Discouraging Union Membership by: (1) facilitating the circulation and submission of the decertification petition through an Assistant Foreman, (2) instructing that Assistant Foreman and another Unit member to circulate the decertification petition, (3) promising benefits in exchange for decertifying OE3, and (4) refusing to negotiate with OE3 pending the resolution of the decertification proceedings. OE3’s blocking charge included a request that PERB stay the decertification election pending resolution of the charge, alleging that the District’s conduct, if true, would likely interfere with employee free choice and influence employees in their vote. OGC agreed and stayed the election. The District appealed the AD, and OE3 urged the Board to uphold the stay.

**Disposition:** The Board found that applicable law and the unfair practice allegations support the AD's analysis, including the AD's findings that the District's alleged conduct is likely to impact employee free choice, and therefore upheld the stay and adopted the AD as the decision of the Board itself.

**Order No.** [Ad-505-M](#)

**Caption:** *Celia E. Francisco v. City of Compton*

**Non-precedential**

**Description:** Charging Party Celia E. Francisco appealed an administrative determination by PERB's Appeals Office rejecting as untimely her amended statement of exceptions to the proposed decision of an administrative law judge. Francisco filed a timely appeal of the administrative determination.

**Disposition:** The Board affirmed the Appeals Office's rejection of Charging Party's late filing.

**Order No.** [Ad-506-M](#)

**Caption:** *City of Compton and American Federation of State, County & Municipal Employees Local 3947*

**Precedential**

**Description:** This case came before the Public Employment Relations Board (PERB or Board) on appeal by the City of Compton from an administrative determination by PERB's Office of the General Counsel (OGC) approving a request by the American Federation of State, County & Municipal Employees Local 3947 (AFSCME) pursuant to the Meyers-Milias-Brown Act (MMBA) that the parties' bargaining differences be submitted to a factfinding panel. The City and AFSCME are parties to a memorandum of agreement that expired on June 30, 2019. The parties began successor negotiations on January 15, 2020. The parties reached tentative agreements on some articles, but not others. Via an e-mail on May 31, 2023, AFSCME advised the City that it rejected several City proposals and provided the City with a written declaration of impasse. The next day, AFSCME filed its request with PERB for MMBA factfinding. On June 2, 2023, AFSCME filed a copy of the May 31 e-mail message to the City declaring impasse. The City opposed AFSCME's factfinding request, asserting that the parties had not yet reached impasse, and therefore, the request was inappropriate and premature. OGC issued an administrative determination approving AFSCME's factfinding request. The City appealed the administrative determination, again asserting that though the factfinding request was timely, it was insufficient because the parties are not actually at impasse. AFSCME opposed the City's appeal.

**Disposition:** The Board affirmed OGC's administrative determination approving the request for factfinding, finding that OGC correctly concluded that the request was timely under MMBA section 3505.4 and PERB Regulation 32802 and procedurally proper. The Board noted PERB has reiterated on multiple occasions that in resolving a request for factfinding, it does not evaluate whether the parties are in fact at impasse. (See, e.g., *County of Santa Clara* (2020) Order No. Ad-483-M, p. 4; *City of Salinas* (2018) PERB Order No. Ad-457-M, p. 6; *Santa Cruz Central Fire Protection District* (2016) PERB Order No. Ad-436-M, pp. 6-7.) The City's appeal failed to establish any reason for a different result.

**Order No. [Ad-507-M](#)**

**Caption:** *City of Stockton and Operating Engineers Local 3, AFL-CIO*

**Precedential**

**Description:** Operating Engineers Local Union No. 3 (OE3) filed a request with PERB's Office of the General Counsel (OGC) to submit its bargaining differences with the City of Stockton to a factfinding panel pursuant to MMBA section 3505.4. OGC granted the request, and the City appealed.

**Disposition:** The Board reversed, dismissing OE3's fact-finding request on the ground that OE3 did not file it within 30 days of the City's written impasse declaration. OE3 claimed that the filing window was 30 to 45 days following the impasse declaration because PERB should find that the parties' pre-impasse mediator was constructively reappointed as a post-impasse mediator on the date of the impasse declaration. The Board rejected that argument.

**Order No. [Ad-508-S](#)**

**Caption:** *Kevin M. Healy v. State of California (California Correctional Health Care Services)*

**Non-precedential**

**Description:** PERB's Office of the General Counsel concluded that Respondent State of California (Correctional Health Care Services) fully complied with the remedial order in *State of California (Correctional Health Care Services)* (2021) PERB Decision No. 2760-S. Charging Party Kevin Healy appealed, arguing that PERB should change its methodology and use compound interest—rather than simple interest—to calculate interest on back pay.

**Disposition:** The Board denied the appeal in a non-precedential decision. Based on the unique procedural posture of this case, the Board declined to consider whether to adopt daily compound interest as a new standard for monetary remedies.

**Order No. [Ad-509-S](#)**

**Caption:** *Preston Lee Brown Scott v. State of California (Department of Veterans Affairs)*

**Non-precedential**

**Description:** Charging Party appealed the decision by Chief administrative law judge (ALJ) to deny Charging Party's request to recuse the ALJ originally assigned to Case No. LA-CE-758-S.

**Disposition:** Charging Party's request for special permission to appeal the order denying recusal in Case No. LA-CE-758-S was granted, as was Charging Party's request that original ALJ Rohrbacher be recused.

**Order No. [Ad-510-M](#)**

**Caption:** *San Francisco City Workers United v. City and County of San Francisco*

**Non-precedential**

**Description:** Charging Party San Francisco City Workers United (SFCWU) appealed an administrative determination by PERB's Appeals Office rejecting as untimely SFCWU's appeal of a dismissal by PERB's Office of the General Counsel.

**Disposition:** The Board affirmed the Appeals Office's rejection of Charging Party's late filing.

**Order No. [Ad-511](#)**

**Caption:** St. Hope Public Schools and Group of Employees and Sacramento City Teachers Association  
**Precedential**

**Description:** A group of St. HOPE public school (SHPS) teachers filed a petition to decertify Sacramento City Teachers Association (SCTA) as the exclusive representative of their bargaining unit while SHPS and SCTA were negotiating their first contract. PERB's Office of the General Counsel (OGC) stayed the Petition in September 2021 based on blocking charges filed by SCTA. In October 2023, SCTA filed a new blocking charge alleging that petitioner's lead representative was not a unit member and/or was an agent of the employer. OGC issued an administrative determination finding cause to add SCTA's 2023 blocking charge as a further basis for the existing stay. The 2021 blocking charge and the 2023 blocking charge are currently set for separate formal hearings. SHPS timely appealed OGC's conclusion that the 2023 blocking charge is a further basis for the existing stay.

**Disposition:** The Board affirmed OGC's decision and adopted it as the Board's decision, as supplemented by further analysis and a clarified order. The Board reaffirmed that there is a lower bar for a stay during first contract negotiations, while noting that the complaint issued in the 2023 blocking charge included multiple claims that may establish a tendency to influence employee free choice. Based on the Board's order, the Petition remains stayed pending final disposition of all blocking charges that warrant a stay. If SCTA fails to establish any unfair practice in the 2021 and 2023 blocking charges, and there are no further pending allegations of unfair practices warranting a stay, OGC must process the Petition. If SCTA prevails in whole or in part, OGC must determine whether to process or dismiss the Petition. Dismissal is appropriate if the proven conduct: (1) materially tainted solicitation of employee support or employees' decision to sign the Petition, such that there is a legitimate question whether the Petition would have reached the requisite threshold absent unfair practices; (2) warrants retroactive extension of the certification bar based on SCTA's status as an emerging union negotiating for a first contract; or (3) has a continuing prospective tendency to harm employee free choice that PERB's remedies are unlikely to fully address, even in conjunction with the passage of time and any other relevant factors.

**Order No. [Ad-512-H](#)**

**Caption:** *Teamsters Local 2010 v. Trustees of the California State University (San Diego)*  
**Non-precedential**

**Description:** Charging Party Teamsters Local 2010 (Teamsters) appealed an administrative determination by PERB's Appeals Office rejecting its statement of exceptions and brief in support of exceptions on the grounds that they were filed as two separate documents rather than a single, integrated document as required by PERB Regulation 32300, subdivision (b).

**Disposition:** The Board granted Teamsters' appeal and reversed the administrative determination.

**Order No. [Ad-513-P](#)**

**Caption:** *North County Transit District and Group of Employees and International Association of Sheet Metal, Air, Rail and Transportation Workers*  
**Precedential**

**Description:** On appeal from State Mediation and Conciliation Service's (SMCS) administrative determination to proceed with a decertification election, the exclusive representative Sheet Metal, Air,

Rail and Transportation Workers (SMART) requested a stay of activity pursuant to PERB Regulation 32370.

**Disposition:** The Board found that it had discretion to issue a stay, and because further processing of the decertification petition would be unnecessary if it reverses the administrative determination, granted the request.

**Order No. [Ad-514](#)**

**Caption:** *Dailey Elementary Charter School and Fresno Teachers Association (FTA/CTA)*  
**Precedential**

**Description:** This representation case came before the Board on a purported appeal by non-party Darcey Severns from an administrative determination by PERB's Office of the General Counsel (OGC) certifying Fresno Teachers Association (FTA) as the exclusive representative of all certificated teachers and other certificated classroom support professionals at Dailey Elementary Charter School. In the determination, OGC concluded that: (1) FTA submitted sufficient proof of support from a majority of employees in the proposed bargaining unit; (2) no other employee organization properly intervened to seek to represent any of the employees in the petitioned-for unit; (3) Dailey did not dispute that the proposed unit was appropriate; and (4) Dailey had not granted recognition to FTA. Thus, OGC certified FTA as the proposed unit's exclusive representative pursuant to section 3544.1 of the Educational Employment Relations Act and PERB Regulation 33485.

After OGC issued the administrative determination, Severns, a teacher at Dailey, submitted a letter purporting to appeal the determination. Severns argued that there is no longer majority support for FTA and that she properly filed a petition for intervention.

**Disposition:** The Board affirmed the administrative determination and adopted it as the decision of the Board itself, as supplemented by additional discussion.

**Order No. [Ad-515-H](#)**

**Caption:** *Stephen Malloy v. Regents of the University of California (San Francisco)*  
**Non-precedential**

**Description:** Charging Party appealed the decision by Chief Administrative Law Judge (ALJ) to reassign himself as the ALJ for the underlying unfair practice charge. In the decision, the Chief ALJ analyzed Charging Party's opposition to his reassignment under PERB's recusal regulations and determined there was no evidence warranting recusal. In his appeal, Charging Party alleges, in part, that (1) he was not required to present evidence supporting his objection to reassignment and (2) the Chief ALJ's decision demonstrates bias and prejudgment, requiring recusal.

**Disposition:** The Board granted Charging Party special permission to appeal the Chief ALJ's decision not to recuse himself in Case No. SF-CE-1221-H. After consideration of Charging Party's appeal, the Board denied Charging Party's request that the Chief ALJ be recused.

**Order No. [Ad-516-S](#)**

**Caption:** *California Correctional Peace Officers Association v. State of California (Department of Corrections and Rehabilitation)*

**Precedential**

**Description:** This case came before the Board on an interlocutory appeal filed by Respondent State of California (Department of Corrections and Rehabilitation) (CDCR) to an administrative law judge's (ALJ) order denying its two motions to defer an unfair practice charge to arbitration. The ALJ denied Respondent's motions on the ground that CDCR withdrew its agreement to be bound by an arbitration award when it filed a Petition to Vacate or Correct Arbitration Award in superior court. Following the order, CDCR's appeal, and California Correctional Peace Officers Association's opposition thereto, the ALJ certified CDCR's appeal to the Board itself pursuant to PERB Regulation 32200.

**Disposition:** The Board affirmed the ALJ's conclusion that deferral to an arbitration award is not appropriate when the moving party refuses to be bound by the award. Hence, the Board denied the appeal and remanded the matter to PERB's Division of Administrative Law for proceedings consistent with its order.

**Order No. [Ad-517](#)**

**Caption:** *Gloria Medina v. Los Angeles Unified School District*

**Non-Precedential**

**Description:** Charging Party appealed an administrative determination issued by PERB's Office of the General Counsel (OGC). After a hearing and compliance proceedings, OGC dismissed Charging Party's request for legal expenses and determined that the District had complied with PERB's compliance order. Charging Party timely appealed to the Board.

**Disposition:** The Board denied the appeal, finding Charging Party's assertion that the District must pay her legal expenses and other costs unfounded for two reasons. First, the ALJ did not award legal expenses and fees as part of the proposed decision, and charging party did not file exceptions to the proposed decision. Therefore, she waived any arguments related to legal expenses. Second, even if charging party had filed an exception seeking legal expenses, she was not entitled to those expenses as part of the make whole remedy.