

The seal of the State of California is centered in the background. It features a circular design with the text "THE GREAT SEAL OF THE STATE OF CALIFORNIA" around the perimeter. In the center, there is a figure holding a scale and a sword, with a star above. The year "1850" is also visible.

# **ANNUAL REPORT**

**to the  
LEGISLATURE**

# **1983**

**PUBLIC EMPLOYMENT  
RELATIONS BOARD**

EIGHTH ANNUAL REPORT  
OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

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Members of the Board

Harry Gluck, Board Chairman<sup>1</sup>

Nancy Burt

John Jaeger

Marty Morgenstern

Irene Tovar

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Office of the General Counsel

Dennis Sullivan, General Counsel

Jeffrey Sloan, Assistant General Counsel

Janet Caraway, Director of Representation

Fred D'Orazio, Chief Administrative Law Judge

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Chuck Cole, Executive Director

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\*On February 1, 1984, Deborah M. Hesse was named Chairperson of PERB by Governor Deukmejian.

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## BOARD OPERATIONS

The Public Employment Relations Board (PERB) is a quasi-judicial agency responsible for administering three laws: the Educational Employment Relations Act (EERA, in effect since April 1976), the State Employer-Employee Relations Act (SEERA, in effect since July 1978), and the Higher Education Employer-Employee Relations Act (HEERA, in effect since July 1979). These three collective negotiations laws cover approximately 875,000 public employees employed by California public schools (pre-kindergarten - community colleges), the State of California, the University of California, and the California State University.

In administering these laws, the PERB has two principal functions: (1) to prevent and remedy unlawful acts (unfair practices) of employers and unions, and (2) to determine and implement, through secret-ballot elections, the free, democratic choice by employees as to whether they wish to be represented by a union in dealing with their employers.

The Board is composed of five members, appointed by the Governor and subject to confirmation by the Senate. During calendar year 1983, Harry Gluck served as Chairperson. Members during this period were Nancy Burt, John Jaeger, Marty Morgenstern, and Irene Tovar. Dennis Sullivan was General Counsel, and Chuck Cole served as Executive Director.

The agency has 99 authorized positions assigned to headquarters in Sacramento and regional offices in Los Angeles, San Francisco, and Sacramento.

During the reporting period, the Board made significant progress in attaining three goals:

1. Disposing of aged cases;
2. Reducing the period of time between original filing and final agency action; and
3. Balancing decision output with the incoming caseload.

As of January 1, 1984, the Board had reduced to 4 the number of unfair practice cases on its docket longer than one year. All four cases were under deliberation on December 31, 1983. As of that date, no other unfair practice cases, with the exception of those cases deferred pending the resolution of issues on appeal to the Supreme Court, have been on the Board's docket for more than nine months.

The Board is confident that the backlog of EERA unfair practice cases, which were delayed so the Board could implement the representation provisions of the three laws, is permanently resolved.

During the reporting period, PERB's very successful advisory committee, composed of representatives of labor, management, and interested citizens, expressed support for PERB's procedures and case processing timelines. The advisory group remains a critical link in PERB's efforts to further improve employer-employee relations in California.

## PERB PROCEDURES

### Representation

In accordance with the provisions of the statutes, the Board is empowered to determine appropriate units for negotiating purposes.

This process begins when a petition is filed by an employee organization. If there is only one employee organization and the parties agree on the unit description, the employer may either grant voluntary recognition or ask for a representation election. If more than one employee organization is competing for the same unit, an election is mandatory. The Board has stressed voluntary settlements through cooperation and has consistently offered the assistance of Board agents to work with the parties for unit settlements. It is the policy of the Board to encourage the parties covered by the Acts to resolve disputes by mutual agreements, provided such agreement is not inconsistent with the purpose and policies of the Acts.

If the parties dispute the appropriateness of a unit or the employment status of individuals within the unit, a Board agent convenes a settlement conference to assist the parties in resolving the dispute. The disputed unit modification cases are handled in the same manner as unit disputes.

If a unit dispute is resolved, the employer may grant voluntary recognition if there is only one employee

organization and the organization has evidenced majority support. If the employer declines to grant voluntary recognition, an election is held.

The Board has jurisdiction over all three statutes. When one or both parties wish to change established units, these changes are made in accordance with the Board's unit modification regulations.

In disputed cases, a Board agent will convene a settlement conference to assist the parties in resolving their disagreement. If the parties do not resolve their dispute, the Board agent will conduct an investigation or, if necessary, a hearing to develop a factual basis for resolving the case in light of Board precedent.

Another employee organization or group of employees may try to decertify an incumbent exclusive representative by filing a decertification petition with PERB. Such a petition is dismissed if filed within 12 months of the date of voluntary recognition by the employer or certification by PERB of the incumbent exclusive representative. Unless it is filed during a window period beginning approximately 120 days prior to the expiration of that agreement, the petition is also dismissed if filed when there is a negotiated agreement in effect.

### Elections

One major function of PERB is to conduct representation elections. The Board agent or the representative of a party to

the election may challenge the voting eligibility of any person who casts a ballot, and parties to the election may file objections to the conduct of the election. Challenged ballots and objections are resolved through procedures detailed in PERB regulations.

A second type of election occurs in order for employees to approve (under the EERA) or rescind (under the EERA or SEERA) an organizational security (fair share fee) agreement. Organizational security election procedures are similar to those followed in representation elections.

#### Impasse

The agency assists the parties in reaching negotiated agreements through mediation under all three statutes, and then through factfinding under EERA and HEERA, should it be necessary. If the parties are unable to reach an agreement during negotiations, either party may declare an impasse. At that time, a Board agent contacts both parties to determine if they have reached a point in their negotiations where their differences are so substantial or prolonged that further meetings would be futile. In cases where there is no agreement of the parties in regard to the existence of an impasse, a Board agent seeks information that helps the Board determine if mediation would be helpful and productive. Once it is determined that an impasse exists, the State Mediation and

Conciliation Service is contacted to assign a mediator. The mediation process has been very successful.

In the event settlement is not reached during mediation, either party (under EERA or HEERA) may request that factfinding procedures be implemented. If the mediator agrees that factfinding is appropriate, PERB provides a list of neutral factfinders from which the parties select an individual to chair the tripartite panel. If the dispute is not settled during factfinding, the panel is required to make findings of fact and recommend terms of settlement. These recommendations are advisory only. Under EERA, the public school employer is required to make the report public within 10 days after its issuance. Under HEERA, the parties are prohibited from making the report public for at least 10 days. Both laws provide that mediation can continue after the factfinding process.

#### Unfair Practice

An employer, employee organization, or employee may file a charge with PERB alleging that an employer or employee organization has committed an unfair practice. The charge and the underlying evidence is evaluated by a Board agent to determine whether a prima facie case of an unfair practice has been established.

If the Board agent determines that the charge or evidence fails to state a prima facie case, the charging party is

informed of the determination. If the charge is neither amended nor withdrawn, the Board agent assigned dismisses the charge. The charging party then has a right to appeal the dismissal to the Board.

If the Board agent determines that a charge states a prima facie case, a complaint is issued, and the respondent is given an opportunity to file an answer to the complaint. An administrative law judge (ALJ) then calls the parties together for an informal conference where efforts are made to settle the matter by mutual agreement. At the informal conference, the parties are free to discuss the case in confidence with the ALJ. To encourage open discussion and enhance the possibility of settlement no record is made. If settlement does not occur, either party may request a formal hearing.

At the formal hearing a new ALJ is assigned to hear the case. The ALJ rules on motions, takes sworn testimony and other evidence in order to build a formal record. The ALJ then studies the record, considers the applicable law, and issues a proposed decision.

A proposed ALJ decision applies precedential Board decisions to the facts of a case. In the absence of Board precedent, the ALJ decides the issue(s) by applying other relevant legal principles.

Any party to the proceeding who is dissatisfied with a proposed ALJ decision may file a Statement of Exceptions and a

supporting brief with the Board. After evaluating the exceptions, the Board may affirm the decision, modify it in whole or in part, reverse it, or send the matter back to the ALJ to take additional evidence. Proposed ALJ decisions that are not appealed are binding on the parties to the case.

An important distinction exists between ALJ decisions which become final and decisions of the Board itself. ALJ decisions may not be cited as precedent in other cases before the Board. Board decisions are precedential and not only bind the parties to that particular case, but also serve as precedent for similar issues arising in subsequent cases.

#### Public Notice

The three public sector collective bargaining acts provide that the public must be informed about the issues to be negotiated and that the public also be afforded the opportunity to express its views on the issues before negotiations.

PERB regulations provide the public with a mechanism to allege a violation of these sections of the EERA and HEERA. A Board agent is assigned to evaluate each complaint. Every effort is made to gain voluntary compliance and to resolve the complaint without the necessity of a formal hearing. To date, the staff has been highly successful with this approach.

## Litigation

The Board is represented in litigation by its General Counsel. The litigation responsibilities of the General Counsel include:

- defending final Board unfair practice decisions when aggrieved parties seek review in appellate courts;
- seeking judicial relief when a party refuses to comply with a final Board decision or with a subpoena issued by PERB;
- defending the Board against attempts to block its processes, such as attempts to enjoin PERB hearings or elections;
- defending a formal Board unit determination decision when the Board, in response to a petition from a party, agrees that the case is one of special importance, and joins in a request for immediate appellate review;
- submitting amicus curiae briefs in cases in which the Board has a special interest, or in cases affecting the Board's jurisdiction.

## Financial Statement

PERB regulations require that exclusive representatives file an annual financial statement with the agency no later than 60 days following the close of the organization's fiscal year. Any employee may file a statement alleging noncompliance with this regulatory requirement. Upon receipt of such a filing, PERB agents investigate the allegation in order to determine the accuracy of the allegation. If appropriate, the agency seeks compliance with the regulation.

## OPERATIONAL HIGHLIGHTS

### 1. Unfair Practice Cases

A total of 671 charges (543 under the EERA, 52 under the HEERA, 76 under the SEERA) were filed in calendar year 1983. Of these, 572 were charges against employers (CE) and 99 were charges against employee organizations (CO).

Regional staff, acting on behalf of the Board and under the direction of the General Counsel, issued 355 complaints under all Acts and either dismissed or permitted the withdrawal of 681 total charges.

Administrative law judges issued 77 proposed decisions, conducted 408 informal settlement conferences and held 92 hearings. Thirty-three of the decisions issued were appealed to the Board and forty-three became final.

### 2. Representation Cases

#### EERA

Forty-five requests/interventions for recognition and ninety-two petitions for unit modifications were received and processed. There were nine proposed decisions issued which dealt with representation issues. (One decision dealt with public notice). (See Appendix A-5.)

#### SEERA

The representation caseload for SEERA consisted of 32 cases (see Appendix A-6). The major representation workload related to the elections of exclusive representatives the year before.

## HEERA

The HEERA representation workload took on new dimensions with the filing of 38 cases (see Appendix A-7).

### 3. Elections

#### EERA

PERB conducted 75 elections covering approximately 23,493 employees. A listing of the elections conducted in 1983 is found in the Appendices, page A-8.

PERB conducted 12 elections to determine which employee organization, if any, would represent the employees of a particular negotiating unit and there were 2 elections to determine severance. Of these, 12 elections resulted in the selection of an exclusive representative and 2 in the selection of no representation.

In addition, the Board conducted 46 (4 runoffs) decertification elections. Of these, 24 resulted in the retention of the incumbent organization, 5 resulted in the selection of "no representation," 13 resulted in the selection of another employee organization as the exclusive representative.

As provided by statute, 10 public school employers requested the Board to conduct organizational security elections. Seven of these elections resulted in ratification of the organizational security provisions, and 3 resulted in rejection of the organizational security provision.

#### SEERA

PERB conducted one organizational security (fair share fee) rescission election. The organizational security provision was not rescinded by a vote of 300/against to 669/for, a majority of the total number of the employees in the unit being required.

#### HEERA

Twenty-one elections were conducted in the University of California system covering approximately 44,883 employees in order to determine which organizations, if any, would represent the employees of a particular negotiating unit. Of these, 15 resulted in the selection of an exclusive representative, 6 in "no representation."

#### 4. Impasse Cases

##### EERA

PERB received a total of 422 mediation requests. Of these 16.1 percent proceeded to factfinding.

##### SEERA

PERB received a total of 16 mediation requests. SEERA does not provide for factfinding.

##### HEERA

PERB received no mediation requests from the HEERA parties.

#### 5. Compliance Cases - EERA - SEERA - HEERA combined.

A compliance case arises when a party is ordered by PERB to take some remedial action. After issuance of a final decision

and order, the appropriate regional director is responsible for ensuring that the order is implemented. There were 56 compliance cases in 1983.

#### 6. Decisions Issued

The Board itself issued 163 decisions and orders in 1983, the highest number of decisions issued for a single year since the Board's inception. Of these, 75 were final adjudications in unfair practice cases and 28 were representation decisions. The remainder of the decisions and orders issued by the Board included requests for reconsideration or injunctive relief, administrative appeals, public notice decisions, judicial review, and voluntary settlements of cases at the Board level.

### RESEARCH AND COMMUNICATION

Government Code section 3541.3(f) reads:

The board shall have all of the following powers and duties:

(f) Within its discretion, to conduct studies relating to employee-employer relations, including the collection, analyses, and making available of data relating to wages, benefits and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. . . .

In 1983 PERB initiated steps to more fully meet its research and communication obligations. Specific projects started by PERB in order to respond to this Legislative mandate include:

Health Care Cost Containment Study

Legislative sanction was obtained through Senate Bill 922 (Chapter 1258) of the Statutes of 1983 to expend funds from the PERB budget to commence a study which would communicate cost containment efforts and alternatives to PERB constituents.

Specifically, the statute states . . . .

The Public Employment Relations Board shall enter into a contract, pursuant to subdivision (f) of Section 3541.3 of the Government Code, to collect, analyze, and compare data on health benefits and cost containment in the public and private sectors, and to make recommendations concerning public employees. The recommendations may take into consideration health benefit cost containment issues in public and private employment. The cost of this contract shall not exceed forty thousand dollars (\$40,000), and shall be expended from Item 8320-490 of the Budget Act of 1983.

Pursuant to SB 922, the major features of the study will include:

(1) A comprehensive survey to generate data about actual health care benefit cost and administration methods among public sector entities.

(2) A comprehensive series of reports outlining the central elements of the cost containment issue such as the parameters of the crisis, preferred provider organizations, self funding, utilization review, coalitions, cost containment as a vehicle for a better level of health, responses from private and public institutions, alternatives, and controversy over the issue.

(3) An assessment of cost containment programs in the private sector.

At the conclusion of the study this information will be made available to public employers, employee organizations, and interested citizens.

#### PERB Publishes Board Decision Index

While a number of private and commercial reporter services publish the text and digests of PERB decisions, the Board has, in 1983, responded to frequent requests from labor relations practitioners to prepare an index which reflects the unique nature of California law. A team of PERB staff prepared an index to Board decisions in unfair practice cases.

This new research tool arranges Board cases by subject matter, and provides a valuable supplement to the commercially available publications. The index is available to the public and professional practitioners through the State library depository system, law school and university libraries, or through an annual subscription from the agency.

### Advisory Committee Meets Frequently in 1983

Originally organized in the winter of 1980 to assist PERB in meeting the mandate of AB 1111, the regulation review statute, the PERB Advisory Committee continued to function and in 1983 became actively interested and involved in other labor relations issues. The PERB Advisory Committee consists of approximately 30 people from throughout California. They represent management and labor groups, law firms, negotiators, professional consultants, the public, and scholars.

In 1983, the Advisory Committee held four meetings on a rotating basis in Los Angeles, Sacramento, and San Francisco. Topics of discussion frequently led to independent action by the committee. During the past year, the PERB Advisory Committee focused on such diverse subjects as the participation of the public in the negotiating process for the State Employer-Employee Relations Act and the Higher Education Employer-Employee Relations Act, research, communications, and case processing timelines within PERB itself.

Scrutiny from the Legislature and other observers of PERB had found case processing time at PERB to be longer than desirable. The Advisory Committee has been examining this proposition. The committee, by its own initiative, intends to communicate its satisfaction with PERB timelines in case handling to the Legislature. The committee feels that

flexibility and the opportunity for mutual resolution of charges is made possible through the existing timelines.

The Advisory Committee also examined timelines for injunctive relief requests. The committee submitted a proposal to the agency regarding the processing of injunctive relief requests, suggesting that a longer time frame might be more advantageous. The 1984-85 PERB budget was reviewed by the Advisory Committee during the course of its preparation. Comments and observations on this subject from the Advisory Committee were welcomed by PERB staff.

Research and communication have been given high attention by the Advisory Committee. For example, the Advisory Committee formed a subcommittee of employee benefits managers and technicians to work with PERB staff in developing the PERB study on health care cost containment. In addition, the Advisory Committee has been working with staff to prepare and amend the initial drafts of the index to PERB decisions. Further, the Advisory Committee members have been making very substantial suggestions as to directions that PERB research and communication can take.

Information provided to the Advisory Committee comes from many sources. In response to issues raised by the committee members, the Advisory Committee has been addressing the issue of factfinding and further discussions of the topic are planned.

### Board Members and Staff Meet With Practitioners

PERB members and key staff have been frequent participants in regional and statewide conferences and meetings sponsored by employer and employee associations. The Association of California School Administrators, the California School Boards Association, the California Teachers Association, the University of California, the AFL-CIO, affiliated groups of the AFL-CIO, affiliated unions of the AFL-CIO, the California School Employees Association, the California State Employees Association, the School Employers Association of Los Angeles County, the Community College Consortia, Information Project on Educational Negotiations and many other constituent groups held meetings and multi-day conferences on subjects on labor relations and related subjects in which PERB participation was a central component. From the perspective of PERB, participation in these varied functions has proven to be a valuable asset in the agency's efforts to equitably administer California's public sector collective bargaining laws.

LEGISLATIVE ENACTMENTS

In addition to amendments to HEERA and SEERA, the Board was assigned specific research tasks by the Legislature.

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AB 1949            Chapter 143            Effective date: June 28, 1983  
(Hughes)

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A title change from the California State University and Colleges to the California State University was made to various Government Code sections.

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AB 329            Chapter 135            Effective date: June 28, 1983  
(Robinson)

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Requires the parties to begin meeting and conferring sufficiently in advance of the adoption date of the final budget for the ensuing year so that there is adequate time for agreement to be reached, or for the resolution of an impasse.

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AB 2187            Chapter 803            Effective date: July 1, 1984  
(Papan)

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Increases PERB member salaries to \$63,000. Increases PERB chairperson salary to \$65,000.

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AB 223            Chapter 323            Effective date: July 21, 1983  
(Vasconcellos)

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Added another section 3517.7 to the Government Code. This section 3517.7 requires the Department of Personnel

Administration (DPA) to adopt emergency regulations to implement employee benefits for state officers and employees excluded from collective bargaining under SEERA.

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SB 922 Chapter 1258 Effective date: September 30, 1983  
(Garamendi)

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Authorizes PERB to expend \$40,000 to conduct a study of health care cost containment issues in the public and private sector.

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SB 813 Chapter 998 Effective date: July 28, 1983  
(Hart)

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Requires PERB to report to the Legislature in 1985 regarding the utilization, made possible by this statute, of discipline short of dismissal language in negotiated agreements.

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SB 183 Chapter 1040 Effective date: January 1, 1984  
(Russell)

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Specifies various sections of the Education Code which, if in conflict with the provisions of a memorandum of understanding, the memorandum of understanding shall prevail.

## REPRESENTATION CASES

### Unit Determination

#### EERA

1. Oakland Unified School District and Oakland Education Association/CTA/NEA (6/20/83) PERB Decision No. 320

The association petitioned to add all regular certificated substitute teachers to the certificated unit. The Board approved.

#### HEERA

1. Unit determination cases covering:

- Technical Employees
- Skilled Crafts
- Printing Trades
- Clerical and Allied Workers
- Service Employees
- Professional Scientists
- Librarians
- Professional Patient Care Employees
- Non-academic Senate Instructional, Research and Allied Professors

were issued by the Board. PERB Decision Nos. 241a, b, c; 242a, b; 245a, b, c, d; 246a, b, c; 247a, b, c; 248a, b; 270a, b.

2. Unit Determination for Technical, Skilled Crafts, Service and Professional Employees of the University of California, Lawrence Livermore National Laboratory Pursuant to Chapter 744 of the Statutes of 1978 (3/4/83) PERB Decision No. 290-H

Pursuant to testimony presented by parties, the Board found that employees who are designated by the Lawrence Livermore National Laboratory as indeterminate time employees shall be included in the established LLNL units, except for those who are students or retirees. The Board further found that employees of the LLNL who are designated as temporary employees shall be included in established LLNL units except for those who are hired directly into the

following laboratory programs: student/faculty summer program; plant engineering experience program; student technical experience program; OEO summer faculty program; summer student internship program; and women's re-entry program.

3. Unit Determination for Technical, Skilled Crafts, Service and Professional Employees of the University of California (Lawrence Livermore National Laboratory Casual Employees) Pursuant to Chapter 744 of the Statutes of 1978 (8/19/83) PERB Decision No. 290a-H

The Board found "extraordinary circumstances" to exist within the meaning of PERB rule 32410 because it did not correctly characterize UC's position regarding the unit placement of indeterminate-time retirees. The request for reconsideration was granted and indeterminate-time retirees are included in the various LLNL units.

4. Unit Determination for Housestaff Employees of the University of California Pursuant to Chapter 744 of the Statutes of 1978 (5/5/83) PERB Decision No. 306-H

The Board adopted a stipulation entered into by the University and the Physicians National Housestaff Association creating a systemwide unit of UC housestaff employees.

The Board ordered that no exclusionary proceedings or representational election occur pending final determination by a court of competent jurisdiction that housestaff employees are employees within the meaning of the HEERA.

#### PUBLIC NOTICE CASES

##### EERA

1. Howard O. Watts v. Los Angeles Community College District (8/15/83) PERB Decision No. 330

Summary affirmance of the regional director's partial dismissal of a public notice complaint.

The complaint alleged that the district's five minute limitation on the length of comments on collective bargaining items violated the public notice and

comment requirements of the EERA section 3547. The regional director found that some of the items which appellant wished to comment on (a legislative report and a campus shooting incident) did not concern initial proposals of either an exclusive representative or the employer and therefore not subject to the procedural requirements of section 3547.

The regional director also found, however, that the district's five minute speaking limitation interfered with the complainant's right to express his views on the district's initial proposal and should proceed to hearing.

2. Howard O. Watts v. Los Angeles Community College District (8/15/83) PERB Decision No. 331

Board summarily affirmed the hearing officer's dismissal of that portion of appellant's public notice complaint (discussed above in PERB Decision No. 330) that proceeded to hearing.

Two issues were presented. First, whether the district's five minute speaking limitation interfered with appellant's right to public comment. Second, whether a motion to dismiss prior to hearing can be granted in light of the regional attorney's finding that the complaint stated a prima facie violation.

Based upon exhibits submitted with an amended complaint, the hearing officer found that the district had provided adequate time for public comment on its initial proposals. Therefore, at subsequent meetings, it was not obligated to let members of the public speak at all.

Further, based upon the language of the EERA and PERB practice, the hearing officer found that there is sufficient authority to grant the district's motion to dismiss irrespective of a prior finding by the regional attorney that the complaint states a prima facie violation.

3. Howard O. Watts v. Los Angeles Unified School District (8/18/83) PERB Decision No. 335

The regional director determined that four of the allegations concerned alleged violations of the district's own administrative regulations and were thus beyond PERB's jurisdiction. The Board concluded

the regional director erred in dismissing portions of the complaint based specifically on the fact that the alleged violations concerned the district's public notice rules. An assertion of a violation of local rules is not determinative. Rather, the Board must intercede if the local rules facially conflict with a public notice requirement or if a deprivation of statutory rights results from the rule's application.

The dismissal was affirmed, however, based on the rationale that none of the allegations asserted violations of specific EERA provisions nor did they contain sufficient factual information from which the Board could find that application of the local rules resulted in harm.

4. Howard O. Watts v. Los Angeles Unified School District  
(8/18/83) PERB Decision No. 336

Charging party appealed the ALJ's proposed decision which dismissed alleged violations of an EERA public notice provision (Gov. Code sec. 3547(d)).

The ALJ concluded the district had complied with the subsection by placing an informational document in a file in the public information office within 24 hours after presentation of a new proposal. He also rejected the assertion that simply placing a document in a file in the public information office and allowing public access to that file does not constitute compliance with the statutory public notice requirements.

The Board held, with one exception, that appellant failed to raise meritorious arguments. The exception was the ALJ's refusal to permit appellant to call two additional witnesses.

The Board affirmed the ALJ's conclusion that the language of 3547(d) does not mandate the placement of new negotiating proposals on the school board's agenda. However, in light of the ALJ's decision to expand the scope of the charge, appellant's witness should have been allowed to testify about "whether the document should be put in the public information file."

Consequently, the Board remanded the case since (a) neither party was permitted to fully address the issue at hearing and (b) appellant was denied the opportunity to present witnesses who allegedly would have addressed the issue.

## ADMINISTRATIVE APPEALS

### EERA

1. San Mateo Community College District and San Mateo Community College Federation of Teachers, AFT, AFL/CIO (3/3/83) PERB Order No. Ad-133

The regional director ordered certification of the new exclusive representative chosen in a decertification election. District's request for a stay of the certification was denied by the Board. The district's concern that it might be subject to contractual liability because of the dues provision in the previous contract was found by the Board to be without merit.

2. Antioch Unified School District and California School Employees Association and its Antioch Chapter #85 (3/30/83) PERB Order No. Ad-134 and No. Ad-135

The Board affirmed the regional director's dismissal of a unit modification petition requesting deletion of eight positions from an operations/support unit. No contention or evidence of changed circumstances regarding the disputed classifications was presented.

### SEERA

1. State of California (Departments of Transportation & Industrial Relations) and Professional Engineers in California Government (5/16/83) PERB Order No. Ad-136-S

The Board affirmed regional director's determination that it is not within the statutory jurisdiction of the Board to determine whether or not an employee is supervisory as opposed to managerial or confidential.

2. William Thomas Monsoor v. State of California (Department of Developmental Services) (5/17/83) PERB Order No. Ad-137-S

The Board denied a request for reconsideration. Petitioner's failure to read PERB decision "carefully" and his impression that decision was "favorable" does not excuse late filing of request for reconsideration.

3. State Employees Trade Council Local 1268, LIUNA, AFL-CIO and State of California (5/20/83) PERB Order No. Ad-138-S

Separate unit of hydroelectric craft employees denied where exclusive representative had been certified for less than one year at the time severance petition was filed. Board balanced employees' right under Government Code section 3521(b)(6) against need for period of stability in recently-established collective bargaining relationship and opportunity for employer and incumbent representative to reach agreement.

#### UNFAIR PRACTICE CASES

##### EERA

##### A. Refusal to Negotiate or Utilize Statutory Impasse Proceedings

1. Napa County Federation of Teachers v. Napa County Office of Education (2/14/83) PERB Decision No. 282

The Federation appealed a ruling of a hearing officer that the employer had no duty to bargain over wages, hours, and working conditions of a newly created classification pending the placement of that classification in a bargaining unit pursuant to PERB unit modification procedures. The Board found that the unfair practice charge was rendered moot by the resolution of the issue in a representation hearing which came about as a result of the Federation filing a unit modification petition. By filing the petition the union took an inherently inconsistent position from the one it presented in filing the unfair practice charge.

2. Service Employees International Union, Local 699 v. Los Angeles Unified School District (2/17/83) PERB Decision No. 285

The Board expressly overruled the San Dieguito decision and concluded that representation can be afforded to employees represented by a nonexclusive representative. However, the expectations of a nonexclusive representative are not as great as that of an exclusive representative in that the employer in

the former situation is only obliged to provide notice and reasonable opportunity to meet and discuss matters fundamental to the employment relationship prior to the employer reaching a decision on those matters.

3. California School Employees Association and its Chico Chapter No. 110 v. Chico Unified School District (2/22/83) PERB Decision No. 286

Following a one-day wildcat sick-out the employer required verification of absence by employees through a statement or notarized affidavit from a doctor. This was contrary to past practice wherein verification was required only after five days absence.

However, the contract between the district and the employee organization required that an employee offer, when reasonably required by the district, adequate proof of illness or injury in the form of a letter from his/her physician. The Board held such verification to be a reasonable form of proof and that the procedures for verification were consistent with language of the contract, the history of negotiations, and does not constitute a unilateral change.

4. Walnut Valley Educators Association v. Walnut Valley Unified School District (2/28/83) PERB Decision No. 289

The district adopted and applied criteria and procedure to certify competency of over 65 employees. The district refused to negotiate concerning such policy and application. The district had the option under the Education Code to require retirement or continue the employee in a non-tenured position. The Board found this option related to wages, hours and terms and conditions of employment including standards and procedures for evaluating employment of aged teachers and was negotiable. Duty to negotiate was not superseded by Education Code provisions.

5. Capistrano Unified School District v. Capistrano Unified Education Association (3/16/83) PERB Decision No. 294

The union's release of an incomplete factfinding report prior to its receipt by the negotiating parties violated the duty to utilize the impasse proceedings in good faith. Publication must include all reports

made and must be deferred until receipt by both parties. The union's belief that its verbatim release was complete did not excuse its action.

6. California School Employees Association and its Colusa Chapter No. 574 v. Colusa Unified School District (3/21/83) PERB Decision No. 296

PERB has jurisdiction to interpret a contract where necessary to determine whether a unilateral change in violation of the EERA has occurred. Grant Joint Union High School District (2/26/82) PERB Decision No. 196. The evidence showed that the district had unilaterally changed its contractual paid leave policy.

7. Mt. San Antonio College Faculty Association, CTA/NEA v. Mt. San Antonio Community College District (3/24/83) PERB Decision No. 297

In response to Proposition 13 the district passed a resolution freezing salaries, employer contribution to health insurance benefits, increasing class size, extending hours, and took other actions regarding summer sessions, counselors, and librarians.

The Board affirmed the ALJ's finding that the decision to cancel summer school courses, modify low-enrollment course cancellation procedure, and cancel the second summer session was within management's exclusive prerogative. However, the Board found that the procedure for making summer school teaching assignments was closely related to wages and hours, and therefore within scope.

The Board also affirmed the ALJ's finding that the assignment of administrators to teach courses had the effect of transferring work out of the bargaining unit, in violation of the duty to negotiate. Rialto Unified School District (4/30/82) PERB Decision No. 209.

The Board affirmed the ALJ's finding that the assignment of librarians and counselors to teach regular courses was an unlawful departure from existing practice. Rio Hondo Community College District (12/31/82) PERB Decision No. 279. The Board noted that the reassignment of employees from one set of duties to another is a "reassignment" within the

meaning of section 3543.21 and, therefore, expressly within the scope of representation.

8. Dixie Teachers Association v. Dixie Elementary School District (3/29/83) PERB Decision No. 298

The district's refusal to bargain based on its contention that accretion of substitutes to teachers' unit was inappropriate violated subsections 3543.5(a), (b), and (c).

9. Arvin Elementary Teachers Association, CTA/NEA v. Arvin Union School District (3/30/83) PERB Decision No. 300

The district unilaterally adopted a new discipline policy short of dismissal. Policy on discipline short of dismissal is negotiable, the Board found, based on Anaheim test (PERB Decision No. 177)

10. Delano High School Teachers Association, CTA/NEA v. Delano Jt. Union High School District (5/5/83) PERB Decision No. 307

The association alleged that the district violated its duty to negotiate in good faith by refusing to negotiate the effects of its decision to lay off certificated employees. The Board found that because no demand to negotiate effects was ever made by the union, the union waived its right to negotiate.

11. Grossmont Education Association v. Grossmont Union High School District (5/26/83) PERB Decision No. 313

A contract provision stated to that teachers would be assigned six working periods, of which no more than five could be class periods and at least one must be a preparation period. In the past, Educationally Handicapped Department teachers had taught four classes and two preparation periods. The district changed this assignment to five classes and one preparation period. The Board found that the district had authority within the contract to make the assignment.

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<sup>1</sup>All section references are to the Government Code.

12. Marysville Unified Teachers Association, CTA/NEA v. Marysville Joint Unified School District (5/27/83)  
PERB Decision No. 314

The association alleged that the district violated EERA when it unilaterally required teachers to undertake noon-time supervision responsibilities and thereby received only 30-minute lunch breaks. The association argued that the practice between 1970 and 1978 was to grant teachers 50-55 minute lunch periods. The district defended by pointing to contract language in the 1976-1978 agreement which required the district to provide a lunch period "not less than 30 minutes . . . ."

The contract language was, according to the Board, clear and unambiguous. It permitted the district to allow a lunch period as short as 30 minutes. Even though the district had not chosen to enforce this contract right, it was not precluded from doing so in the future date. The union waived therefore its right to negotiate over the district's reduction of the lunch period to 30 minutes.

13. California School Employees Association v. Pittsburg Unified School District (6/10/83) PERB Decision No. 318

The Board concluded that the district's reduction in clerical employees work year from 12 months to 10 months was not the equivalent of a layoff under the Education Code, but was an unlawful unilateral change.

The filing of two decertification petitions relieved the district of its duty to meet and negotiate until the challenges were resolved. Regardless of the change in NLRB precedent (Dresser Industries, Inc., RCA del Caribe), the district's reliance upon the then-existing Telautograph rule was reasonable.

The district was, however, required to maintain existing terms and conditions of employment pending resolution of the representation question.

The Board established that reinstatement of employment positions, benefits and back pay is the appropriate remedy since the Board's general policy is to attempt to restore the status quo ante in cases involving unilateral changes.

14. Palo Verde Teachers Association, CTA/NEA v. Palo Verde Unified School District (6/20/83) PERB Decision No. 321

The district unilaterally changed the health plan carrier from Blue Cross to Blue Shield. Benefit levels were substantially increased. The initial agreement between the parties specifically gave the district the right to select the carrier. The second agreement named Blue Cross as the carrier. The third agreement provided that the district would pay 100 percent of the premium cost and that no reduction of benefits could occur. It was silent as to the identity of the carrier and did not give the district the right to select the carrier.

During negotiations for a successor agreement, the association stated that it had no objection to a switch in carriers, so long as it could assure itself that there would be no reduction in coverage.

Because the changes in benefits were material, the change in carriers violated EERA under Oakland Unified School District (4/23/80) PERB Decision No. 126, aff'd. 120 Cal.App.3d 1007. Further, specific coverage levels are not the only aspects of health care benefits which are negotiable.

As to the waiver arguments, a waiver must be clear and unequivocal. Here, the absence of the name "Blue Cross" in the third agreement is insufficient to constitute a further waiver by the association of its right to negotiate over carrier identity (if such identity materially affects the health care benefits of employees by altering specific benefit levels or by otherwise affecting health care coverage). Waiver of such a statutory right must be explicit, and will not be inferred.

15. California School Employees Association v. Alum Rock Union Elementary School District (6/27/83) PERB Decision No. 322

District violated subsections 3543.5(a), (b), and (c) by unilaterally adopting and implementing a new classification plan for classified employees.

The district was obligated to negotiate regarding the following portions of the plan within scope: (1) the transfer of work from one classification to another;

(2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned and any changes in salaries or salary ranges of existing classifications; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; (6) the grouping of classifications into occupational groups; and (7) the effects, if any, on terms and conditions of employment of those classification decisions within the district's exclusive prerogative, including the creation of new classifications to perform functions not previously performed, the abolition of classifications to cease engaging in functions previously performed, and the revision of job specifications.

16. Southern Alameda County Teachers Association, CTA/NEA v. Alameda County Board of Education and County Superintendent of Schools of Alameda County (6/30/83) PERB Decision No. 323

The Association sought to establish that County Board of Education and County Superintendent of Schools were both employers. Its refusal-to-bargain charge was dismissed where respondent Board of Education was found not to be an employer because it lacked control or authority over fundamental matters of employment relations, including hiring, promotions, assignments, transfers, dismissals and layoffs, and where responsibility for school budget was defused among Board of Education, County Board of Education and Superintendent of Public Instruction.

17. Teachers Association of Long Beach v. Long Beach Unified School District (7/8/83) PERB Decision No. 325

Regional attorney's dismissal of the charge was upheld because the charging party failed to state facts which would support a finding of a prima facie case. Rather, the charging party argued that sections of the Education Code had been violated. When the association originally went to court for relief, the court referred the case to PERB.

18. Oakland School Employees Association v. Oakland Unified School District (7/11/83) PERB Decision No. 326

Board held that notice and timing of layoff were negotiable effects of the decision to lay off and not

precluded by the Education Code. More specifically, a proposal to give 90 days notice is negotiable and a proposal imposing a May 15 deadline for layoff is not.

A proposal to direct the district to target a specific position for layoff is nonnegotiable because it interferes with the decision to lay off. The Board found the district engaged in surface bargaining because it delayed negotiations, refused to provide information in a timely manner, offered proposals unacceptable when viewed in the context of the negotiations, and failed to sunshine the union's proposals.

19. Mount San Antonio College Faculty Association v. Mount San Antonio Community College District (8/18/83) PERB Decision No. 334

The district unilaterally implemented a reorganization plan by which the "administrative" (nonteaching) duties of department chairpersons would be transferred to a newly-created nonunit position, that of "division chairperson." In addition, the plan unilaterally altered the hours of department chairpersons and eliminated the stipends they received for the performance of administrative duties.

The Board found that although the decision to create the new classification of division chairperson was a managerial prerogative (Alum Rock Union Elementary School District PERB Decision No. 322), the duties assigned to employees in that classification transferred work out of the bargaining unit and must be negotiated.

20. Kern Community College CTA/NEA v. Kern Community College District (8/19/83) PERB Decision No. 337

The district appealed the ALJ's proposed decision that the district violated 3543.5(b) and (c) by refusing to negotiate with the association on the effects of the district's decision to lay off eight certificated employees. The association appealed the ALJ's refusal to order reinstatement and backpay for the laid off employees. The Board affirmed the decision and the proposed remedy.

The district argued that the charge was moot since the association was afforded the opportunity to negotiate on the subject pursuant to the reopener provision of

their contract. The Board held the issue was not moot since the association had been forced to sacrifice one of its two contractual reopeners in order to negotiate concerning the effects of the layoffs, and thereby suffered a deprivation of its EERA rights. Also, a 3543.5(c) charge is not mooted by the subsequent signing of an agreement.

Next, the district claimed it had no duty to negotiate because the association never tendered a specific proposal pursuant to the public notice provisions of section 3547. The duty to bargain, however, arises out of section 3543.3, not 3547.

Finally, the district claimed that the ALJ erred in finding an unlawful unilateral change in the decision to reduce personnel and issue layoff notices. The Board explained that while these actions were not per se violations, under Alum Rock (6/27/83) PERB Decision No. 322 and Education Code section 87743, the district did act to assert unilateral control by refusing to open negotiations on the effects of the layoff decision. Consequently, the district violated EERA subsections 3543.5(b) and (c).

21. Salinas Valley Federation of Teachers Local 7020, AFT, AFL-CIO v. Salinas Union High School District  
(8/22/83) PERB Decision No. 339

The Board affirmed the ALJ's dismissal of charges that the district unilaterally changed terms and conditions of employment by conducting in-service training at a faculty meeting.

The ALJ found the employer's abandonment of its in-service training proposal (cast in terms of specified allotted time) was not a general repudiation of the concept of in-service training. The ALJ further found that while faculty meetings and in-service training were distinct activities, the nature of the duties was not so dissimilar or inconsistent as to be mutually exclusive. Also, there was clear evidence that, albeit infrequently, previous faculty meetings had been utilized to dispense comparable information. There was, consequently, no unilateral change.

22. California School Employees Association v. South San Francisco Unified School District (9/2/83) PERB Decision No. 343

The Board held that the district violated the EERA by unilaterally reducing the hours of two classified positions. Although a contract article allowed the district to designate the hours of the work day, the bargaining history and the other articles in the contract clearly stated it could only increase the hours. Any decrease could be made only upon a showing of operational necessity and following procedural protections in the Education Code. The district failed to prove met those standards were met.

The Board also ruled that the district did not violate the EERA when it refused to negotiate the effects of its decision to lay off teachers aides because: (1) the parties had negotiated layoffs; (2) the union agreed to a contract without a specific lay-off provision; (3) the contract had a clause stating that absent a specific provision the procedures would be discretionary with the Board of Trustees and Personnel Commission; and (4) the contract contained a zipper clause waiving the right to negotiate over subject matter not covered in this agreement despite the subject matter having been withdrawn.

23. Modesto Teachers Association, CTA/NEA v. Modesto City Schools (9/27/83) PERB Decision No. 347

The Board determined that the Modesto City Schools did not unilaterally alter its teacher evaluation policy. Finding the evaluation provision silent as to the option of consecutive evaluations of substandard teachers, the Board looked to bargaining history and past practice to resolve the facial ambiguity of the contract language.

24. Palo Verde Teachers Association v. Palo Verde Unified School District (10/28/83) PERB Decision No. 354

The association charged that the district violated subsections 3543.5(a), (b) and (c) of EERA by switching the date of a teacher catch-up day in response to the legislative enactment of Martin Luther King, Jr. (MLK) Day and by refusing to negotiate the decision. The ALJ found, and the Board affirmed, that the district had not made an unlawful unilateral

change by switching the teacher catch-up day from a Monday to the previous Friday, since it was not demonstrated that the change affected teachers' wages, hours or other matters within scope. Citing San Jose Community College District (9/30/82) PERB Decision No. 240.

The Board further found that the parties' contract contained specific language setting out the holidays for the school year, and the district was entitled to rely on the contract and refuse to re-negotiate those holidays.

25. Associated Calexico Teachers v. Calexico Unified School District (11/22/83) PERB Decision No. 357

Board affirmed ALJ's determination that unilateral freeze of step and column increases during term of agreement was a per se violation of the duty to negotiate in good faith. The Board upheld ALJ's rejection of business necessity and waiver defenses.

26. Teachers Association of Lancaster v. Lancaster Elementary School District (11/23/83) PERB Decision No. 358

Appeal of a regional attorney's dismissal and deferral to arbitration of the association's charge that the district unilaterally adopted a new policy regarding employees' leaves for jury duty.

Waiver not found in agreement "to allow PERB to hear and determine if the district committed an Unfair Practice. . . ." Board found no refutation of the district's contention that the agreement merely expressed its willingness to submit the matter to PERB's normal complaint processing procedure. Therefore, deferral was appropriate.

27. California School Employees Association v. Arcohe Union School District (11/23/83) PERB Decision No. 360

The district subcontracted custodial services to a private concern without notice to the association. The Board held that the general subject of subcontracting was within scope under EERA, but a proposal to subcontract custodial work per se was not negotiable because of Education Code supersession. Violation of 3543.5(a), (b) and (c).

Applying the Anaheim test (PERB Decision No. 177), the Board determined that subcontracting custodial work withdraws work from unit employees and weakens the collective strength of employees in the unit. Since the district decided to continue custodial services, but by persons outside the unit, no functions essential to management were involved.

28. California School Employees Association, Chapter 54 v. Anaheim City School District (12/14/83) PERB Decision No. 364

The Board held that a grievance procedure, up to and including binding arbitration, was within the scope of representation. The district's unilateral repudiation of its grievance procedure (including a provision for advisory arbitration) upon termination of a collective bargaining agreement, absent clear evidence of an intent that the grievance procedure should terminate at that date, was an unlawful unilateral change, based on Nolde Bros, Inc. v. Bakery Workers (1977) 430 U.S. 243 [94 LRRM 2753]; American Sink Top (1979) 242 NLRB 408 [101 LRRM 1166].

29. Oakland School Employees Association v. Oakland Unified School District (12/16/83) PERB Decision No. 367

The underlying charge alleged four separate types of unilateral acts.

1. PERB found unilateral subcontracting under facts indicating that the rate of subcontracting had increased tenfold. It did not require a showing of "adverse impact" over and above that deemed to be inherent in all unilateral changes. The Board ordered that the level of subcontracting which occurred during the status quo ante not be exceeded.
2. PERB found no unilateral change in what it determined to be a long-standing practice of assigning custodians overtime security watch work, since the association acquiesced.
3. PERB held that the district's adoption of a policy standardizing hours of employees was undertaken unilaterally and had an adverse effect on several categories of employees. The district

was found to have bargained in bad faith by bypassing the association and concluding separate agreements with employees concerning their assignments.

4. PERB also found the district unilaterally changed the date of the employees' contractually guaranteed holiday. PERB granted employees pay at time-and-a-half because they were required to work on the contractual holiday. This was offset by the payment they received for not working on a substitute holiday. PERB found no unilateral act concerning the district's adoption of the 1981-82 calendar and also a 1982-83 calendar on the ground that they pertained to student schedules and not that of employees.

Finally, PERB held that the district bargained in bad faith when it refused to provide information concerning subcontracting and the standardization programs under way.

30. Mammoth Education Association, CTA/NEA v. Mammoth Unified School District (12/29/83) PERB Decision No. 371

Board upheld ALJ dismissal of alleged violations of 3543.5(a), (b) and (c) arising from a suspension of a teacher who refused to carry out assigned duties.

31. California School Employees Association; Chapters 246, 336 and 617 v. Kern Community College District (12/29/83) PERB Decision No. 372

Board reversed ALJ finding of the district's refusal to bargain. The Association made a general request to bargain the effects of a layoff decision, but all association proposals were out of scope. No proposals which were within scope were made.

32. Mt. Diablo Education Association, CTA/NEA and John Mills, Peter Molino, Carol Young, Catherine Avington, Laurie Peterson and Les Groobin v. Mt. Diablo Unified School District; Mt Diablo Federation of Teachers, Local 1902, CFT/AFT, AFL-CIO, John Mills, Peter Molino, Carol Young, Catherine Avington, Laurie Peterson and Les Groobin v. Mt. Diablo Unified School District (12/30/83) PERB Decision No. 373

The Board found that an employer's duty to provide notice and an opportunity to negotiate the effects of its decision to lay off arises when the employer reaches a firm decision to lay off.

The union need only produce sufficient evidence to establish that the decision to lay off would have a "reasonably foreseeable adverse impact on employees' working conditions and that the proposal addresses concerns generated by the anticipated impact." The Board used this standard to find that insufficient evidence was presented to allow the union to negotiate over caseloads for nurses.

The Board found contract proposals concerning severance pay and incorporation of Education Code protections negotiable, but proposals relating to rescinding layoff notices and a lottery, system for "same day" teachers were nonnegotiable and superseded by the Education Code. A proposal concerning transfer rights was found to have been waived. A proposal that sought to set a minimum number of employees to be hired at each school was found nonnegotiable because the decision to eliminate a position is a managerial prerogative. Newark Unified School District (6/30/82) PERB Decision No. 225, Mt. San Antonio Community College District (8/18/83) PERB Decision No. 334 and South Bay Union School District (4/30/82) PERB Decision No. 207. In addition, a proposal to seek additional nursing staff was found nonnegotiable as it interferes with management's determination of staffing needs.

Proposals regarding librarians were found outside of scope because they were within managerial prerogative, and also because they sought to negotiate over the district's budgetary process, its staffing needs and the assignment of students to district programs.

33. California School Employees Association and its Azusa Chapter 299 v. Azusa Unified School District (12/30/83) PERB Decision No. 374

The Board upheld ALJ decision finding violations for failure to provide a seniority list in a timely

fashion and for a unilateral reduction in instructional aides' hours. A six-month delay in providing the list was found unreasonable.

B. Interference With Employee or Organization Rights

1. Kenneth L. Parisot, Jr. v. California School Employees Association and its Shasta College Chapter #381  
(1/31/83) PERB Decision No. 280

The Board overturned a refusal by its hearing officer to issue a complaint on a charge against the association by a member who alleged that the association had taken reprisals against him for his organizational activity. The Board held that notwithstanding the section 3543 right "to form, join, and participate . . ." in an employee organization, suspension from membership pursuant to section 3543.1(a) is a reasonable form of discipline for a member who engaged in decertification activity. The Board noted that the reasonableness of the procedures and findings may, however, weigh upon a finding of reprisals pursuant to section 3543 of the Act. Accordingly, a prima facie case may be present. Here, the Board found such a case and ordered a complaint issued and a hearing held.

Board declined the association's request to reconsider on the grounds that though the charging party was now a supervisor and any remedy would be ineffectual, the charging party has the right to have the Board rule on whether or not there is ground for his complaint.

2. Shasta Secondary Teachers Association, CTA/NEA v. Lester D. Jensen, John K. Roberts, Ann O. Silveria, et al. (2/14/83) PERB Decision No. 284

The Board sustained the dismissal of an unfair practice charge for failure to state a prima facie case. The employer and association are parties to a contract which provides for an agency shop, among other things. Pursuant to the agreement, the association is solely responsible for enforcement, and the agreement expressly prohibits the district from dismissing or disciplining employees for failure to pay the established fees. The association filed charges against 15 employees regarding their failure to pay the fees. PERB does not have jurisdiction to enforce agreements between the parties unless the alleged violation is also an unfair practice. There

were no facts connecting the individuals' actions to the District, and no showing that they acted as an employee organization.

3. Robert Hildago and Edward Collins v. San Leandro Unified School District (2/24/83) PERB Decision No. 288

The Board held that the charging party, by presenting a grievance against perceived violations of the collective bargaining agreement and by organizing support for this grievance, engaged in protected activity. Further, the transfer of the charging party by the employer less than a month after the grievance presentation and other facts and testimony indicate that the employer had an unlawful motive.

4. California School Employees Association and its Fremont Chapter 237 v. Fremont Union High School District (4/6/83) PERB Decision No. 301

The district denied an employee's request, made through her union representative, for representation at a first level grievance meeting. The Board found an employee has the right to representation at an informal grievance meeting. This right was not waived either by failure to request representation personally or by failure to reiterate the request after it had been denied.

5. Edmund L. Carboneau v. Poway Unified School District (4/14/83) PERB Decision No. 303

The charging party alleged that he was terminated by the district because of his protected activities. The Board found, applying the test set forth in Novato Unified School District (4/30/82) PERB Decision No. 210, that there was no evidence the charging party's protected activities were a motivating factor in the decision to seek his termination.

6. San Francisco Federation of Teachers, AFT Local 61 v. San Francisco Unified School District (6/8/83) PERB Decision No. 317

The Board found that a letter sent by the school board president to all district employees conveyed neither an express nor implied threat of reprisal or force or promise of benefit. The communication was not an

effort to bypass the exclusive representative but rather was within the parameters of the employer's right to free speech expressing its position relevant to matters of legitimate employer concern.

7. William T. Baird v. Central Union High School District (6/30/83) PERB Decision No. 324

ALJ's dismissal of discrimination complaint is upheld on the basis that a district's lack of justification for employee discipline does not, in itself, mean that the discipline was for illegal reasons. Moreland Elementary School District (7/27/82) PERB Decision No. 227. Charging party's request to reopen the hearing and rebut perjured testimony is denied. Respondent's request for attorney's fees also denied as the appeal was not frivolous or without arguable merit.

8. Sierra College Faculty Association v. Sierra Jt. Community College District (9/22/83) PERB Decision No. 345

Refusal by district to agenda association's proposal that the board of trustees not extend the employment contracts of its superintendents does not violate EERA. The subject matter was not a matter for which unions have a right to represent employees.

However, the association's proposal for a management consultant referred to cost-of-living wage adjustments, and the district was on sufficient notice that some areas of "employment relations" would be addressed. It violated EERA by refusing to place the matter on the agenda, especially in view of the association's assurances that it did not intend to negotiate the matter.

Similarly, the district violated EERA by denying the association its right to address the board of trustees on the agenda item concerning the staff satisfaction survey, which clearly covered matters of employment relations. Parties not part of the negotiating relationship were allowed to address such matters.

The district's bylaw establishing a screening procedure unique to employee organizations to evaluate their agenda proposals was lawful since EERA provides labor organizations unique and exclusive procedures for doing business with the school employer. However, the district's bylaw exceeded its authority to

regulate agenda presentations by reserving a blanket right to consider organizational submissions either through the collective bargaining process or through the public meeting agenda. Similarly, the bylaw was unlawful because it leaves to the employer's discretion whether the association can speak at a public hearing about "consultable" matters, which the association and district agree are nonnegotiable.

9. San Diego Community College Teachers Association, CTA/NEA v. San Diego Community College District (12/22/83) PERB Decision No. 368

The Board found that the district discriminated against two employees because it objected to the speech of one of them. The Board ruled that a speaker who is a member of an association executive board and negotiating committee is presumed to be acting on behalf of the organization. Further, the Board found that the subject matter of the speech concerned employment relations, an essential element. The Board applied a Novato analysis (PERB Decision No. 210) and summarized the circumstantial evidence it deemed to have raised an inference of unlawful motivation on the part of the district. The Board found that the charging party demonstrated school board knowledge of the speech, suspicious timing in that the adverse act against the employee followed closely the speech of one of the two employees, belated justification and disparate treatment.

#### C. Strikes or Work Actions

1. Modesto City Schools v. Modesto Teachers Association, CTA/NEA and Modesto Teachers Association, CTA/NEA v. Modesto City Schools (3/8/83) PERB Decision No. 291

The Board, held that the district, by failing to consider the factfinder's report and post-factfinding concessions from the association, refused to bargain in good faith and to participate in good faith in the impasse proceedings. Impasse does not automatically follow publication of the factfinder's report. Impasse procedures are exhausted when the factfinder's report has been considered in good faith, and then only if it fails to change the circumstances and provides no basis for settlement or movement that could lead to settlement. Once the statutory procedures are complete, the Board has no authority to recertify an impasse or reinvoke impasse procedures.

The Board also held that the district refused to bargain by implementing unilateral changes after publication of the factfinder's report. Even if the parties had been at impasse, the unilateral changes would be unlawful because the changes were not reasonably comprehended within the district's last best offer.

Further, the Board held that the strike by the association was protected conduct because it was provoked by the district's unfair practices and the association had participated in good faith in the bargaining process.

2. Rio Hondo Faculty Association, CTA/NEA v. Rio Hondo Community College District; Rio Hondo Community College District v. Rio Hondo Faculty Association, CTA/NEA (3/8/83) PERB Decision No. 292

The Board overturned the hearing officer's conclusion that the association did not commit an illegal act by engaging in a one-day strike, but upheld the conclusion that the emergency resolution adopted by the school district was not supported by legitimate business necessity.

The association failed to show requisite provocation by the district as the basis for its strike. The Board held that the mere existence of an unfair practice committed prior to the strike does not render the work action an "unfair practice strike."

#### D. Cases of Special Interest

##### Weingarten Rights

1. California School Employees Association v. Redwoods Community College District (3/15/83) PERB Decision No. 293

Employee was unlawfully denied union representation at meeting with management to protest her immediate supervisor's evaluation. Such a meeting is tantamount to an appeal from adverse personnel action and is distinguishable from meeting with evaluator.

The right to representation under these circumstances derives directly from EERA sections 3540 and 3543. Reliance on Weingarten ((1975) 420 U.S. 257) is

unnecessary and inapropos, since that case extends the right to management investigations which may lead to discipline; here, the employee was appealing action already taken.

#### Duty of Fair Representation

1. Carol Fridie Reyes v. Reed District Teachers Association (8/15/83) PERB Decision No. 332

The Board affirmed the regional attorney's refusal to issue a complaint and dismissal of complainant's unfair practice charge.

The charge, as amended, contained allegations that the association violated its duty to fairly represent Ms. Reyes by conspiring to write, in conjunction with the district, a collective bargaining agreement that effectively denied teachers the right to redress grievances and by failing to respond to a letter written by Ms. Reyes.

The Board noted that the charge and the "amended charge" should be considered a single pleading, and that the allegations and exhibits contained in the two should be treated as a single charge.

The Board, however, found no facts sufficient to support the allegations that the association breached its duty to fairly represent.

2. John C. Scates and Shiral Pitts v. Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (8/29/83) PERB Decision No. 341

Two bus drivers filed grievances against the district over disciplinary notices. One of the drivers was later transferred, and the other allegedly lost overtime work. The union took the grievances to arbitration, resulting in a repeal of the disciplinary notices.

The bus drivers charged that the union violated its duty to fairly represent them.

The Board held that the charges failed to state a prima facie case. Although the union's conduct, as charged, was possibly negligent, unwise or otherwise

unsatisfactory to the charging parties, there were no specific facts alleging that it acted in an arbitrary, capricious or bad faith manner, or that its manner of handling of the arbitration hearing was improperly motivated.

3. Therese M. Dyer v. California School Employees Association (9/2/83) PERB Decision No. 342

The Board upheld a regional attorney's dismissal of an unfair practice charge alleging that the union breached its duty of fair representation when it refused to pursue to the appellate court level a civil action filed by the union on her behalf against the employer. In the union's judgment, it could not achieve a reversal of the court's ruling because it was foreclosed from overcoming the requirement of exhaustion of administrative remedies. The charge did not state a prima facie case because there were no facts alleged which would indicate that the union's decision not to appeal was discriminatory, made in bad faith, or made "without a rational basis or devoid of honest judgment."

#### Procedures

1. Duarte Unified School District v. Duarte Unified Education Association, CTA/NEA (2/3/83) PERB Decision No. 281

The association appealed the partial refusal to issue a complaint and partial dismissal without leave to amend a charge filed by the district against the association. The Board ruled that the association was without standing to appeal the hearing officer's partial refusal to issue a complaint because the association was not the charging party.

2. Jules Kimmett v. Los Angeles Community College District (5/18/83) PERB Decision No. 309

The Board affirmed the Executive Assistant to the Board's dismissal of an appeal as untimely, and affirmed an ALJ's dismissal of an unfair practice charge. Charging party failed to show how the district's salary proposal was a refusal to bargain in good faith.

3. Gust Siamis v. Los Angeles Unified School District  
(5/20/83) PERB Decision No. 311

The Board found that the ALJ erred in ruling that the charge was time-barred. The Board held that efforts preparatory to the actual filing of the grievance were a part of the party's efforts to exhaust the machinery. Here, charging party began such preparatory efforts - meeting with his union representative, gathering evidence, preparing documentation, etc. - promptly upon receipt of his Notice of Discharge and diligently filed his grievance within 20 working days. Thus, the statute began to run for the first time only upon his receipt of the final notice that his grievance had been denied. Calculated on this basis, the charge was timely filed.

4. La Mesa-Spring Valley School District and La  
Mesa-Spring Valley Teachers Association, CTA/NEA  
(5/31/83) PERB Decision No. 316

This case deals with procedural questions concerning proof of support required when amending an original petition for unit modification.

5. La Mesa-Spring Valley School District and La  
Mesa-Spring Valley Teachers Association, CTA/NEA  
(7/12/83) PERB Decision No. 316a

PERB Decision No. 316 vacated, together with hearing officer's proposed decision, pursuant to petitioner's request to withdraw petition for unit modification.

6. Butte County Superintendent of Schools and California  
School Employees Association and Butte County  
Employees Association/Service Employees International  
Union, Local 916, AFL-CIO (8/22/83) PERB Decision  
No. 338

Butte County Employees Association/Service Employees International Union, Local 916, AFL-CIO (SEIU) appealed the Sacramento Regional Director's decision directing a decertification election. The regional director determined that the contract between the parties was "prematurely extended" and consequently, was not a bar to the decertification election. The Board denied the appeal, held that the decertification petition was timely filed, and remanded the case for the decertification election proceedings.

In Hayward Unified School District (6/10/80) PERB Order No. Ad-96, the Board adopted the National Labor Relations Board principle that a prematurely extended contract will not act as a bar to an election. Such an extension occurs where, as in the instant case, the parties execute a new contract during the term of an existing contract with an expiration date later than that of the first contract.

#### Statute of Limitations

1. Poway Federation of Teachers, Local 2357, CFT/AFT, AFL-CIO v. Poway Unified School District (10/12/83) PERB Decision No. 350

The Board upheld the ALJ's determination that the efforts undertaken by the union to resolve a dispute concerning sick leave through the contractual grievance procedure did not toll the statutory time limitations because the grievance procedure did not culminate in binding arbitration. The Board also upheld the determination that the equitable tolling doctrine was inapplicable. The parties' agreement reached in conjunction with the grievance to waive the grievance time limits was confined to the district's evidentiary inquiry of the notice issue. Thus, the district would have been unfairly surprised by union's subsequent complaint regarding the unilaterally adopted policy itself.

#### Organizational Security

1. Bonnie H. Ake v. Simi Educators Association; Geneva M. Pringle v. Simi Educators Association (5/27/83) PERB Decision No. 315

The charging parties objected to (1) contract language which required them to sign an authorization that their agency fee be deducted from payroll, and (2) the association's refusal to allow them to make their payments direct to the union on a monthly basis.

Case authority holds that the rights of non-members are determined by contract language dealing with union security. The Education Code which now allows monthly payments direct to the association is not applied retroactively and therefore does not govern this situation.

HEERA

A. Refusal to Negotiate or Utilize Statutory Impasse Proceedings

1. Donald E. Kempland v. The Regents of the University of California (U.C. San Diego) (3/30/83) PERB Decision No. 299-H

Under Novato test (PERB Decision No. 210), although charging party raised the inference that his termination was in part motivated by HEERA-protected activity, the University demonstrated that it would have terminated charging party for insubordination and poor performance, even absent his activity. Thus, his exceptions are dismissed and the ALJ's proposed decision affirmed. The portion of the ALJ's decision holding that the University violated charging party's right to representation was not excepted to and thus became final and binding on the parties.

2. Statewide University Police Association v. Regents of the University of California (11/14/83) PERB Decision No. 356-H

The Board found that the UC had made an unlawful unilateral change when it increased parking fees.

By analogy to private sector cases involving the price of employer provided food services, the Board found parking fees to be within scope.

The Board rejected UC's contention that it did not change the dynamic status quo regarding parking fees, but rather simply continued its preexisting practice of imposing annual across-the-board fee increases. The Board held that what was required was maintenance of the preexisting practice - but, to the extent discretion had existed in determining the amount or timing of the increases, the union must have the opportunity to negotiate over the terms of the program prior to implementation.

3. University Council, American Federation of Teachers and AFT Local 2199 v. The Regents of the University of California (11/23/83) PERB Decision No. 359-H

AFT, the nonexclusive employee representative, filed an unfair practice charge against the UC Regents

alleging that the employer had unilaterally altered terms and conditions of employment for University lecturers, including reduction of the maximum amount of time allowed for service in full-time lecturer positions. AFT asserted that this action violated sections 3571(a) and (b) of HEERA.

The ALJ and Board concluded that AFT was not afforded adequate notice of the policy change; thus, the charge was timely.

The University contended that AFT failed to demonstrate that the change in policy adversely affected the lecturers employed at the time the change occurred. The Board recommended that this argument be raised at a compliance hearing. It concluded that the University altered the lecturer employment policy and ordered compensation for all individuals harmed by the unilateral change, whether by nonreappointment or by virtue of leaving the University to seek an appointment of longer duration.

B. Interference With Employee or Organization Rights

1. Physicians National Housestaff Association v. Regents of the University of California (2/14/83) PERB Decision No. 283-H

The employer refused to continue making authorized payroll dues deductions on behalf of the charging party after the effective date of the Higher Education Employer-Employee Relations Act. The Board found that the educational objectives of housestaff are subordinate to the services they perform and coverage under the HEERA would further the purposes of the Act.

2. California State Employees Association, Chapter 41 v. Regents of the University of California (4/28/83) PERB Decision No. 305-H

The ALJ's finding that the University discriminated against the employee by denying him a promotional appointment is affirmed. The dismissal of five other charges of alleged interference or discrimination against the employee is also affirmed.

3. California State Employees Association v. The Regents of the University of California (Berkeley) (5/16/83) PERB Decision No. 308-H

The Board found that HEERA grants higher education employees the right to be represented by an employee organization in grievance proceedings and non-exclusive employee organizations the right to represent employees in their grievances.

However, the Board dismissed the charge and concluded that the University's rule which limited the employees to one representative did not interfere with either the employees' or the organization's rights granted by HEERA.

4. California State Employees Association v. Regents of the University of California (5/19/83) PERB Decision No. 310-H

The employee's right to representation at several disciplinary meetings was not denied because, consistent with Weingarten v. U.S. (1975) 420 U.S. 251, the University stopped and rescheduled the meetings when union representation was demanded.

The employee's suspension and demotion were based on a legitimate business justification and were not a reprisal for exercise of her protected right to such union representation.

5. California State Employees Association, Chapter 41 v. Regents of the University of California (6/10/83) PERB Decision No. 319-H

The Board dismissed the charges filed by the California State Employees' Association against the University of California. It found that University employee Kasper engaged in protected activity but found no basis to conclude that he was not selected to fill four vacant job positions because of his exercise of that protected conduct. In each of the specified incidents, the selecting officials acted in order to satisfy legitimate staffing needs, utilized proper selection techniques, were unaware of Kasper's protected conduct and/or evidenced no indicia of anti-union sentiments, personally or as imputed from others.

6. United Health Care Employees, SEIU, Local 660, AFL-CIO v. University of California, UCLA Medical Center (8/5/82) PERB Decision No. 329-H

The Board found that employee organizations have a presumptive right of access to nonimmediate patient care areas. The right can be rebutted by evidence that a ban on access is necessary to prevent disruption of health care operations or disturbance of patients. Access by nonemployees to nonimmediate patient care areas is subject to reasonable regulations as to manner, frequency and duration. Employees and nonemployee representatives share the same presumptive rights of access under HEERA and EERA.

7. California State Employees Association v. Regents of the University of California (9/22/83) PERB Decision No. 346-H

The Board summarily affirmed the ALJ's finding that the University's decision not to reclassify an employee and denial of two promotional opportunities was not based upon anti-union animus.

8. Statewide University Police Association v. Regents of the University of California (12/16/83) PERB Decision No. 366-H

Statewide University Police Association (SUPA) filed an unfair practice alleging that a supervisor made promises of benefits to bargaining unit employees conditional upon abandonment of their membership in SUPA.

The Board affirmed the ALJ's finding that comments of UC police chief made during a job interview did not constitute a promise of benefits.

The Board adopted the National Labor Relations Act's 8(c) standard for HEERA cases: allegedly unlawful speech is evaluated to determine whether it contains a threat of reprisal or force, or promise of benefit. If not, it constitutes speech protected by section 3571.3 of the Government Code.

## C. Cases of Special Interest

### Procedures

1. California State Employees' Association v. Regents of the University of California (8/24/83) PERB Decision No. 340-H

The Board upheld an ALJ's dismissal of complaint. Charging party failed to file a request for hearing within six months from the date the complaint issued and failed to properly file a written request for an extension of time at least three days before the expiration of the time for filing (PERB regulations 32652 and 32132). The arguments that the parties were engaged in settlement discussions during the time and that the ALJ verbally consented to an oral request for an extension were rejected.

2. California State Employees Association v. Regents of the University of California (12/7/83) PERB Decision No. 362-H

The Board affirmed the regional attorney's decision to refuse to issue a complaint and to dismiss the charge for failure to state a prima facie violation of HEERA.

This case concerned the breach of a settlement agreement, but such a breach does not violate HEERA, and no "nexus" between the employer's conduct and employee's exercise of HEERA rights was alleged.

3. California State Employees Association v. Regents of the University of California (12/14/83) PERB Decision No. 365-H

The Board upheld ALJ's dismissal of unfair practice complaint for charging party's failure to file an "at-issue memorandum" pursuant to PERB rule 32652.

CSEA's reasons for its failure to file the memorandum did not constitute "extraordinary circumstances" within the meaning of PERB rule 32136 regarding excuse of late filings. Facts cited by CSEA amounted to neglect on its part, not "extraordinary circumstances."

Cases cited by CSEA interpreting "good cause" standards in other statutes, do not mandate PERB to adopt "good cause" rather than "extraordinary circumstances" as standard.

## Statute of Limitation

1. California State Employees Association v. Regents of the University of California (10/27/83) PERB Decision No. 353-H

This case involves allegations that UC violated HEERA sections 3571(a) and (b) by: (1) unilaterally reclassifying A gardeners thereby eliminating pay differentials paid to B gardeners; and (2) unilaterally reclassifying food service workers thereby eliminating pay differentials paid to senior food service workers.

The ALJ dismissed the allegations pertaining to the gardeners as untimely and union excepted. No exceptions were filed as to the ALJ's finding of a violation in UC's reclassification of food service workers. The Board affirmed the ALJ decision to dismiss.

The reclassification occurred in March of 1980, but the charge was not filed until August of 1981, more than 17 months after the complained-of conduct. Since a unilateral change is not a continuing violation the charge should have been filed within the six-month period beginning March 1980.

## SEERA

- A. Refusal to Negotiate or Utilize Statutory Impasse Proceedings

1. California State Employees' Association v. State of California, Department of General Services (4/8/83) PERB Decision No. 302-S

While election campaign to select exclusive representative was in progress, the department made unilateral changes in printing tradesmen's duties, the procedure for calculating employment class/status, placement of bindery room assistant, use of intermittent employees, and red circle date use for demoted employees.

The Board found the facts presented alleged unilateral changes in terms of employment. ALJ's dismissal of charge was reversed.

2. California State Employees Association v. State of California (Department of Transportation) (8/18/83)  
PERB Decision No. 333-S

The Board concluded that the regional attorney erred in refusing to issue a complaint.

CSEA alleged that Caltrans unilaterally transferred two maintenance supervisors from highway maintenance to landscape maintenance crews. Such action, allegedly, had the effect of reducing the employees' opportunities for overtime and depriving them of a Home Use Permit which allowed them to drive their State cars to and from work.

The regional attorney dismissed the charge noting first that the affected employees were in classifications merged by the State Personnel Board. The dismissal letter stated: "While transfer and reassignment policies are within the scope of representation under SEERA, the Department's action in reassigning Jemelian and Gallegus was consistent with its past practice since 1979 in consolidating the job responsibilities of the two types of supervisors, pursuant to the job descriptions adopted by the State Personnel Board."

On appeal Caltrans argued that, as a matter of law, it must be free to transfer employees within merged classifications created by the SPB. The Board rejected this argument, noting that if Caltrans' view was accepted, an agency desiring to unilaterally transfer employees could circumvent the negotiating process by seeking and obtaining a consolidation of classifications from the SPB.

3. California State Employees Association v. State of California (Department of Transportation) (11/28/83)  
PERB Decision No. 361-S

A test was constructed which is similar to the Anaheim test (PERB Decision No. 177) for EERA scope. For SEERA, the Board will find matters within scope if they involve the employment relationship and are of such concern to both management and employees that conflict is likely to occur, and if the mediatory influence of collective negotiations is an appropriate means of resolving the conflict. Such subjects will be found mandatorily negotiable under SEERA unless

imposing such an obligation would unduly abridge managerial prerogatives essential to the achievement of the State's mission.

The proviso in section 3516 is identical to a proviso to the scope of representation under the Meyers-Miliias-Brown Act. The Board views the proviso as a codification of the managerial prerogatives portion of its scope test.

Applying this test to the facts, the Board determined that the staffing practice at issue was negotiable. Moreover, the Board noted that the opportunity for overtime is a subject which previously was expressly been held within scope. (See PERB Decision No. 333-S.)

#### B. Interference With Employee or Organization Rights

1. Coalition of Associations and Unions of State Employees v. State of California (Department of Real Estate) (2/24/83) PERB Decision No. 287-S

Appellant Coalition argued that a complaint should have issued on its charge against the employer for comments made during a third level grievance response. The amended charge alleged that offensive remarks had a chilling effect on the protected right of filing a grievance.

The Board found no connection between the exercise of the employees' rights and the action of the employer as required by PERB in California Department of Corrections (5/5/80) PERB No. 127-S and Carlsbad Unified School District (1/30/79) PERB No. 89. The Board found the employer's remarks were in reaction to "the picayune nature" of the grievance rather than the grievance process itself.

2. State Employees Trade Council, Local 1268, LIUNA, AFL/CIO v. State of California (Department of Transportation) (4/26/83) PERB Decision No. 304-S

Removal by the employer of an allegedly defamatory union leaflet from state-provided bulletin boards customarily used for union material posting was a violation of SEERA.

Subsequent certification of another union did not preclude the subject union from pursuing the charge, the Board ruled.

3. State Employees Trades Council, Local 1268, LIUNA, AFL/CIO v. State of California (Department of Parks and Recreation) (7/29/83) PERB Decision No. 328-S

The Board found discrimination against employee who received a partially unfavorable evaluation from his supervisor because of his protected activity. The supervisor's evaluation subsequently caused a lower ranking from an unbiased panel. The Board held that unlawful animus may be found where an evaluation panel, even innocently, relies upon the inaccurate and biased evaluations of other management officials, citing Hambre Hambre Enterprises, Inc. v. NLRB (99 LRRM 2541).

4. Union of American Physicians and Dentists v. State of California (Department of Developmental Services, and Public Practice Bureau/California Medical Association) (9/12/83) PERB Decision No. 344-S

A rival union (UAPD) filed charges alleging violations of SEERA by DDS in granting special privileges to the PPB/CMA. It also filed charges against the PPB/CMA alleging it deceived the State into granting it special privileges while organizing employees, and that such privileges were not available to UAPD. It also filed charges alleging that PPB/CMA interfered with employee rights by inducing employees to sign authorization cards through the use of misstatements (mailgrams).

The Board dismissed all allegations stating that, while PPB and CMA were really one organization, the DDS had taken various steps to disassociate itself from PPB/CMA and to stop all privileges at the moment it found out that PPB/CMA was acting as a labor organization.

As to the misstatements, the Board noted that since the authorization cards of PPB were used only to intervene in the election, that the showing of interest was not challenged, that the employees were free to vote for any choice, and that UAPD won the election, there had been no showing that PPB's conduct affected protected rights.

The fact that CMA dominated PPB supports the State's action in withdrawing preferential treatment to the latter but does not independently constitute an interference with employee rights. The relationship between PPB and CMA was not, in and of itself, unlawful.

C. Procedures

1. California State Employees' Association and State of California (Department of Personnel Administration)  
(7/14/83) PERB Decision No. 327-S

Board upheld regional director's refusal to accept additional authorization cards in support of a decertification petition where the window period had ended. Citing Pittsburg Unified School District (10/20/78) PERB Order No. Ad-49.

## PERB-RELATED LITIGATION

PERB was involved in substantial litigation activity during 1983, participating in 11 new Superior Court, Court of Appeal, and California Supreme Court cases. Additionally, the Board received decisions in a number of cases that were filed in previous years. Of the cases in which court opinions were issued, however, only three involved published, precedential decisions. The remainder involved summary disposition of petitions seeking review of Board decisions.

These summary dispositions continue a trend by the appellate courts both to defer to the Board's statutory interpretations unless they are perceived to be clearly erroneous, and to consider Board factual determinations to be conclusive if they are supported by substantial evidence on the record considered as a whole.

A number of significant cases are pending disposition by the California Supreme Court and Court of Appeal.

### Precedential Appellate Opinions

Moreno Valley Unified School District v. Public Employment Relations Board (1983) 142 Cal.App.3d 191

After unsuccessful negotiations between the Moreno Valley Educators Association (Association) and the Moreno Valley

Unified School District (District) the parties declared impasse and requested the Board appoint a mediator. The Board did so on September 20. On or around September 15, 1981, the district unilaterally implemented the terms of its "last best offer." Mediation proceeded in accordance with the statutory impasse procedures.

The Association filed an unfair practice charge alleging violation of section 3543.5(a), (b), (c) & (e) of the Act. A hearing was held, and the ALJ concluded that it was a per se violation for the district to implement unilateral changes concerning subjects within the scope of representation prior to exhaustion of the statutory impasse procedures. Exceptions were filed, and on April 30, 1982, the Board issued its decision. The Board adopted the ALJ's conclusion stating that "following declaration of impasse, a unilateral change regarding a subject within the scope of negotiations . . . is, absent a valid affirmative defense, per se an unfair practice." The district filed a Petition for Writ of Extraordinary Relief from the Board's decision in the Fourth District Court of Appeal.

The court held that PERB reasonably interpreted subsection (e) of the statute in finding a per se violation of the employer's duty to participate in impasse procedures in good faith. However, the court found that the Board erred in its conclusion that the unilateral action also violated the

employer's duty to meet and negotiate in good faith as required under subsection (c). The court concluded that the Board's interpretation of the statutory phrase "meeting and negotiating" was too broad.

San Mateo City School District (Healdsburg Union High School District) v. Public Employment Relations Board (1983) 33 Cal.3d 850

This case arose from three petitions filed in the District Court of Appeal requesting review of San Mateo City School District (5/20/80) PERB Decision No. 129, and Healdsburg Union High School District (6/19/80) PERB Decision No. 132). In both decisions, the Board found that the districts refused to meet and negotiate regarding certain contract proposals which were within the scope of representation and that other proposals were outside the scope of representation.

The Supreme Court annulled the decisions, made prior to the Board's formulation of the Anaheim scope test, and remanded the cases for reconsideration of the specific contract proposals in light of the Anaheim decision. (Anaheim Union High School District (10/28/81) PERB Decision No. 177.) The court approved the new test for determining negotiability holding that PERB correctly interpreted the EERA.

Under that test, a subject is negotiable even though it may not be specifically enumerated in section 3543.2(a) if:

1. it is logically and reasonably related to hours, wages, or an enumerated term and condition of employment;

2. it is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the proper means of resolving the conflict; and
3. the employer's obligation to negotiate would not significantly abridge management's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission.

In holding PERB's interpretation conformed to the language and purpose of the EERA, the court extensively reviewed the history of the statute. While the Legislature intended to enact a scope of representation more restricted than that conferred under the Winton Act, at the same time it wanted to strengthen employee's rights to bargain for binding agreements and preserve their rights to consult on certain policy matters. Consequently, no rigidly limited scope test was intended.

The court also upheld PERB's interpretation of section 3540, correctly construing the statute as prohibiting negotiations only where provisions of the Education Code would be "replaced, set aside or annulled" by the language of the proposed contract clause. Unless the statutory language [of the Education Code] clearly evidences an intent to set an inflexible standard or insure immutable provisions, the negotiability of a proposal should not be precluded.

The Regents of the UC (Wilson) v. Public Employment Relations Board (1983) 139 Cal.App. 3d 1039

On November 16, 1979, William H. Wilson, as an individual and on behalf of American Federation of State, County and Municipal Employees (AFSCME), filed an unfair practice charge alleging that the University prohibited AFSCME from distributing organizational literature to custodial employees through the internal mail system.

A hearing was held and the ALJ issued a decision finding that the University's regulations prohibiting union access to the internal mail system violated the HEERA because they are not "reasonable" under standards set forth by the Board in Richmond Unified School District/Simi Valley Unified School District (8/1/79) PERB Decision No. 99.

On November 25, 1981 the Board upheld the ALJ and ordered the University to allow free access to the mail system. (PERB Decision No. 183-H)

The University filed a Petition for Writ of Review with the First District Court of Appeal claiming that if it granted the union access to the internal mail system, it ran the risk of violating federal postal laws.

On February 17, 1983 the court remanded the matter to PERB for determination of, whether the University's regulations denying union access to the internal mail system "are reasonable in light of all the surrounding circumstances, including federal postal requirements."

## Summary Dispositions

### Novato Unified School District v. Public Employment Relations Board

On June 6, 1980, the Novato Federation of Teachers (NFT) filed an unfair practice charge against the district alleging the district violated the Act by unilaterally transferring a union activist.

A hearing was held and the ALJ found the district in violation of EERA section 3543.5(a). The district filed exceptions and on April 30, 1982, the Board issued its decision (PERB Decision No. 210) upholding the ALJ's finding that the District was in violation of the Act.

On June 7, 1982, the district filed a Petition in the First Appellate District Court seeking review of the Board's decision. On January 10, 1983, the court summarily denied the Petition.

### Delano Union Elementary Teachers Assn. v. Public Employment Relations Board

On April 30, 1982, PERB issued Decision No. 213 finding the district in violation of the EERA by unilaterally changing the pay, hours, and work year of four resource teachers. The Board ordered that the teachers be paid the money they lost as a result of the unilateral changes and that their longer work hours be restored.

The district requested reconsideration of the Board's decision. The Board granted the district's request and revised the remedy by eliminating the order for reinstatement of the longer hours and by limiting the backpay (PERB Decision No. 213a).

On November 12, 1982 the Association filed a Petition for Writ of Review of the Board's decision with the Fifth District Court of Appeal arguing that PERB abused its discretion by revising its remedy.

The court summarily denied the Petition on February 15, 1983.

Los Angeles Unified School District v. Public Employment Relations Board

Prior to passage of the EERA (in 1976), the Los Angeles Unified School District adopted regulations as part of its effort to implement the Winton Act which authorized employee organizations representing district employees to meet and confer with district representatives. In September of 1979, the district informed SEIU Local 699 (a non-exclusive representative) that it would no longer meet and confer with that union. One month later, the district rescinded its meet and confer regulations.

A hearing was held and the ALJ issued a decision finding that the district violated the EERA by refusing to meet with SEIU. Exceptions were filed, and the Board issued its

decision on February 17, 1983 (PERB Decision No. 285), adopting the ALJ's findings and concluding that the district is obligated to meet with SEIU to discuss matters of fundamental interest to its members.

The district appealed the Board's decision to the Second Appellate District Court of Appeal arguing that the EERA does not require public school employees to meet and confer with non-exclusive representatives. On May 5, 1983, the court summarily denied the district's Petition.

The District then filed a Petition for Hearing before the California Supreme Court arguing that a hearing is necessary to establish uniformity of appellate court treatment of PERB decisions. On June 22, 1983 the court summarily denied the Petition.

Walnut Valley Unified School District v. Public Employment Relations Board

As a result of the enactment of Education Code section 3922 giving public school employees 65 years of age and older the right to continue employment after certification of competence, the Walnut Valley Unified School District, on March 20, 1978, unilaterally created and implemented a new retirement policy. The Walnut Valley Educators Association maintained that the policy was negotiable, but the district refused the Association's requests to bargain contending that it had no obligation to negotiate.

The Association filed an unfair practice charge against the district, and a hearing was held. Exceptions were filed to the ALJ's decision, and on February 28, 1983 the Board issued its decision finding the retirement policy to be a subject within the scope of negotiations.

On March 29, 1983, the district filed a Petition for Writ of Review with the Second District Court of Appeal asking the court to set aside the Board's decision. On June 22, 1983, the court summarily denied the Petition.

Jefferson Classroom Teachers Association v. Public Employment Relations Board

In a writ proceeding filed in the First District Court of Appeal, California Teachers Association (CTA) sought to require the Board to change its remedial order to require the district to negotiate with CTA. The court summarily denied CTA's Petition on June 30, 1983.

Jefferson School District v. Public Employment Relations Board

On July 29, 1980, the Jefferson School District filed a Petition for Extraordinary Relief with the First District Court of Appeal. In that Petition, the district argued that PERB exceeded its jurisdiction by finding certain items to be within the scope of negotiations. In an order issued by the court on September 23, 1983, the court dismissed the district's Petition as moot.

Pending Significant Cases

William J. Cumero v. Public Employment Relations Board

Petition by individual teacher to vacate the Board's decision (King City Union High School District (Cumero) (3/3/82) PERB Decision No. 197) which established and applied a test for evaluating allegations that exclusive representatives have unlawfully refused to rebate portions of agency fee payments spent on impermissible purposes. Cumero also challenges the application of PERB's test to specific expenditures made by the exclusive representative in this case.

Broadwood v. Public Employment Relations Board

Petition by three employees to vacate the Board's decision (Los Altos School District (12/29/81) PERB Decision No. 190) which dismissed charges alleging that a retroactive service fee provision violated the EERA.

Pittsburg Unified School District v. CSEA

Complaint for injunctive relief filed by the district against the association to enjoin the association from picketing and leafletting the offices of school board members regarding pending negotiations. The Superior Court issued the injunction, and the association filed an appeal. PERB filed an amicus brief contending that it had exclusive initial jurisdiction over the conduct alleged in the district's

complaint and that the superior court was without jurisdiction to issue the injunction.

State Personnel Board v. Public Employment Relations Board

Complaint for injunctive relief and Petition for Writ of Mandate filed by the SPB to prevent PERB from adjudicating unfair practice cases under SEERA which involve the "merit principle" of employment.

Redwoods Community College District v. Public Employment Relations Board

Petition by the District contending that PERB was incorrect in its decision that an employee should have union representation (Weingarten rights) in a mandatory discussion of a written evaluation.

Dixie Elementary School District v. Public Employment Relations Board

Petition by District seeking to overturn the Board's decision in Dixie Elementary School District (3/29/83) PERB Decision No. 298, in which the Board determined that the district had violated EERA by refusing to negotiate with the Dixie Teachers Association (DTA). That action was a "technical" refusal to bargain taken by the district to challenge the Board's underlying unit modification decision, Dixie Elementary School District (8/11/81) PERB Decision No. 171, in which the Board accreted all substitute and

temporary teachers to the regular classroom teachers' bargaining unit.

Regents of the University of California v. PERB (Physicians National Housestaff Association)

Petition by U.C. contesting PERB's determination that interns and residents at U.C. hospitals are employees within the meaning of the term under HEERA.

Regents of the University of California v. PERB (United Health Care Employees)

Petition by U.C. challenging PERB's designation of certain patient-care unit lounges, locker rooms, and unused classrooms for non-employee union access to hospital workers.

San Jose Unified School District v. Public Employment Relations Board

The district, after filing a Petition for Bankruptcy, filed an application to stay PERB proceedings on two unfair practice complaints issued by the Board. The issuance of the complaints indicate that the charges by CSEA and SJTA stated prima facie violations of EERA. The district's request for a preliminary injunction was denied on 10/26/83. The Bankruptcy Court determined that the district failed to show that it would suffer irreparable injury if PERB were allowed to continue processing the unfair practice charges.

Sierra Joint Community College District v. Public Employment Relations Board

Petition by district seeking to overturn the Board's decision in Sierra Joint Community College District (9/22/83) PERB Decision No. 345, in which the Board determined that employee organizations' express statutory right to represent their members, and employees' correlative right to be represented in their employment relations, includes the right of employee organizations to address school boards, on behalf of their members, as to matters of employment relations.

CTA/Modesto Teachers Association v. Public Employment Relations Board

Petition by CTA claiming that PERB erroneously used extrinsic evidence to decide that a collective bargaining agreement was ambiguous and erroneously determined that there was a past practice of back-to-back teacher evaluations for substandard teachers.

EERA UNITS IN PLACE

Total Number of School Districts	1,191
Number with no Activity	201
Number with Activity	990
Total Number of Units	2,303
Number of Certificated Units	1,219
Number of Classified Units	1,048
Number of Certificated Supervisory Units	11
Number of Classified Supervisory Units	25
Total Number of Employees	433,058
Number of Certificated Employees	244,525
Number of Classified Employees	187,433
Number of Certificated Supervisory Employees	405
Number of Classified Supervisory Employees	695
Type of School District	
Unified School District	239
Elementary School District	377
High School District	6
Union Elementary School District	255
Union High School District	78
Joint Union Elementary School District	16
Joint Union High School	30
Joint Unified School District	31
Joint Elementary School District	14
County Office of Education	58
Community College District	71
Public School District (Combined)	9
Miscellaneous Listing	7

PUBLIC EMPLOYMENT RELATIONS BOARD

SEERA UNITS IN PLACE

UNIT	EMPLOYER/UNIT	NO. EMPLOYEES
	State of California	
S01	Admin./Fin./Staff Serv.	24, 019
S02	Attorney & H.O.	1,783
S03	Education & Library	2,189
S04	Office & Allied	31,989
S05	Highway Patrol	4,212
S06	Corrections	6,849
S07	Prot. Serv. & Pub. Safety	4,329
S08	Firefighter	2,282
S09	Professional Engineer	4,714
S10	Professional Scientific	1,285
S11	Engineering and Sci. Techs	3,066
S12	Craft & Maintenance	9,376
S13	Stationery Engineer	472
S14	Printing Trades	793
S15	Custodial Services	6,343
S16	Physician/DDS/Podiatrist	977
S17	Registered Nurses	1,619
S18	Psychiatric Technician	7,563
S19	Health & Soc. Serv. Prof.	3,089
S20	Med./Soc. Serv. Support	1,509
	TOTAL	118,458

PUBLIC EMPLOYMENT RELATIONS BOARD

HEERA UNITS IN PLACE

UNIT	EMPLOYER/UNIT	NO. EMPLOYEES
	University of California	
U01	Police	230
U02	Faculty/Santa Cruz	295
U03	LLNL Skilled Crafts	264
U04	UCB/Lawr. Skilled Crafts	238
U05	UCSF Skilled Crafts	52
U06	UCLA Skilled Crafts	326
U07	Printing Trades	95
U08	LLNL Technical	1,653
U09	Systemwide Technical	4,093
U10	LLNL Service	461
U11	Service	6,286
U12	Clerical & Allied Service	19,352
U13	Patient Care Technical	4,109
U14	Residual Patient Care Prf.	1,524
U15	Registered Nurses	4,420
U16	LLNL Prof. Sci. & Eng.	2,746
U17	Professional Librarians	401
U18	Non Academic Senate Inst.	1,877
U19	Research & Allied	7,802
U20	UCR Skilled Crafts	39
U21	UCI Skilled Crafts	81
U22	UCSB Skilled Crafts	49
U23	UCD Skilled Crafts	202
U24	UCSD Skilled Crafts	122
U25	UCSC Skilled Crafts	25
U26	Housestaff	N/A
	TOTAL	56,742
	California State University	
C01	Physicians	140
C02	Health Care Support	273
C03	Faculty	19,106
C04	Academic Support	1,335
C05	Operations - Support Serv.	2,108
C06	Skilled Crafts	815
C07	Cler. & Admin. Support Serv.	6,677
C08	Pub. Sfty. Ofcrs. & Invest.	166
C09	Tech. & Support Services	2,107
	TOTAL	32,732

EERA - SEERA - HEERA  
 REPRESENTATION CASE ACTIVITY  
 TOTAL ACTIVITY FOR 1983

	<u>Active as of 01-01-83</u>	<u>Cases Filed 1983</u>	<u>Total Active Cases</u>	<u>Closed Cases 1983</u>	<u>Active as of 12-31-83</u>
Representation Petitions	71	52	123	98	25
Decertification Petitions	5	68	73	61	12
Unit Modification Petitions	38	95	133	119	14
Organizational Security Petitions	2	29	31	25	6
Amended Certifications	10	1	11	6	5
Mediations	202	427	629	441	188
Factfindings	17	68	85	69	16
Arbitrations	0	7	7	2	5
Public Notice Complaints	8	28	36	12	24
Compliances	36	56	92	51	41
Financial Statements	0	2	2	1	1
 TOTALS	 <u>389</u>	 <u>833</u>	 <u>1,222</u>	 <u>885</u>	 <u>337</u>

EERA REPRESENTATION CASE ACTIVITY  
TOTAL ACTIVITY FOR 1983

	<u>Active as of 01-01-83</u>	<u>Cases Filed 1983</u>	<u>Total Active Cases</u>	<u>Closed Cases 1983</u>	<u>Active as of 12-31-83</u>
Representation Petitions	22	45	67	46	21
Decertification Petitions	5	65	70	60	10
Unit Modification Petitions	37	92	129	117	12
Organizational Security Petitions	2	23	25	20	5
Amended Certifications	9	1	10	5	5
Mediations	199	411	610	422	188
Factfindings	16	68	84	68	16
Arbitrations	0	7	7	2	5
Public Notice Complaints	8	7	15	5	10
Compliances	32	43	75	43	32
Financial Statements	0	1	1	1	0
<b>TOTALS</b>	<u>330</u>	<u>763</u>	<u>1,093</u>	<u>789</u>	<u>304</u>

SEERA REPRESENTATION CASE ACTIVITY  
TOTAL ACTIVITY FOR 1983

	<u>Active as of 01-01-83</u>	<u>Cases Filed 1983</u>	<u>Total Active Cases</u>	<u>Closed Cases 1983</u>	<u>Active as of 12-31-83</u>
Representation Petitions	2	0	2	2	0
Decertification Petitions	0	2	2	1	1
Unit Modification Petitions	0	3	3	2	1
Organizational Security Petitions	0	6	6	5	1
Amended Certifications	1	0	1	1	0
Mediations	3	16	19	19	0
Factfindings	N/A	N/A	N/A	N/A	N/A
Arbitrations	0	0	0	0	0
Public Notice Complaints	0	0	0	0	0
Compliances	2	4	6	4	2
Financial Statements	0	1	1	0	1
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
TOTALS	8	32	40	34	6

HEERA REPRESENTATION CASE ACTIVITY  
TOTAL ACTIVITY FOR 1983

	<u>Active as of 01-01-83</u>	<u>Cases Filed 1983</u>	<u>Total Active Cases</u>	<u>Closed Cases 1983</u>	<u>Active as of 12-31-83</u>
Representation Petitions	47	7	54	50	4
Decertification Petitions	0	1	1	0	1
Unit Modification Petitions	1	0	1	0	1
Organizational Security Petitions	0	0	0	0	0
Amended Certifications	0	0	0	0	0
Mediations	0	0	0	0	0
Factfindings	1	0	1	1	0
Arbitrations	0	0	0	0	0
Public Notice Complaints	0	21	21	7	14
Compliances	2	9	11	4	7
Financial Statements	0	0	0	0	0
 TOTALS	 <u>51</u>	 <u>38</u>	 <u>89</u>	 <u>62</u>	 <u>27</u>

PUBLIC EMPLOYMENT RELATIONS BOARD  
 ERA ELECTIONS HELD - 1983

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1983 DATE	R-No	CASE NO	SCHOOL DISTRICT	UNIT TYPE	No OF VOTERS	No OF VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
01/18	S-R-0728		Camptonville ESD	CL	7	6	CSEA-#701			2	0	0	CA-REP
01/27	S-R-0720		Calaveras COE	CL	108	59	CSEA-#522			6	0	1	CA-REP
02/03	S-R-0402	D-56	Spring Valley ESD	CL	13	8	NO REP	CSEA-#675		8	0	0	RD-REP
02/16	S-R-0627	D-54	Butte CCD	C	122	109	Butte CCD Ed Assn	Butte Felty Alli		2	0	0	RD-REP
02/17	S-R-0079	D-55	Placer Hills UnESD	C	49	47	Amron Bear Ed Assn			0	0	0	RD-REP
03/15	S-R-0153	D-57	Sundale UnESD	C	18	15	NO REP	Placer Tehrs Un Sundale TA		9	0	0	RD-REP
03/24	S-R-0296A	OS-33	Shasta UnHSD	CL	64	41		Yes-23	No-18	0	0	0	CA-OSR
03/24	S-R-0296B	OS-34	Shasta UnHSD	CL	82	71		Yes-33	No-38	0	0	0	CA-OSR
04/07	S-R-0733		Riverdale JtUnHSD	C	22	20	Riverdale JtUnHS TA			1	0	0	CA-REP
05/12	S-R-0437	OS-36	Redding ESD	C	100	80		Yes-67	No-13	0	0	0	CA-OS
05/20	S-R-0232B	D-60	San Juan USD	CL	192	166	CSEA-#127	Teamsters-L165		1	0	0	RD-REP
05/24	S-R-0727-1		Rocklin ESD	CL	28	25	SEIU-L22	CSEA-#714		6	0	0	CA-REP
05/25	S-R-0448	D-58	Hanford JtUnHSD	C	109	103	Hanford HS TA	Hanford FOT		1	0	0	RD-REP
05/26	S-R-0729		Clovis USD	C	697	614	NO REP	Clovis Untd TA		323	3	0	CA-REP
10/27	S-R-0736		San Joaquin Delta CCD	CL	6	6		For-4	Not-2	0	0	0	CA-SREP
10/27	S-R-0736		San Joaquin Delta CCD	CL	6	6	PORAC	CSEA-#359		0	0	0	CA-REP
11/08	S-R-0046	D-63	Hamilton UnESD	CL	19	17	NO REP	CSEA		11	0	0	RD-REP
11/09	S-R-0695	D-65	Modoc COE	C	15	12	ModocCoTA CTA/NEA	TEAMSTERS		0	0	0	RD-REP
11/15	S-R-0496	D-59	Butte COE	CL	340	151	Butte CEA	CSEA		7	0	5	RD-REP
12/02	S-R-0746		Millville ESD	CL	5	5	NO REP	CSEA-2		3	0	0	CA-REP
12/09	S-R-0018	D-53	Palo Verde UnESD	C	17	17	NO REP	PVTA-CTA/NEA		9	0	0	RD-REP
04/26	SF-R-0243A	D-95	Soledad UnESD	CL	15	15	NO REP	CSEA		9	0	0	RD-REP
04/27	SF-R-0080A	D-97	Sequoia UnHSD	CL	160	113	AFSCME-L377	CSEA-#51		16	0	0	RD-REP
05/05	SF-R-0184A	D-98	San Francisco USD	C	4075	3266	SF Classrm TA	SF FOT		38	4	6	RD-REP
05/10	SF-R-0039B	D-99	Alameda USD	CL	130	118	PEU-L1	CSEA-#27		4	3	0	RD-REP
05/16	SF-R-0339	D-100	No. Monterey County USD	C	244	221	No. Monterey Co. FOT	No. Monterey Co. CTA/NEA		4	1	0	RD-REP
05/17	SF-R-0032	D-102	Tamalpais UnHSD	C	220	217	Tamalpais Dist. TA	Tamalpais Dist. FOT		2	1	1	RD-REP
05/20	SF-R-0020A	D-101& D-106	Foothill-DeAnza CCD	CL	92	78	FtHill-DeAn Class Emp	CSEA-#96 SEIU		0	1	0	RD-REP
05/24	SF-R-0394B	D-108	Solano CCD	CL	62	52	CSEA-#211	SEIU-L614		0	1	0	RD-REP
05/25	SF-R-0064	OS-100	Moreland ESD	CL	130	105		Yes-58	No-47	0	0	0	CA-OS
05/26	SF-R-0035	D-103	Novato USD	C	430	385	Novato FOT	Novato TA		3	3	0	RD-REP
06/01	SF-R-0601B	OS-99	Cotati-Rohnert Park USD	CL	71	64		Yes-25	No-39	0	0	0	RD-OSR
06/02	SF-R-0011A	D-105	Hayward USD	CL	193	111	SEIU	CSEA		2	1	0	RD-REP
06/24	SF-R-0020A	D-101& D-106	Foothill-DeAnza CCD	CL	92	69	CSEA-#96	FtHill-DeAn Class Emps					RUNOFF
09/20	SF-R-0652		West Valley JtCCD	CL	34	30	WVCLsSupAsn						CA-REP
09/27	SF-R-0001A	D-110	Peralta CCD	CL	350	290	UntdPubEmps						RD-REP
10/06	SF-R-0615A	D-111	Mendocino CCD	C	38	36	MCInstrsAsn	MCTA					RD-REP
10/12	SF-R-0056A	OS-102	South San Francisco USD	C	450	333		Yes-221	No-112				CA-OS

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PUBLIC EMPLOYMENT RELATIONS BOARD  
ERA ELECTIONS HELD - 1983

1983 DATE	R-NO	CASE NO	SCHOOL DISTRICT	UNIT TYPE	No OF VOTERS	No OF VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
10/31	SF-R-0649		Lake COE	C	10	9	LakeCoTA CTA/NEA			2	0	0	CA-REP
11/15	SF-R-0654		Lucerne ESD	C	9	9	LucerneETA CTA/NEA			0	0	0	CA-REP
12/08	SF-R-0040C	D-112	Berkeley USD	CL	102	76	PEU-Local 1	CSEA		0	0	0	RD-REP
12/15	SF-R-0016A	OS-103	Vacaville USD	CL	300	78		Yes-54	No-24				CA-OS
01/25	LA-R-0560	OS-49	South Whittier ESD	CL	215	127		Yes-107	No-20				CA-OS
02/25	LA-R-0875		Coachella Valley CCD	CL	99	50	CSEA-#407			17	0	0	CA-REP
03/24	LA-R-0056	OS-51	Vista USD	C	500	203		Yes-126	No-76	0	1	0	CA-OS
03/29	LA-R-0074A	D-111	Sweetwater UnHSD	C	1147	943	Swtwtr EA	Swtwtr FOT		54	2	0	RD-REP
05/20	LA-R-0845	D-112	Imperial CCD	C	101	95	Imprl Villy CTA/NEA			26	0	0	RD-REP
05/20	LA-R-0521B	D-113	Grossmont UnHSD	CL	511	304	CSEA-#443	SEIU-L102		10	0	0	RD-REP
05/20	LA-R-0521C	D-114	Grossmont UnHSD	CL	125	76	CSEA-#443	SEIU-L102		4	0	1	RD-REP
05/20	LA-R-0277	D-116	Central UnHSD	C	102	95	El Centro Sec TA			28	0	0	RD-REP
05/20	LA-R-0099	D-117	San Pasqual Valley USD	C	42	37	San Pasqual TA			12	0	0	RD-REP
05/27	LA-R-0152B		Oxnard UnHSD	CL	84	54	OFT/AFT	CSEA		10	0	1	RD-REP
06/01	LA-R-0074A	D-111	Sweetwater UnHSD	C	1131	922	Swtwtr EA	Swtwtr FOT		0	2	8	RUNOFF
06/01	LA-R-0564A	D-115	Kern CCD	CL	63	28	CSEA	AFL/CIO-L1234		1	0	0	RD-REP
06/01	LA-R-0350D	D-118	Compton USD	CL	111	62	Compton USD Peace Off	CSEA		1	0	0	RD-REP
06/08	LA-R-0535	OS-54	Chaffey JtUnHSD	C	600	510		Yes-227	No-283	0	0	2	CA-OS
06/09	LA-R-0347B	D-129	Lynwood USD	CL	390	253	CSEA-#116	AFSCME-L1308		5	0	3	RD-REP
06/10	LA-R-0022	D-122	Poway USD	CL	194	103	SEIU-L102	CSEA-#702		4	0	1	RD-REP
06/10	LA-R-0861B	D-124	Santa Monica-Malibu USD	CL	188	119	SEIU-L660	CSEA-#227		8	0	0	RD-REP
06/10	LA-R-0585B	D-127	Fallbrook UnHSD	CL	19	15	SEIU-L102	CSEA-#519		1	0	0	RD-REP
06/10	LA-R-0868	D-128	San Diego CCD	CS	37	31	NO REP	Assoc Deans Assn		27	0	0	RD-REP
06/10	LA-R-0074A	D-130	Sweetwater UnHSD	CL	200	145	CSEA-#471	Swtwtr Class Emp		12	0	0	RD-REP
06/10	LA-R-0074B	D-131	Sweetwater UnHSD	CL	261	188	CSEA-#471	Swtwtr Class Emp		4	0	0	RD-REP
06/13	LA-R-0521C	D-114	Grossmont UnHSD	CL	125	93	CSEA-#443	SEIU-L102		0	2	0	RUNOFF
06/14	LA-R-0879		ABC USD	CL	319	250	AFSCME	CSEA-#24		2	0	3	CA-REP
06/15	LA-R-0471	D-134	Pasadena USD	C	1061	935	Pasadena EA	Pasadena FOT		16	19	3	RD-REP
06/16	LA-R-0472	OS-53	Hacienda-La Puente USD	C	1183	714		Yes-415	No-299				RD-OSR
06/24	LA-R-0004A	D-121& D-126	Los Angeles CCD	CL	1235	865	CSEA-#507	AFT-L1521	SEIU	78	0	4	RD-REP
08/19	LA-R-0004A	D-121& D-126	Los Angeles CCD	CL	1129	841	AFT-L1521	SEIU		0	0	11	RUNOFF
09/22	LA-R-0696C	OS-56	Sweetwater UnHSD	CL	219	8		Yes-7	No-1				CA-OS
09/29	LA-R-0866	D-135	Lerdo ESD	C	6	1	Lerdo TA						RD-REP
10/05	LA-R-0262	D-136	Santa Barbara ESD & HSD	C	655	553	SB TA	SB FT		7	0	0	RD-REP
10/25	LA-R-0537	OS-55	Fontana USD	C	611	450		Yes-143	No-307	0	0	9	RD-OSR
11/15	LA-R-0056	OS-57	Vista USD	CL	506	265		Yes-114	No-151	0	0	1	CA-OS
11/16	LA-R-0471	OS-59	Pasadena USD	C	1098	732		Yes-334	No-397	0	1	0	CA-OS

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PUBLIC EMPLOYMENT RELATIONS BOARD  
SEERA ELECTIONS HELD - 1983

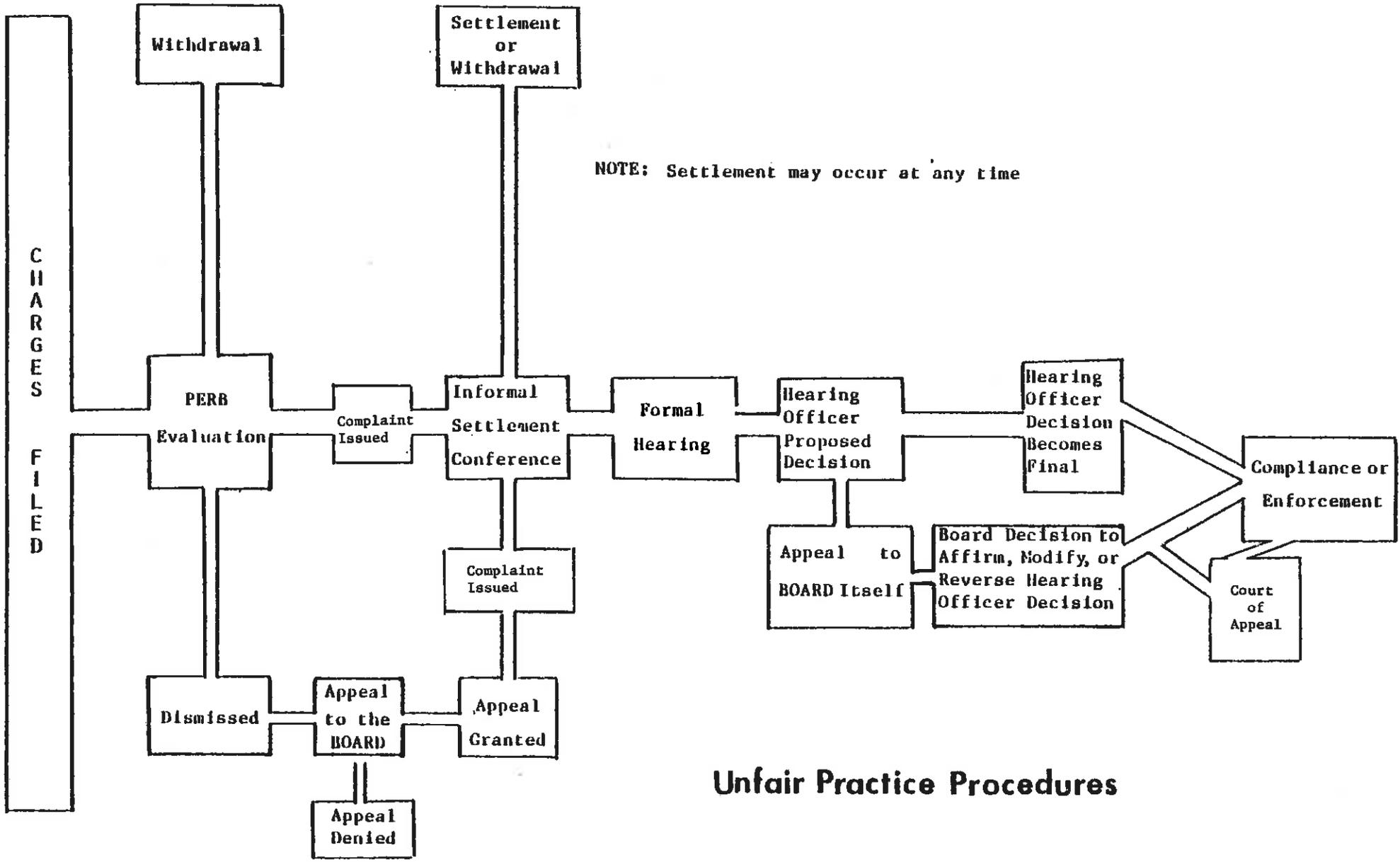
1983 DATE	R-No	CASE NO	SCHOOL DISTRICT	UNIT TYPE	No OF VOTERS	No OF VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
11/18	S-SR-0010	OS-41S	State of California Professional Scientific	10	1429	982		Yes-669	No-300		13	10	CA-OSR

PUBLIC EMPLOYMENT RELATIONS BOARD  
HEERA ELECTIONS HELD - 1983

1983 DATE	R-No	CASE NO	SCHOOL DISTRICT	UNIT TYPE	No OF VOTERS	No OF VOTES	ORG WITH MAJORITY	OTHER ORG (OS-YES)	OTHER ORG (OS-NO)	NO REP	CHALG BALLOT	VOID BALLOT	TYPE OF ELECT
06/14	SF-HR-0005		UC San Francisco		52	49	SFBCTC	AFSCME		8	2	1	RD-REP
06/23	SF-HR-0006		UC Los Angeles		326	279	IUOE-#501	SETC	AFSCME	8	12	1	RD-REP
06/24	SF-HR-0003		UC		264	186	NO REP	AFL-CIO/BCTC		186	2	5	RD-REP
06/24	SF-HR-0010		UC		461	342	NO REP	AFL-CIO/LIU		342	2	7	RD-REP
06/24	SF-HR-0016		UC		2746	1923	NO REP	SPSE/CSEA		2532	19	27	RD-REP
06/27	SF-HR-0004		UC		238	83	Alameda BCTC	AFSCME		27	0	8	RD-REP
06/27	SF-HR-0007		UC		95	71	PTA/AFL-CIO			2	1	5	RD-REP
06/27	SF-HR-0011		UC		6286	3775	AFSCME			921	165	198	RD-REP
06/27	SF-HR-0014		UC		1524	1061	NO REP	AFSCME		608	48	20	RD-REP
06/27	SF-HR-0017		UC		401	328	AFT			158	0	25	RD-REP
06/28	SF-HR-0013		UC		4109	2490	AFSCME			812	59	112	RD-REP
06/28	SF-HR-0015		UC		4420	3088	CNA			865	31	232	RD-REP
06/29	SF-HR-0012		UC		19352	356	AFSCME			5255	637	356	RD-REP
07/14	SF-R -1018,SF-HR-0020		UC Riverside		39	37	IUOE-#501	LIUNA-#1184		16	0	0	RD-REP
07/20	SF-R -1015,SF-HR-0022		UC Santa Barbara		49	43	IUOE-#501			4	0	0	RD-REP
07/19	SF-R -1016,SF-HR-0021		UC Irvine		81	74	IUOE-#501			17	0	0	RD-REP
07/26	SF-PC-1048,SF-HR-0023		UC Davis										
07/26	SF-HR-0009		UC		4093	2263	NO REP	AFSCME		1164	64	61	RD-REP
07/26	SF-PC-1049,SF-HR-0023		UC Davis		202	180	NO REP	AFSCME	SEU	109	1	1	RD-REP
07/28	SF-R -1017,SF-HR-0024		UC San Diego		122	104	IUOE-#501	CELO-#1		26	1	0	RD-REP
11/10	SF-PC-1050,SF-HR-0025		UC Santa Cruz		23	21	AFSCME			9	0	1	CA-REP

## Abbreviations to the election log

AFSCME	American Federation of State, County & Municipal Employees
APSSE	Association of Public School Supervisory Employees
ASCEA	Arcohe School Classified Employees Association
C	Certificated
CA	Consent Agreement
CL	Classified
CSEA	California School Employees Association
CUSE	Classified Union of Supervisory Employees
D	Decertification (when part of case number)
D	<u>Directed Election</u>
ERFOT	El Rancho Federation of Teachers
FMSDADA	Franklin-McKinley School District Association of District Administrators
FUSE	Federation of United School Employees
GHSCEA	Galt High School Classified Employees Association
LA	Los Angeles
LAUSDPOA	Los Angeles Unified School District Peace Officers Association
OS	<u>Organizational Security</u>
PEU	Public Employees Union
PFA	Pupil Personnel Association
PVTA	<u>Palo Verde TA</u>
R	Representation
RCEA	Redlands Classified Employees Association
RO	Runoff
S	Supervisory
S	Sacramento (when part of case number)
SEIU	Service Employees International Union
SF	San Francisco
SFSTO	San Francisco Substitute Teachers Organization
SPIA	Special Project Instructors Association
SPVCEG	San Pasqual Valley Classified Employees Group
TCSEA	Tri County Special Educators Association
UM	Unit Modification
UTKCCD	United Teachers of Kern CCD



NOTE: Settlement may occur at any time

### Unfair Practice Procedures

TOTAL FILINGS - 1983  
UNFAIR PRACTICE CASES - BY ACT

CE's

	<u>EERA</u>	<u>SEERA</u>	<u>HEERA</u>	<u>TOTAL</u>
JAN	39	1	9	49
FEB	29	2	4	35
MAR	45	6	7	58
APR	39	7	8	54
MAY	35	5	3	43
JUN	42	7	4	53
JUL	29	3	2	34
AUG	34	14	2	50
SEPT	59	7	2	68
OCT	38	7	1	46
NOV	35	2	3	40
DEC	<u>37</u>	<u>2</u>	<u>3</u>	<u>42</u>
TOTAL	461	63	48	572

CO's

	<u>EERA</u>	<u>SEERA</u>	<u>HEERA</u>	<u>TOTAL</u>
JAN	6	2	0	8
FEB	2	0	0	2
MAR	3	2	0	5
APR	5	1	1	7
MAY	9	2	1	12
JUN	8	1	1	10
JUL	6	2	1	9
AUG	4	1	0	5
SEPT	6	1	0	7
OCT	8	1	0	9
NOV	7	0	0	7
DEC	<u>18</u>	<u>0</u>	<u>0</u>	<u>18</u>
TOTAL	82	13	4	99

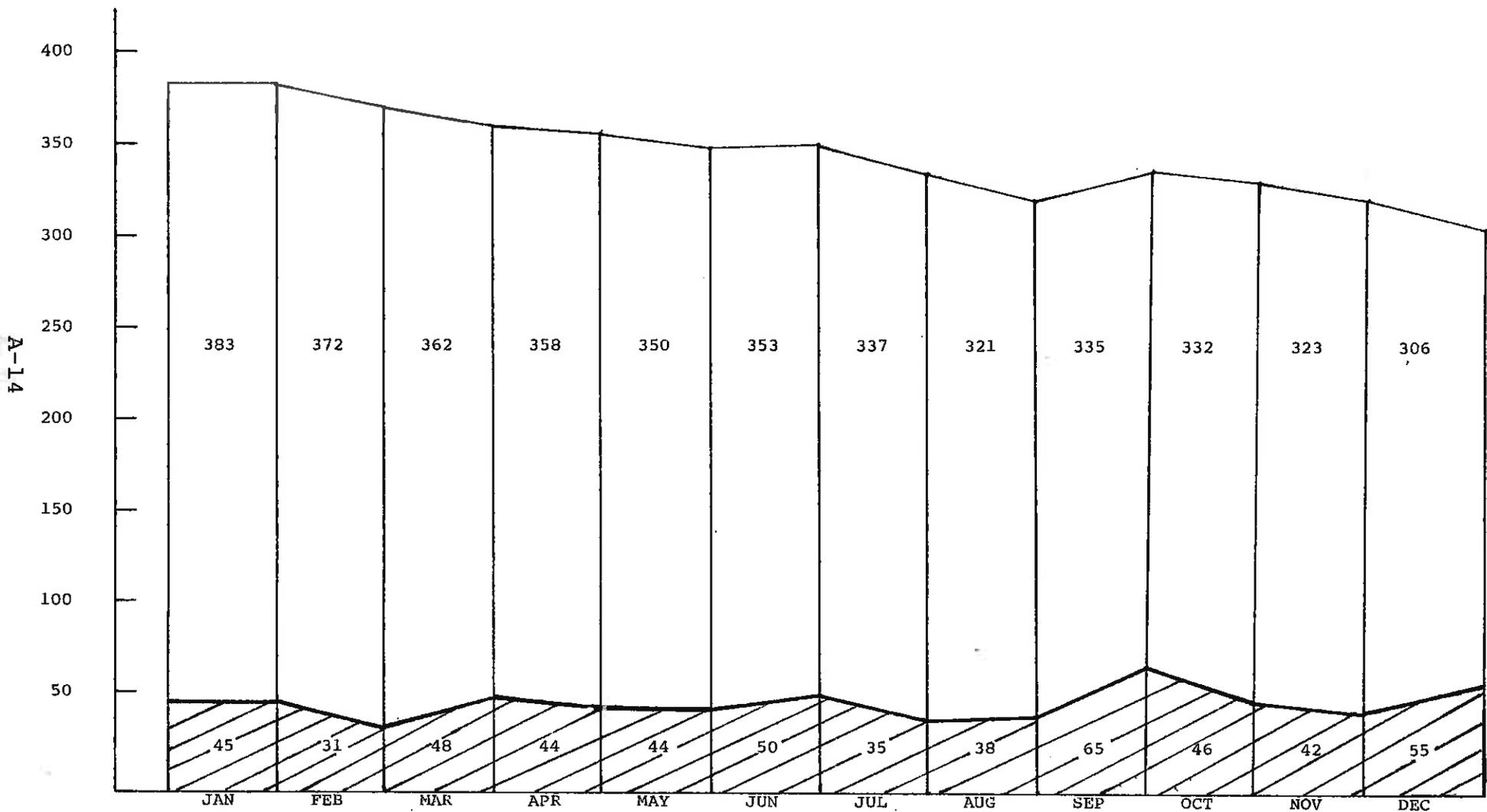
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GRAND TOTALS	543	76	52	671
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EERA  
UNFAIR PRACTICE CASELOAD CHART - 1983

□ Total Open Unfair Practice Cases Pending

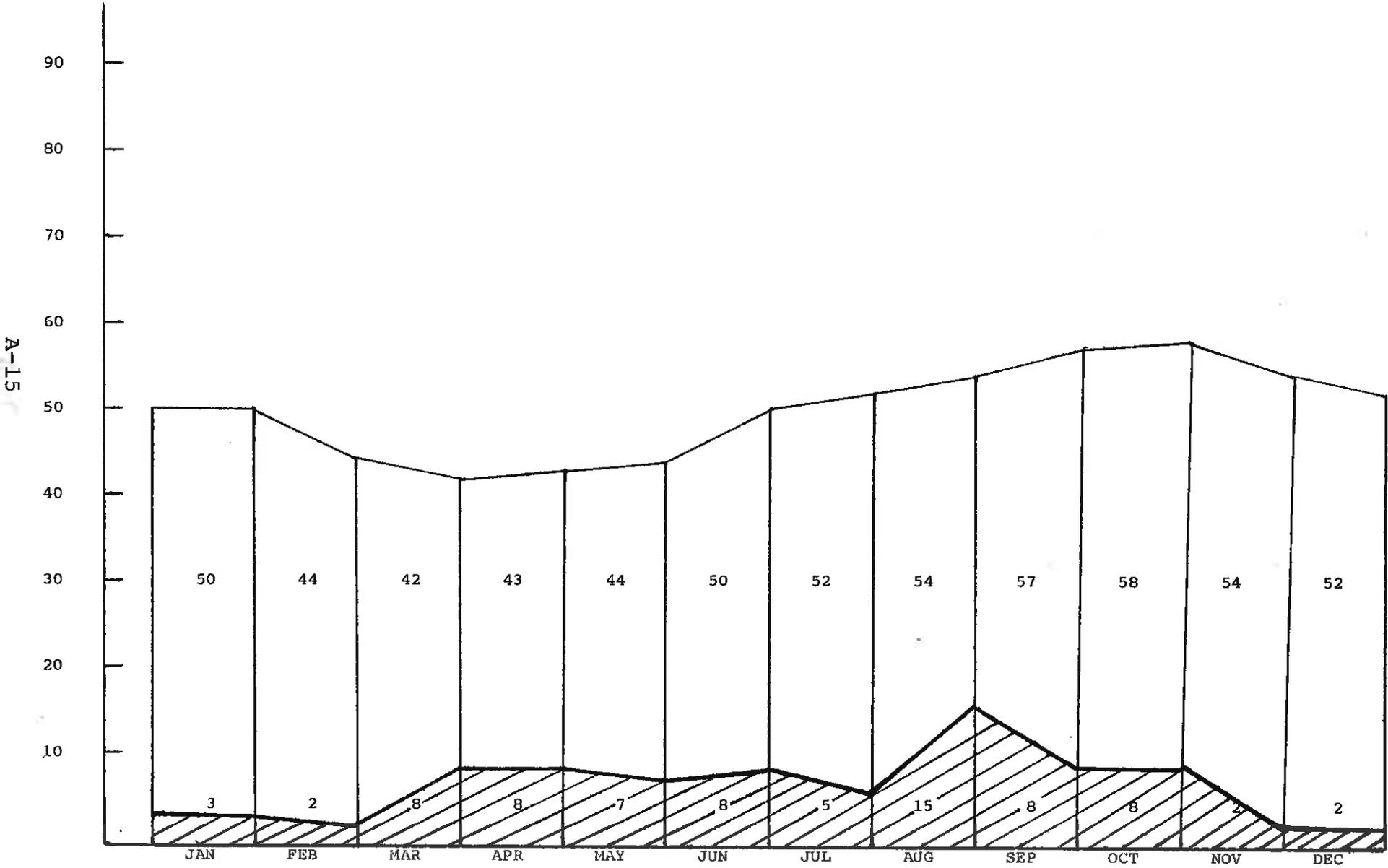
▨ Total New Unfair Practice Charges Filed During Monthly Reporting Period



SEERA  
UNFAIR PRACTICE CASELOAD CHART - 1983

□ Total Open Unfair Practice Cases Pending

▨ Total New Unfair Practice Charges Filed During Monthly Reporting Period

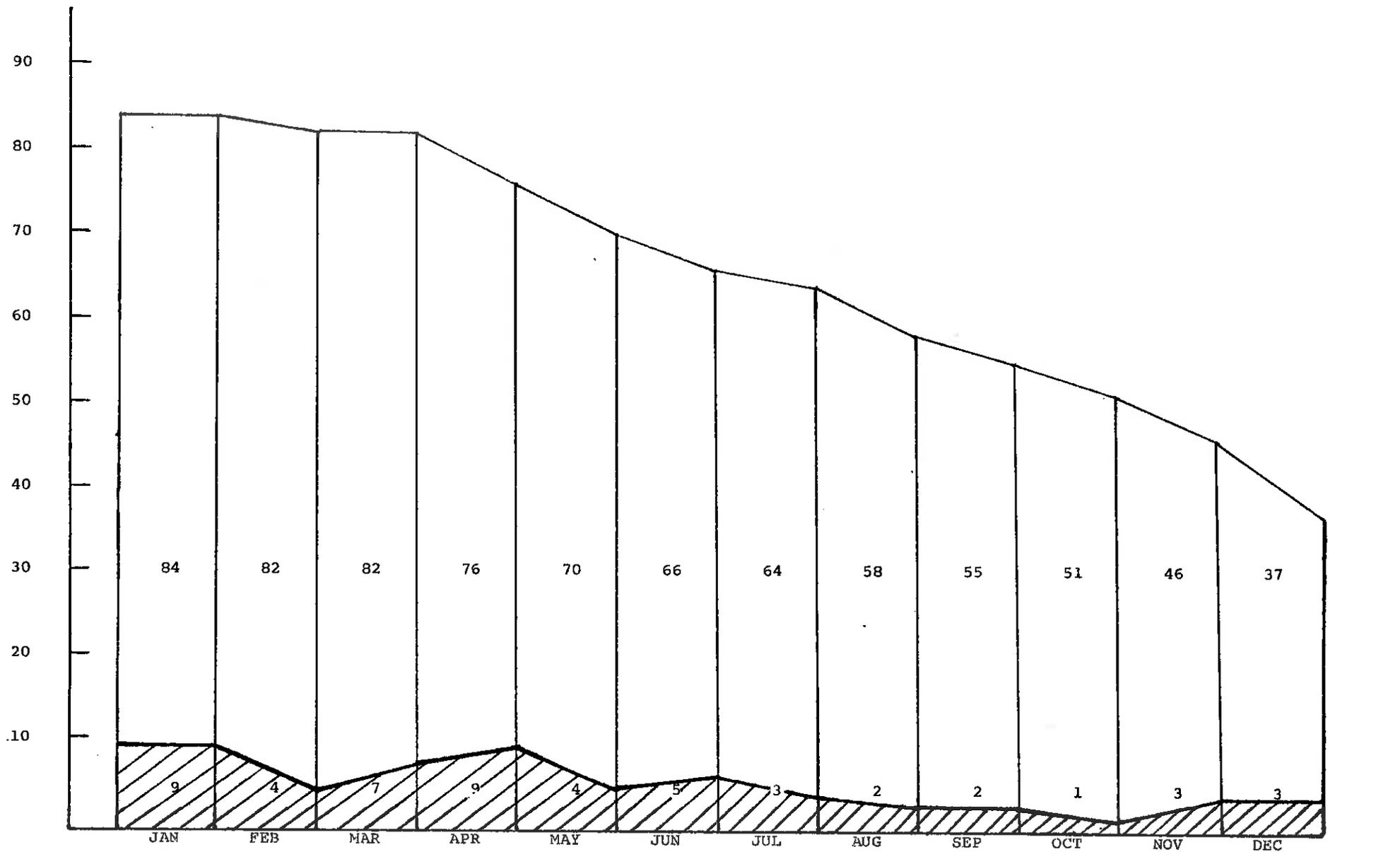


HEERA  
UNFAIR PRACTICE CASELOAD CHART - 1983

□ Total Open Unfair Practice Cases Pending

▨ Total New Unfair Practice Charges Filed During Monthly Reporting Period

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**EERA-HEERA-SEERA  
UNFAIR PRACTICE CASE ACTIVITY  
1/01/83 TO 12/31/83**

	<u>ACTIVE AS OF 1/01/83</u>	<u>CASES FILED</u>	<u>CLOSED CASES</u>	<u>ACTIVE AS OF 12/31/83</u>
<u>EERA</u>				
CE	315	461	524	252
CO	54	82	82	54
TOTAL	<u>369</u>	<u>543</u>	<u>606</u>	<u>306</u>
<u>HEERA</u>				
CE	78	48	91	35
CO	2	4	4	2
TOTAL	<u>80</u>	<u>52</u>	<u>95</u>	<u>37</u>
<u>SEERA</u>				
CE	54	63	72	45
CO	4	13	10	7
TOTAL	<u>58</u>	<u>76</u>	<u>82</u>	<u>52</u>
<u>GRAND TOTAL</u>				
CE	447	572	687	332
CO	60	99	96	63

INJUNCTIVE RELIEF REQUESTS

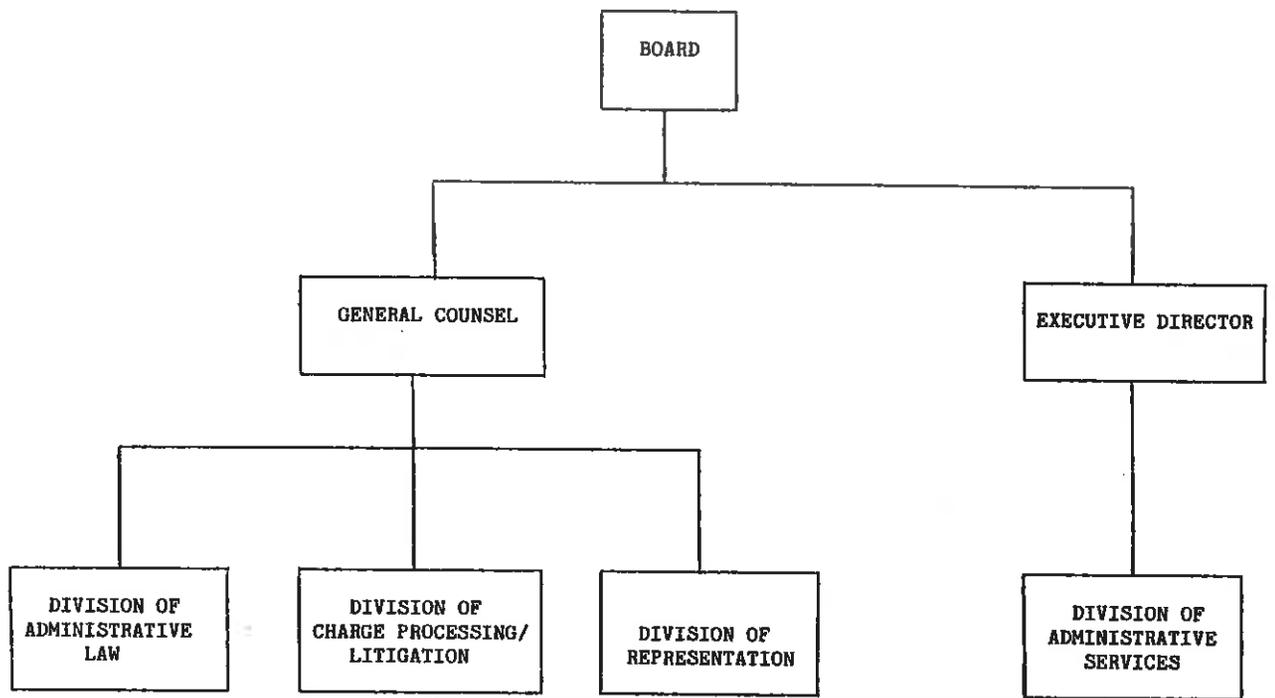
<u>IR#</u>	<u>CASE NAME</u>	<u>CASE NO.</u>	<u>ALLEGATION</u>	<u>FILED</u>	<u>TO BD</u>	<u>DISPOSITION - DATE</u>
175	Statewide Univ. Police Assn. v. Regents of UC	SF-CE-144-H	Refusal to negotiate and unilateral changes	4/20/83	4/29/83	Denied by letter 5/3/83
176	AFSCME v. Regents of UC	LA-CE-94-H	Refusal to provide banner space	5/24/83	5/26/83	Denied by letter 5/27/83
177	CSEA, et al. v. Mojave USD	LA-CE-1787, 1788	Unilateral action	5/24/83	6/2/83	Pursuant to settlement 6/13/83
178	ACSA v. DPA	S-CE-184-H	Refusal to bargain	6/6/83	6/10/83	Denied by letter 6/13/83
179	San Jose TA v. San Jose USD	S-CE-786	Bad faith bargaining	6/10/83	6/22/83	Denied by letter 6/23/83
180	CSEA v. San Jose USD	SF-CE-787	Bad faith bargaining	6/10/83	6/22/83	Denied by letter 6/23/83
181	CCPOA v. DPA, CTA, CDC	S-CE-189-S faith on money items	Refusal to bargain in good	6/30/83	--	Request w/d 7/7/83
182	CCPOA v. CSEA	SF-OO-25-S activities	Illegal decertification	6/30/83	7/8/83	Denied by letter 7/14/83

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INJUNCTIVE RELIEF REQUESTS

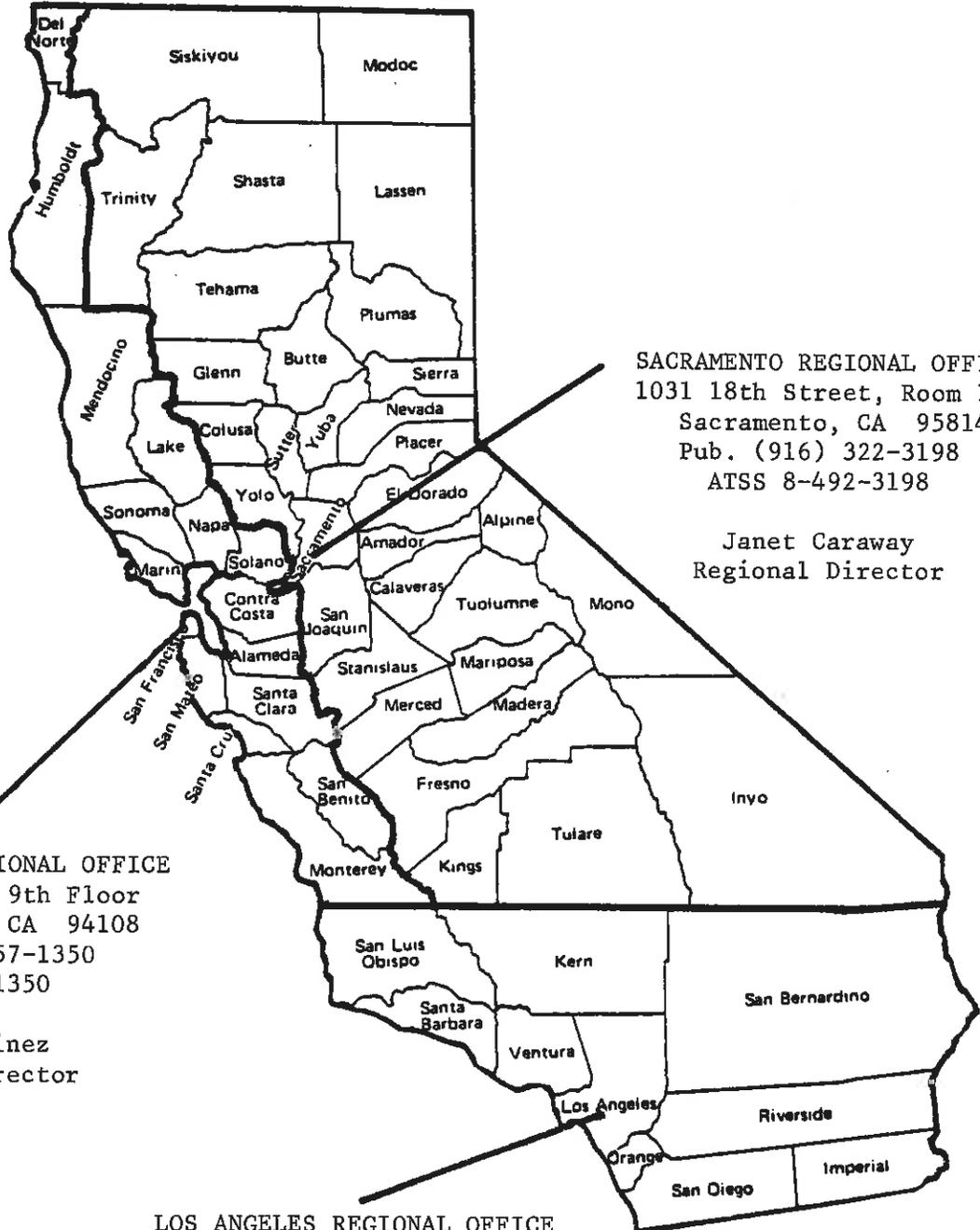
<u>IR#</u>	<u>CASE NAME</u>	<u>CASE NO.</u>	<u>ALLEGATION</u>	<u>FILED</u>	<u>TO BD</u>	<u>DISPOSITION - DATE</u>
183	Marilyn Oberg v. CFA	IA-CO-2-H	Breach of campaign promise (discrimination)	8/5/83	8/9/83	Denied by letter 8/10/83
184	CSEA v. Mojave USD	IA-CE-1828	Unilateral change	8/29/83	--	w/d 9/6/83
185	Compton Community College Federation of Teachers v. Compton CCD	IA-CE-1832	Unilateral change	9/1/83	--	w/d 9/2/83
186	Compton Community College Federation of Teachers v. Compton CCD	IA-CE-1832	Unilateral change	9/6/83	9/16/83	Denied by letter 10/7/83
187	Oakland Ed. Assn. v. Oakland USD	SF-CE-826	Unilateral change	9/21/83	9/30/83	Denied by letter 10/4/83
188	AFSOME v. Regents of UC	SF-CE-177-H	Interference with employees' rights	11/4/83	11/10/83	w/d 11/15/83
189	Liberty UnHSD v. Liberty Ed. Assn.	SF-CO-207	Alleged "sick out"	11/22/83	11/23	Denied by letter 11/29/83

PUBLIC EMPLOYMENT RELATIONS BOARD



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# Regional Office Jurisdictions



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