



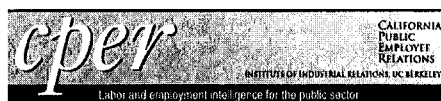
PERB & CPER

PRESENT

A STEP BY STEP

ANALYSIS OF THE PROCESS

PERB'S 30TH ANNIVERSARY CONFERENCE



PUBLIC EMPLOYMENT RELATIONS BOARD

Board Office
1031 18th Street, Board Suite 204
Sacramento, CA 95814-4174
Telephone: (916) 323-8000
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September 21, 2006

Dear Conference Participants:

The PERB and CPER are proud to welcome you to PERB's 30th anniversary conference: "A Step by Step Analysis of the Process." For the past 30 years, the Board has sought to improve employer-employee relations in the State of California. In so doing, PERB has developed an extensive expertise in the field of labor relations.

Today, we hope to share our expertise with those of you who are and will be practicing before PERB. To that end, we have assembled an incredible group of conference panelists who possess a tremendous breadth of knowledge. They include seasoned representatives from both sides of the bargaining table, as well as past and present Board Members and employees. Today's program, although geared toward new practitioners, should provide a little something for everyone.

Thank you for sharing PERB's 30th anniversary. We hope you will enjoy the conference and look forward to working with you over the next 30 years.

Sincerely,

John C. Duncan
Chairman

PERB/CPER CONFERENCE
“PERB: A Step by Step Analysis of the Process”
September 21, 2006

California Environmental Protection Agency
1001 “I” Street (Byron Sher Auditorium)
Sacramento, California

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| REGISTRATION and Continental Breakfast | 8:00 – 9:00 a.m. |
| WELCOME: John Duncan, Chairman, PERB, and Carol Vendrillo, Editor, CPER | 9:00 a.m. |
| PANEL ONE: <i>When the Charge is Filed</i> | 9:15 - 10:45 a.m. |
| <i>Moderator:</i> Robin Wesley, Acting General Counsel, PERB Kristin Rosi, Regional Attorney, PERB, Oakland Mary Creith, Regional Attorney, PERB, Los Angeles Matthew Gauger, Partner, Weinberg, Roger & Rosenfeld – Union Roman J. Muñoz, Attorney, Kronick, Moskowitz, Tiedemann & Girard – Management | |
| BREAK | 10:45 – 11:00 a.m. |
| PANEL TWO: <i>Settlement Conferences</i> | 11:00 a.m. - 12:30 p.m. |
| <i>Moderator:</i> Les Chisholm, Sacramento Regional Director, PERB Robert Thompson, Former General Counsel, PERB Marc Hurwitz, Regional Attorney, PERB, Los Angeles Keith Pace, Field Director, California School Employees Association – Union Charles Sakai, Partner, Renne, Sloan, Holtzman & Sakai – Management | |
| LUNCH including a Panel Discussion: <i>A Retrospective of PERB</i> | 12:30 - 2:00 p.m. |
| <i>Moderator:</i> Carol Vendrillo, Editor, California Public Employee Relations Journal John Duncan, Chairman (2004 – Present) Debbie Hesse, Former Chairperson (1984 – 1994) John Jaeger, Former Board Member (1981 – 1986) Barbara Moore, Former Board Member (1979 – 1981) Jerilou Cossack, Former Board Member (1976 – 1979) | |
| PANEL THREE: <i>If the Charge Goes to Hearing</i> | 2:00 - 3:30 p.m. |
| <i>Moderator:</i> Fred D’Orazio, Chief Administrative Law Judge, PERB Tom Allen, Administrative Law Judge, PERB Christine Bologna, Administrative Law Judge, PERB Bernard McMonigle, Administrative Law Judge, PERB Arthur Krantz, Attorney, Leonard Carder – Union Wendi Ross, Attorney, Department of Personnel Administration – Management | |
| BREAK | 3:30 - 3:45 p.m. |
| PANEL FOUR: <i>Appeal of a Dismissal or Proposed Decision</i> | 3:45 – 5:00 p.m. |
| <i>Moderator:</i> Greg Lyall, Legal Adviser, PERB John Duncan, Chairman, PERB Heather Glick, Legal Adviser, PERB Rosalind Wolf, Attorney, California Teachers Association – Union Paul Loya, Partner, Atkinson, Andelson, Loya, Ruud & Romo – Management | |
| CONFERENCE ADJOURNMENT | 5:00 p.m. |

PERB OVERVIEW

An Introduction to the Board

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency that oversees collective bargaining statutes encompassing 7,000 public employers and over 2 million employees. The Board itself is composed of up to five members appointed by the Governor and subject to confirmation by the State Senate. Board members are appointed to five-year terms, with the term of one member expiring at the end of each calendar year. Current members are: John C. Duncan, Chair, Lilian S. Shek, Sally M. McKeag, and Karen L. Neuwald. Biographical information for the Board's current members is provided below.

John C. Duncan was appointed to the Board and designated Chairman by Governor Arnold Schwarzenegger February 2004. Prior to his appointment, he was president of Duncan Consulting, Inc. and served as a member of the Governor-Elect's Transition Team staff. Mr. Duncan previously served in the cabinet of Governor Pete Wilson. He was the Director of the Department of Industrial Relations and principal advisor to Governor Wilson on labor and employment issues. Following that service, he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in History and holds a masters degree in Public Administration from Harvard University's John F. Kennedy School of Government. His term expires on December 31, 2008.

Lilian S. Shek was appointed to the Board by Governor Arnold Schwarzenegger November 2004. Prior to her appointment, she was an Administrative Law Judge II for the Unemployment Insurance Appeals Board, where she served from April, 1992 to November, 2004. In 1994, Governor Pete Wilson appointed her to the Governor's Advisory Selection Committee, the Regents of the University of California. Before April, 1992, she was an attorney in private practice, an assistant professor and lecturer in business law at California State University, Sacramento; a hearing officer for the Sacramento County Civil Service Commission; and a judge pro tem for the Small Claims Department of Sacramento County Superior and Municipal Courts. She was an assistant counsel for the California Farm Bureau Federation; and received a Reginald Heber Smith Community Lawyer Fellowship to serve as a staff attorney for the San Francisco Neighborhood Legal Assistance Foundation and Legal Services of Northern California. She was actively involved in several professional organizations. She was a Barrister of the Anthony M. Kennedy American Inns of Court; Chair of the California State Bar Committee on Women in the Law; President of Women Lawyers of Sacramento; and a member of the American Women Judges Delegation to the People's Republic of China. She earned her Bachelor of Arts degree in Sociology from the University of California, Berkeley; her Doctor of Jurisprudence degree from Hastings College of the Law, University of California; and her Masters of Business

Administration degree from California State University, Sacramento. Her term expires on December 31, 2007.

Sally M. McKeag was appointed to the Board by Governor Arnold Schwarzenegger in March 2005. Prior to her appointment, she served as Chief Deputy Director of the California Employment Development Department since January 2004. She also served as Deputy Staff Director of the Governor-Elect's Transition Team. Her term ends on December 31, 2006.

Ms. McKeag initially served as Chief of Staff to the Department of Labor's Employment and Training Administration Assistant Secretary, and then assisted in the creation of ETA's Business Relations Group (BRG). The BRG applies innovative approaches to help business and industry better access the services of the state and local workforce investment system and to ensure the workforce investment system understands the skills and training needs of the 21st Century workforce.

Ms. McKeag served in a variety of capacities for the California State Senate and the Wilson Administration. Specifically, she was Director of Public Affairs for the Senate Republican Caucus where she oversaw the development and implementation of strategies to support Senate members in representing their constituencies. Under Governor Pete Wilson, she served as Deputy Director of Operations for the Department of Consumer Affairs, Acting Deputy Director of the Department of Fish and Game, and Director of the Governor's Office of Constituent Affairs. Prior to the Wilson Administration, she served in the Reagan and Bush Administrations in Washington, D.C. She was the Director of the Executive Secretariat at the Environmental Protection Agency, overseeing the coordination of all correspondence and other official documents for the EPA Administrator. Ms. McKeag was also Special Assistant to the Secretary of the Interior, supervising all functions related to scheduling of the Secretary's participation in official and political events.

Karen L. Neuwald was appointed to the Board July 2005. Prior to her appointment she was the Chief of the Office of Governmental Affairs at the California Public Employees' Retirement System for two years. She served as the Assistant Director for legislation at the Department of General Services from November, 1996 to July, 2003. For 11 years prior to DGS, Ms. Neuwald worked at the Department of Personnel Administration. She began her career at DPA working on policy and legal issues, and then spent six years directing DPA's legislative program. Ms. Neuwald had her entrée in state government in 1982 working as an analyst at the Legislative Analyst's Office. As a program analyst, she worked on budget matters related to employee compensation, collective bargaining, health care, and retirement issues. Overall, Ms. Neuwald has enjoyed a 24 year career in state government service. Ms. Neuwald is a graduate of the University of Oklahoma and the University of Texas, where she received a master's degree in public affairs. Her term expires on December 31, 2009.

Statutory Authority and Jurisdiction

The Board now administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB since the mid-1970's are: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code sec. 35401, et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code sec. 3512, et seq.), establishing collective bargaining for State Government employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code sec. 3560, et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968 (Gov. Code sec. 3500, et seq.), which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes peace officers, management employees and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include the supervisory employees of the Los Angeles County Metropolitan Transportation Authority. The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) is codified at Public Utilities Code sec. 99560, et seq.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Employment Protection and Governance Act of 2000 (Gov. Code sec. 71600, et seq.) and the Trial Court Interpreter Employment and Labor Relations Act of 2002 (Gov. Code sec. 71800, et seq.).

Purpose and Duties of the Board

In addition to the overall responsibility for administering the seven statutes, the Board acts as an appellate body to hear challenges to proposed decisions that are issued by the Board agents in the Office of the General Counsel. Decisions of the Board itself may be appealed under certain circumstances, and then only to the state appellate courts. The Board, through its actions and those of its agents, is empowered to:

- Conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- Deal with impasses that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;

- Ensure that the public receives accurate information and has the opportunity to register its opinions regarding the subjects of negotiations between public sector employers and employee organizations;
- Interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- Bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- Conduct research and training programs related to public sector employer-employee relations;
- Take such other action as the Board deems necessary to effectuate the purposes of the Acts that it administers.

Major PERB Functions

The major functions of PERB involve: (1) the investigation and resolution 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) the appeals of Board staff determinations to the Board itself; and (4) the legal functions performed by the Office of the General Counsel. Each of these four functions is described in more detail below.

Unfair Practice Charges

The investigation and resolution of unfair practice charges is a major function performed by PERB. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. These allege an employer or employee organization engaged in conduct that is unlawful under one of the labor statutes administered by PERB. Examples of unlawful employer conduct include refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; or failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by Board agents to determine whether a prima facie violation of the statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, HEERA, MMBA, TEERA, Trial Court Act or Court Interpreter Act has occurred. If the charge fails to state a prima facie case, a Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw its charge. If the charge is not amended or withdrawn, it is dismissed. The charging party then has the option of appealing the dismissal to the Board itself.

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

Once a complaint has been issued, a Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB Administrative Law Judge (ALJ) is scheduled. That usually occurs within 100 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party to the case may then appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse or remand the proposed decision.

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

Decisions of the Board itself are both binding on the parties to a particular case and precedential. PERB decisions are now available on our website at <http://www.perb.ca.gov>. Interested parties can also now sign-up for electronic notification of new Board decisions. Additionally, unfair practice charges can now be filed electronically. Please visit our website for further information.

Representation Cases

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

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent holds a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination. That determination sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB conducts a representation election in cases where the employer has not granted recognition to an employee organization to serve as the exclusive representative. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of "No Representation" appears on the ballot in every representation election.

Mediation/Fact-Finding

PERB staff also assist parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the fact-finding process provided under EERA and HEERA. If the parties are unable to reach an agreement during negotiations either party may declare an impasse. If that occurs, a Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined an impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

If settlement is not reached during mediation, either party, under EERA and HEERA, may request the implementation of statutory fact-finding procedures. PERB provides lists of neutral factfinders who make findings of fact and advisory recommendations to the parties concerning terms of settlement.

Appeals Office

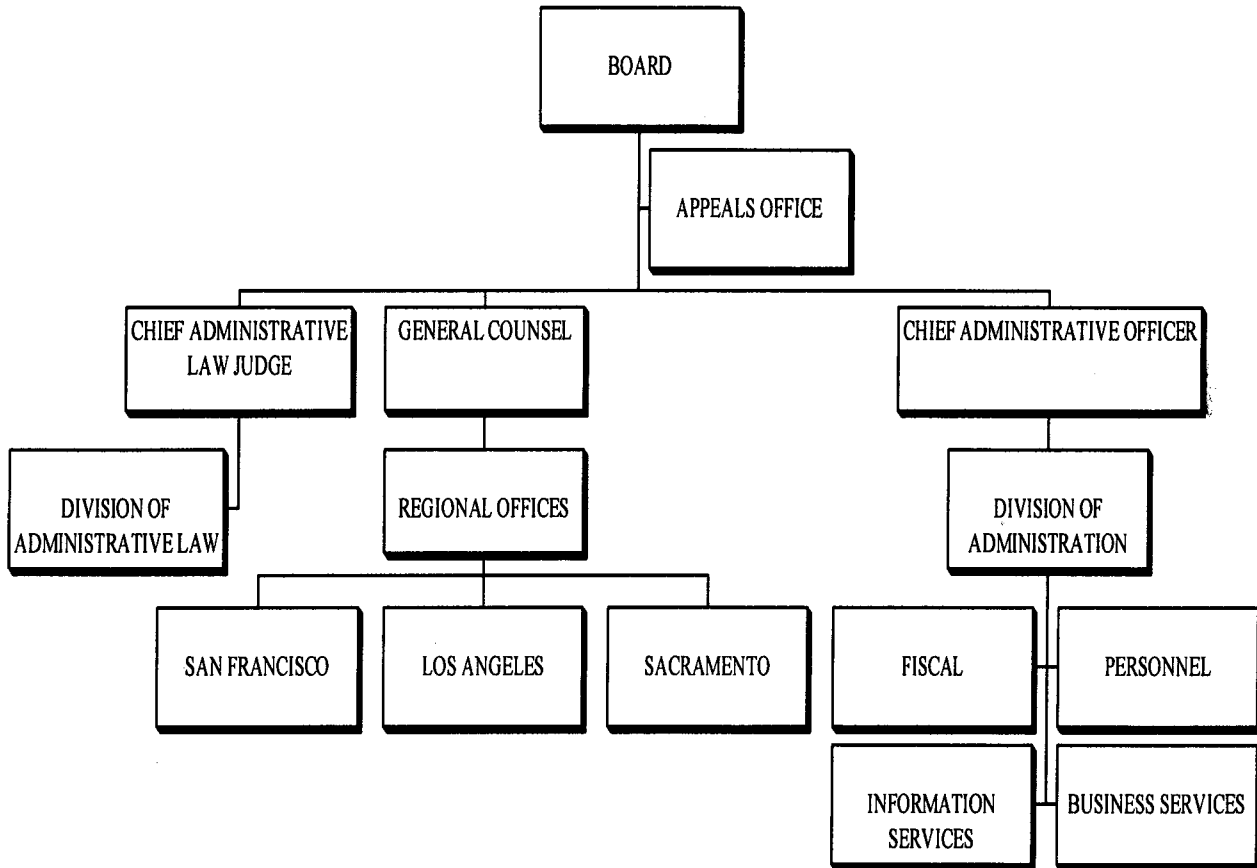
The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. It maintains case files, issues decisions rendered and prepares administrative records filed with California appellate courts. This office is the main contact with parties and their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

Office of the General Counsel

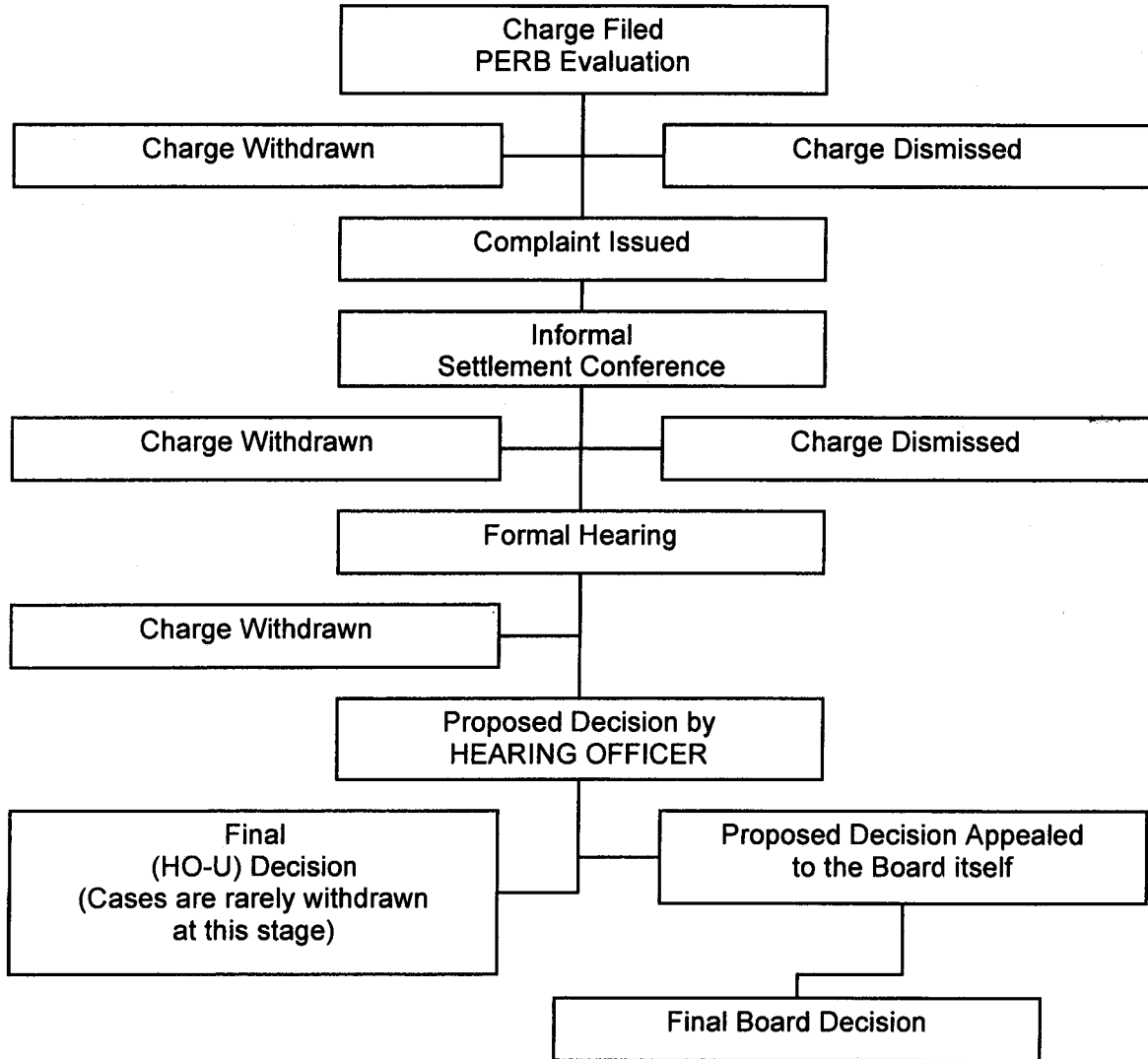
The legal representation function of the Office of the General Counsel includes:

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

PUBLIC EMPLOYMENT RELATIONS BOARD
Organizational Chart



**UNFAIR PRACTICE CHARGE
FLOW CHART**



PANEL ONE

PANEL ONE:

When the Charge is Filed

9:15 - 10:45 a.m.

Moderator: Robin Wesley, Acting General Counsel, PERB

Panelists: Kristin Rosi, Regional Attorney, PERB, Oakland
Mary Creith, Regional Attorney, PERB, Los Angeles
Matthew Gauger, Partner, Weinberg, Roger & Rosenfeld – Union
Roman J. Muñoz, Attorney, Kronick, Moskowitz, Tiedemann & Girard – Management

Opening Remarks

Introductions

Methods of Filing an Unfair Practice Charge

The Charge Form
Service of Charge
Processing Charge
Respondent's Position Statement

Investigating a Charge

Merits of Case
Warning Letter
Dismissal Letter
Complaint

Union Perspective

Management Perspective

PANEL ONE: When the Charge is Filed

Panel Members

Moderator: Robin Wesley, Acting General Counsel, PERB

Robin Wesley currently serves as PERB's Acting General Counsel. She has worked at PERB for nearly 16 years in several roles, serving as Board counsel, regional attorney and on occasion as a hearing officer. Robin previously served as the Deputy Director for Local Government Affairs in the Office of Planning and Research and as the District Administrative Assistant to a member of the Legislature. Robin is a graduate of Westmont College and the McGeorge School of Law.

Kristin Rosi, Regional Attorney, PERB, Oakland

Kristin L. Rosi currently serves as PERB's Senior Regional Attorney in the San Francisco Regional Office. Kristin has worked at PERB for nearly 11 years, in both the San Francisco and Los Angeles offices. Prior to her PERB employment, Kristin worked at the National Labor Relations Board, CPER, and with the U.S. District Court. Kristin co-authored several publications, including the CPER Pocket Guide to the Dills Act. Kristin is a graduate of Smith College and the University of California, Hastings College of the Law, where she studied under former California Supreme Court Justice Joseph Grodin.

Mary Creith, Regional Attorney, PERB, Los Angeles

Mary Creith has served as a Regional Attorney for the Public Employment Relations Board since 2004. She received a degree in Urban and Regional Planning from California State Polytechnic University, Pomona in 1999 and is a graduate of Loyola Law School, 2002.

See attached resumes for:

Matthew Gauger, Partner, Weinberg, Roger & Rosenfeld

Roman J. Muñoz, Attorney, Kronick, Moskovitz, Tiedemann & Girard

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Matthew Gauger is a shareholder in Weinberg, Roger and Rosenfeld's Sacramento office. Mr. Gauger represents labor unions in all matters before State and Federal courts, California's Public Employment Relations Board, other administrative agencies, in collective bargaining negotiations, and grievance arbitrations. Mr. Gauger's primary interest is using the law in non-traditional ways. This includes creative avoidance of the National Labor Relations Board, suing employers who cheat their employees out of wages, employers who do not pay the legally required rates to employees, employers who perform construction work without the appropriate contractor licenses, and generally forcing employers in the industrial, construction, service, and public sectors to comply with the law. Mr. Gauger has a very active practice before the Public Employment Relations Board. Mr. Gauger represents several clients against the State Personnel Board in SPB's current Jihad against the labor movement over arbitration of state employee discipline. Mr. Gauger also defends unions in duty of fair representation, discrimination cases, and successfully uses California's SLAPP statute to defend unions from secondary boycott allegations.

Mr. Gauger earned his law degree from University of California, Davis, in 1988 where he was an editor on the Law Review. Mr. Gauger received his undergraduate degree from University of California, Santa Cruz, where he graduated with honors with a double major in Politics and Legal Studies in 1984. Mr. Gauger's previous employers include California Correctional Peace Officers Association (CCPOA) Legal Department from August 1989 to June 1996, and United Farm Workers, AFL-CIO, in 1984-85. Mr. Gauger's other interests include politics, skiing and co-driving a performance rally car on the US Pro-Rally Circuit where he won first place co-driver in his class in the Pacific Northwest Division in 2003 and 2004 and the Western States Rally Championship in 2004 and 2005. Mr. Gauger is tied for first place in his class for 2006.



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ROMAN MUÑOZ

Mr. Muñoz, an associate in the firm, represents public agencies, including school districts and housing authorities, in the areas of employment law and labor relations. Mr. Muñoz brings extensive experience working in the California State Legislature to his practice as well as experience at a private firm representing education clients.

LEGAL EXPERIENCE

Mr. Muñoz primarily focuses on employment and labor law issues confronting public agencies. In his capacity as advisor to governing boards and public agencies, he counsels them on a variety of legal matters, including:

- Employee discipline and dismissal
- Labor relations
- Board policies
- Contract administration
- Employee benefits
- Employment litigation
- Reductions in force
- Grievance arbitration
- Unfair labor practice proceedings

Prior to joining KMTG, Mr. Muñoz worked for a private law firm in Pleasanton, California, where he represented a number of school districts in education law matters. He also brings extensive experience working in the California State Legislature. While pursuing a law degree, Mr. Muñoz worked as a Legislative Aide to California State Senator Richard G. Polanco, and after graduation, began his legal career as a Graduate Legal Assistant with the California Legislative Counsel. His background also includes serving in the United States Army as a non-commissioned officer.

PRACTICE EXAMPLES

Mr. Muñoz guides clients through the array of procedural requirements for employee dismissals, which include tenure and seniority issues, timely notifications, and administrative hearings. He also helps his clients distinguish between the myriad of statutory and constitutional rights afforded to public employees. Mr. Muñoz works closely with governing boards to negotiate labor agreements that meet their unique operational needs and negotiating objectives.

Continued

PROFESSIONAL ACTIVITIES & AFFILIATIONS

Mr. Muñoz' professional activities and affiliations include:

- Member, American Bar Association
- Member, Sacramento County Bar Association
- Member, Hispanic National Bar Association
- President-Elect, California Council of School Attorneys

Additionally, Mr. Muñoz is a founding member of the Plaza Youth Advantage Program, a program that provides mentors for at-risk youth living in East Los Angeles.

ACADEMIC BACKGROUND

B.A. California State University, Fresno, 1996

J.D. University of the Pacific, McGeorge School of Law, 1999

—Graduated with distinction

—Member, Traynor Honor Society

—Member, Golden Key National Honor Society

—Recipient, Corpus Juris Secundum for Torts

Panel One Materials

Filing and Processing Charges

I. FILING A CHARGE WITH PERB

A. Methods of Filing a Charge

1. Mail – fax – efile
2. Charge filed when received by PERB

B. Charge Form

1. Contact information
2. Applicable statute
3. Attachments
 - a. Relevant contract provisions
 - b. Local rules – MMBA

C. Serve Charge on Respondent, Proof of Service

D. Processing Charge

1. Case number assigned
2. Board agent assigned
3. PERB notification letter
 - a. Describes investigation process
 - b. Time to file respondent's position statement
 - c. Notice of appearance form

E. Respondent's Position Statement

1. Statement signed under penalty of perjury or affirmation
2. Attached documents
3. Served on the charging party

II. INVESTIGATING A CHARGE

A. Investigation by Board Agent

1. Determine whether alleged facts state a prima facie case
2. May contact parties for additional information
3. Credit charging party's facts where disputed

B. Warning Letter

C. Dismissal Letter

Appeal to Board

D. Complaint

Assigned to new Board agent for settlement conference

III. UNION PERSPECTIVE

IV. MANAGEMENT PERSPECTIVE



PUBLIC EMPLOYMENT RELATIONS BOARD

The Public Employment Relations Board (PERB or Board) is an independent, quasi-judicial state agency with responsibility for enforcement of rights and duties under seven public sector collective bargaining statutes: the Educational Employment Relations Act (EERA), the Ralph C. Dills Act, the Higher Education Employer-Employee Relations Act (HEERA), the Meyers-Milias-Brown Act (MMBA), the Trial Court Employment Protection and Governance Act (Trial Court Act), the Trial Court Interpreter and Labor Relations Act (Court Interpreter Act), and the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). These seven laws give PERB jurisdiction over collective bargaining in California public schools (pre-kindergarten through community college); the State of California (state civil service); public higher education (University of California, California State University and Hastings College of Law); local public agencies (cities, counties and special districts); trial courts; and the Los Angeles County Metropolitan Transportation Authority (supervisory employees only), respectively.

The Board itself consists of five members appointed by the Governor with the consent of the State Senate. PERB employs approximately 40 persons in offices located in Sacramento, Los Angeles and Oakland.

PERB has the authority and responsibility, under all seven statutes, to investigate allegations concerning, and to provide remedies for, violations of these acts (and/or violations of local rules, under the MMBA, Trial Court Act and Court Interpreter Act) by either employers or employee organizations.

PERB also has the following functions in administering the EERA, Dills Act, HEERA, and TEERA:

- To determine appropriate bargaining units, and rule on petitions to add or delete positions from an established unit.
- To determine, through secret ballot elections, whether employees wish to be represented by an employee organization for the purpose of negotiating and, if so, which organization.
- To ensure that the public is afforded sufficient information and time to register its opinion regarding negotiations.

Under EERA, Dills Act and HEERA, PERB also oversees statutory impasse procedures whereby negotiations between employers and employee organizations can result in agreement. The Board maintains a list of neutral factfinders who may be chosen by the parties to assist in this process under EERA and HEERA.

In administering the MMBA, Trial Court Act and Court Interpreter Act, PERB has authority and responsibility over matters such as unit determinations, representation petitions and elections only where the local agency has not adopted local rules to govern these matters.

The text of all seven statutes and PERB's Regulations, as well as information about how to use PERB's processes and how to contact PERB, is available on the Internet at www.perb.ca.gov.

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(510) 622-1016



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE:

Case No: _____

Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES

NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name, title and telephone number of person filing charge:

e. Bargaining unit(s) involved:

2. CHARGE FILED AGAINST: (mark one only)

EMPLOYEE ORGANIZATION

EMPLOYER

a. Full name:

b. Mailing address:

c. Telephone number:

d. Name, title and telephone number of agent to contact

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:

b. Mailing address:

c. Agent:

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630 – 71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (*a copy of the applicable local rule(s) MUST be attached to the charge*):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (*Use and attach additional sheets of paper if necessary.*)

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on _____

(Date)

at _____
(City and State)

(Type or Print Name)

(Signature)

Title, if any: _____

Mailing address: _____

Telephone Number: () _____

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of _____,
State of _____. I am over the age of 18 years and not a party to the within entitled
cause. The name and address of my residence or business is _____

On _____, I served the _____
(Date) (describe document(s))

_____ on the parties listed below (include name, address and, where applicable, fax number) by (check the applicable method or methods):

___ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;

___ personal delivery;

___ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on _____, at _____.

(Type or print name)

(Signature)

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 322-3198
Fax: (916) 327-6377



June 25, 2004

SAMPLE INTRODUCTORY LETTER

Matthew Gauger, Attorney
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, CA 95814-2341

Wayne Heine, Director, Labor Relations
San Joaquin County
24 South Sutter Street, Suite 101
Stockton, CA 95202

Re: SEIU Local 790 v. County of San Joaquin
Unfair Practice Charge No. SA-CE-245-M

Dear Parties:

This is to notify you that the above-referenced charge was filed on June 24, 2004 with the Public Employment Relations Board (PERB or Board) and will be screened initially by the undersigned Board agent under the direction of the General Counsel. The following procedure will be used:

1. I shall review the charge to determine whether it states a prima facie case of an unfair practice. (See PERB Regulation 32620(b)(4).)¹
2. To make this determination I may contact the Charging Party and/or the Respondent to request further information before taking action. The Respondent is hereby notified that it may file a position statement. Any response must be signed under penalty of perjury with a declaration that the response is true and complete to the best of the Respondent's knowledge and belief and must be served on the Charging Party. If no response is filed by July 9, 2004,² I will proceed with my review of the charge and issue a complaint where appropriate. (See Regulation 32620(c).)

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB's Regulations and the statutes administered by the Board may be found by visiting www.perb.ca.gov. Copies of the Regulations and statutes are available for purchase from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174.

² A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (Regulation 32135.)

3. If the charge, after review, fails to state a prima facie case, I shall dismiss the charge. (See Regulation 32620(b)(5).) The Charging Party may appeal my dismissal to the Board itself, consistent with PERB Regulations. (See Regulation 32635.)
4. If a prima facie case is established, I shall issue a formal complaint and inform the Respondent, by letter, of its obligation to answer. (See Regulations 32640, 32644, 32646.) The answer must contain, among other things, an admission or denial of each factual allegation and a statement of any affirmative defenses. (See Regulation 32644(b)(5) and (6).)
5. After issuance of a complaint, the case file is transferred to another Board agent for an informal conference. (See Regulation 32650.)
6. The purpose of the informal conference is to clarify the issues and explore the possibility of voluntary resolution and settlement of the case. (See Regulation 32650.)
7. If the parties are unable to settle the case at the informal conference, the case may be set for a formal administrative hearing. (See Regulations 32680 and 32690.)

Both parties are requested to provide me and serve the other parties with the name, address and telephone number of their designated representative, if any. A Notice of Appearance form is provided for your convenience. Once you receive a Notice of Appearance from another party, please communicate with that party only through its designated representative.

Until a complaint or dismissal is issued in this case, please address all communications concerning this matter to me at the address and telephone number shown above. Please reference the case number on all correspondence.

Sincerely,

Robin W. Wesley
Regional Attorney

Enclosure: Notice of Appearance Form



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



NOTICE OF APPEARANCE FORM

CASE NAME: SEIU Local 790 v. County of San Joaquin

CASE NUMBER: SA-CE-245-M

NAME OF PARTY: SEIU Local 790

DATE FILED: June 24, 2004

I, the undersigned party, hereby designate as my representative the person whose name and address appears below, and authorize such representative to appear on my behalf in this preceding. This designation shall remain valid until I file a written revocation of it with the Public Employment Relations Board.

(Signature)

(Name of Representative)

(Printed Name)

(Title)

(Title)

(Mailing Address)

(Date)

(City) (Zip)

(Telephone Number) (Ext.)

(BOARD AGENT: RWW)

PERB 920 (8/1998)



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



NOTICE OF APPEARANCE FORM

CASE NAME: SEIU Local 790 v. County of San Joaquin

CASE NUMBER: SA-CE-245-M

NAME OF PARTY: County of San Joaquin

DATE FILED: June 24, 2004

I, the undersigned party, hereby designate as my representative the person whose name and address appears below, and authorize such representative to appear on my behalf in this proceeding. This designation shall remain valid until I file a written revocation of it with the Public Employment Relations Board.

(Signature)

(Name of Representative)

(Printed Name)

(Title)

(Title)

(Mailing Address)

(Date)

(City) (Zip)

(Telephone Number) (Ext.)

(BOARD AGENT: RWW)

PERB 920 (8/1998)



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form with proof of service attached to each copy in the appropriate PERB regional office (see PERB regulation 32075). Proper filing includes concurrent service and proof of service of the charge as required by PERB regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Service Employees International Union Local 790

b. Mailing address: 37 Hunter Square Plaza, Stockton, CA 95202-2703

c. Telephone number: (209) 463-3283

d. Name, title and telephone number of person filing charge: Stephanie Batey, Staff Director
Telephone (209) 463-3283

e. Bargaining unit(s) involved: All SEIU bargaining units; Pro., Para., OOT, TL&I, Supervisory

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: County of San Joaquin

b. Mailing address: 24 South Sutter Street, Suite 101, Stockton, CA 95202

c. Telephone number: (209) 468-9669

d. Name, title and telephone number of agent to contact: Wayne Heine, Director of Labor Relations, (209) 468-9669

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name: _____

b. Mailing address: _____

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name: _____

b. Mailing address: _____

c. Agent: _____

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (Gov. Code sec. 3560 et seq.)
- Meyers-Miliias-Brown Act (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (Pub. Utilities Code sec. 99560 et seq.)

b. The specific Government or Public Utilities Code section(s) alleged to have been violated is/are:

Section 3505

c. The specific PERB regulation(s) and/or, for MMBA, the specific applicable local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary.)

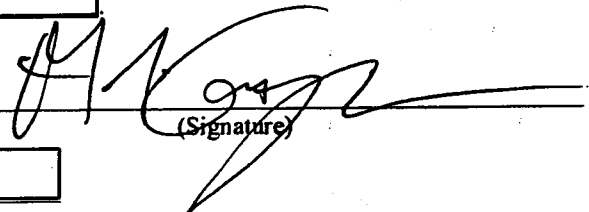
See Attached

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on June 24, 2004 (Date)

at Sacramento, California (City and State)

Matthew J. Gauger (Type or Print Name)



(Signature)

Title, if any: Attorney for SEIU Local 790

Mailing address: 428 J Street, Suite 520, Sacramento, CA 95814

Telephone Number: (916) 443-6600

STATEMENT OF CHARGE

The above-named employer has violated Section 3505 by refusing to supply necessary and relevant information after timely requests. The parties are currently engaged in negotiations over layoffs. The employer has admitted at the various bargaining tables on numerous occasions that it has identified the workers who will be laid off. The Union on various dates, including June 1, June 4, June 14, June 16, June 17, June 18, June 23 and June 24, 2004, has made oral and written requests for a list of names of employees who will be laid off in each bargaining unit. The employer has refused to provide this information. The Union needs this information in order to determine whether the employees are being laid off in the proper seniority order, whether the employer is properly applying the bumping rules incorporated into the contract, and to investigate whether any other grievances need to be filed with regard to the order of layoff. The Union also needs this information in order to formulate proposals concerning layoffs. The parties have been negotiating over whether the Union will accept furloughs, pay cuts or pure layoffs. The Union needs to know the list of the workers in order to determine its bargaining position. The employer has responded that the list of people who it will layoff is confidential information. However, the employer has sent letters to each of the people who will be laid off and it will ultimately be evident who is laid off when, on July 1, 2004, the remaining workers show up at their jobs and some are missing. The Union has represented to the employer that it will make any reasonable agreement to protect the employees' privacy. The Union has represented to the employer at the table that it will not publish the list of employees' names in any newspapers of general circulation or otherwise embarrass its members with the information, once provided. The employer's position is so wholly frivolous as to support a sanction of attorneys' fees that should be applied to the individual bureaucrats who made the decision not to provide the information. The Union believes that individual bureaucrat is Wayne Heine.

Remedies

1. An order to provide the list of workers to be laid off;
2. Reinstatement and full backpay for each of the workers until the Union is supplied the information;
3. A declaration that such information is, in fact, necessary and relevant and the employer must provide it;
4. A declaration that management's position is frivolous;
5. Attorneys' fees at the appropriate Lodestar rate;
6. Because the taxpayers of the County of San Joaquin should not be burdened with management's frivolous violation of MMBA, an order that the individual manager or managers who made the decision not to provide the information be required to pay the attorneys' fees award and the backpay award out of their personal assets;
7. An appropriate posting in the manner of the National Labor Relations Board;
and
8. Any other remedies that would effectuate the purposes of the Act.



**OFFICE OF THE
COUNTY COUNSEL**

COUNTY OF SAN JOAQUIN
COURTHOUSE, ROOM 711
222 EAST WEBER AVENUE
STOCKTON, CA 95202-2777
TELEPHONE (209) 468-2980
FAX (209) 468-0315

DEPUTY COUNTY COUNSEL:
GILBERTO GUTIERREZ
LAWRENCE P. MEYERS
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DANIEL C. CEDERBORG
MATTHEW P. DACEY
KIMBERLY D. JOHNSON

TERRENCE R. DERMODY
COUNTY COUNSEL
DAVID WOOTEN
ASSISTANT COUNTY COUNSEL
ROBYN TRUITT DRIVON
ASSISTANT COUNTY COUNSEL

**CHILD PROTECTIVE
SERVICES COUNSEL:**
(209) 468-1330
JANINE MOLGAARD
ROBERTA C. LAGOMARSINI
DANIELLE DUNHAM-RAMIREZ

105007

July 26, 2004

Robin W. Wesley
Regional Attorney
Public Employment Relations Board
Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174

JUL 2004

Re: Local 790 v. County Of San Joaquin
Unfair Practice Charge No. SA-CE-245-M

Dear Mr. Smith:

Please accept this letter as the position statement by the County of San Joaquin regarding the above-referenced charge.

The Charging party alleges that the County of San Joaquin violated section 3505 of the Meyers-Milias-Brown Act (hereinafter MMBA) by failing to release the names of individuals proposed to be laid off from County employment on July 1, 2004. The County of San Joaquin denies the allegation and requests that the Charge be dismissed for failure to state a prima facie case. [PERB Regulation 32620(b)(5)].

This case revolves around the proposed layoff of County employees due to budgetary restraints. On May 28, 2004, the County notified SEIU Local 790 (hereinafter Local 790) that it would be recommending that employees in specific County civil service classifications be served layoff notices on or after June 15, 2004. (Attachment 1). In response, Local 790 made several requests for information concerning the proposed layoff for the purposes of its preparation for the meet and confer over the proposed layoffs. (Attachment 2). In each request, Local 790 requested to learn, among other things, the names, classifications, bargaining unit, pay rate, seniority date, and employment status of all employees being laid off. The County, for the most part, complied with Local 790's request¹. (Attachment 3). However, County refused to identify, by name, those employees who were being proposed for layoff because it: (1) did not consider the information relevant or necessary to SEIU's ability to represent its members, and (2) considered the release

¹For each of the affected departments, Local 790 received, among other things, a vacancy list, a copy of the contracts for contract employees, seniority list, list of department classifications by bargaining unit, list of classifications identified for layoff containing the number of proposed layoffs, unit, and the salary range, a copy of the County Audit Report, and a copy of the Final Budget for 2002-2003 and 2003-2004.

of these identities to invade the privacy of those employees and is therefore confidential. It is the County's refusal to identify, by name, those employees proposed for layoff (and not the denial of any other request for information in preparation for the meet and confer) which Local 790 now claims amounts to a violation of section 3505 of the MMBA.

Historically, the County has not released the names of those employees proposed to be laid off. This practice has been the subject of meet and confers with Local 790, the result being section 14 of the MOU between the County and Local 790's bargaining units. Beginning in September 2003, with the MOU between the County and the Para-Professional & Technical Bargaining Unit of Local 790, this practice was placed in writing. Specifically, section 14.1.1 provides that the County shall notify the union in writing of the proposed layoffs fifteen days prior to issuing layoff notices. The notification to the union will identify the layoffs by department and by classification. (Attachment 4). Thus, the County complied fully with the language and the spirit of MOUs between it and the bargaining units represented by Local 790 when it identified those employees scheduled for layoff by department and classification² in its May 28, 2004 letter and supplied Local 790 with additional information (as discussed below) from which to identify those employees slated for layoff. With this unfair labor practice charge, Local 790 seeks to subvert language contained in MOUs which it agreed to as a result of meet and confers. PERB should not allow this to occur.

PERB precedent establishes that the employer has an obligation to provide an exclusive representative with requested information necessary and relevant to its duty to represent its unit members. The Board has held that the decision to lay off classified employees is a managerial prerogative. [Newman-Crows Landing Unified School District (1982) PERB Decision No. 223]. However, management is obligated to negotiate the effects of its layoff decision on matters within the scope of representation. [Newark Unified School District, (1982) PERB Decision No. 225]. Information pertaining to mandatory subjects of bargaining must be disclosed unless the employer can establish that the information is plainly irrelevant, excessively burdensome to produce, or there is some compelling reason why it cannot be disclosed. [Stockton Unified School District (1980) PERB Decision No. 143]. The determination of whether a union's request for information is relevant is made under "a liberal 'discovery-type standard.'" [Soule Glass and Glazing Co. v. NLRB, (1st Cir. 1981) 652 F. 2d 1055]. "The test of the union need for such information is simply a showing of 'probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'" [Westinghouse Electric Corp. (1978) 239 NLRB 106].

In this case, Local 790 cannot meet its burden of establishing a prima facie case for violation of section 3505 of the MMBA because it cannot establish that the request for names of those being proposed to be laid off was relevant to its duty to represent its members where it sought information pertaining to employees who were not members of its bargaining unit. While Local 790 purported to make these requests in response to the County's intention to lay off members of its bargaining unit, Local 790 requested to learn the names of all individuals slated to be laid off in a given department regardless of whether the individual was a member of its

²This section has since been added to the MOUs between the County and bargaining units represented by Local 790.

bargaining unit³. In one request, Local 790 even sought to learn the names and classifications of those employees (being laid off in upper and mid-management) who clearly are not a part of its bargaining unit. See Attachment 2, June 28, 2004 e-mail from Bill Petrone to John Bertke. Therefore, Local 790 simply cannot demonstrate that the request for the names, including the names of non-bargaining unit members, was relevant to its duty to represent its unit members. Even assuming arguendo that Local 790 was entitled to learn the names of individuals, this entitlement is limited to members of its bargaining units only.

Likewise, Local 790 cannot meet its burden of establishing that the requested information was necessary as Local 790 had sufficient information from which to identify which of its members were proposed to be laid. The May 28, 2004 letter identified the department and classification targeted for layoffs including the number of positions slated to be lost. (See Attachment 1). In addition to this list, Local 790 was provided⁴ with, among other things, a vacancy list, the contracts pertaining to contract employees, a list of classifications identified for layoff with number, unit, salary range, and a seniority list for each department which identified each position falling within a classification and the number of hours accrued by the individual currently in that position. (Attachment 5). In addition to this information, Local 790 also had access to a current list of its members which identified them by name, department, classification/position, pay rate, etc., which the County supplies on a bimonthly basis. This bimonthly list coupled with the information provided to Local 790 as a result of its requests provided ample information from which Local 790 could have determined the names of those individuals proposed to be laid off⁵. The fact that the information was not in a specific format is irrelevant as it has long been recognized that the union is not entitled to demand receipt of information in a particular form. [Emeryville Research Center v. NLRB (9th Cir., 1971) 441 F.2d 880].

Therefore, Local 790 cannot establish a prima facie case of violation of section 3505 of the MMBA and the charge should be dismissed.

Even assuming that the identity of those Local 790 units members proposed for lay off was necessary and relevant to Local 790's representational duties, an employer's obligation to furnish such information is not absolute. [Los Rios Community College District (1988) PERB Decision No. 613-H] (holding that an employer may legitimately deny a union's request for information if the disclosure of information would invade personal privacy). "Where the employer presents reasons for keeping the information confidential, the interest of the employer in preventing disclosure must be weighed against the union's interest in the requested information. The type and extent of disclosure required will depend on 'the circumstances of the particular case.'" (8th Cir., 1988) WCCO Radio v. NLRB, 844 F.2d 511, 515 (quoting Soule

³For the most part, each request sought a list of all affected employees by name, their classification, pay rate, seniority date, employment status, and bargaining unit. In some instances, the Local 790 sought to additionally learn the medical/dental coverage, dependents age, gender, and marital status of the affected employee.

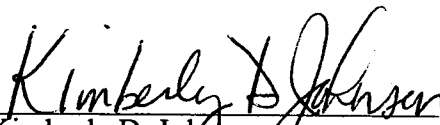
⁴Attachment 3 lists the information provided to Local 790 as it pertains to each department.

⁵In addition to the information provided to Local 790, each county employee received a list of his or her seniority hours and was directed to contact Human Resources if the information reflected was inaccurate. The seniority list for each department was posted in the department in an area accessible to employees for a reasonable period of time. Each employee who was proposed to be laid off also received a layoff notice. Thus, the policies and practices in place and the information provided by the County provided a means for Local 790 to identify its members who were proposed to be laid off and assemble the necessary member leaders for the meet and confer and for its members to contact Local 790 for representational purposes.

Glass, 652 F.2d at 1094). This is true for information either shown or presumed to be relevant. WCCO Radio, supra.

In this case, the County decided not to disclose the identities of those proposed to be laid off because it determined that: (1) the requested information was not necessary or relevant; and (2) the release of the information would invade the personal privacy of those proposed to be laid off and lead to their embarrassment. The latter determination is based on a prior incident involving Local 790 and the release of names of those being slated for layoff. In March 2003, the County deviated from its longstanding practice of not releasing such information. On that occasion, the County released to Local 790 the names of part-time non-civil service employees who were proposed to be laid off at San Joaquin General Hospital despite the fact that it had no obligation to do so and unaware that Local 790 would misuse the information. Local 790, in turn, published the names of these individuals on its website and identified them as individuals slated to be laid off. Needless to say, Local 790's actions caused quite a commotion, especially among those whose names appeared on the website. As a result, the County was put into the position of explaining why it provided such sensitive and potentially embarrassing information to Local 790 for publication on its website. Assuming the BOARD finds that Local 790 can establish that the requested information was necessary and relevant to Local 790's ability to represent its unit members, the County believed it had no obligation to do so because the County's interest in maintaining the confidentiality of this information and protecting the personal privacy of those proposed to be laid off outweighed Local 790's interest in obtaining a list which identified those proposed to be laid off by name especially where Local 790 had access to information whereby it could have ascertained the names of those proposed to be laid off.

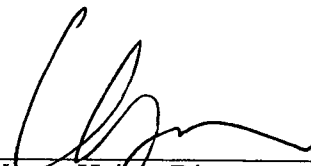
For the reasons stated above, San Joaquin County respectfully requests that the charge be dismissed on the grounds that Local 790 fails to state a prima facie case of violation of section 3505 of the MMBA or on the grounds that the County, based on the circumstances presented, was excused from providing the information.


Kimberly D. Johnson
Deputy County Counsel

Attorney for County of San Joaquin

I declare under penalty of perjury that I have reviewed the factual statements contained in the foregoing response, and they are true and complete to the best of my knowledge and belief.

Executed at Stockton, California, July 26, 2004


Wayne Heine, Director
Division of Labor Relations

Encls.

cc: Matthew Gauger

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SEIU LOCAL 790,

Charging Party,

v.

COUNTY OF SAN JOAQUIN,

Respondent.

Case No. SA-CE-245-M

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of California Government Code section Government Code section 3500 et seq., the General Counsel of the Public Employment Relations Board (PERB) on behalf of PERB, pursuant to California Government Code sections Government Code sections 3509(b) and 3541.3(i) and California Code of Regulations, title 8, section 32640, issues this COMPLAINT and alleges:

1. Charging Party is an exclusive representative within the meaning of PERB Regulation 32016(b) of an appropriate unit of employees.
2. Respondent is a public agency within the meaning of Government Code section 3501(c) and PERB Regulation 32016(a).
3. On or about June 1, 2004, Charging Party requested the following information that is relevant and necessary to Charging Party's discharge of its duty to represent employees: the names of bargaining unit employees who were issued layoff notices.
4. To date, Respondent has refused to provide the requested information.
5. By the conduct described in paragraph 4, Respondent failed and refused to meet and confer in good faith with Charging Party in violation of Government Code section 3505 and

committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(c).

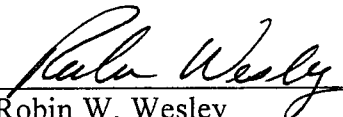
6. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3506 and is an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a).

7. This conduct also interfered with Charging Party's right to represent bargaining unit employees in violation of Government Code section 3503 and is an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(b).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: September 15, 2004

ROBERT THOMPSON
General Counsel

By  _____
Robin W. Wesley
Regional Attorney

**PROOF OF SERVICE BY MAIL
C.C.P. 1013a**

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95814-4174. I am readily familiar with the ordinary practice of the business of collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On September 15, 2004, I served the COMPLAINT WITH COVER LETTER AND NOTICE OF INFORMAL CONFERENCE regarding Case No. SA-CE-245-M on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Sacramento, California addressed as follows:

Matthew Gauger, Attorney
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, CA 95814-2341

Kimberly D Johnson, Deputy County Counsel
San Joaquin County
222 East Weber Avenue
Stockton, CA 95202

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 15, 2004, at Sacramento, California.

Phyllis West

(Type or print name)



(Signature)



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

PUBLIC EMPLOYMENT
RELATIONS BOARD
HEADQUARTERS OFFICE

2004 AUG 13 PM 2:20

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form with proof of service attached to each copy in the appropriate PERB regional office (see PERB regulation 32075). Proper filing includes concurrent service and proof of service of the charge as required by PERB regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Service Employees International Union, Local 790
 b. Mailing address: 37 Hunter Square Plaza, Stockton, CA 95202-2703
 c. Telephone number: 209.463.3283
 d. Name, title and telephone number of person filing charge: Michelle Blau, Field Representative/Organizer; 209.463.3283
 e. Bargaining unit(s) involved: Paraprofessional Unit; Office/Office Technical Unit; Supervisory Unit; *PROFESSIONAL UNIT*

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: County of San Joaquin
 b. Mailing address: 24 So. Hunter Street, Room 101, Stockton, CA 95202
 c. Telephone number:
 d. Name, title and telephone number of agent to contact: John Bertke, Labor Relations Representative; 209.468.3370; fax: 209.468.0508

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:
 b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name:
 b. Mailing address:
 c. Agent:

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (Gov. Code sec. 3560 et seq.)
- Meyers-Miliias-Brown Act (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (Pub. Utilities Code sec. 99560 et seq.)

b. The specific Government or Public Utilities Code section(s) alleged to have been violated is/are:

Government Code Section 3505

c. The specific PERB regulation(s) and/or, for MMBA, the specific applicable local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary.)

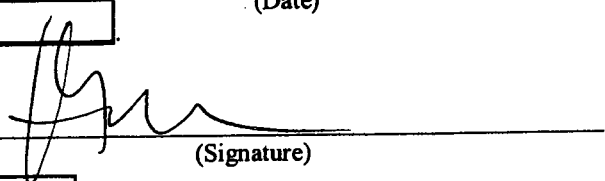
See attached.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on August 13, 2004 (Date)

at Sacramento, California (City and State)

Matthew J. Gauger (Type or Print Name)

 (Signature)

Title, if any: Attorneys for SEIU, Local 790

Mailing address: 428 J Street, Suite 520, Sacramento, CA 95814

Telephone Number: 916.443.6600

Attachment 6(d)

The County of San Joaquin violated Government Code Section 3505 by refusing to provide necessary and relevant information to the Union after a timely request.

In July 2004, the employer announced that it would layoff Program Chiefs and other employees in the office of Substance Abuse. The Union sent a timely information request on July 14, 2004 in order to prepare for the upcoming negotiations. A true and correct copy of the Union's July 14th Information Request is attached as Exhibit A and incorporated herein as though fully set forth. That document, including attachments, is four pages long. The Union had some limited information but the information was contradictory and, among other things, the Union sought clarification from the employer. Rather than providing the information, the employer responded on July 21st. The July 21st response is inadequate on several levels.

First, it provides no names of employees, only positions regarding the seniority list. With regard to transfers, it provides no names of employees, no information on whether the transfers were voluntary or not and the list is incomplete. The Union knows that there are employees employed by the employer in those positions that the employer did not include on the list.

The Union also asked for all the employees' names and phone numbers and the employer refused to provide any names or telephone numbers. A true and correct copy of the employer's two-page July 21, 2004 response is attached as Exhibit B and incorporated herein as though fully set forth.

The Union made a further information request on July 26, 2004. The Union made a further information request and Step 3 complaint under the Collective Bargaining Agreement on July 26, 2004. A true and correct copy of the Union's July 26, 2004 letter is attached as Exhibit C and incorporated herein as though fully set forth.

The employer responded on August 9th. A true and correct copy of the employer's August 9th letter is attached as Exhibit D and is incorporated herein as though fully set forth. As it indicates, the employer denied the grievance and refused to provide any additional information.

On July 28th, the employer's further response dated July 28th is attached as Exhibit E and incorporated herein as though fully set forth. This document is a one-page letter with an eight-page attachment. As the reader can see, the employer does not identify the names of the employees who are transferring nor does it match the names of employees with positions they clearly hold.

The employer once again responded and provided a seniority list. On August 6th, the employer once again responded and provided a seniority list. A copy of that list is attached hereto as Exhibit F. However, as the reader can see, the employer has failed to

match names with job titles. The seniority list the employer provided is, in fact, gibberish. A seniority list without names is absolutely useless to the Union or to anyone else. The list has been provided in bad faith in order to waste the Union's time and resources. Both Mr. Bertke, the Labor Relations official in charge of negotiating for the County and providing this information was a Union representative for many years before he became a management representative. He personally knows that a seniority list must have names in order to be useful. The County's response is frivolous and a bad faith attempt to waste the Union's time and resources.

The July 26th letter reiterates and makes additional information requests. It is also a complaint under the Union's Collective Bargaining Agreement. The Collective Bargaining Agreement does not contain a final and binding arbitration clause so this case should not be deferred to arbitration under the Lake Ellsinore doctrine.

By these and other acts, the above-named employer has refused to provide necessary and relevant information to the Union.

Remedy

1. Immediately provide the information the Union requested;
2. A posting in the manner of the National Labor Relations Board indicating the employer's violation;
3. Attorneys' fees at the appropriate lodestar rate;
4. The taxpayers of the County of San Joaquin should not pay any monetary award. Rather it should be paid from the personal assets of the managers who made the decision to waste the Union's time and not provide the information;
5. Any other remedy that would effectuate the purposes of the Act.

Exhibit A

COPY



John Bertke, LR
24 S. Hunter St, room 101
Stockton, CA 95202

July 14, 2004

RE: INFORMATION REQUEST PROGRAM CHIEF LAYOFF

Dear Mr. Bertke:

Per your phone request today, I am sending another request for information pertaining to the impact of layoffs at the Office of Substance Abuse. Item number one was already stated and the second request has been amended to include all employees transferred and the reason. The third request is a modification of information requested June 4, 2004. The Union is concerned there are discrepancies in the number of people impacted by the layoff and the number of positions being eliminated. The Union also needs to determine the impact on the material working conditions of our members based on new staffing assignments. For the purposes of properly representing our members in this matter, please provide the following information:

1. The complete Seniority list for the Office of Substance Abuse reflecting the amendments made based on the June 18, 2004 agreement on contract time. In the event the amended Seniority list is not yet completed, please provide the seniority list for the Substance Abuse Counseling Program Chief position immediately and the rest of the list as soon as possible.
2. The complete list of all OSA employees who have been transferred in the past forty-five days. Please include the employee's name, classification, where he/she transferred from, which program and shift he/she transferred into, the reason for the transfer, and whether or not the transfer was voluntary.
3. A list of all OSA programs, the name and title of each employee under the program, and the phone number for that employee.

In the Attachment A document dated May 28, 2004, there is one Substance Abuse Counseling Program Chief position listed as being eliminated. In the document provided June 24, 2004, titled, "County of San Joaquin Fiscal Year 2004-2005 Potential Layoffs Included in the Proposed Budget" there is

OFFICERS

| | | | | | | | |
|-------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------------------------------|
| TERRY REX SPRAY RN President | STEVE BRISTOW Executive Vice President | VICKI REED Treasurer | HENRIETTA LEE Recording Secretary | MARIA ELENA GUILLEN Regional Vice President San Francisco | SANDRA LEWIS Regional Vice President East Bay | LEEA RODRIGUEZ Regional Vice President Sacramento | MARCUS WILLIAMS Regional Vice President San Joaquin |
| PATRICK IKEDA Chairperson, Local Government Industry | ED KINCHLEY Chairperson, Health Care Industry | MYNETTE THEARD Chairperson, Education Industry | NORMAN Y. TEN Chairperson, Private Sector / Non-Profits Industry | KAREV BISHOP Chairperson, Human & Civil Rights Committee | MARIA MA Chairperson, Media / Communications Committee | EVAN MOGAN, RN Chairperson, Policy & Appeals Committee | MARY SANDERS Chairperson, Member Organizing Committee |
| LINDA JANG Regional Trustee San Francisco | MARY JANE LOGAN Regional Trustee East Bay | JOHN MCPHEK Regional Trustee Sacramento | STEVE MEYER Regional Trustee Sacramento | E. DEAN SMITH Regional Trustee San Joaquin | MARY STERLING Regional Trustee San Joaquin | DAVID M. TURNER Regional Trustee San Francisco | TERRY WONG Regional Trustee East Bay |


one Substance Abuse Counseling Program Chief listed. On the same document, there are 2 Substance Abuse Director II positions listed as deleted. I have attached these documents for your convenience.

It is my understanding based on our conversation today that there is actually only one filled Director II position being impacted. The other position was vacant. Also, the person filling the Director II position has chosen to leave OSA and did not bump anyone. Please let me know if this is not the case.

Given this information, the Union believes only one chief position should have been impacted by a layoff. In the email dated July 13, 2004, you state "Of the two chiefs impacted one stayed at Aurora Street Clinic and the other moved to ATS both as SAC II." It is our understanding one of these Program Chiefs should not have been impacted in the layoff. This discrepancy would likely have been avoided had the county collaborated better with the Union regarding the layoffs. The lack of willingness to provide us the information necessary to represent our members has caused unnecessary confusion.

Please research this issue and respond in writing to the specific requested items. In the event you need clarification please contact me at 463-3283. If you are not going to provide certain information, please notify me in writing of your decision not to provide the information and your reason for withholding the information.

Thank you,



Michelle Blau
Field Rep./Organizer

CC: SEIU meet and confer team
Stephanie Batey
Manual Lopez, CAO

Attachment A**May 28, 2004**

| <u>Department</u> | <u>Classification</u> | <u>Number of Positions</u> |
|-----------------------------------|--------------------------------------|-----------------------------------|
| Alcohol/Drug Alternative Program | Office Assistant | 1 |
| Child Support Services | Administrative Assistant II | 2 |
| Child Support Services | Child Support Compliance Analyst | 3 |
| Child Support Services | Child Support Supervisor | 2 |
| Child Support Services | Dept Info Systems Specialist I/II | 2 |
| Child Support Services | Dept Info Systems Tech I/II | 1 |
| Correctional Health Services | Mental Health Specialist | 1 |
| Employment & Economic Development | Accounting Technician I | 2 |
| Employment & Economic Development | Department Applications Analyst II | 3 |
| Employment & Economic Development | Dept Info Systems Specialist I/II | 1 |
| Employment & Economic Development | EEDD Analyst I | 1 |
| Employment & Economic Development | EEDD Client Services Specialist I/II | 12 |
| Employment & Economic Development | EEDD Employment Svcs Specialist I/II | 3 |
| Employment & Economic Development | EEDD Employment Trng Specialist I/II | 16 |
| Employment & Economic Development | Office Assistant | 10 |
| Information Systems Division | Info Systems Oper Shift Supervisor | 1 |
| Information Systems Division | Info Systems Technician I/II | 1 |
| Mental Health Services | Accountant Auditor I/II | 1 |
| Mental Health Services | Mental Health Clinician I/II | 1 |
| Mental Health Services | Senior Administrative Supervisor | 1 |
| Mental Health Services | Stock Clerk II | 1 |
| Mental Health Services | Department Applications Analyst | 1 |
| Office of Substance Abuse | Healthcare Program Assistant | 1 |
| Office of Substance Abuse | Office Assistant | 2 |
| Office of Substance Abuse | Perinatal Child Care Aide | 4 |
| Office of Substance Abuse | Perinatal Child Care Worker | 1 |
| Office of Substance Abuse | Substance Abuse Counselor I/II | 10 |
| Office of Substance Abuse | Office Manager | 1 |
| Office of Substance Abuse | Physician Assistant II | 1 |
| Office of Substance Abuse | Subs Abuse Counseling Prog Chief | 1 |
| Probation | Probation Officer III | 1 |
| San Joaquin General Hospital | Lead Housekeeper | 1 |

*CAC's
Office*

**County of San Joaquin
Fiscal Year 2004-05
Potential Layoffs Included in the Proposed Budget**

| Proposed Deletion of Filled Positions | | | | Furlough In Lieu of Layoffs (Assumes Department-wide Participation & Prorated Benefits) | | | |
|------------------------------------------|-----------|----------------------------------|----------|-----------------------------------------------------------------------------------------------|-------------|---------------------------|--|
| Department | # of Pos | Classification | Rep Unit | Annual Position Cost | \$9,121,533 | Total Deplial S&B | |
| Office Of Substance Abuse | 1 | Physician Assistant II | E | \$98,681 | \$35,083 | S&B Savings/Day | |
| | 2 | Substance Abuse Director II | C | 163,134 | 32.90 | # of Furlough Days Needed | |
| | 1 | Healthcare Program Assistant | F | 59,701 | 0.6 | # of Furlough Days/Week | |
| | 1 | Subs Abuse Counseling Prog Chief | R | 57,436 | | | |
| | 10 | Substance Abuse Counselor I/II | F | 461,290 | | | |
| | 1 | Office Manager | F | 51,295 | | | |
| | 2 | Office Assistant | G | 84,774 | | | |
| | 1 | Perinatal Child Care Worker | G | 37,267 | | | |
| | 4 | Perinatal Child Care Aide | F | 140,600 | | | |
| Total - Office of Substance Abuse | 23 | | | \$1,154,178 | | | |

Exhibit B



**SAN JOAQUIN COUNTY
LABOR RELATIONS DIVISION**
24 S. Hunter Street, Room 101
Stockton, California 95202
Telephone (209) 468-9669
Fax (209) 468-9672

July 21, 2004

Michel Blau, Field Representative
SEIU Local 790
37 Hunter Square Plaza
Stockton, CA 95202

Re: Information Request Dated July 14th Regarding Program Chief Layoff

Dear Ms. Blau:

This correspondence is in response to your inquiry of July 14th regarding the Program Chief Layoff. The County response is as follows to the points in your inquiry:

1. Due to current staffing levels and vacation schedules within the HR Division, this information will be made available to you no later than August 4th
2. This information is being collected from the Office of Substance Abuse and will be made available as soon as it is received in LR.
3. Please refer to response to item 2.

Concerning the information request regarding employees who transferred out of or into OSA as a result of the layoffs the following information was provided by HR:

| Class | To Dept: | Class |
|-------------------------------------|----------|-----------------------------|
| SAC | H.S.A. | Sr.OA |
| SAC | P.W. | Garage Attendant |
| Director II | M.H.S. | Dep Pub Guardian |
| Perinatal Child Care Aide (3) | SJGH | Hospital Attendant |
| OA's (3) | SJGH | Office Assistant |
| | | |
| Dept Applications Analyst | OSA ** | Dept Info System Spec II |

** Laid off employee transferred into OSA from MHS as a result of the layoff mitigation policy.

Information Request Response
 OSA Layoff
 July 21, 2004
 Page 2

In regard to your statement that only one program chief position should have been impacted by the layoff the following chart may help explain the number of positions impacted:

Initial Impact:

| Class | Total Positions | Vacant | Filled |
|---------------|-----------------|---------------------|-----------|
| Director II | 2 | 0 | 2 |
| Program Chief | 3 | 2 | 1 |
| Total: | 5 positions | 2 vacancies deleted | 3 layoffs |

Adjusted Impact due to a Director II voluntarily demoting to a Program Chief:

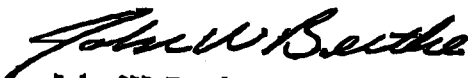
| Class | Total Positions | Vacant | Filled |
|---------------|-----------------|---------------------|-----------|
| Director II | 2 | 1* | 1 |
| Program Chief | 3 | 1 | 2 |
| Total: | 5 positions | 2 vacancies deleted | 3 layoffs |

Please note that the demotion of a Director II to the class of Program Chief resulted in a vacancy being created at the Director II level. Rather than two filled positions being deleted (which would have resulted in 2 layoffs) one filled position was deleted and one vacant position was deleted. The net effect remains that two Director II positions were deleted.

The individual who demoted to a Program Chief demoted into one of the vacant Program Chief positions. Initially 2 vacant Program Chiefs and one filled Program Chief position were to be deleted. This was a total of three impacted Program Chief positions. Once the Director II voluntarily demoted to a vacant Program Chief, there was no change in the total number of Chief positions to be deleted, but there was a change in the number of vacant and filled positions to be deleted. The chart above clearly shows how this occurred.

I may be reached at 209-468-9671 with questions or concerns.

Sincerely



John W. Bertke
 Senior Employee Relations Representative

c: Donald W. Turko, Director of Human Resources
 File

Exhibit C

LOCAL 790**SEIU**

Leading the Way

JOSIE MOONEY
Executive Director

MARY ANN TURLEY
Deputy Executive Director

**SERVICE EMPLOYEES
INTERNATIONAL UNION
AFL-CIO, CLC**

Headquarters
100 Oak Street
Oakland, California 94607
(510) 465.0120
Fax: (510) 451.6928

1390 Market Street
Suite 1118
San Francisco, CA 94102
(415) 575.1740
Fax: (415) 431.6241

1111 Howe Avenue
Suite 505
Sacramento, CA 95825
(916) 568.2000
Fax: (916) 568.0710

37 Hunter Square Plaza
Stockton, CA 95202
(209) 463.3283
Fax: (209) 946.1382



John Bertke, LR
24 S. Hunter St, room101
Stockton, CA 95202

July 26, 2004

RE: STEP THREE COMPLAINT PROGRAM CHIEF LAYOFF

Dear Mr. Bertke:

SEIU is filing a Step Three Complaint for violation of Section 14 Layoffs contained in the Para-Professional Memorandum of Understanding. Section 14.1.1.1 states "Fifteen calendar days prior to issuing any layoff notices, the County shall notify the union in writing of the proposed layoffs." The Union was not notified in writing until July 21, 2004, of the deletion of three Program Chief positions two of which were filled. I am sending this notification to you because you have been the Chief Spokesperson at the table for San Joaquin County.

In the Attachment A document dated May 28, 2004, there is one Substance Abuse Counseling Program Chief position listed as being eliminated. In the document provided June 24, 2004, titled, "County of San Joaquin Fiscal Year 2004-2005 Potential Layoffs Included in the Proposed Budget" there is one Substance Abuse Counseling Program Chief listed. In the meet and confer sessions held June 18, 2004, and June 24, 2004, there were no changes to these documents given to SEIU. There have been a number of conversations about the number of impacted employees changing due to bumping, but at no time was there a change to the aforementioned documents or any other indication given to SEIU that the number of Program Chief positions eliminated had changed from the 1 originally noted.

The Union requests the Program Chiefs be made whole, including back pay and benefits equal to their pay as a Chief. The Union also requests to meet and confer over the layoff.

In addition to the information previously requested, the Union needs the following information in order to represent our members in this matter. Please provide all information no later than August 4, 2004.

1. A copy of each original layoff notice given to all employees within all bargaining units in the Office of Substance Abuse.

OFFICERS

| | | | | | | | |
|------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------------|-----------------------------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------------------------|
| TERRY REX SPRAY III President | STEVE BRISTOW Executive Vice President | VICKI REED Treasurer | HENRIETTA LEE Recording Secretary | MARIA ELENA GURLEN Regional Vice President San Francisco | SANDRA LEWIS Regional Vice President East Bay | LEEA RODRIGUEZ Regional Vice President Sacramento | MARCUS WILLIAMS Regional Vice President San Joaquin |
| PATRICK WEDA Chairperson, Local Government Industry | ED KINCHLEY Chairperson, Health Care Industry | MYNETTE THEARD Chairperson, Education Industry | NORMAN Y. TEN Chairperson, Private Sector / Non-Profit Industry | KAREN BISHOP Chairperson, Human & Civil Rights Committee | MARIA MA Chairperson, Media / Communications Committee | EVAN MOGAN, III Chairperson, Policy & Appeals Committee | MARY SANDERS Chairperson, Memo Organizing Commit |
| LINDA JANG Regional Trustee | MARY JANE LOGAN Regional Trustee East Bay | JOHN MCPHEE Regional Trustee Sacramento | STEVE MEYER Regional Trustee Sacramento | E. DEAN SMITH Regional Trustee San Joaquin | MARY STERLING Regional Trustee San Joaquin | DAVID M. TURNER Regional Trustee San Francisco | TERRY WONG Regional Trustee East Bay |

2. Any and all documents given to the Budget Analyst in preparation for the Budget Hearings. Since the final budget has been adopted, these documents should be a matter of public record.
3. The total number of Director II positions prior to the layoff, the programs they represent, which positions were filled prior to the layoffs, and which positions are currently filled.
4. Which Director demoted voluntarily, the date of that demotion, the Seniority hours of the Director, the program from which he or she demoted, and the program into which he or she demoted. Please also include the Payroll Action Documents reflecting this change in title.
5. Who made the decision to eliminate three Program Chief positions, the date of the decision, and the relevant data by which the decision was made.

I am available at 463-3283 x 120 to set up a meet and confer and answer any questions you might have.

Sincerely,



Michelle Blau
Field Rep/Organizer

CC: Stephanie Batey, SEIU
Manuel Lopez, CAO
Don Turko, HR

Exhibit D



**SAN JOAQUIN COUNTY
LABOR RELATIONS DIVISION**
24 S. Hunter Street, Room 101
Stockton, California 95202
Telephone (209) 468-9669
Fax (209) 468-9672

August 9, 2004

Michelle Blau, Field Representative
SEIU Local 790
37 Hunter Square Plaza
Stockton CA 95202

RE: Step 3 Complaint Program Chief Layoff

Dear Ms. Blau:

The Labor Relations Division is in receipt of your Step 3 Complaint dated July 26, 2004 and received via fax on July 26, 2004. The complaint alleges a violation of Section 14 Layoffs, in the "Para-Professional Memorandum of Understanding"(MOU). It must be noted that there is no MOU designated as "Para-Professional," however, there is the Professional and the Para-Professional & Technical MOUs. Further, the classification of Substance Abuse Counseling Program Chief is not covered under either the Professional MOU or the Para-Professional & Technical MOU. The classification of Substance Abuse Counseling Program Chief, according to County records, is covered under the Supervisors MOU.

After conducting the necessary research into the complaint, and based on the information provided by SEIU in filing the complaint, the Labor Relations Division can not conclude a violation exists and therefore the complaint is denied.

I may be reached at (209) 468-9671 with questions or concerns.

Sincerely,

John W. Bertke

c: Manuel Lopez
Bruce Hopperstad, Director, Mental Health Services/Office of Substance Abuse
File

| | | | | | |
|-------------------|---------|---------|---------|------------|---|
| Post-it® Fax Note | 7671 | Date | 8/10/04 | # of pages | 1 |
| To | M. BLAU | From | BERTKE | | |
| Co./Dept. | SEIU | Ca | SKLR | | |
| Phone # | | Phone # | | | |
| | 52 | Fax # | | | |

14. LAYOFFS

14.1. Notice

Any permanent County employee who is a member of the County's Merit System and who is to be laid off or dismissed for other than disciplinary reasons shall be given fifteen (15) calendar days notice. This provision does not apply to probationary, provisional, or temporary employees. Nothing contained herein shall be deemed to require the County to pay an employee except for services rendered.

14.1.1. Meet and Confer

Fifteen calendar days prior to issuing any layoff notices, the County shall notify the union in writing of the proposed layoffs. Such notice will identify the proposed layoffs by department and by classification. Upon the request of the union in writing, the County will meet and confer with the union regarding the effects of the proposed layoffs and will consider any proposals advanced by the union regarding the effects of the proposed layoffs.

14.1.2. Mitigation

In order to mitigate the effect of lay-offs the County will provide employees identified for layoff with the opportunity to participate in an orientation program. The County will make all reasonable efforts to place employees who have been placed on any resulting layoff list. The County shall also provide a monthly mailing of the County Employment Bulletin and any other information deemed relevant by the Human Resources Division to all employees who remain on the layoff list.

14.1.3. Benefits

Employees who are provided a notice of layoff pursuant to section 14.1 of this Agreement shall have their eligibility for employee benefits extended for one pay period beyond the date coverage would have terminated due to the notice of layoff. In such situation the County will make payment for benefits as provided in section 2.3.1 of this Agreement.

14.2 Short Term Staff Reduction – SJGH

The need for short-term reductions in temporary or regular staff within San Joaquin General Hospital will be determined by the Director of Health Care Services and/or the Associate Director and will be based on patient census/staffing considerations within each division. Within the Nursing Division, such determination will be made in conjunction with discussions with Nursing Administration, including, as appropriate, the Director of Nursing, Associate Director of Nursing, Assistant Directors of Nursing, and Nursing Department Managers responsible for shift management (e.g., p.m. and night shift Nursing Department Managers).

Exhibit E

RECEIVED
JUL 29 2004
BY: _____



SAN JOAQUIN COUNTY
LABOR RELATIONS DIVISION
24 S. Hunter Street, Room 101
Stockton, California 95202
Telephone (209) 468-9669
Fax (209) 468-9672

July 28, 2004

Michelle Blau, Field Representative
SEIU Local 790
37 Hunter Square Plaza
Stockton CA 95202

RE: Information Request Program Chief Layoff

Dear Ms. Blau:

After a review of your information request on the Program Chief layoff dated July 14, 2004, the County is providing relevant responses to items #2 and #3. As per your request, please submit available dates, times, and the names of employees you wish released to meet and confer on the layoff.

I may be reached at (209) 468-9671.

Sincerely,

John W. Berke
Senior Employee Relations Representative

Attachment

c: Donald W. Turko, Director of Human Resources
File

OSA Employee Transfers From June 1, 2004 to July 15, 2004

| 1 | A FROM | B TO | C CLASSIFICATION | D STATUS | E SHIFT WORKED | | F SHIFT TRANSFERRED TO | | G REASONS |
|----|----------------|----------------|----------------------|-------------|------------------------------|------------------------------|---------------------------|--|----------------------------------|
| | | | | | | | | | |
| 2 | Hermanas | Recovery House | S.A. Counselor II | PM | Graveyard | Graveyard | | | Program Closed |
| 3 | Hermanas | RDP | S.A. Worker | PM | 24 hr program-various shifts | 24 hr program-various shifts | | | Program Closed |
| 4 | Hermanas | Family Ties | S.A. Counselor I | PM | 24 hr program-various shifts | 24 hr program-various shifts | | | Program Closed |
| 5 | New Choices | Aurora Street | S.A. Chief | PM | Day shift | Day Shift | | | Program Closed |
| 6 | Hermanas | Recovery House | S.A. Worker | PM | 24 hr program-various shifts | 24 hr program-various shifts | | | Need for a Chief at this program |
| 7 | Hermanas | SAFE | S.A. Worker | PM | Day shift | Day Shift | | | Program Closed |
| 8 | Hermanas | SAFE | S.A. Counselor I | PM | 24 hr program-various shifts | Day Shift | | | Program Closed |
| 9 | Central Intake | ATS | S.A. Counselor II | PM | Day shift | Day Shift | | | Program Closed |
| 10 | Hermanas | CDCC | Sr. Office Assistant | PM | Day shift | Day Shift | | | Need for a SAC II level |
| 11 | ATS | Prevention | S.A. Chief I | PM | Day shift | Day Shift | | | Program Closed |
| | | | | | | | | | Need for a Chief at this program |

Exhibit F



**SAN JOAQUIN COUNTY
LABOR RELATIONS DIVISION**

24 S. Hunter Street, Room 101
Stockton, California 95202
Telephone (209) 468-9669
Fax (209) 468-9672

August 6, 2004

Michel Blau, Field Representative
SEIU Local 790
37 Hunter Square Plaza
Stockton, CA 95202

Re: Information Request Dated July 14th Regarding Program Chief Layoff

Dear Ms. Blau:

Attached you will find the OSA seniority list as requested as item #1 of your request for information regarding the Substance Abuse Counselor Program Chief layoff dated July 14, 2004. The response to items #2 and #3 of your request was submitted to you on July 28, 2004. The information attached is the balance of the information request mentioned above.

I may be reached at 209-468-9671 with questions or concerns.

Sincerely

John W. Bertke
Senior Employee Relations Representative

c: Donald W. Turko, Director of Human Resources
File

| | | | | | |
|-------------------|---------|---------|--------|------------|---|
| Post-It® Fax Note | 7571 | Date | 8/6/04 | # of pages | 9 |
| To | M. BLAU | From | BERTKE | | |
| Co./Dept. | SEIU | Co. | SJC LR | | |
| Phone # | | Phone # | | | |
| Fax # | | Fax # | | | |



**OFFICE OF THE
COUNTY COUNSEL**

COUNTY OF SAN JOAQUIN
COURTHOUSE, ROOM 711
222 EAST WEBER AVENUE
STOCKTON, CA 95202-2777
TELEPHONE (209) 468-2980
FAX (209) 468-0315

DEPUTY COUNTY COUNSEL:

GILBERTO GUTIERREZ
LAWRENCE P. MEYERS
SHERYLE L. SPARKS
DANIEL C. CEDERBORG
MATTHEW P. DACEY
KIMBERLY D. JOHNSON

TERRENCE R. DERMODY
COUNTY COUNSEL

DAVID WOOTEN
ASSISTANT COUNTY COUNSEL

ROBYN TRUITT DRIVON
ASSISTANT COUNTY COUNSEL

**CHILD PROTECTIVE
SERVICES COUNSEL:**
(209) 468-1330

JANINE MOLGAARD
ROBERTA C. LAGOMARSINI
DANIELLE DUNHAM-RAMIREZ

August 25, 2004

BERNARD MCMONIGLE
REGIONAL ATTORNEY
PUBLIC EMPLOYMENT RELATIONS BOARD
SACRAMENTO REGIONAL OFFICE
1031 18TH STREET
SACRAMENTO, CA 95814-4174

AUG 2004
11:11
S.S.T.O.

Re: SEIU Local 790 v. County Of San Joaquin
Unfair Practice Charge No. SA-CE-259-M

Dear Mr. McMonigle:

Please accept this letter as the position statement by the County of San Joaquin regarding the above-referenced charge.

This case revolves around the layoff of County employees and is closely related to another PERB charge, SA-CE-245-M. Pursuant to section 14¹ of the MOU between the County and the bargaining units represented by Local 790, the County notified Local 790 on May 28, 2004, that it would be recommending that employees in specific County civil service classifications be served layoff notices on or after June 15, 2004. (See Attachment 1). The Office of Substance Abuse (hereinafter "OSA") was one of the departments scheduled to be impacted by the proposed layoff. In response to the notification of proposed layoffs, Local 790 requested to learn, among other things, the identity of those County employees proposed to be laid off. The County's denial of this request is the subject of Unfair Labor Practice Charge No. SA-CE-245-M, currently before PERB.

In this complaint, Local 790 contends that it sought information pertaining to the impact of layoffs at the OSA and the County failed to provide necessary and relevant information when requested to do so in violation of section 3505 of the Meyers-Milias-Brown Act (hereinafter MMBA). While the complaint contains a number of requests and the County's responses, it


¹Specifically, section 14.1.1 provides that the County shall notify the union in writing of the proposed layoffs fifteen days prior to issuing layoff notices. The notification to the union will identify the layoffs by department and by classification.

appears that Local 790's complaint is solely based on the County's failure to identify OSA employees by name². The County of San Joaquin denies that it failed to provide necessary and relevant information when it failed to identify OSA employees by name and requests that the charge be dismissed for failure to state a prima facie case. [PERB Regulation 32620(b)(5)].

In its July 14, 2004 letter, Local 790 made an information request regarding the Program Chief Layoff. In that request, Local 790 requested a complete seniority list for the OSA. (See **Attachment 2**). In response, the County provided Local 790 with the seniority list. (See **Attachment 3**). As is our customary practice, the seniority list did not identify the employee by name or the employee's address and Local 790 did not request that the seniority list contain such information. Instead, the seniority list listed the classification/job title of each individual in OSA and listed that individual's seniority hours. This was the same format used when the seniority list was displayed in County departments in the months before Local 790's request. Moreover, each County employee received information concerning his/her seniority hours in the months preceding Local 790's request for the seniority list and was directed to inform the appropriate County department regarding any discrepancies.

In the second and third request contained in the July 14, 2004 letter, Local 790 sought to learn the names of all OSA employees regardless of whether these individuals were members of Local 790's bargaining units³. Local 790 simply cannot demonstrate that the request for names, including the names of non-bargaining members, was relevant to its duty to represent its members. Even assuming arguendo that Local 790 was entitled to learn the names of some employees, this entitlement is limited to members of its bargaining units only. Lastly, SEIU currently has the ability to identify by name all individuals employed in OSA. On a bi-weekly basis, SEIU receives a Bi-Weekly Member Report. This report consists of a list of all current employees including their names, date of hire, department, class title, bargaining unit, salary range, bi-weekly salary, and supplemental pay. This Bi-Weekly Report coupled with the information provided to Local 790 provides ample information from which SEIU can learn the names of OSA employees. The fact that the information was not in a specific format is irrelevant as it has long been recognized that the union is not entitled to demand receipt of information in a particular form. [Emeryville Research Center v. NLRB (9th Cir., 1971) 441 F.2d 880].

For the reasons stated above, San Joaquin County respectfully requests that the charge be dismissed on the grounds that Local 790 fails to state a prima facie case of violation of section 3505 of the MMBA.


Kimberly D. Johnson
Deputy County Counsel

Attorney for County of San Joaquin

I declare under penalty of perjury that I have reviewed the factual statements contained in

²This response will address the County's failure to identify employees by name only. County requests that Local 790 amend its complaint and County be allowed to submit an amended reply in the event that Local 790's complaint is not solely limited to that issue.

³In response to this request, County provided a position listing which identified the position, the department, and the departmental phone number.

the foregoing response, and they are true and complete to the best of my knowledge and belief.

Executed at Stockton, California, August 25, 2004


John W. Bertke
Senior Employee Relations Representative

Encls.

cc: Matthew Gauger

2
3 **PROOF OF SERVICE BY MAIL**

4 STATE OF CALIFORNIA)
5) ss.
6 COUNTY OF SAN JOAQUIN)

7 **I, THE UNDERSIGNED, SAY:**

8 I am, and was at all times herein mentioned, a citizen of the
9 United States and employed in the County of San Joaquin, State of
10 California, over the age of eighteen (18) years, and not a party to
11 the within action; that my business address is Courthouse, Room
12 711, 222 East Weber Avenue, Stockton, California, 95202. I am
13 readily familiar with the office's practice of collecting and
14 processing correspondence for mailing with the U.S. Postal Service
15 and, after collection, it is deposited with the U.S. Postal Service
16 on the same day in the ordinary course of business.

17 On August 25, 2004, at the Office of the County Counsel,
18 County of San Joaquin, I enclosed a true copy of the attached
19 **Position Statement Letter, dated August 25, 2004** in a separate
20 envelope for each of the person(s) named below, addressed as set
21 forth immediately below the respective name(s), as follows:

22 **NAME(S) /ADDRESS(S)**

23 BERNARD MCMONIGLE
24 REGIONAL ATTORNEY
25 PUBLIC EMPLOYMENT RELATIONS BOARD
26 SACRAMENTO REGIONAL OFFICE
27 1031 EIGHTEENTH ST
28 SACRAMENTO CA 95814-4174

MATTHEW J GAUGER
ATTORNEY FOR SEIU LOCAL 790
428 J ST STE 520
SACRAMENTO CA 95814

Each said envelope was sealed and placed for collection and mailing on the aforesaid date following ordinary business practices.

I DECLARE UNDER PENALTY OF PERJURY that the foregoing is true and correct.

EXECUTED at Stockton, California, on August 25, 2004.

Kristina Rubianes

ATTACHMENT 1

Attachment A**May 28, 2004**

| <u>Department</u> | <u>Classification</u> | <u>Number of Positions</u> |
|-----------------------------------|--------------------------------------|-----------------------------------|
| Alcohol/Drug Alternative Program | Office Assistant | 1 |
| Child Support Services | Administrative Assistant II | 2 |
| Child Support Services | Child Support Compliance Analyst | 3 |
| Child Support Services | Child Support Supervisor | 2 |
| Child Support Services | Dept Info Systems Specialist I/II | 2 |
| Child Support Services | Dept Info Systems Tech I/II | 1 |
| Correctional Health Services | Mental Health Specialist | 1 |
| Employment & Economic Development | Accounting Technician I | 2 |
| Employment & Economic Development | Department Applications Analyst II | 3 |
| Employment & Economic Development | Dept Info Systems Specialist I/II | 1 |
| Employment & Economic Development | EEDD Analyst I | 1 |
| Employment & Economic Development | EEDD Client Services Specialist I/II | 12 |
| Employment & Economic Development | EEDD Employment Svcs Specialist I/II | 3 |
| Employment & Economic Development | EEDD Employment Trng Specialist I/II | 16 |
| Employment & Economic Development | Office Assistant | 10 |
| Information Systems Division | Info Systems Oper Shift Supervisor | 1 |
| Information Systems Division | Info Systems Technician I/II | 1 |
| Mental Health Services | Accountant Auditor I/II | 1 |
| Mental Health Services | Mental Health Clinician I/II | 1 |
| Mental Health Services | Senior Administrative Supervisor | 1 |
| Mental Health Services | Stock Clerk II | 1 |
| Mental Health Services | Department Applications Analyst | 1 |
| Office of Substance Abuse | Healthcare Program Assistant | 1 |
| Office of Substance Abuse | Office Assistant | 2 |
| Office of Substance Abuse | Perinatal Child Care Aide | 4 |
| Office of Substance Abuse | Perinatal Child Care Worker | 1 |
| Office of Substance Abuse | Substance Abuse Counselor I/II | 10 |
| Office of Substance Abuse | Office Manager | 1 |
| Office of Substance Abuse | Physician Assistant II | 1 |
| Office of Substance Abuse | Subs Abuse Counseling Prog Chief | 1 |
| Probation | Probation Officer III | 1 |
| San Joaquin General Hospital | Lead Housekeeper | 1 |

ATTACHMENT 2

COPY



John Bertke, LR
24 S. Hunter St, room 101
Stockton, CA 95202

July 14, 2004

RE: INFORMATION REQUEST PROGRAM CHIEF LAYOFF

Dear Mr. Bertke:

Per your phone request today, I am sending another request for information pertaining to the impact of layoffs at the Office of Substance Abuse. Item number one was already stated and the second request has been amended to include all employees transferred and the reason. The third request is a modification of information requested June 4, 2004. The Union is concerned there are discrepancies in the number of people impacted by the layoff and the number of positions being eliminated. The Union also needs to determine the impact on the material working conditions of our members based on new staffing assignments. For the purposes of properly representing our members in this matter, please provide the following information:

1. The complete Seniority list for the Office of Substance Abuse reflecting the amendments made based on the June 18, 2004 agreement on contract time. In the event the amended Seniority list is not yet completed, please provide the seniority list for the Substance Abuse Counseling Program Chief position immediately and the rest of the list as soon as possible.
2. The complete list of all OSA employees who have been transferred in the past forty-five days. Please include the employee's name, classification, where he/she transferred from, which program and shift he/she transferred into, the reason for the transfer, and whether or not the transfer was voluntary.
3. A list of all OSA programs, the name and title of each employee under the program, and the phone number for that employee.

In the Attachment A document dated May 28, 2004, there is one Substance Abuse Counseling Program Chief position listed as being eliminated. In the document provided June 24, 2004, titled, "County of San Joaquin Fiscal Year 2004-2005 Potential Layoffs Included in the Proposed Budget" there is

OFFICERS

| | | | | | | | |
|-------------------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------------------------------|--------------------------------------------------------------------|
| TERRY REX SPRAY RN President | STEVE BRISTOW Executive Vice President | VICIO REED Treasurer | HENRIETTA LEE Recording Secretary | MARIA ELENA GUILLEN Regional Vice President San Francisco | SANDRA LEWIS Regional Vice President East Bay | LEEA RODRIGUEZ Regional Vice President Sacramento | MARCUS WILLIAMS Regional Vice President San Joaquin |
| PATRICK IKEDA Chairperson, Local Government Industry | ED KINCHLEY Chairperson, Health Care Industry | MYNETTE THEARD Chairperson, Education Industry | NORMAN Y. TEN Chairperson, Private Sector / Non-Profit Industry | KAREN BISHOP Chairperson, Human & Civil Rights Committee | MARIA MA Chairperson, Media / Communications Committee | EVAN MCGAN, RN Chairperson, Policy & Appeals Committee | MARY SANDERS Chairperson, Member Organizing Committee |
| LINDA JANG Regional Trustee San Francisco | MARY JANE LOGAN Regional Trustee East Bay | JOHN MCPHER Regional Trustee Sacramento | STEVE MEYER Regional Trustee Sacramento | E. DEAN SMITH Regional Trustee San Joaquin | MARY STERLING Regional Trustee San Joaquin | DAVID M. TURNER Regional Trustee San Francisco | TERRY WONG Regional Trustee East Bay |



one Substance Abuse Counseling Program Chief listed. On the same document, there are 2 Substance Abuse Director II positions listed as deleted. I have attached these documents for your convenience.

It is my understanding based on our conversation today that there is actually only one filled Director II position being impacted. The other position was vacant. Also, the person filling the Director II position has chosen to leave OSA and did not bump anyone. Please let me know if this is not the case.

Given this information, the Union believes only one chief position should have been impacted by a layoff. In the email dated July 13, 2004, you state "Of the two chiefs impacted one stayed at Aurora Street Clinic and the other moved to ATS both as SAC II." It is our understanding one of these Program Chiefs should not have been impacted in the layoff. This discrepancy would likely have been avoided had the county collaborated better with the Union regarding the layoffs. The lack of willingness to provide us the information necessary to represent our members has caused unnecessary confusion.

Please research this issue and respond in writing to the specific requested items. In the event you need clarification please contact me at 463-3283. If you are not going to provide certain information, please notify me in writing of your decision not to provide the information and your reason for withholding the information.

Thank you,



Michelle Blau
Field Rep./Organizer

CC: SEIU meet and confer team

Stephanie Batey
Manual Lopez, CAO

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD



SEIU LOCAL 790,

Charging Party,

v.

COUNTY OF SAN JOAQUIN,

Respondent.

Case No. SA-CE-259-M

COMPLAINT

It having been charged by Charging Party that Respondent engaged in unfair practices in violation of California Government Code section 3500 et seq., the General Counsel of the Public Employment Relations Board (PERB) on behalf of PERB, pursuant to California Government Code sections 3509(b) and 3541.3(i) and California Code of Regulations, title 8, section 32640, issues this COMPLAINT and alleges:

1. Charging Party is an exclusive representative within the meaning of PERB Regulation 32016(b) of an appropriate unit of employees.
2. Respondent is a public agency within the meaning of Government Code section 3501(c) and PERB Regulation 32016(a).
3. On or about July 14, 2004, Charging Party requested the following information that is relevant and necessary to Charging Party's discharge of its duty to represent employees: a complete seniority list for the Office of Substance Abuse, a list of employees transferred from that office in the prior 45 days, and a list of employees and their phone numbers by program. Such lists were to include the names of employees.
4. Since July 14, 2003, Respondent has refused to provide the requested information described in paragraph 3.

5. By the conduct described in paragraph 4, Respondent failed and refused to meet and confer in good faith with Charging Party in violation of Government Code section 3505 and committed an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(c).

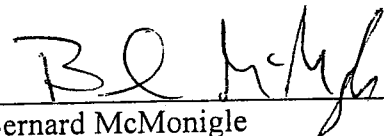
6. This conduct also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government Code section 3506 and is an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(a).

7. This conduct also interfered with Charging Party's right to represent bargaining unit employees in violation of Government Code section 3503 and is an unfair practice under Government Code section 3509(b) and PERB Regulation 32603(b).

Any amendment to the complaint shall be processed pursuant to California Code of Regulations, title 8, sections 32647 and 32648.

DATED: October 28, 2004

ROBERT THOMPSON
General Counsel

By 
Bernard McMonigle
Regional Attorney

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SEIU LOCAL 790,

Charging Party,

v.

COUNTY OF SAN JOAQUIN,

Respondent.

Case No. SA-CE-245-M

Case No. SA-CE-259-M

SETTLEMENT AGREEMENT

In the interest of promoting harmonious labor relations between the parties and to avoid the uncertainty, inconvenience, and expense of litigation, the SEIU Local 790 and the County of San Joaquin, in settlement of the above-captioned unfair practice charge before the Public Employment Relations Board, agree as follows:

1. A dispute has arisen between the parties concerning necessary and relevant information.
2. SEIU Local 790 hereby withdraws Unfair Practice Charge No. SA-CE-245-M and SA-CE-259-M. The Employer agrees to provide the information described in paragraph three (3) of the complaints in both PERB cases.
3. This Settlement Agreement does not constitute an admission of wrongdoing, contract or statutory violation, or liability on the part of any party to this agreement.
4. This Settlement Agreement represents a full and complete resolution of the claims and disputes between the parties based upon the above-referenced matter.
5. The undersigned parties represent that they have read and understand the terms of this settlement and that they are authorized to execute this Settlement Agreement on behalf of their principals.

For Charging Party:

[Signature]
[NAME]
[Title] *Gen (Gen'l Industry Chair)*

March 2, 2005
Date

For Respondent:

[Signature]
[NAME]
[Title] *ATTORNEY FOR RESPONDENT*

3/2/05
Date

PANEL TWO

PANEL TWO:

Settlement Conferences

11:00 a.m. - 12:30 p.m.

Moderator: Les Chisholm, Sacramento Regional Director, PERB

Panelist: Robert Thompson, Former General Counsel, PERB
Marc Hurwitz, Regional Attorney, PERB, Los Angeles
Keith Pace, Field Director, California School Employees Association – Union
Charles Sakai, Partner, Renne, Sloan, Holtzman & Sakai – Management

Opening Remarks

Introductions

Presentation

Historically, in half of all cases where a complaint issues, the charge will be withdrawn at the settlement conference pursuant to a mutual agreement resolving the dispute. In 2005-2006, the rate of settlement at the informal conference was actually 61 percent. Resolution of charges without further litigation conserves resources for both the parties and PERB, and arguably results in better outcomes for the parties.

The panelists will offer PERB, Union and Management perspectives on how best to utilize the informal conference to settle a dispute. Topics to be covered include:

- Preparation (research/assessment of strength and weaknesses of your case/defining the issue or problem).
- Who to bring/planning for communication with principals who cannot attend/exploring options for settlement in advance.
- Use(s) of the caucus/separate meeting with neutral.
- Teleconference meetings: advantages and disadvantages.
- Consequences of not settling the case.

PANEL TWO: Settlement Conferences

Panel Members

Moderator: Les Chisholm, Sacramento Regional Director, PERB

Les Chisholm has served as Sacramento Regional Director for PERB since 1987. His duties include investigation of representation cases and unfair practice charges, and conduct of settlement conferences and representation hearings and elections. Mr. Chisholm also has responsibilities in the areas of legislation, rulemaking and computer projects for the Board. He received an M.A. in political science from the University of Iowa.

Robert Thompson, Former General Counsel, PERB

Robert Thompson began working for PERB in 1980, serving initially as a Legal Adviser to then Chair Harry Gluck and Board Member John Jaeger. In 1981, he became a Regional Attorney and was promoted to Deputy General Counsel in 1988. Beginning in October 1992, Mr. Thompson headed the General Counsel's office in the absence of a General Counsel. In December 2001, he was formally appointed to the position of General Counsel. In August 2006, he retired from state service. He also served as a member and an advisor to the Executive Committee of the Labor and Employment Law Section of the State Bar of California from 2000 through July 2006.

Marc Hurwitz, Regional Attorney, PERB, Los Angeles

Marc Hurwitz joined PERB in 1989 as a Regional Attorney in Los Angeles investigating unfair practice charges, working on requests for injunctive relief, handling appeals of Board Decisions in the Courts of Appeal, handling Representation matters, and serving as a Mediator at Informal Settlement Conferences. Prior to his PERB employment, Mr. Hurwitz served as a Deputy Attorney General with the California Department from 1973-1979, was an in House Counsel for the Southern California Laborers' Trust Funds from 1979 to 1981 and worked for the US Army Corps of Engineers in Los Angeles from 1985 until 1989. Mr. Hurwitz received his Juris Doctor from Loyola University Law School in Los Angeles in 1972 and a Bachelor's Degree in Economics from UCLA in 1969.

See attached resumes for:

Keith Pace, Field Director, California School Employees Association

Charles Sakai, Partner, Renne, Sloan, Holtzman & Sakai

KEITH D. PACE

2532 Marshfield Rd • Vallejo, CA 94591 • 707.655.4564 • Fax 707.557.5446

Email - ddakota@aol.com

SUMMARY

Over twenty years of progressive experience in member representation and organizing as well as project planning and employee management, with a proven track record of demonstrating leadership, initiative, and exercising sound judgment in the implementation of union programs and policies. Team and results oriented leader who builds strong union and team culture and has consistently increased union activist involvement through strategic focus, education, team orientation and solid execution. Personal strengths in ability to establish strong and solid leadership presence, coupled with enthusiastic and passionate spirit, excellent presentation skills, relationship management, team building, and strategic and analytical skills.

EXPERIENCE

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION 2000 - Present

Field Director, North Bay Field Office
Concord, California

Direct, manage, supervise and coordinate field activities and operations including basic and advanced job steward program, site representative program, union leadership program, Know Your Rights program, political grass roots activities, political action recruitment, staff/member office teams and educational reform projects; coordinate assigned activities with educational entities such as the UC Berkeley Labor Center.

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION 1994 - 2000

Senior Labor Relations Representative
Los Angeles, California

Directed and coordinated the work of Labor Relations Representatives in carrying out assigned projects for CSEA. Assisted the Field Director by following up on the execution of assigned tasks. Provided "hands on" assistance in difficult situations including, but not limited to negotiations, arbitrations, and Public Employment Relations Board hearings. Prepared and created programs to carry out CSEA goals and objectives. Assisted the Governmental Relations Department in planning and organizing political strategies, in addition to coordinating and conducting political grassroots campaigns at the local level. Assisted in the training of new Labor Relations Representatives both locally and statewide. Assisted in the development and delivery of member and staff training, Legislative Training, Leadership Development Training, and Research and Negotiations Training. Developed, coordinated and delivered, in compliance with the CSEA Statewide Job Steward Certification Program, Job Steward training in the Field Office.

LOS ANGELES COMMUNITY COLLEGE DISTRICT 1997-2000

Trade Tech College Adjunct Faculty Member

Los Angeles, California

Taught Job Steward training in accordance with the rules, policies and procedures of the Los Angeles Community College District. Maintained all member records including enrollment information, homework assignments, and learning assessment scores. Served as liaison between members and college for purposes of transcript, fee, and credit transfer information. Served as substitute instructor during absence of other adjunct faculty.

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION 1991-1994

Member Education/Staff Development Representative

San Jose, California

Developed produced and implemented educational tests and training programs designed to increase the knowledge and skill of union activists and staff in all areas of union activity. Planned and conducted training programs, assisted staff, state officers and committees, and individual members with labor programs. Identified training and development needs through analysis of skill knowledge and performance requirements of union members in relation to organizational/operational goals and priorities. Wrote training modules and other publications for the continuing education of union members. Participated and trained at union workshops and training programs, as well as seminars and conferences conducted by other organizations.

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION 1987 - 1991

Labor Relations Representative

Los Angeles, California

San Jose, California

Planned and carried out field activities and services, assignments and CSEA goals and objectives. Provided guidance and leadership to union members and staff and planned, organized and controlled various campaigns and special projects for CSEA. Represented union members before employers, the Public Employment Relations Board and other public agencies.

EDUCATION

SAN FRANCISCO STATE UNIVERSITY

BA - Liberal Studies

UC BERKELEY LABOR CENTER

Union Leadership School

AMERICAN ARBITRATION INSTITUTE

Arbitration Skills and Techniques

ADMINISTRATIVE HEARING INSTITUTE

Administrative Hearing Skills and Techniques

SAN FRANCISCO CITY COLLEGE

General Education

SPECIAL TRAINING AND SKILLS

| | |
|-------------------------------------|-----------------------------------------|
| Case Investigation | Witness Interviewing & Case Preparation |
| Due Process Just Cause | Recognizing Employer Reactions |
| Sexual Harassment | Presentation Skills |
| Contracting Out & Outsourcing | Issues in Public Sector Employment |
| Past Practice | Fair Labor Standards Act |
| The Americans with Disabilities Act | Workers' Compensation |
| Grievance Arbitration | Issue & Social Organizing |
| Contract Interpretation | Workplace Violence |
| Strategies for Negotiations | Employment Discrimination |
| Strategic Choice & Union Management | Drug Testing |
| Interest Based Bargaining | Family Medical Leave Act |
| Health & Welfare | Unemployment |

PROFESSIONAL AFFILIATIONS

Board of Trustee, Central Valley Trust, 2003 – To current
President, Association Employees Union, 1992-1996
Trustee, Association Employees Union, 1991
Bargaining Team Member, Association Employees Union, 1990
Steward, Association Employees Union, 1988-1990
President, CSEA Chapter #242, 1984-1987
Bargaining Team Chairperson, CSEA Dixie Chapter #242, 1985-1987



Contact Information
Telephone: (415) 678-3808
Fax: (415) 678-3838
csakai@rshslaw.com

Charles Sakai – Managing Partner

Practice Areas: Labor and Employment

Experience

Mr. Sakai is the firm's managing partner. He practices in the areas of employment and labor law, representing primarily public sector and nonprofit employers. His practice focuses on traditional labor relations, including unit determinations and modifications, representation and decertification elections, collective bargaining, interest arbitrations, contract grievances and rights arbitration, and unfair labor practice charges.

Sakai handles complex negotiations and collective bargaining issues, including multi-party negotiations, interest arbitrations, and collective-bargaining-related litigation for a variety of clients throughout northern California.

Related Experience

He began his career at the California Department of Personnel Administration, which represents the State Employer in all aspects of labor relations affecting employees of the State of California. At DPA, Sakai maintained a general labor and employment litigation practice, handling State Personnel Board disciplinary hearings, California Public Employment Relations Board ("PERB") unfair practice charges, and grievance arbitrations throughout the state while providing negotiations support to the department's labor negotiators. Sakai also advised various state departments on labor relations and personnel matters and handled State and Federal Court litigation, including civil writs, Fair Labor Standards Act litigation and an amicus brief to the State supreme court.

In 1996, Sakai accepted a Governor's appointment as a Legal Advisor to a member of the PERB, the quasi-judicial administrative agency responsible for administering California's public-sector bargaining statutes. As a legal advisor, Sakai drafted legal memoranda and decisions for his member, and worked with other Board members and legal advisors to interpret and develop California's public sector labor relations laws and assisted the Board in deciding requests for Injunctive Relief. Sakai also assisted the General Counsel's office in investigating unfair practice charges and represented the agency in

appellate litigation. Sakai remains one of the youngest legal advisors in the board's thirty year history.

During his tenure with PERB, Mr. Sakai taught "Labor and Employment Law and Legislation" for the University Extension program at the University of California at Davis.

Education

Pomona College (B.A. 1991)
University of California, Davis Law School (J.D, 1994.)

Bar Admissions

California

Speaking Engagements and Publications

Currently serves on the Editorial Board of ***Bender's California Labor & Employment Bulletin.***

LUNCH PANEL

LUNCH PANEL:

A Retrospective of PERB

12:30-2:00 p.m.

Moderator: Carol Vendrillo, Editor, California Public Employee Relations Journal

Panelists: John Duncan, Chairman (2004 – Present)
Debbie Hesse, Former Chairperson (1984 – 1994)
John Jaeger, Former Board Member (1981 – 1986)
Barbara Moore, Former Board Member (1979 – 1981)
Jerilou Cossack, Former Board Member (1976 – 1979)

Opening Remarks

Introductions

Presentation

LUNCH PANEL: A Retrospective of PERB

Panel Members

Moderator: Carol Vendrillo, Editor, California Public Employee Relations Journal

Carol A. Vendrillo is the Director of the California Public Employee Relations Program at the Institute of Industrial Relations, University of California, at Berkeley. She serves as the editor of the bi-monthly journal, California Public Employee Relations, and also writes and edits CPER's series of "pocket guides" to the laws governing public sector employment in California.

In addition, Ms. Vendrillo is an arbitrator, mediator, and factfinder and has heard numerous cases involving public sector employers and employees. She currently is on the panel of arbitrators maintained by the California State Mediation and Conciliation Service, the Federal Mediation and Conciliation Service, the American Arbitration Association, and the Los Angeles City Employee Relations Board. She also is a designated arbitrator in several individual collective bargaining agreements.

Ms. Vendrillo serves as the annual revision editor for California Public Sector Labor Relations, a LexisNexis publication funded by the Labor and Employment Section of the State Bar of California.

She graduated from Hastings College of the Law in San Francisco in 1977 and received a B.S. degree from Ithaca College, in Ithaca, New York, in 1973.

Ms. Vendrillo has been a member of the State Bar of California since 1977, and a member of the Executive Committee of the Labor and Employment Section of the Bar since 1998. In 2001-2002, she served as the Chair of the Section's Executive Committee and regularly has served on the Program Committee for the Section's Annual Meeting and Public Sector Program.

John C. Duncan, Chairman (2004 – Present)

John C. Duncan was appointed to the Board and designated Chairman by Governor Arnold Schwarzenegger February 2004. Prior to his appointment, he was president of Duncan Consulting, Inc., and served as a member of the Governor-Elect's Transition Team staff. Mr. Duncan previously served in the cabinet of Governor Pete Wilson. He was the Director of the Department of Industrial Relations and principal advisor to Governor Wilson on labor and employment issues. Following that service he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to

the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in History and holds a masters degree in Public Administration from Harvard University's John F. Kennedy School of Government. His term expires on December 31, 2008.

Debbie Hesse, Former Chairperson (1984 – 1994)

Partner in Hesse consulting firm. Over 35 years of public service with the State of California. Served as Chairperson of quasi-judicial labor board-Public Employment Relations Board, Chief Deputy Director of Department of Personnel Administration, Deputy Director of the Office of Environmental Health Hazard Assessment, Deputy Director of the Governor's Office of Employee Relations, Deputy Cabinet Secretary, Assistant Executive Officer of the Board of Investigations and Collections and Assistant Bureau Chief for Bureau of Information and Analysis. Former Member of California Advisory Committee to U.S. Civil Rights Committee, California Afro-American Museum Board, Labor Relations Institute, University of California, Berkeley Advisory Board, Industrial Relations Association of Northern California, National Forum for Black Public Administrators, Sierra Adoptions, former Board Member and current Management Advisor.

John Jaeger, Former Board Member (1981 – 1986)

Barbara Moore, Former Board Member (1979 – 1981)

Jerilou Cossack, Former Board Member (1976 – 1979)

Jerilou Cossack has been a labor arbitrator, mediator and factfinder since 1979. After receiving both her undergraduate and graduate degrees from UCLA, she worked for the National Labor Relations Board in Los Angeles, California; she was lent to the State of California to help draft rules and regulations and hire and train personnel for the newly created Agricultural Labor Relations Board. She was one of the initial members of the California Public Employment Relations Board.

Jerilou's arbitration and mediation experience includes both the public and private sectors. She serves on a number of permanent panels. She has been a speaker in many neutral, union and management forums. She has taught collective

bargaining at California State University, Hayward, University of San Francisco, and Chabot Community College.

She was the Regional Chair of Region 15 of the National Academy of Arbitrators from 2003 through 2004. She was Chair of the Public Employment Dispute Resolution Committee and a member of the Audit Committee of the NAA and the president of the Sacramento Chapter of the Industrial Relations Research Association.

PANEL THREE

PANEL THREE:

If the Charge Goes to Hearing

2:00 - 3:30 p.m.

Moderator: Fred D'Orazio, Chief Administrative Law Judge, PERB

Panelist: Tom Allen, Administrative Law Judge, PERB
Christine Bologna, Administrative Law Judge, PERB
Bernard McMonigle, Administrative Law Judge, PERB
Arthur Krantz, Attorney, Leonard Carder – Union
Wendi Ross, Attorney, Department of Personnel Administration – Management

Opening Remarks

Introductions

Before the PERB Hearing

Answer
Discovery
Motions
Subpoenas
Prehearing Conferences
Ex Parte Communications

The PERB Hearing

The Hearing Process

Post-Hearing Matters

Briefing Schedule
Briefs
Ex Parte Communications
Proposed Decisions

PANEL THREE: If the Charge Goes to Hearing

Panel Members

Moderator: Fred D'Orazio, Chief Administrative Law Judge, PERB

Chief Administrative Law Judge Fred D'Orazio joined PERB as an Administrative Law Judge in 1978. He was promoted to Chief Administrative Law Judge in 2003. He served for ten years as annual editor of California Public Sector Labor Relations, a treatise sponsored by the Employment and Labor Law Section of the State Bar of California and published by Matthew Bender. He authored a Pocket Guide to the Ralph C. Dills Act, published by the California Public Employee Relations, Institute of Industrial Relations, University of California, Berkeley. He also taught public sector labor law at Golden Gate University School of Law and administrative law at University of San Francisco School of Law. He received his B.S. from George Washington University and his J.D. from American University, Washington College of Law. Prior to joining PERB, he was Assistant General Counsel for the National Treasury Employees Union.

Tom Allen, Administrative Law Judge, PERB

Tom Allen joined PERB as a Regional Attorney in 1988, and became an Administrative Law Judge in 1997. He had previously worked at the U.S. Department of Labor, the California Department of Fair Employment and Housing, and the UCLA School of Law. He is a graduate of Stanford University and the University of Chicago Law School.

Christine Bologna, Administrative Law Judge, PERB

Christine A. Bologna was appointed as an Administrative Law Judge (ALJ) II with PERB in April 1, 2006. She had served as an ALJ I with PERB, since September 2005. Ms. Bologna also worked as an ALJ II with the State Personnel Board (SPB) from March–September 2005, and served as Chief ALJ with SPB from June 1993–February 2005. She also worked as an ALJ I with PERB from May 1990–June 1993, after prior service as the PERB General Counsel from July 1988–April 1990. Ms. Bologna also worked as Chief Counsel, Assistant Chief Counsel and Labor Relations Counsel for the Department of Personnel Administration (DPA) from 1982-1988; staff attorney for the California State Employees Association (CSEA) from 1978-1982; and as a law clerk and associate with Brundage, Williams & Zellmann in San Diego from 1976-1978.

From 1971-74, Ms. Bologna was a high school social studies teacher with Lake Shore School District in St. Clair Shores, Michigan. She is a graduate of

Michigan State University (B.A. 1971) and the University of San Diego School of Law (J.D. 1977).

Ms. Bologna served two terms as a Hearing Officer for the Sacramento County Civil Service Commission. She has arbitrated cases with the City of Folsom and Folsom Correctional Peace Officers Association. She has taught Administrative Hearing Process classes to state and county investigators through the Public Safety Center, Los Rios Community College District, and to internal affairs staff of the Department of Corrections.

Bernard McMonigle, Administrative Law Judge, PERB

Bernard McMonigle has been on the staff of PERB since 1988. Prior to his permanent appointment as an Administrative Law Judge in 2004, he served as a Senior Counsel in the Office of the General Counsel and on temporary ALJ assignments.

He has worked as a labor relations neutral since 1977, when he was appointed as a Commissioner of Mediation for the Federal Mediation and Conciliation Service. Before joining PERB, he was a Board Counsel for the California Agricultural Labor Relations Board. He has also served as an arbitrator and an ad hoc hearing officer for the Sacramento County Civil Service Commission.

Mr. McMonigle has a B.B.A. in Economics from the University of Georgia and an M.S. in Employment Relations from American University in Washington, D.C. He is a 1984 graduate of the University of the Pacific McGeorge School of Law. A member of the Labor and Employment section of the state bar, he served as the 1999 Chair of the Sacramento County bar's labor section.

Arthur Krantz, Attorney, Leonard Carder – Union

Ari Krantz is a partner at the law firm of Leonard Carder, LLP, where he represents public sector and private sector labor unions and represents employees in class actions, individual employee rights cases and law reform litigation. Mr. Krantz provides advice and representation to a wide variety of unions, including four unions that represent eight statewide bargaining units at the University of California, as well as several unions representing City and County employees in Northern California. Mr. Krantz has also represented the ILWU throughout the West Coast, and has litigated a variety of class action cases. Mr. Krantz began his work in the labor movement as an undergraduate at Yale University, when he served as a shop steward, executive board member and contract negotiating committee member for UNITE HERE Local 35.

Wendi Ross, Attorney, Department of Personnel Administration – Management

Wendi L. Ross is a Labor Relations Counsel with the State of California, Department of Personnel Administration (DPA), and has held that position since 1997. In her current position, Ms. Ross represents the State primarily before the Public Employment Relations Board, in labor arbitrations and in state courts. Previously, Ms. Ross represented school and fire districts with respect to labor and employment matters as an Associate Attorney with the law firm of Pinnell & Kingsley. Ms. Ross also represented private sector employers when she was employed as an Associate Attorney with the law firm of Thierman, Cook, Brown & Prager.

Currently, Ms. Ross teaches a course in labor contract administration through the U.C. Davis Extension Program.

During law school, Ms. Ross was a Student Assistant at the Public Employment Relations Board. Prior to attending law school, Ms. Ross was a Business Agent with the American Federation of Government Employees, Local 1857 and was an intern with the Hotel and Restaurant Employees' Union. Ms. Ross is a former Chair of the Labor and Employment Law Section of the Sacramento County Bar Association.

Panel Three Materials

If the Charge Goes to Hearing

BEFORE THE PERB HEARING

I. ANSWER (PERB Reg. 32644)

1. File 20 days from service of complaint or as directed
2. Admit or deny or state insufficient knowledge
3. State affirmative defenses
 - a. Statute of limitations (Long Beach Community College District (2003)
PERB Decision No. 1564)
 - b. Deferral to arbitration (East Side Union High School District (2004)
PERB Decision No.1713)
 - c. Failure to state may mean waiver
4. Include declaration that true and complete
5. Failure to file may mean admission of truth and waiver of hearing

II. DISCOVERY

1. Basically none
2. Depositions only for unavailable witnesses (PERB Reg. 32160)
3. Subpoenas only for hearing

III. MOTIONS

1. Generally (PERB Reg. 32190)
 - a. Regs don't say what can/can't be filed
 - b. Respond 14 days from service or as directed
 - c. No appeal of interlocutory order unless ALJ joins (PERB Reg. 32200)
 - d. Summary judgment: probably not
2. Amending complaint (PERB Reg. 32647)
 - a. File request and amended charge

- b. Can't revive issues dismissed or withdrawn with prejudice
 - c. ALJ can disregard non-prejudicial error (PERB Reg. 32645)
3. Amending answer (PERB Reg. 32649)
 - a. ALJ may require from 20 days of service of amendment to complaint
 - b. Otherwise, amended complaints deemed denied (PERB Reg. 32644(a))
 4. Continuances (PERB Reg. 32205)
 - a. Generally no later than five days prior to hearing
 - b. Generally in writing
 - c. Must state the grounds and the position of each party
 - d. Granted "only under unusual circumstances" and where no prejudice
 5. Other motions and requests
 - a. Motion to strike or dismiss
 - b. Motion to bifurcate
 - c. Application for joinder (PERB Reg. 32164)
 - d. Request to disqualify ALJ (PERB Reg. 32155)
 - e. Motion to revoke subpoena (PERB Reg. 32150(d))

IV. SUBPOENAS (PERB Reg. 32150; CCP sections 1985, 1987)

1. Issuance
 - a. Forms on-line at www.perb.ca.gov
 - b. Any PERB agent can sign
 - c. Won't sign blank subpoenas
 - d. Subpoena duces tecum must have supporting declaration
2. Service
 - a. Throughout State
 - b. Personal service
 - c. Witness fees and mileage (Gov. Code 68093)
 - d. Reasonable time to prepare and travel
3. Revocation: If irrelevant or invalid
4. Enforcement: ALJ to GC to Board to Court

V. PRE-HEARING CONFERENCES

1. Subpoena issues

2. Motions
3. Witness issues
4. Settlement: ALJ may participate if parties waive objections
5. Pre-hearing memorandum (PERB Reg. 32690): never actually done?

VI. EX PARTE COMMUNICATIONS (PERB Reg. 32185)

1. Forbidden regarding merits
2. May be permissible regarding procedural questions

THE PERB HEARING

VII. HEARING PROCESS (PERB Regs. 32090, 32130-32230, 32640-32690)

1. Notices of Hearing
2. Continuances
3. Subpoenas & Subpoena Duces Tecums
4. Exhibits
5. Stipulations
6. Preliminary Discussions
7. Opening Statement(s)
8. Motions
 - a. Sequester
 - b. Amend
 - c. Conform to Proof
 - d. Defer
9. ALJ Activity
10. Objections
 - a. Hearsay

- b. Relevance
 - c. Privilege
 - d. Settlement Discussions at Informal Conference
- 11. Contempt
 - 12. Unalleged Violation(s)
 - 13. Closing Statement

POST-HEARING MATTERS

VIII. POST-HEARING

- 1. Briefing Schedule
- 2. Briefs
 - a. Table of Content
 - b. Statement of Facts
 - (i) Accuracy
 - (ii) Candor
 - (iii) Record Citation
 - c. Argument
 - (i) Organization/Logical Order
 - (ii) Concise and Clear
 - (iii) Tone/Aspersions
 - (iv) Case Citations
 - (v) Credibility Determinations
 - (vi) Novel Issues
 - (vii) Unalleged Violations
- 3. Ex Parte Communications
- 4. Proposed Decisions
 - a. Settlement/Withdrawal Before Issuance
 - b. Nature/Effect
 - c. Remedy/Compliance
 - d. Ends Role of ALJ

THE MOST RELEVANT REGULATIONS

BEFORE THE PERB HEARING

32150. Subpoenas.

(a) Before the hearing has commenced, the Board shall issue subpoenas at the request of any party for attendance of witnesses or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena for production of documents. After the hearing has commenced the Board may issue subpoenas.

(b) Any subpoenas issued pursuant to subdivision (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of sections 1987 and 1988 of the Code of Civil Procedure.

(c) All witnesses appearing pursuant to subpoena, other than the parties, shall receive fees and mileage in the amount as prescribed by law for civil actions in a superior court. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

(d) A written motion to revoke a subpoena may be filed prior to the proceeding or made by an oral motion at the commencement of the proceeding. The Board shall revoke the subpoena if the evidence requested to be produced is not relevant to any matter under consideration in the proceeding or the subpoena is otherwise invalid.

[(e) and (f) omitted.]

32185. Ex Parte Communications.

(a) No party to a formal hearing before the Board on an unfair practice complaint shall, outside the hearing of the other parties, orally communicate about the merits of the matter at issue with the Board agent presiding. Nor shall any party to a formal hearing communicate in writing with the Board agent presiding without providing a copy of the writing to the other parties.

(b) A Board agent who receives such an ex parte communication shall state on the record that the communication was made, identify the person who made it and either summarize the contents of the communication, or provide all parties with a copy of such communication. The Board agent shall then afford the other parties to the hearing the opportunity to rebut the communication on the record.

32190. Motions.

- (a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.
- (b) Responses to motions shall be filed with the Board agent within fourteen days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required.
- (c) During the hearing, a motion or the response thereto may be made orally on the record.
- (d) The Board may hear oral argument or take evidence on any motion.
- (e) No hearing shall be delayed because a motion is filed unless the Board so directs.
- (f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

32205. Continuances.

A party may file a request for a continuance of the formal hearing no later than five days prior to such hearing. Such request shall be in writing, signed by the party or its agent, state the grounds for the request, and state the position of each party regarding the request. An oral request or a request for continuance submitted less than five days prior to the hearing may be made only under unusual circumstances. A request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.

32644. Answer.

- (a) The respondent shall file with the Board an answer to the complaint within 20 days or at a time set by the Board agent following the date of service of the complaint. Service and proof of service of the answer pursuant to Section 32140 are required. If a formal hearing is set less than 20 days after the complaint is served, the answer shall be filed no later than the date of hearing stated in the notice of hearing or as otherwise directed by the Board agent. Amended complaints served after the answer is filed shall be deemed denied, except for those matters which were admitted in the answer and which have not been changed in the amended complaint.
- (b) The answer shall be in writing, signed by the party or its agent and contain the following information:
 - (1) The case number appearing on the complaint;
 - (2) The name of the charging party;

- (3) The name, address, telephone number and any affiliation of the respondent;
 - (4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;
 - (5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;
 - (6) A statement of any affirmative defense;
 - (7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.
- (c) If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing.

32645. Non-prejudicial Error.

The Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not affect the substantial rights of the parties.

32647. Amendment of Complaint Before Hearing.

After issuance of a complaint, the charging party may move to amend the complaint by filing with the Board agent:

- (a) a request to amend the complaint, and
- (b) an amended charge meeting the requirements of Section 32615.

32649. Answer to Amendment.

Within 20 days or a time set by the Board agent after service of an amendment to the complaint, the Board agent may require the respondent to file an amendment to its answer, which shall respond only to the new allegations in the amended complaint. The respondent shall file with the Board proof of service of its amended answer.

THE PERB HEARING AND POST-HEARING MATTERS

32090. Fax Filing.

- (a) "Facsimile transmission" is the transmission of a document by a system that encodes a document into electrical signals, transmits these electrical signals over a telephone line, and reconstructs the signals to print a duplicate of the original document at the receiving end.
- (b) "Facsimile machine" means a machine that can send a facsimile transmission using the international standard for scanning, coding, and transmission established for Group 3 machines by the Consultative Committee of International Telegraphy and Telephone of the International Telecommunications Union, in regular resolution. Any facsimile machine used to send documents must send at an initial transmission speed of no less than 4800 baud and be able to generate a transmission record. Facsimile machine includes, but is not limited to, a facsimile modem that is connected to a personal computer.
- (c) "Facsimile filing" or "filing by fax" means the facsimile transmission of a document to PERB.
- (d) "Fax" is an abbreviation for "facsimile," and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

32130. Computation of Time.

- (a) In computing any period of time under these regulations, except under Section 32776(c), (d), (e) and (f), the period of time begins to run the day after the act or occurrence referred to.
- (b) Whenever the last date to file a document falls on Saturday, Sunday, or a holiday, as defined in Government Code Sections 6700 and 6701, or PERB offices are closed, the time period for filing shall be extended to and include the next regular PERB business day. The extension of time provided herein shall be applied subsequent to the application of any other extension of time provided by these regulations or by other applicable law.
- (c) A five day extension of time shall apply to any filing made in response to documents served by mail if the place of address is within the State of California, ten days if the place of address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. No extension of time applies in the case of documents served in person, or by facsimile transmission as defined in Section 32090.

32132. Extension of Time.

- (a) A request for an extension of time within which to file any document with the Board itself shall be in writing and shall be filed at the headquarters office at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension. Service and proof of

service pursuant to Section 32140 are required. Extensions of time may be granted by the Board itself or an agent designated by the Board itself for good cause only.

(b) A request for an extension of time within which to file any document with a Board agent shall be in writing and shall be filed with the Board agent at least three days before the expiration of the time required for filing. The request shall indicate the reason for the request and, if known, the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party. Extensions of time may be granted by the Board agent for good cause only.

32135. Filing.

(a) All documents shall be considered "filed" when the originals, and the required number of copies, if any, are actually received by the appropriate PERB office during a regular PERB business day.

(b) All documents, except proof of support as described in sections 32700, 61020, 81020 and 91020, shall also be considered "filed" when received during a regular PERB business day by facsimile transmission at the appropriate PERB office together with a Facsimile Transmission Cover Sheet, or when received by on-line filing as defined in Section 32613.

(c) A party filing documents by facsimile transmission or by on-line filing must also place the original, together with the required proof of service and the required number of copies, in the U.S. mail for delivery to the appropriate PERB office.

(d) A facsimile filing shall be accompanied by a Facsimile Transmission Cover Sheet which includes the following:

(1) The name of the party serving or filing papers by fax and the name and telephone number of the agent transmitting the document by facsimile transmission;

(2) The name or title of the document being transmitted and the number of pages;

(3) The date and time of the transmission;

(4) The PERB case number, if any.

32136. Late Filing.

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

32140. Service.

(a) All documents referred to in these regulations requiring "service," except subpoenas, shall be considered "served" by the Board or a party when personally delivered, deposited in the

mail or with a delivery service properly addressed, or when sent by facsimile transmission in accordance with the requirements of Sections 32090 and 32135(d). All documents required to be served shall include a "proof of service" declaration signed under penalty of perjury which contains the following information: (1) The name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years and not a party to the case; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) used for service on the party(ies); and (8) the date of service.

(b) Whenever "service" is required by these regulations, service shall be on all parties to the proceeding and shall be concurrent with the filing in question.

32142. Proper Recipient for Filing or Service.

Whenever a document is required to be "filed" or "served" with any of the below listed entities, the proper recipient shall be:

(a) The Board: the appropriate or designated regional office (see, e.g. Sections 32075, 32122, or 32612) unless the headquarters office is specified;

(b) The Board itself: only at the headquarters office;

(c) An employer

(1) in the case of a public school employer: the superintendent, deputy superintendent, or a designated representative of a school district; or to the school board at a regular or extraordinary meeting;

(2) in the case of a state employer: the Governor or his designated representative on behalf of the State of California;

(3) in the case of a higher education employer:

(A) If the employer is the Regents of the University of California, the Office of the General Counsel of the University;

(B) If the employer is the Directors of Hastings College of the Law, the Office of the General Counsel of Hastings;

(C) If the employer is the Trustees of the California State University for unfair practice proceedings, service shall be on the Office of the General Counsel of the California State University; for representation proceedings, filing or service shall be on the Office of the Director of Employee Relations.

(4) in the case of a public agency employer as defined in Government Code section 3501(c): the individual designated to receive service or the chief executive officer.

(5) in the case of a transit district employer as defined in Public Utilities Code section 99560.1(g), any person authorized to act on behalf of the employer.

(6) in the case of a trial court employer as defined in Government Code section 71601(k) or 71801(k): the individual designated to receive service or the executive officer.

(7) in the case of a regional committee as defined in Government Code sections 71801(h) and 71807: the individual designated to receive service or the chair of the regional committee.

(d) An employee organization: the individual designated to receive service or to the president or if there is no president, an officer of the organization.

(e) An individual: to the named person or to their representative of record.

32145. Waiver of Time Periods.

The Board itself may waive or all parties to a proceeding, subject to the approval of the Board, may jointly waive any time period allowed for action by a party or the Board in order to expedite any pending matter.

32147. Expediting Matters Before the Board.

The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board pursuant to policy established by the Board itself. For purposes of this Section, expediting matters in the case of the Board itself means the matter shall be given priority and decided on an expedited basis.

32149. Investigative Subpoenas.

The Board may issue investigative subpoenas and subpoenas duces tecum compelling the attendance of witnesses and production of records at investigative proceedings. The provisions in Section 32150 governing issuance of subpoenas and motions to quash subpoenas shall be applicable to investigative subpoenas issued by the Board.

32150. Subpoenas.

(a) Before the hearing has commenced, the Board shall issue subpoenas at the request of any party for attendance of witnesses or production of documents at the hearing. Compliance with the provisions of Section 1985 of the Code of Civil Procedure shall be a condition precedent to the issuance of a subpoena for production of documents. After the hearing has commenced the Board may issue subpoenas.

(b) Any subpoenas issued pursuant to subdivision (a) shall be extended to all parts of the State and shall be served in accordance with the provisions of sections 1987 and 1988 of the Code of Civil Procedure.

(c) All witnesses appearing pursuant to subpoena, other than the parties, shall receive fees and mileage in the amount as prescribed by law for civil actions in a superior court. Fees, mileage and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed.

(d) A written motion to revoke a subpoena may be filed prior to the proceeding or made by an oral motion at the commencement of the proceeding. The Board shall revoke the subpoena if the evidence requested to be produced is not relevant to any matter under consideration in the proceeding or the subpoena is otherwise invalid.

(e) Upon a finding of the Board itself that a Board agent is essential to the resolution of a case and that no rational decision of the Board can be reached without such agent, the Board itself shall produce the agent if subpoenaed to do so by any party to the dispute.

(f) Upon the failure of any person to comply with a subpoena, the Board may apply to an appropriate superior court for an order requiring such person to appear and produce evidence and give testimony regarding the matter under investigation or in question. Requests for compliance with a subpoena shall be made to the Board agent assigned the case. If the Board agent deems it appropriate, he or she shall promptly recommend to the General Counsel that the Board seek enforcement of the subpoena. A request that the Board apply for an order may be made by the General Counsel at any stage of the proceedings. The Board shall seek enforcement on recommendation of the General Counsel unless in the judgment of the Board the enforcement of such subpoena or notice would be inconsistent with law or the policies of the applicable Act. If the request is granted, the record will remain open in the matter until the Board determines that the court order will not be forthcoming, or that further delay would frustrate the policies of the applicable Act, or until the testimony sought is included in the record.

32155. Disqualification of Board Agent or Board Members.

(a) No Board member, and no Board agent performing an adjudicatory function, shall decide or otherwise participate in any case or proceeding:

(1) In which he or she has a financial interest in the outcome.

(2) When he or she is related to any party or to an agent or officer of any party, or to an attorney or counsel of any party by consanguinity or affinity within the third degree computed according to the rules of law, or when he or she is indebted, through money borrowed as a loan, to any party or to an attorney or counsel of any party.

(3) When, in the case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding

before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.

(4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

(b) Whenever such a Board agent shall have knowledge of any facts, which under the provisions of this rule disqualify him or her from presiding over any aspect of a hearing or investigation, it shall be his or her duty immediately to notify the General Counsel or the Chief Administrative Law Judge, as appropriate, setting forth all reasons for his or her belief.

(c) Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Notwithstanding his or her disqualification, a Board agent who is disqualified may request another Board agent who has been agreed upon by all parties to conduct the hearing or investigation.

(d) If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing or investigation and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file an appeal, after hearing or investigation and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

(e) Whenever a Board member shall have knowledge of any facts which, under the provisions of this rule, disqualify him or her to consider any case before the Board, it shall be his or her duty to declare the disqualification to the Board immediately upon learning of such facts. This declaration shall be made part of the official record of the Board. The Board member shall then refrain from participating and shall attempt in no way to influence any other person with respect to the matter.

(f) Any party to a case before the Board may file directly with the Board member a motion for his or her recusal from the case when exceptions are filed with the Board or within ten days of discovering a disqualifying interest provided that such facts were not available at the time exceptions were filed. The motion shall be supported by sworn affidavits stating the facts

constituting the ground for disqualification of the Board member. Copies of the motion and supporting affidavits shall be served on all parties to the case.

(g) Within ten days after the filing of a motion for recusal, the Board member alleged to be disqualified shall render a decision stating the reasons therefore. If the Board member is not on the panel assigned to hear the case, he or she shall so inform the parties and indicate that he or she does not intend to participate in the case. In the event that the Board member decides to participate, he or she shall render a decision on the motion for recusal before doing so.

(h) Any party aggrieved by a determination made pursuant to subsections (d) or (g) of this rule may include the matter of claimed disqualification in a writ of extraordinary relief filed pursuant to Government Code Section 3509.5, 3520, 3542, 3564, 71639.4 or 71825.1 or Public Utilities Code section 99562 seeking judicial review of the Board's decision on the merits.

32160. Depositions.

The Board may order the taking of testimony of a material witness within or outside the State by deposition in the manner prescribed for civil actions only upon the filing of an application by a party showing that:

(a) The witness is unable to attend the hearing because of illness, infirmity or imprisonment; or

(b) The witness cannot be compelled to attend the hearing by subpoena. The application shall state the case number, name and address of the witness, show the materiality of the testimony, and shall request an order requiring the witness to appear and testify before a named officer authorized by law to take depositions. Where the witness resides outside the State and the Board has authorized a deposition of the witness, the Board shall obtain an order of the Superior Court in Sacramento County for that purpose pursuant to Section 11189 of the Government Code.

32162. Confidentiality of Board Investigations.

The Board shall not disclose any confidential statement submitted by a party, or the identity of any person who submits such a statement, unless the person submitting the statement agrees to disclosure or disclosure is required:

(a) Pursuant to Section 32206, concerning production of statements of witnesses after direct testimony;

(b) In a court proceeding upon a complaint for injunctive relief;

(c) By order of the Board itself;

(d) By final order of a court of competent jurisdiction.

32164. Application for Joinder of Parties.

(a) Any employee, employee organization or employer may file with the Board agent an application for joinder as a party in a case. Service and proof of service of the application pursuant to Section 32140 are required.

(b) The application for joinder shall be in writing, signed by the representative filing it and contain a statement of the extent to which joinder is sought and a statement of all the facts upon which the application is based. The Board shall allow each party an opportunity to oppose the application.

(c) The Board may allow joinder if it determines that the party has a substantial interest in the case or will contribute substantially to a just resolution of the case and will not unduly impede the proceeding.

(d) The Board may order joinder of an employer, employee organization or individual, subject to its jurisdiction, on application of any party or its own motion if it determines that:

(1) In the absence of the employer, employee organization or individual, as a party, complete relief cannot be accorded; or

(2) The employer, employee organization or individual has an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may:

(A) As a practical matter impair or impede their ability to protect that interest; or

(B) Leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of said interest.

32165. Application to Join a Representation Hearing As a Limited Party.

In a representation proceeding the Board agent may allow any person, employer, or employee organization which did not file a timely request for recognition, intervention or petition to join the hearing as a limited party provided:

(a) The person, employer, or employee organization files a written application prior to the commencement of the hearing stating facts showing that it has an interest in the proceedings; and

(b) The Board agent determines that the person, employee organization or employer has an interest in the case and will not unduly impede the proceeding.

(c) The Board agent may grant participation in the hearing which shall be limited to the right to make an oral statement on the record and to file a written brief subject to such conditions as may be prescribed.

32166. Application to Join a Representation Hearing As a Full Party.

(a) An employee organization shall be allowed to participate fully in a representation hearing provided it has filed a written application with the regional office not less than 10 days prior to the commencement of the hearing, accompanied by either 10 percent support of any unit in dispute at the hearing, or 10 percent support of a proposed unit which overlaps another unit in dispute at the hearing. Proof of support is defined in Chapter 1, Section 32700 and Chapter 5, Section 61020. A copy of the written application, excluding the proof of support, shall be served on the parties. Proof of service pursuant to Section 32140 is required.

(b) The Board agent may waive the deadline for filing an application pursuant to this Section for good cause.

32168. Conduct of Hearing.

(a) Hearings shall be conducted by a Board agent designated by the Board, except that the Board itself or a Board member may act as a hearing officer.

(b) A Board agent may be substituted for another Board agent at any time during the proceeding at the discretion of the Chief Administrative Law Judge in unfair practice cases or the General Counsel in representation matters. Prior to ordering a substitution the parties shall be notified and provided an opportunity to state objections to the proposed substitution. Substitutions of Board agents shall be appealable only in accordance with Sections 32200 or 32300.

(c) Hearings shall be open to the public, except as provided in Section 32170.

32170. Powers and Duties of Board Agent Conducting a Hearing.

The board agent conducting a hearing shall have the powers and duties to:

(a) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;

(b) Authorize the taking of depositions;

(c) Issue subpoenas and rule upon petitions to revoke subpoenas;

(d) Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room;

(e) Hold conferences for the settlement or simplification of issues;

(f) Rule on objections, motions and questions of procedure;

(g) Administer oaths and affirmations;

- (h) Take evidence and rule on the admissibility of evidence;
- (i) Examine witnesses for the purpose of clarifying the facts and issues;
- (j) Authorize the submission of briefs and set the time for the filing thereof;
- (k) Hear oral argument;
- (l) Render and serve the proposed decision on each party;
- (m) Carry out the duties of administrative law judge as provided or otherwise authorized by these regulations or by the applicable Act.

32175. Rules of Evidence: Representation Cases.

(a) Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. However, immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply.

(b) A party seeking to offer a written document into evidence shall provide a copy of the document for each party to the hearing.

32176. Rules of Evidence: Unfair Practice Cases.

Compliance with the technical rules of evidence applied in the courts shall not be required. Oral evidence shall be taken only on oath or affirmation. Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, or unduly repetitious evidence may be excluded. The rules of privilege shall apply. Evidence of any discussion of the case that occurs in an informal settlement conference shall be inadmissible in accordance with Evidence Code Section 1152.

32178. Burden of Proof: Unfair Practice Cases.

The charging party shall prove the complaint by a preponderance of the evidence in order to prevail.

32180. Rights of Parties.

Each party to the hearing shall have the right to appear in person, by counsel or by other representative, and to call, examine and cross-examine witnesses and introduce documentary and other evidence on the issues.

32185. Ex Parte Communications.

(a) No party to a formal hearing before the Board on an unfair practice complaint shall, outside the hearing of the other parties, orally communicate about the merits of the matter at issue with the Board agent presiding. Nor shall any party to a formal hearing communicate in writing with the Board agent presiding without providing a copy of the writing to the other parties.

(b) A Board agent who receives such an ex parte communication shall state on the record that the communication was made, identify the person who made it and either summarize the contents of the communication, or provide all parties with a copy of such communication. The Board agent shall then afford the other parties to the hearing the opportunity to rebut the communication on the record.

32190. Motions.

(a) Written motions made before, during or after a hearing shall be filed with the Board agent assigned to the proceeding. Service and proof of service pursuant to Section 32140 are required.

(b) Responses to motions shall be filed with the Board agent within fourteen days of service of the motion, or within such time as is directed by the Board agent. Service and proof of service pursuant to Section 32140 are required.

(c) During the hearing, a motion or the response thereto may be made orally on the record.

(d) The Board may hear oral argument or take evidence on any motion.

(e) No hearing shall be delayed because a motion is filed unless the Board so directs.

(f) Rulings on motions shall not be appealable except as specified in Sections 32200 and 32360.

32200. Appeal of Rulings on Motions and Interlocutory Matters.

A party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to the Board agent and a copy shall be sent to the Board itself. Service and proof of service pursuant to Section 32140 are required. The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply:

(a) The issue involved is one of law;

(b) The issue involved is controlling in the case;

(c) An immediate appeal will materially advance the resolution of the case.

32205. Continuances.

A party may file a request for a continuance of the formal hearing no later than five days prior to such hearing. Such request shall be in writing, signed by the party or its agent, state the grounds for the request, and state the position of each party regarding the request. An oral request or a request for continuance submitted less than five days prior to the hearing may be made only under unusual circumstances. A request for a continuance shall be granted only under unusual circumstances and if the other party will not be prejudiced thereby.

32206. Production of Statements of Witnesses After Direct Testimony.

(a) After direct examination of a witness, and upon motion of any party, the hearing officer shall order the production of any statement made by the witness to a Board agent that relates to the subject matter of the testimony.

(b) A statement includes a written declaration by the witness, signed or otherwise approved by the witness, or a recording or a transcription of a recording which is a verbatim recital of something said by the witness.

(c) If the party sponsoring the testimony claims that a statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony, the party shall deliver the statement to the hearing officer for his or her private inspection. The hearing officer may excise those portions of the statements which do not relate to the subject matter of the testimony. The remainder of the statement shall be delivered to the moving party.

32207. Hearings.

The parties may submit stipulated facts where appropriate to the Board agent. No hearing shall be required unless the parties dispute the facts in the case.

32209. Correction of Transcript.

A motion to correct alleged errors in the transcript of a proceeding before a Board agent must be filed with the Board agent presiding at the proceeding within 20 days of the date of service of the transcript. The motion shall specify the alleged errors and provide a proposed corrected version. Within 10 days following the date of service of such a motion, any party may file with the Board agent a response to the motion. Service and proof of service of the motion and of any response to a motion pursuant to Section 32140 are required. Failure to file a timely motion to correct will be deemed a waiver of any objection to the accuracy of the transcript.

32210. Informational Briefs and Arguments.

(a) Any person may file a petition to submit an informational brief or to argue orally in any case at a hearing or before the Board itself.

(b) The petition shall include the following information:

(1) The case number;

(2) The title of the case;

(3) The name, address, telephone number and any affiliation of the petitioner;

(4) The name, address and telephone number of any agent to be contacted;

(5) A statement setting forth the nature of the petitioner's interest or involvement in the case;

(6) A statement setting forth the specific issues of procedure, fact, law or policy which the petitioner wishes to address.

(c) The petition may be granted or denied at the discretion of the Board.

32212. Briefs and Oral Argument.

Prior to the close of the hearing, the Board agent shall rule on any request to make oral argument or to file a written brief. The Board agent shall set the time required for the filing of briefs. Any party filing a brief shall file the original and one copy with the Board agent. Service and proof of service of the brief pursuant to Section 32140 are required.

32215. Proposed Decision.

A Board agent shall issue a written proposed decision or submit the record of the case to the Board itself for decision pursuant to instructions from the Board itself. The Board shall serve the proposed decision on each party. Unless expressly adopted by the Board itself, a proposed or final Board agent decision, including supporting rationale, shall be without precedent for future cases.

32220. Contemptuous Conduct.

Contemptuous conduct of a party or its agent shall be grounds for the exclusion of the party or agent from any proceeding related to the case.

32230. Refusal of Witness to Testify.

The refusal of a witness at a hearing to answer any question which has been ruled proper by the Board agent conducting the hearing may be grounds for striking the full testimony of such witness on the same matter and or such other action as deemed appropriate by the Board.

32640. Issuance of Complaint.

(a) The Board agent shall issue a complaint if the charge or the evidence is sufficient to establish a prima facie case. The complaint shall contain a statement of the specific facts upon which Board jurisdiction is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair practice. The complaint shall include, when known, when and where the conduct alleged to constitute an unfair practice occurred or is occurring, and the name(s) of the person(s) who allegedly committed the acts in question. The Board may disregard any error or defect in the complaint that does not substantially affect the rights of the parties.

(b) The Board shall serve the complaint on the charging party and respondent.

(c) The decision of a Board agent to issue a complaint is not appealable to the Board itself except in accordance with Section 32200.

32644. Answer.

(a) The respondent shall file with the Board an answer to the complaint within 20 days or at a time set by the Board agent following the date of service of the complaint. Service and proof of service of the answer pursuant to Section 32140 are required. If a formal hearing is set less than 20 days after the complaint is served, the answer shall be filed no later than the date of hearing stated in the notice of hearing or as otherwise directed by the Board agent. Amended complaints served after the answer is filed shall be deemed denied, except for those matters which were admitted in the answer and which have not been changed in the amended complaint.

(b) The answer shall be in writing, signed by the party or its agent and contain the following information:

(1) The case number appearing on the complaint;

(2) The name of the charging party;

(3) The name, address, telephone number and any affiliation of the respondent;

(4) The name, address, telephone number and capacity of any agent of the respondent to be contacted;

(5) A specific admission or denial of each allegation contained in the complaint. If the respondent does not have knowledge of information sufficient to form a belief as to the truth of a particular allegation, the respondent shall so state and such statement shall operate as a denial of the allegation;

(6) A statement of any affirmative defense;

(7) Notwithstanding the Code of Civil Procedure Section 446, a declaration under penalty of perjury that the answer is true and complete to the best of the respondent's knowledge and belief.

(c) If the respondent fails to file an answer as provided in this section, the Board may find such failure constitutes an admission of the truth of the material facts alleged in the charge and a waiver of respondent's right to a hearing.

32645. Non-prejudicial Error.

The Board may disregard any error or defect in the original or amended charge, complaint, answer or other pleading which does not affect the substantial rights of the parties.

32647. Amendment of Complaint Before Hearing.

After issuance of a complaint, the charging party may move to amend the complaint by filing with the Board agent:

- (a) a request to amend the complaint, and
- (b) an amended charge meeting the requirements of Section 32615.

32648. Amendment of Complaint During Hearing.

During hearing, the charging party may move to amend the complaint by amending the charge in writing, or by oral motion on the record. If the Board agent determines that amendment of the charge and complaint is appropriate, the Board agent shall permit an amendment. In determining the appropriateness of the amendment, the Board agent shall consider, among other factors, the possibility of prejudice to the respondent.

32649. Answer to Amendment.

Within 20 days or a time set by the Board agent after service of an amendment to the complaint, the Board agent may require the respondent to file an amendment to its answer, which shall respond only to the new allegations in the amended complaint. The respondent shall file with the Board proof of service of its amended answer.

32650. Informal Conference.

- (a) A Board agent may conduct an informal conference or conferences to clarify the issues and explore the possibility of voluntary settlement. No record shall be made at such a conference.
- (b) A Board agent shall give reasonable notice of such conference to each party directed to attend.

32661. Repugnancy Claims.

(a) An unfair practice charge concerning conduct subject to Government Code Section 3514.5(a)(2), or 3541.5(a)(2), or subject to final and binding arbitration pursuant to a collective bargaining agreement for parties governed by the TEERA, MMBA, HEERA, Trial Court Act or Court Interpreter Act, may be filed based on a claim that the settlement or arbitration award is repugnant to the applicable Act.

(b) The charge shall comply with the requirements of Section 32615. It shall allege with specificity the facts underlying the charging party's claim that the arbitrator's award is repugnant to the purposes of the applicable Act.

(c) In reviewing the charge to determine whether a complaint shall issue, the Board agent shall have all of the powers and duties specified in Section 32620. A Board agent's issuance of a complaint under this section shall not be appealable to the Board itself except as provided in Section 32360.

(d) The Board itself may, at any time, direct that the record be submitted to the Board itself for decision.

32680. Formal Hearing.

If the informal conference procedure fails to result in voluntary settlement, the Board may order a hearing. The hearing shall be conducted by the Board according to the provisions of Chapter 1, Subchapter 3 (commencing with Section 32165) of these regulations.

32690. Notice of Formal Hearing and Prehearing Memorandum.

(a) The Board shall serve on each party a notice of the formal hearing which shall state the date, time and place of the hearing.

(b) The Board may also serve on each party a pre-hearing memorandum which shall set forth the following information:

(1) A summary of the proceedings to date, including but not limited to a statement of the charge, a summary of any negotiations excluding offers of settlement and a statement of the issues settled;

(2) A statement of the issues to be decided at the formal hearing.

SELECTED THOUGHTS ON PROCEEDINGS IN FRONT OF PERB ALJs

Prepared for the PERB/CPER Conference
"PERB: A Step-By-Step Analysis of the Process"
September 21, 2006

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I. Preparing to Litigate

In a modern law school curriculum, you learn about the need to figure out your "theory of the case" before you do anything else in preparation for litigation. And with good reason. Reflexively going through the steps of preparing to litigate – drafting subpoenas, outlining an opening statement, preparing witnesses, etc., is quite a bit less effective without first pinpointing your theory and your opponent's theory. The fact that you have filed the charge and reviewed your opponent's opposition, or vice versa, is not necessarily sufficient. Charges and position statements are both overinclusive and underinclusive in mapping out what really is going to matter at trial. In the hectic, crisis and deadline driven arena in which we all find ourselves, taking an hour – or a day if legal research is involved – to work on one's theory of the case too often falls out the window.

And I want to add one related preparatory item to your agenda. Try to remind yourself why you are litigating the case, because keeping that reason in mind may have an important effect on your theory of the case and everything that you do throughout the litigation. PERB cases, like other types of litigation, typically settle. For this reason, when we do find ourselves in a PERB trial, it is, hopefully, because we (or our opponent) are seeking one or more of the following:

- (i) To develop precedent in an area where there is little or no PERB case law already developed;
- (ii) To reverse or at least amend precedent in an area where current case law is unfavorable; or
- (iii) To resolve an issue that is hotly disputed between the parties and is likely to arise over and over again.

Of course, this is not always the case. There are instances where neither side has any of the above interests at stake. Maybe the case did not settle because one party or the other is being obstinate for no good reason.

However, if your case *does* meet criteria (i), (ii) and/or (iii) above, then it is especially important to put in the extra effort up front to determine what kind of decision you are seeking to obtain. One that breaks new ground? One that merely "splits the baby?" Knowing what type of decision you realistically hope to achieve informs everything that you do.

Let me offer as a recent example a PERB unfair practice case that I handled from the initial stages of drafting the charge all the way through to review in the Court of Appeals. In Regents of the University of California (2004) PERB Decision No. 1689-H, the Board affirmed and adopted the decision of Judge D’Orazio. UC has a systemwide health benefits program covering more than 100,000 employees. UC generally makes changes to health benefits once each year. UC made such changes, including increases in employees’ premium payments and copayments, during a period in which UC and Charging Party AFT were in bargaining. Changes were made without an opportunity to meet and confer, but the University asserted that the changes were consistent with the “dynamic status quo” because such changes are made each year. AFT argued this is not correct, because the changes were discretionary rather than tied to some definite past practice, and also because the nature of the changes were different from those made previously.

This case went to trial for all three of the reasons I mentioned. First, while there is a fair amount of private sector case law on point, PERB precedents regarding the dynamic status quo principle are few in number and do not provide exhaustive instruction regarding many of the types of scenarios that can arise. Second, one precedent in this area, resulting from a charge filed in the 1990s by a different union challenging health benefit changes by UC, had been dismissed without issuance of a complaint, and this dismissal had been affirmed by the Board. So, there was at least superficially unfavorable precedent, although the prior case was easily distinguishable on several grounds. Third, the issue was hotly disputed and is almost sure to arise over and over again – whenever a contract between UC and one of its unions expires and is not quickly renewed.

Having in mind why I was litigating led me to the first significant question in developing a theory of the case – was I trying to argue that the prior case with a negative outcome had been wrongly decided, was distinguishable, or both? Without going into too much detail, it quickly became apparent that, because the prior decision merely affirmed a dismissal, meaning that the decision was brief and stated no facts other than those provided in the dismissal letter, I was going to need to put into the record the evidence and arguments that the parties had submitted in the prior case, in order to show exactly what was and was not at issue in that case. In my experience, it is pretty rare when distinguishing prior precedent to introduce into evidence parts of the underlying record from the prior case, but that was clearly called for in this instance, and that evidence figured prominently in the eventual PERB decision. While this particular circumstance may not arise again, the broader issue is relevant in every case – if you wait until your post-trial brief to think through your theory of the case, or to carefully consider why you are litigating and what type of decision you realistically hope to achieve, it may be too late to develop the record properly.

II. Amending the Complaint

In those cases that do make it to trial, it seems that more often than not charging party has reason to ask the ALJ to amend the Complaint.

The reasons for amending vary quite a bit. Sometimes, there is simply a factual mistake or omission in the complaint. That is usually no problem to take care of. Sometimes, charging party wishes to add an additional allegation or legal theory. Assuming that your allegation or theory was not dismissed at the pre-complaint stage, you may have a pretty good shot at this, although there will always be a question as to why your proposed amendment was not included in the complaint to begin with. In some of these instances, the theory or allegation was included in the charge, but was neither dismissed nor included in the complaint.

Lastly, there is quite often new conduct occurring after issuance of the complaint but prior to trial. For instance, in the health benefits case mentioned above, by the time the complaint was issued and trial dates were chosen, we were into the next year, and UC was already making the next year's set of health benefit changes, while the parties were still in bargaining for a contract.

Ironically, PERB regulations in some way seem to make it less burdensome to amend the complaint after trial begins (as compared to prior to trial). Clearly, however, it is far more prudent to request the amendment as far before trial as possible.

Finally, when adding new factual allegations, most are familiar with PERB precedent regarding the relation back doctrine, which often determines whether or not your amendments are timely. However, with the return of the equitable tolling doctrine as set forth last year's decision in Long Beach Community College District (2003), PERB Decision No. 1564, there will be a broader set of possible amendments to be made without running afoul of the statute of limitations.

III. Developing the Record

Developing the trial record can be straightforward, except when it's not. In the category of "straightforward," I include some cases where the facts are completely in dispute and credibility is crucial. These cases can still be straightforward, as long as you take the facts as they come and do not allow the emotion and intensity present in many labor disputes to blur your case. Too frequently, the clients on both sides are so attached to their notions of what is in dispute that they do not rigorously examine the factual details that really matter. Also, the absence of discovery can lead to cross examinations that are unduly long, and, once in a while, attempts to impeach credibility on extrinsic matters can lead things far astray.

There are also some common types of cases in which developing the record is almost

never straightforward. Consider an average discrimination or discriminatory access case. Union activist alleges she is being treated differently on a regular basis, possibly leading to discipline. Charging party is in the position of having to prove that activist is treated differently than others: perhaps, while the activist is warned for arriving two minutes late or talking about union business on the job, others arrive three minutes late, or spend longer talking about last night's baseball game, without consequence. Now we are already into the realm of a difficult record, even though the case is familiar and common. How much proof of disparate treatment is going to be enough?

Also, as charging party, do we risk causing problems for other employees if they take the stand to testify that they are engaging in comparable conduct without getting in trouble? Will the employer be able to assert plausibly that it never knew about this other conduct? Even worse, if the department at issue was not one where there was much union support, or the discipline against the activist has chilled the remaining possible witnesses, how does charging party competently establish the disparate treatment, even if it is well known that other types of nonwork activity, not having to do with union business, are commonly permitted? Will the employer's supervisors admit this? From the employer's perspective, how do you prove a negative? How do you prove that other employees are not treated differently? Do you simply try to rebut the examples raised by charging party? Or do you ask your witnesses to make broad sweeping statements, which is dangerous, because they are often disproven using one or two examples?

Or, in another common fact scenario, an employer tries to restrict use of its e-mail system to official business only. Of course, that is almost impossible to do. How many examples of nonbusiness e-mail must be put into evidence before PERB will find that the forum must also be usable for union activity? As charging party, do you really need to find, authenticate and put into evidence every possible example, for fear that the employer may argue that you have come up with too few examples, and/or that the employer supposedly did not know about these examples? If so, you may be in for a long record. This often may not be necessary. For instance, under those public sector labor law statutes that contain access provisions, an employer should not be able to close its e-mail system to union activity under any circumstances. However, attorneys being conservative creatures, we don't like to rely upon just one theory, and that leads to longer and longer evidentiary records.

IV. Drafting the Post-trial Brief

Employer and union counsel alike cite to NLRB precedent when we think it is helpful, and attempt to distinguish it when we think it should not be followed. No surprise there.

However, as the Bush NLRB rewrites parts of the NLRA in new cases arriving almost weekly, the familiar ritual of citing or distinguishing federal precedent changes. While flip-flops in NLRB precedent are hardly new, presently the divergence between what we in the union bar think the law provides and what the current NLRB thinks the law provides appears extraordinarily large.

Some of the NLRB's rolling back of employee and union rights has simply been reversing Clinton-era labor victories, on issues such as units containing temporary agency employees, or Weingarten rights among employees that are not exclusively represented. On these issues, PERB has not been faced with determining whether to follow NLRB law. But these reversals should not close the door on urging PERB to follow the lead of the Clinton NLRB. Last year, federal law permitted a petitioning union to include temporary agency employees in a proposed unit, without naming the temporary agency as an employer on its petition. While that is no longer the view of the current NLRB majority, if the principles were sound then, they should be equally sound now.

PERB/CPER CONFERENCE
“PERB: A STEP BY STEP ANALYSIS OF THE PROCESS”
September 21, 2006

Panel Three – *If the Charge Goes to Hearing*
(From Management’s Perspective)

Wendi L. Ross,
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A. UNFAIR PRACTICE HEARING BEFORE A PERB ADMINISTRATIVE LAW JUDGE (“ALJ”)

1. COMPLETELY REVIEW THE PERB COMPLAINT AND YOUR ANSWER

Make sure that you know exactly what you are defending against. Make a motion to strike any statements in the Complaint that are incorrect, such as the wrong bargaining unit or contract section.

Keep a copy of the Complaint and Answer in front of you during the entire hearing, in order to make relevancy objections every time the union “strays” from the allegations set forth in the Complaint.

2. OPENING STATEMENT

Unless the case is very complex or involves numerous witnesses, WAIT to make your opening statement until after the union has presented their case in chief. This gives you greater flexibility to fine tune your opening statement and point out if the union has failed to establish a particular element of the Complaint.

3. EXHIBITS

a. Joint Exhibits

In general, the parties will stipulate or agree that there are certain exhibits that will be admitted into evidence as “Joint Exhibits.” Such exhibits include the parties’ collective bargaining agreement and communications between the parties (letters or e-mail messages) that are undisputed and relevant to the proceedings.

b. Union’s Exhibits

Since the union has the burden of proof, it will present its case first. Many of the documents in dispute between the parties will be “introduced” by the union as it tries to make its case. Be on the alert for documents that are not authenticated by the witness testifying about that document. Object to the admission of any document that is not

relevant to the case. Object to documents that contain hearsay statements, even though hearsay is admissible.

c. Employer's Exhibits

Make sure to have enough copies of each exhibit for the opposing side, the ALJ the witness and yourself. In general, ask adverse witnesses on cross-examination to authenticate their own documents or documents that you want to show they have "received."

Properly authenticated, charts, graphs or maps help the ALJ understand your case. For example, in a discrimination case, a chart showing the number of other employees receiving the same disciplinary action for the same offense helps to establish that the employer is treating the employee in question uniformly and consistently and is not singling out the employee for his/her union activities.

4. EXAMINATION OF WITNESSES

a. Prepare for Cross-Examination of the Union's Witnesses

In general, the union is the charging party and has the burden of putting its case on first. The union will oftentimes have union elected officials, union representatives and bargaining unit employees testify in the case. Do not let broad generalizations about "management always does this or that" go unchallenged. Object to hearsay statements and leading questions.

If a witness is crying for whatever reason – ask to take a break. Remember, testifying is sometimes a very emotional experience for some witnesses.

b. Thoroughly Prepare Employer Witnesses to Testify in the Case

The union can and will call those witnesses that the union believes support its position, including management witnesses. Management witnesses, including supervisory witnesses, who are subpoenaed by the union, should be prepared well in advance of the hearing date for the possible questions the union representative/counsel might ask the witness.

After the union has questioned the management or supervisory witness, the employer's counsel can decide to either further examine the witness or wait and call the same witness during the employer's case in chief. Generally, the later is preferable unless the witness only has a few short questions to answer for the employer's representative/counsel.

c. Subpoena the Union's Representatives as Witnesses and the Union's Documents

Subpoenas are issued by PERB. Leave enough time to have the subpoena sent to PERB to execute and sent back to you. Typically, it is best to hire a process server to serve a union representative with a subpoena. The union representative should be served with a subpoena well in advance of the hearing date. The process server should

have the witness fees and mileage available, in case the union representative asks for such monies pursuant to the provisions of Government Code section 68093.

i. Union Representatives' Communications with Members are Not Privileged

On the witness stand, a union representative may claim that communications with union members cannot be divulged based upon an "associational" or "representational" privilege. However, the Second District of the California Court of Appeals recently ruled that no evidentiary privilege exists between a union representative and a union member. (*American Airlines, Inc. v. The Superior Court of Los Angeles County* (2003) 114 Cal.App.4th 881.) In that case, a union representative purported to have relevant information with respect to an employee's claim of discrimination. However, during a deposition conducted by the employer, the union representative refused to provide the names of witnesses and other relevant information. The defendants sought a motion to compel responses to those questions. The Court of Appeal held, "We conclude no union privilege exists and direct the trial court to grant American's motion to compel." (*Id.* at p. 887.)

ii. Union documents

Employer's subpoena documents from the union for a variety of reasons. Most often, it is to obtain copies of the union's bargaining notes, internal memos and e-mail messages. Of course, such a subpoena will generally generate one from the union to the employer asking for the same information.

5. ASK THE ALJ TO TOUR THE WORKSITE

If it is in the best interest of your case, ask the ALJ if he/she is willing to tour the worksite. Oftentimes, it is helpful for the ALJ to actually see the work area in question. Before the tour, discuss with the ALJ and opposing counsel on the record the following issues: the exact facilities that will be toured; the length of time for the tour; who will attend the tour and how discussions and/or questions that occur on the tour will be subsequently memorialized on the record.

B. POST-HEARING BRIEFS

1. EACH STATUTE IN PERB'S JURISDICTION MUST BE INTERPRETED ACCORDING TO THE SPECIFIC LANGUAGE OF THE STATUTE

PERB has held that it cannot "... overlook textual differences among the three collective bargaining laws in an attempt to make all three statutes identical. Differences among the three PERB-administered statutes must be recognized, even where this leads to different results under each statute." (*State of California (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization* (1998) PERB Dec. No. 1279-S, adopting ALJ's Proposed Decision, pp. 41-42.)

Therefore, simply because PERB has already ruled in a case under EERA, does not mean that they must or should rule the same way in a HEERA or Dills Act case. The specific statutory language, as well as the Legislative intent, must be reviewed to

determine if the Legislature meant the statutes to be interpreted similarly even though there are differences in the wording of the Acts.

Further, depending on your argument, it may well be worth the money to pay a professional legislative search service to compile the legislative intent of a specific statute.

2. USE DECISIONS FROM THE NATIONAL LABOR RELATIONS BOARD TO SUPPORT YOUR POSITION

The courts have determined that the Dills Act and other California public sector labor statutes evolved out of and are built on the National Labor Relations Act (hereinafter "NLRA"). (29 U.S.C. § 151 et seq.; **California State Employees Ass'n. v. Public Employment Relations Bd.**, supra, 51 Cal.App.4th 923, 934-35.) In interpreting the Dills Act, both PERB and the courts have turned to decisions of the National Labor Relations Board (hereinafter "NLRB") interpreting analogous provisions under the NLRA. (**California State Employees Ass'n. v. Public Employment Relations Bd.**, supra, 51 Cal.App.4th 923, 934-35; **McPherson v. Public Employment Relations Board**, supra, 189 Cal.App.3d 293, 305-306.)

For example, the PERB Board relied on the provisions of the NLRA and the decisions of the NLRB when addressing the term "wages" in the case of **Trustees of the California State University (San Marcos)** (2004) PERB Dec. No. 1584-H:

"Under HEERA, the scope of representation is limited to 'wages, hours or employment, and other terms and conditions of employment.' (HEERA sec. 3562(r)(1).) The Board has long interpreted the term 'wages' to include more than an employee's hourly, weekly or piece work compensation. (**Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District** (1984) PERB Decision No. 375 (Healdsburg).) Instead, the Board has followed the definition of 'wages' employed under the National Labor Relations Act (NLRA). (**Healdsburg**, at p. 29.) Under the NLRA, 'wages' is defined to include 'emoluments of value' which accrue to employees out of their employment relationship. (**Inland Steel Co.** (1948) 77 NLRB 1, 4, enf'd. 170 F.2d 247 (7th Cir. 1948), cert. denied 336 U.S. 960 (1949).) Examples of such "emoluments of value" include gas discounts given to employees of a gas company (**NLRB v. Central Illinois Public Service Co.** (1963) 324 F.2d 916 [54 LRRM 2586] (**Central Illinois**)); employee "layaway plans" (**Master Slack** (1977) 230 NLRB 1054 [96 LRRM 1309]); education and relocation assistance (**Tocco, Inc.** (1997) 323 NLRB 480 [155 LRRM 1138]); and employee discounts on eyewear (**Optica Lee Borinquen, Inc.** (1992) 307 NLRB 705 [141 LRRM 1265] enf'd 991 F.2d 786 (1st Cir. 1993))." (*Id.*)

3. "UNPROTECTED" UNION ACTIVITIES

PERB has ruled that employee activities, in order to be considered "protected," must be "made in pursuit of lawful objectives and carried out in a proper manner." (*Konocti Unified School District* (1982) PERB Dec. No. 217.) For example, PERB has ruled that protected activity may lose its statutory protection if it is in breach of a labor agreement. (*Mammoth Unified School District* (1983) PERB Dec. No. 371.)

Recently, PERB ruled that an elected union officer did not engage in protected activity when he informed unit members to disregard an employer's order to sign and read a memorandum. (*State of California (Department of Corrections)* (2004) PERB Dec. No. 1723-S.) The Board stated as follows in that case,

"Lucketta has failed to state a prima facie case because he has not met the requirements of the Novato test. There was no adverse action by the employer related to protected activity. The LOI did not discipline Lucketta for protected activity but rather addressed Lucketta telling the psych techs to go against written policy and act in a manner inconsistent with management directives. Telling employees to violate management directives is not protected activity." (Id.)

4. "UNPROTECTED" UNION SPEECH

PERB has long ruled that speech, including written speech, by union activists will be considered "protected," as long as the subject matter of the speech relates to "matters of legitimate concern to employees as employees so as to come within the right to participate in the activities of an employee organization for the purpose of representation on matters of employer-employee relations." (*Rancho Santiago Community College District* (1986) PERB Dec. No. 602, citing *Mt. San Antonio Community College District* (1982) PERB Dec. No. 224; *Pittsburg Unified School District* (1978) PERB Dec. No. 47 and *State of California (Department of Transportation)* (1982) PERB Dec. No. 257-S.)

PERB has ruled that an employee's right to engage in protected conduct permits some leeway for "impulsive behavior," which must be balanced against the employer's right to maintain order and respect in the workplace. (*State of California (Department of Corrections)* (2001) PERB Dec. No. 1435-S adopting ALJ proposed decision at 23 PERC para. 30161; *Rio Hondo Community College District* (1982) PERB Dec. No. 260.) For example, in *Unified School District* (1996) PERB Dec. No. 1164, adopting the proposed decision of the ALJ, PERB ruled that an employee's activity directed against a supervisor's performance was in fact "protected" when its purpose was found to further a legitimate interest in working conditions. In another case, PERB determined that an employer unlawfully disciplined employees who called a superintendent an obscene name for refusing to participate in a question and answer session during a faculty assembly. (*Rio Hondo Community College District* (1982) PERB Dec. No. 260.) Thus, it is clear from PERB case law, that employees, especially those speaking in their capacity of union officers/agents, are given wide latitude by PERB when discussing workplace concerns and such speech is usually found to be protected.

While PERB affords "speech in the context of union activities," generous protection, protected speech may lose its statutory protection where it is found to be so **"opprobrious, flagrant, insulting, defamatory, insubordinate, or fraught with malice"** as to cause **"substantial disruption or material interference"** with the employer's operations. (Emphasis added; ***State of California (Department of Corrections)*** (2001) PERB Dec. No. 1435-S adopting ALJ proposed decision at 23 PERC para. 30161, p. 554; see also ***California Faculty Association*** (1988) PERB Dec. No. 693-H; ***Mt. San Antonio Community College District*** (1982) PERB Dec. No. 224; ***Richmond Unified School District*** (1979) PERB Dec. No. 99; ***NLRB v Blue Bell, Inc.*** (5th Cir. 1955) 219 F.2d 796.)

However, in ***Rancho Santiago Community College District*** (1986) PERB Dec. No. 602; PERB found a union official's statements charging the employer with falsifying teacher evaluations for purposes of political retaliation, invading privacy, and administrative meddling to break up faculty departments, to be "protected" speech. (*Id.*)

Finally, an employee's statements are not always considered "protected" speech simply because the individual holds a position with a union. Rather, employee activity that is detrimental to and/or disparaging of an employer's business and is not related to work-related activities or employees' interest as employees will not be found to be protected speech. In ***State of California (Department of Transportation)*** (1982) PERB Dec. No. 257-S, PERB held that an employee's criticism aimed at humiliating a supervisor based purely on a "personal grudge" was not considered protected speech.

PANEL FOUR

PANEL FOUR:

Appeal of a Dismissal or Proposed Decision

3:45-5:00 p.m.

Moderator: Gregory Lyall, Legal Adviser, PERB

Panelists: John C. Duncan, Chairman, PERB
Heather Glick, Legal Adviser, PERB
Rosalind Wolf, Attorney, California Teachers Association – Union
Paul Loya, Attorney, Partner, Atkinson, Andelson, Loya, Ruud & Romo – Management

Opening Remarks

Introductions

Filing Appeals

Deciding when to appeal
Preparing an appeal
Strategy
Research techniques

Case Processing

How cases are processed at the Board level
How cases are reviewed by Board Members and Legal Advisers
Briefs. What works and what doesn't
Oral Argument

Remedies

Appealing Board Decisions

Process
Strategy

PANEL FOUR: Appeal of a Dismissal or Proposed Decision

Panel Members

Moderator: Gregory Lyall, Legal Adviser, PERB

Appointed as Legal Adviser to Member Sally M. McKeag in June 2005, Gregory T. Lyall was previously a staff counsel at the California Department of Personnel Administration from 2001 to 2005. Before entering state service, Mr. Lyall was an associate attorney with the law firms of Kronick, Moscovitz, Tiedemann & Girard (1997-2001) and Pinnell & Kingsley (1994-1997). Mr. Lyall received his B.S. degree in Biology from the University of Southern California and his Juris Doctorate from the University of San Diego School of Law where he graduated with *cum laude* honors and served as a member of the San Diego Law Review. Mr. Lyall currently teaches a class on labor and employment law through the U.C. Davis Extension Program.

John C. Duncan, Chairman, PERB

John C. Duncan was appointed to the Board and designated Chairman by Governor Arnold Schwarzenegger February 2004. Prior to his appointment, he was president of Duncan Consulting, Inc. and served as a member of the Governor-Elect's Transition Team staff. Mr. Duncan previously served in the cabinet of Governor Pete Wilson. He was the Director of the Department of Industrial Relations and principal advisor to Governor Wilson on labor and employment issues. Following that service he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in History and holds a masters degree in Public Administration from Harvard University's John F. Kennedy School of Government. His term expires on December 31, 2008.

Heather Glick, Legal Adviser, PERB

In September 2005, Heather Glick was appointed as Legal Adviser to Member Karen L. Neuwald. Ms. Glick began her career in labor and employment law in law school when she clerked for Los Angeles Unified School District and Milwaukee Public Schools in their respective labor relations departments. Upon graduating from Valparaiso University School of Law, she worked for the State of Illinois as Labor Relations Counsel where she represented all agencies under the auspice of the Governor in arbitrations and before the Illinois Labor Relations Board. After leaving state service, Ms. Glick worked for Ancel, Glink, Diamond, Bush, DiCianni & Rolek (2002-2004) and Liebert Cassidy Whitmore (2004-2005) boutique, firms specializing in local government law. Ms. Glick received a B.A. degree in Sociology of Law and English from the University of California Davis and her Juris Doctorate from Valparaiso University School of Law.

See attached resumes for:

Rosalind D. Wolf, Attorney, California Teachers Association

Paul Loya, Partner, Atkinson, Andelson, Loya, Ruud & Romo

ROSALIND D. WOLF
California Teachers Association
11745 E. Telegraph Road
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Phone 562.942.7979 Fax 562.949.6518

- Staff Attorney, California Teachers Association, since 1985
 - Board Counsel to Member Marty Morgenstern, Public Employment Relations Board (1982-85)
- Adjunct Professor, San Francisco State University (1981)
 - Legislative Aide to Supervisor Nancy Walker San Francisco Board of Supervisors (1980-82)
- Attorney, National Labor Relations Board (1979)

Fields of Practice

- Public Sector Union Representation & Unfair Labor Practice Proceedings
 - Appellate Court Practice
 - Education Law
 - Constitutional Law
 - Labor and Employment Law
 - Charter Schools
 - Arbitration

Memberships

- California Bar Association, Labor & Employment Law Section
- American Bar Association, Labor & Employment Law Section
 - National Lawyer's Guild

California Teachers Association
Department of Legal Services

CTA's Legal Department provides legal services to approximately 300,000 public school teachers (elementary, secondary, and higher education), and to local CTA affiliates which serve as the exclusive bargaining agent in nearly 800 school districts throughout California. In addition to administrative hearings before PERB and other administrative agencies, CTA staff attorneys practice before California's superior courts, courts of appeal, and Supreme Court, and before federal District courts.

BURLINGAME

Beverly Tucker, Chief Counsel
Priscilla S. Winslow, Assistant Chief Counsel
Ballinger Kemp
Ramon E. Romero
Diane Ross

SANTA FE SPRINGS

Joseph R. Colton
Michael D. Hersh
John F. Køhn
Robert E. Lindquist
Brenda Sutton-Wills
Rosalind D. Wolf

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Senior Partner

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Public Sector Practice Group

Experience

Paul Loya is a senior partner in the Pleasanton office of Atkinson, Andelson, Loya, Ruud & Romo. Mr. Loya represents school employers as legal counsel and as labor management negotiator. He has successfully litigated employee termination cases in federal and state courts and has handled appeals through the California and U.S. Supreme Courts. Mr. Loya represents school districts and community colleges in all matters, including PERB proceedings, general school, business, and teacher dismissal cases. He was recently named by Law & Politics Magazine as one of northern California's "Super Lawyers" and by Bay Area Lawyer Magazine as a top litigator.

Education

Mr. Loya earned his undergraduate degree in Mathematics from California State University, Hayward. He graduated with his Juris Doctor from the University of California, Berkeley (Boalt Hall). His honors include Law Review and being a Major Walter Dinkelspiel Scholar.

Admission

1973, California, U.S. Supreme Court, U.S. Court of Appeals, Ninth Circuit and U.S. District Court, Northern District of California; 1983, U.S. District Court, Eastern District of California

Memberships

State Bar of California; American Bar Association, Alameda County Bar, Eastern Alameda County Bar Association, La Raza Lawyers of the East Bay

Publications and Speaking Engagements

Mr. Loya has lectured at University of California, Los Angeles, University of Southern California, University of California, Davis, and for the Northern and Southern California School Employers Associations. He also conducted workshops for Negotiation Support Service, Labor Relations Support Service (LRSS), California Association of School Business Officials (CASBO), Association of California School Administrators (ACSA), and California School Boards Association (CSBA). Mr. Loya directed and acted as chief instructor for the Collective Bargaining Academy for the National Community College Trustees Conference. He authored numerous articles on school law and collective bargaining for firm publications and outside educational journals. He is a long-standing contributing author to California Public Sector Labor Relations, a Matthew Bender publication.

Panel Four Materials

Relevant Law, Statutes and Regulations for Appealing Dismissals or Proposed Decisions to the Board

I. EXCEPTING TO AN ALJ'S PROPOSED DECISION

A. Exceptions to an ALJ's Proposed Decision

A party may file with the Board itself a statement of exceptions to a proposed decision issued pursuant to PERB Regulation 32300, and supporting brief, within 20 days following the date of service of the decision or as provided in Section 32310. (PERB Regs. 32300 and 32310.)

B. Response to Exceptions

Within 20 days following the date of service of the statement of exceptions, any party may file with the Board itself an original and five copies of a response to the statement of exceptions and a supporting brief. (PERB Reg. 32310.)

C. Failure to File Exceptions

Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein. (PERB Reg. 32305.)

II. APPEALING A BOARD AGENT'S DISMISSAL OF UNFAIR PRACTICE CHARGE

A. Appeal of a Dismissal

Within 20 days of the date of service of a dismissal, the charging party may appeal the dismissal to the Board itself. (PERB Reg. 32635(a).)

B. Response to an Appeal of a Dismissal

If the charging party files a timely appeal of the dismissal, any other party may file a statement in opposition to the appeal within 20 days following the date of service of the appeal. (PERB Reg. 32635(c).)

C. Late Filing

A late filing may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations. (PERB Reg. 32136.)

III. CASE PROCESSING

A. Oral Argument on Exceptions

A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument. (PERB Reg. 32315.)

B. Disqualification of Board Members or Board Agents

Grounds for disqualification are set forth in PERB Regulation 32155. Any party may request a Board Member or a Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the person to whom the matter is assigned. Such request shall be written, or if oral, reduced to writing within 24 hours of the request. (PERB Reg. 32155.)

C. Advisory Opinions

PERB does not issue "advisory opinions" or generalized declarations of law. (Santa Clarita Community College District (College of the Canyons) (2003) PERB Decision No. 1506.)

D. Unalleged Violations

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence. (PERB Reg. 32635(b).)

E. Deference to ALJ Determinations

While the Board gives deference to an ALJ's factual findings which incorporate determinations of witness credibility, the Board reviews the record of the cases before it de novo, and has the duty and responsibility to take the actions based on that review which it deems appropriate to take. (State of California (Department of Industrial Relations) (1999) PERB Decision No. 1299a-S.)

F. Powers of the Board to Issue Decisions

The Board itself may: (1) issue a decision based upon the record of hearing, or (2) affirm, modify or reverse the proposed decision, order the record re-opened for the taking of further evidence, or take such other action as it considers proper. (PERB Reg. 32320)

G. Decisions of the Board are Precedential

All decisions and orders issued by the Board itself are precedential and may be cited in any matter pending before a Board agent or the Board itself. (PERB Reg. 32320(c).)

IV. REMEDIES

A. The Board's General Remedial Powers

The Board shall have the power to issue a decision and order in an unfair practice case directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of the applicable statute. (PERB Reg. 32325.)

B. Attorneys' Fees

The Board may award reasonable attorneys' fees and costs when a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or otherwise an abuse of process. (Hacienda La Puente Unified School District (1998) PERB Decision No. 1280.)

V. APPEALING BOARD DECISIONS

A. Request for Reconsideration

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. (PERB Reg. 32410(a) and (c).)

B. Response to a Request for Reconsideration

Any party shall have 20 days from service to file a response to the request for reconsideration. (PERB Reg. 32410(b).)

C. Appeals of Board Decisions

Board decisions are appealed via petition for a writ of extraordinary relief in the district court of appeal. The petition must be filed in the appellate district in which the dispute occurred and must be filed within 30 days from the date of the issuance of the Board's final decision or Order.¹

¹NOTE: Decisions of the Board not to issue a complaint may not be appealed. (Gov. Code secs. 3542 (EERA), 3520 (Dills Act), 3564 (HEERA) and 3509.5 (MMBA).)

GENERAL PROCESS TO APPEAL
FINAL PERB ORDERS

by
Atkinson, Andelson, Loya, Ruud & Romo 2006

APPEALS IN UNFAIR PRACTICE CASES

I. Preliminary Procedures:

- A. Unfair practice complaint filed with PERB pursuant to California Code of Regulations, Title 8, section 32000, et seq.
- B. PERB issues unfavorable Order
- C. Aggrieved party decides to appeal

II. Authority to Appeal:

- A. Government Code sections 3520(b) and (c) Dills Act 3542(b) and (c) EERA; 3564(b) and (c) HEERA; and Public Utility Code section 99562(b) TEERA.¹

III. Appeal Procedure:

- A. Aggrieved party may file petition for writ of extraordinary relief in the court of appeal.
- B. Petition to be filed within 30 days after issuance of PERB's final order or order denying reconsideration.
- C. Petition analogous to writ of review under Code of Civil Procedure sections 1067-1077. Additional procedures found in California Rules of Court, Rule 59.

IV. Petition:

- A. Must be filed in district court of appeal in appellate district where unfair practice dispute occurred.
- B. Must be verified unless filed by state or other public agency.
- C. Must be accompanied by proof of service on the Executive Director of PERB and on any real party in interest, as defined.

¹ Separate procedures are found under Government Code section 3509(a) and (b) for MMBA.

- D. Need not include citations to the record or a detailed points and authorities because PERB files record. (Court must provide opportunity for petitioner to file P's and A's after PERB furnishes record.)

V. Administrative Record:

- A. To be filed by PERB within 10 days unless PERB demonstrates good cause for an extension.

VI. Briefing Schedule:

- A. Petitioner must serve and file supporting brief (with citations to the record) within 30 days after service of the index to the certified record.
- B. PERB and any real party in interest may file a response brief within 30 days after service of petitioner's brief.
- C. Petitioner may file a reply brief within 10 days after service of response.

VII. Court of Appeal:

- A. May summarily deny the petition without issuing an opinion or stating reasons for the denial. (If court declines jurisdiction, action to enforce PERB decision and order must be pursued through statutory procedures for enforcing PERB orders.)
- B. May issue a writ of review, schedule oral argument, and thereafter issue a full decision which enforces, modifies or sets aside the decision.
- C. Decision may be appealed to the California Supreme Court according to general procedures for review by that Court.

VIII. Effect of Pending Court Review on PERB Orders:

- A. PERB automatically stays effectiveness of decisions during review.
- B. Courts may specifically order stay of PERB's decision and order.
- C. PERB has authority to seek interim injunctive remedy after issuance of its decision and pending court review.

IX. Relief Available from Reviewing Court:

- A. Authority to enter a decree enforcing, modifying, or setting aside a PERB order.
- B. May award attorneys fees (Code of Civil Procedure section 1021.5) when PERB decision reviewed by extraordinary writ.
- C. May remand the case to PERB for further actions per court's opinion.

**GENERAL PROCESS TO APPEAL
UNIT DETERMINATIONS AND
OTHER REPRESENTATION CASE DECISIONS**

I. General Rule:

- A. Representation cases under EERA, Dills Act, HEERA, and TEERA not directly reviewable by the courts except in very limited circumstances.²
- B. Obtain judicial review indirectly by raising propriety of PERB's determination as a defense to an unfair practice complaint and then appeal the unfair practice case to the courts.
- C. Cases are commonly referred to as "technical refusal to bargain" cases.
- D. Certification question is not reviewed de novo unless new facts are brought to the court's attention.
- E. PERB's determination that an unfair practice has occurred can then be attacked directly in the court of appeal through a petition for writ of extraordinary relief.

II. Exceptions:

- A. Cases of "Special Importance."
- B. Cases in which PERB acts in excess of its statutory authority.

² For MMBA representation matters, review through petition for writ of extraordinary relief.

MISCELLANEOUS APPEALS

I. Appealing PERB Refusal to Issue Complaint:

- A. Specifically prohibited by the Dills Act, EERA, MMBA, HEERA, and TEERA.

II. Appealing PERB Administrative Determinations:

- A. No published appellate law on whether a PERB administrative determination is subject to judicial review.
- B. Statutory schemes appear to preclude appeals except where they may be presented as part of the review of a final order in an unfair practice case.
- C. Doctrine of exhaustion of remedies would also seem to preclude appeals.

III. Appealing PERB Public Notice Decisions:

- A. EERA, the Dills Act, HEERA, and TEERA contain provisions requiring that bargaining proposals be made public or “sunshined.”
- B. Statutes governing judicial review of PERB decisions do not specify or provide for review of decisions involving public notice complaints.
- C. Possible argument exists that right of appeal extends to special procedures unless the Legislature has expressly prohibited an appeal in the particular case.

IV. Other Proceedings:

- A. Compliance
- B. Enforcement



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California Public Employment Relations Board



The Public Employment Relations Board (PERB or Board) is a quasi-judicial administrative agency charged with administering the collective bargaining statutes covering employees of California's public schools, colleges, and universities, employees of the State of California, employees of California local public agencies (cities, counties and special districts), trial court employees and supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

The Board

The Board is composed of five members drawn from California's public and private sectors. Current members are: [John C. Duncan](#), Chair, [Lilian S. Shek](#), [Sally M. McKeag](#), and [Karen Neuwald](#).

PERB is headquartered in Sacramento, and maintains regional offices in Oakland and Los Angeles.

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California Public Employment Relations Board

Laws & Rules

The Public Employment Relations Board (PERB) is a quasi-judicial agency which oversees public sector collective bargaining in California. PERB administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB include the Educational Employment Relations Act (EERA) of 1976 establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act), establishing collective bargaining for state government employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 extending the same coverage to the California State University System, the University of California System and Hastings College of Law. The Meyers-Milias-Brown Act (MMBA) of 1968 establishing collective bargaining for California's municipal, county, and local special district employers and employees was brought under PERB's jurisdiction pursuant to Senate Bill 739 (Chapter 901, Statutes of 2000), effective July 1, 2001. PERB's jurisdiction over the MMBA excludes peace officers, management employees and the City and County of Los Angeles. In addition, PERB is responsible for the administration of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA), covering supervisory employees of the transit agency. In addition, effective August 16, 2004, pursuant to Senate Bill 1102 (Chapter 227, Statutes of 2004), the Trial Court Employment Protection and Governance Act (Trial Court Act) and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) were brought under PERB's jurisdiction. PERB has established Regulations to implement the provisions of the EERA, Dills Act, HEERA, MMBA, TEERA, Trial Court Act and Court Interpreter Act.

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[Back to Top of Page](#)



[Home](#)

[About PERB](#)

[Laws & Rules](#)

[File UPC Online](#)

[Decisions](#)

▶ [Recent Decisions](#)

▶ [Decision Search](#)

▶ [Email Alert Sign-up](#)

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[Board Meetings](#)

[News](#)

[Annual Report](#)

[F.A.Q.](#)

[Tools](#)

[Forms & Publications](#)

[How to use PERB](#)

[PERB Search Engine](#)

[Links](#)

[Contact](#)

search
My CA This Site

California Public Employment Relations Board

CHAPTER 10.7 MEETING AND NEGOTIATING IN PUBLIC EDUCATIONAL EMPLOYMENT

AS OF JUNE 21, 2004

ARTICLE 1. GENERAL PROVISIONS

[3540. Purpose of chapter](#)

[3540.1. Definitions](#)

[3540.2 Qualified or negative certifications; proposed agreements; review process; financial impact; review and comment by superintendent of public instruction](#)

ARTICLE 2. ADMINISTRATION

[3541. Public employment relations board](#)

[3541.3. Powers and duties of the board](#)

[3541.4. Interference with board in performance of duties; misdemeanor](#)

[3541.5. Unfair practice; jurisdiction; procedures for investigation, hearing and decision](#)

ARTICLE 3. JUDICIAL REVIEW

[3542. Right to judicial review; petition for writ of extraordinary relief; notice; jurisdiction; record; findings; enforcement of final decision or order](#)

ARTICLE 4. RIGHTS, OBLIGATIONS, PROHIBITONS, AND UNFAIR PRACTICES

[3543. Rights of public school employees](#)

[3543.1. Rights of employee organizations](#)

[3543.2. Scope of representation](#)

[3543.3. Negotiations](#)

[3543.4. Management positions; confidential positions; representation](#)

[3543.5. Interference with employees' rights prohibited](#)

3543.6. Unlawful acts of employee organization

3543.7. Duty to meet and negotiate in good faith; time

3543.8. Actions and proceedings; standing; application of section

ARTICLE 5. EMPLOYEE ORGANIZATIONS: REPRESENTATION, RECOGNITION, CERTIFICATION, AND DECERTIFICATION

3544. Request for recognition; proof of majority support

3544.1. Grant of request for recognition; representation election; challenge or competing claim; existing agreement; recognition of other organization

3544.3. Petition requesting representation election; posting of notice of request; appearance on ballot; transmission of petition to board

3544.5. Petition requesting investigation, decision on selection of exclusive representative and to determine appropriateness of unit

3544.7. Inquiries, investigations or hearings; determination; election; dismissal of petition

3544.9. Recognized or certified exclusive representative; duty

ARTICLE 6. UNIT DETERMINATION

3545. Appropriateness of unit; basis

ARTICLE 7. ORGANIZATIONAL SECURITY

3546. Member of recognized employee organization or payment of fair share service fee; condition of employment

3546.3. Member of religious body whose teachings include objections to joining or supporting employee organizations; exception

3546.5. Record of financial transactions; financial report

ARTICLE 8. PUBLIC NOTICE

3547. Proposals relating to representation; informing public; adoption of proposal; new subjects; regulations

3547.5. Major provisions of agreement with exclusive representative

ARTICLE 9. IMPASSE PROCEDURES

3548. Mediator; mutual agreements

3548.1. Fact finding panel; request; selection of panel; chairperson

3548.2. Fact finding panel; hearings, investigations and inquiries; subpoenas; records from various agencies; considerations in arriving at findings

3548.3. Findings of fact and recommendation of terms of settlement; submission; costs

3548.4. Continuation of mediation efforts

3548.5. Agreements; final and binding arbitration procedures

[3548.6. Agreements: final and binding arbitration pursuant to board rules](#)

[3548.7. Agreements: proceedings for failure to proceed to arbitration](#)

[3548.8. Arbitration award to be final and binding; enforcement](#)

ARTICLE 10. MISCELLANEOUS

[3549. Construction](#)

[3549.1. Proceedings exempt from public meeting provisions](#)

[3549.3. Severability](#)

[Back to Top of Page](#)

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Home

About PERB

Laws & Rules

Decisions

▶ Recent Decisions

▶ Decision Search

▶ Email Alert Sign-up

▶ ALJ Decisions

▶ Fact Finder Decisions

Board Meetings

News

Annual Report

F.A.Q.

Tools

Forms & Publications

How to use PERB

PERB Search Engine

Links

Contact

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Regulations of the Public Employment Relations Board As of May 11, 2006

CHAPTER 1. PUBLIC EMPLOYMENT RELATIONS BOARD

SUBCHAPTER 1. INTERNAL PROCEDURES (Sections 31001-31100)

- Article 1. Public Meetings (Section 31001)
- Article 2. Conflict of Interest Code (Section 31100)

SUBCHAPTER 2. DEFINITIONS AND GENERAL PROVISIONS (Sections 32000-32164)

- Article 1. Definitions (Sections 32000-32090)
- Article 2. General Provisions (Sections 32100-32164)

SUBCHAPTER 3. HEARINGS (Sections 32165-32230)

SUBCHAPTER 4. DECISIONS OF THE BOARD ITSELF (Sections 32295-32500)

- Article 1. Ex Parte Communications (Section 32295)
- Article 2. Appeal of Board Agent Decision to the Board Itself (Sections 32300-32325)
- Article 3. Administrative Appeals (Sections 32350-32380)
- Article 4. Reconsideration (Sections 32400-32410)
- Article 5. Request for Injunctive Relief (Sections 32450-32470)
- Article 6. Request for Judicial Review (Section 32500)

SUBCHAPTER 5. UNFAIR PRACTICE PROCEEDINGS (Sections 32602-32690)

SUBCHAPTER 6. REPRESENTATION PROCEEDINGS (Sections 32700-32813)

- Article 1. General Provisions (Section 32700)
- Article 2. Elections (Sections 32720-32754)
- Article 3. Request for Amendment of Certification (Sections 32761-32763)
- Article 4. Decertification Petition (Sections 32770-32776)
- Article 5. Petition for Unit Modification (Sections 32781-32786)
- Article 6. Impasse Procedures (Sections 32791-32800)
- Article 7. Arbitration Procedures (Sections 32810-32813)

SUBCHAPTER 7. COMPLIANCE (Section 32980)

- Article 1. Compliance (Section 32980)

SUBCHAPTER 8. AGENCY FEE REGULATIONS (Sections 32990-32997)

Article 1. Agency Fee (Sections 32990-32997)

CHAPTER 2. EDUCATIONAL EMPLOYMENT RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEEDINGS (Sections 33015-33710)

Article 1. General Provisions (Sections 33015-33020)

Article 2. Request for Recognition and Intervention (Sections 33050-33100)

Article 3. Employer Decision; Request for Board Investigation (Sections 33190-33237)

Article 4. Representation Hearings (Sections 33280-33450)

Article 5. Representation Elections (Sections 33460-33490)

Article 6. Severance Request (Sections 33700-33710)

SUBCHAPTER 2. ORGANIZATIONAL SECURITY ARRANGEMENTS (Sections 34020-34065)

Article 1. Rescission of Organizational Security Arrangement (Sections 34020-34040)

Article 2. Reinstatement of Organizational Security Arrangement (Sections 34050-34065)

CHAPTER 3. STATE EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES (Sections 40130-40430)

Article 1. General Provisions (Sections 40130-40182)

Article 2. Severance Petition (Sections 40200-40260)

Article 3. Representation Election (Sections 40300-40330)

Article 4. Rescission of Fair Share Fee Provision (Sections 40400-40430)

CHAPTER 4. HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES (Sections 51010-51685)

Article 1. General Provisions (Sections 51010-51027)

Article 2. Request for Recognition and Intervention (Sections 51030-51096)

Article 3. Petition for Certification (Sections 51100-51130)

Article 4. Board Investigation (Section 51140)

Article 5. Representation Hearings (Sections 51200-51235)

Article 6. Representation Elections (Sections 51300-51340)

Article 7. Severance Petition (Sections 51680-51685)

SUBCHAPTER 2. FAIR SHARE SERVICE FEE PROVISIONS (Sections 51700-51740)

Article 1. Rescission Petition (Sections 51700-51720)

Article 2. Reinstatement Petition (Sections 51725-51740)

CHAPTER 5. MEYERS-MILIAS-BROWN ACT

Article 1. General Provisions (Sections 61000-61090)

Article 2. Elections (Sections 61100-61200)

Article 3. Petition for Certification (Sections 61210-61270)

Article 4. Petition for Amendment of Certification (Sections 61300-61320)

Article 5. Decertification Petition (Sections 61350-61380)

Article 6. Severance Petition (Sections 61400-61420)

Article 7. Petition for Unit Modification (Sections 61450-61480)

Article 8. Rescission of Agency Shop Agreement or Provision (Sections 61600-61630)

CHAPTER 6. TRANSIT EMPLOYER-EMPLOYEE RELATIONS ACT

SUBCHAPTER 1. REPRESENTATION PROCEDURES (Sections 71010-71685)

- Article 1. General Provisions (Sections 71010-71027)
- Article 2. Request for Recognition and Intervention (Sections 71030-71095)
- Article 3. Petition for Certification (Sections 71100-71130)
- Article 4. Board Investigation (Section 71140)
- Article 5. Representation Hearings (Sections 71200-71235)
- Article 6. Representation Elections (Sections 71300-71340)
- Article 7. Severance Petition (Sections 71680-71685)

SUBCHAPTER 2. FAIR SHARE SERVICE FEE PROVISIONS (Sections 71700-71740)

- Article 1. Rescission Petition (Sections 71700-71720)
- Article 2. Reinstatement Petition (Sections 71725-71740)

CHAPTER 7. TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT

- Article 1. General Provisions (Sections 81000-81090)
- Article 2. Elections (Sections 81100-81200)
- Article 3. Petition for Certification (Sections 81210-81270)
- Article 4. Petition for Amendment of Certification (Sections 81300-81320)
- Article 5. Decertification Petition (Sections 81350-81380)
- Article 6. Severance Petition (Sections 81400-81420)
- Article 7. Petition for Unit Modification (Sections 81450-81480)
- Article 8. Rescission of Agency Shop Agreement or Provision (Sections 81600-81630)

CHAPTER 8. TRIAL COURT INTERPRETER EMPLOYMENT AND LABOR RELATIONS ACT

- Article 1. General Provisions (Sections 91000-91090)
- Article 2. Elections (Sections 91100-91200)
- Article 3. Petition for Certification (Sections 91210-91270)
- Article 4. Petition for Amendment of Certification (Sections 91300-91320)
- Article 5. Decertification Petition (Sections 91350-91380)
- Article 6. Severance Petition (Sections 91400-91420)
- Article 7. Petition for Unit Modification (Sections 91450-91480)
- Article 8. Rescission of Agency Shop Agreement or Provision (Sections 91600-91630)

Back to Top of Page

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Tuesday, September 19, 2006

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[Home](#)[About PERB](#)[Laws & Rules](#)[File UPC Online](#) [Decisions](#)[▶ Recent Decisions](#)[▶ Decision Search](#)[▶ Email Alert Sign-up](#)[▶ ALJ Decisions](#)[▶ Fact Finder Decisions](#)[Board Meetings](#)[News](#)[Annual Report](#)[F.A.Q.](#)[Tools](#)[Forms & Publications](#)[How to use PERB](#)[PERB Search Engine](#)[Links](#)[Contact](#)


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Decisions of the Board are also published, with an index, in the [Public Employee Reporter for California](#) (PERC), a publication of the [Labor Relations Press](#). Copies of the PERC are available in many public and university libraries throughout California. The California Public Employee Relations Program at the Institute of Industrial Relations, UC Berkeley, also abstracts PERB decisions in their journal, and copies of Board decisions can be ordered from them, at \$.30 a page, by calling (510) 643-7069.

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[Back to Top of Page](#)

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- Headnotes
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 - All
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 - Appendix A
 - Appendix B
 - Appendix C
 - Appendix D
 - Appendix E
 - Appendix F

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- "M" refers to the Meyers-Milias-Brown Act
- "S" refers to the Ralph C. Dills Act (formerly known as the State Employer-Employee Relations Act)
- "T" refers to the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act

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[Laws & Rules](#)

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▶ [Decision Search](#)

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▶ [Fact Finder Decisions](#)

[Board Meetings](#)

[News](#)

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[Back to Top of Page](#)

California Home

Tuesday, September 19, 2006

[Home](#)[About PERB](#)[Laws & Rules](#)[File UPC Online](#)[Decisions](#)[▶ Recent Decisions](#)[▶ Decision Search](#)[▶ Email Alert Sign-up](#)[▶ ALJ Decisions](#)[▶ Fact Finder Decisions](#)[Board Meetings](#)[News](#)[Annual Report](#)[F.A.Q.](#)[Tools](#)[Forms & Publications](#)[How to use PERB](#)[PERB Search Engine](#)[Links](#)[Contact](#)

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- [Dills Petition for Certification \(PERB-3005\)](#)
- [Dills Severance Petition \(PERB-3105\)](#)
- [EERA Fair Share Fee Reinstatement Petition \(PERB-2320\)](#)
- [EERA Fair Share Fee Rescission Petition \(PERB-2310\)](#)
- [EERA Representation Petition \(PERB-2110\)](#)
- [HEERA Fair Share Fee Reinstatement Petition \(PERB-4490\)](#)
- [HEERA Fair Share Fee Rescission Petition \(PERB-4480\)](#)
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- [How to File and Process an Unfair Practice Charge](#)
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- [Request for Impasse Determination/Appointment of Mediator \(PERB-1510\)](#)
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Pocket Guide to the Meyers-Milias-Brown Act

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The MMBA Guide governs labor-management relationships in California local government: cities, counties, and most special districts. This edition covers three years of PERB and court rulings since jurisdiction over the act was transferred to PERB; Supreme Court ruling establishing six-month limitations period for MMBA charges before PERB; changes in PERB doctrine including a return to the Board's pre-*Lake Elsinore* arbitration deferral standard and reinstatement of the doctrine of equitable tolling; new federal court developments in the constitutional rules governing agency fees, and more. This booklet is an easy-to-use, up-to-date resource and a quick guide through the tangle of cases affecting local government employees. It includes the full text of the act, a glossary, table of cases, and index of terms.

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By Fred D'Orazio, Kristin Rosi and Howard Schwartz (2nd edition, 2006, \$12 each)

Last published in 1996, the new edition includes recent developments relating to legislative approval of collective bargaining agreements; a discussion of new Supreme Court cases that recognize civil service law limits; and a new section on PERB procedures, including recent reversals in pre-arbitration deferral law. The Pocket Guide provides a thorough description of the Dills Act — how it works, its history, and how it fits in with other labor relations laws. Also included are Public Employment Relations Board enforcement procedures, the text of the act, and a summary of all key cases that interpret the act, with complete citations and references to CPER analyses. In addition, there is a summary of PERB rules and regulations, a case index, and a glossary of terms designed for Dills Act users.

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Pocket Guide to Due Process in Public Employment (1st edition, 2005) by Emi Uyehara

An explanation of one of the most significant constitutional guarantees to citizens in general and to public employees in particular, the guide defines who is protected, what actions are covered, what process is due, remedies for violations, and more.

Pocket Guide to K-12 Certificated Employee Classification and Dismissal (1st edition, 2004) by Dale Brodsky

Now there's a pocket guide to help certificated employees, their representatives, and school employers navigate the often-convoluted web of laws, cases, and regulations that govern or affect classification and job security rights.

Pocket Guide to Public Sector Arbitration: California (3rd edition, 2004) by Bonnie G. Bogue and Frank Silver

A clear explanation of every step in the arbitration process — from filing a grievance to judicial review of arbitration awards — specifically tailored to the public sector.

Pocket Guide to the Basics of Labor Relations (1st edition, 2003) by Rhonda Albey

This Pocket Guide will help readers get their bearings in the labor relations environment and succeed in the initial stages of a rewarding line of work.

Pocket Guide to the Educational Employment Relations Act (7th edition, 2006) by Bonnie G. Bogue, Carol Ventrillo, David J. Bowen and Eric Borgerson

Here's a handy and thorough resource for the labor relations act that covers California's public schools and community colleges.

Pocket Guide to the Fair Labor Standards Act (1st edition, 2000) by Cathleen A. Williams and Edmund K. Brehl

Written by two experts in the field, this Pocket Guide focuses on the act's impact in the public sector workplace and explains the law's complicated provisions that vex public sector practitioners, like the "salary basis" test and deductions for partial-day absences.

Pocket Guide to the Family and Medical Leave Acts (2nd edition, 2002) by Peter J. Brown

A "user friendly" guide to the federal Family and Medical Leave Act of 1993 and the California Family Rights Act of 1993.

Pocket Guide to the Higher Education Employer-Employee Relations Act (1st edition, 2003) by Carol Ventrillo, Ritu Ahuja and Carolyn Leary

The Guide provides an easy-to-use description of the rights and obligations conferred by the act that governs collective bargaining at the University of California and the California State University systems.

Pocket Guide to the Meyers-Milias-Brown Act (13th edition, 2006) by Bonnie G. Bogue, Marla Taylor, Carol Ventrillo, and Eric Borgerson

Here's a tool for those who need the MMBA in a nutshell, offering a quick guide through the tangle of cases affecting local government employer-employee relations.

Pocket Guide to the Public Safety Officers Procedural Bill of Rights Act (11th edition, 2004) by Cecil Marr, Diane Marchant, and Dieter Dammeier

Known statewide, this Guide is the definitive reference to the procedural rights and protections surrounding peace officer investigations and discipline.

Pocket Guide to the Ralph C. Dills Act (2nd edition, 2006) by Fred D'Orazio, Kristin Rosi and Howard Schwartz

A thorough description of the act covering California state employees — how it works, its history, and how it fits in with other labor relations laws.

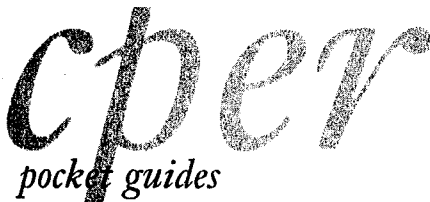
Pocket Guide to Unfair Practices: California Public Sector (4th edition, 2006) by Carol A. Ventrillo and Eric Borgerson

A comprehensive guide to the unfair practices created by state laws covering public school, state, higher education, local government, trial court, court interpreter, and Los Angeles MTA employees.

Pocket Guide to Workplace Rights of Public Employees (2nd edition, 2005) by Bonnie G. Bogue and Liz Joffe

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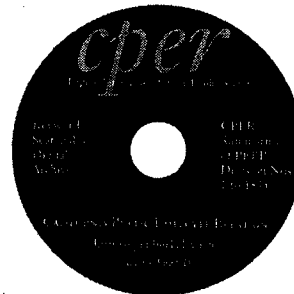
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