

PUBLIC EMPLOYMENT RELATIONS BOARD

October 15, 1993

**1992-1993 Report
To The Legislature**



Pete Wilson

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State of California

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MESSAGE FROM THE CHAIRPERSON

We are pleased to submit our 1992-93 annual report of the activities of the Public Employment Relations Board (PERB).

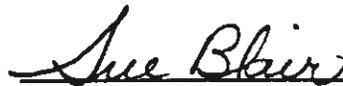
PERB absorbed its third year of major budget reductions. Despite the layoff of experienced staff members resulting in an agency of 40 employees (down from approximately 100 in 1989-90), the Board and staff have made an extraordinary effort to at least maintain our productivity levels, if not improve them through new work methods and processes. We closely monitor our effectiveness by regular feedback and open discussions with the PERB Advisory Committee, which is made up of our constituents statewide.

During this fiscal year the Board functioned with just three and four of the five members authorized. Regardless, productivity was up. The Board issued 90 decisions compared to 72 in the prior year, while the average number of days to issue decisions was 97 days--7 days over our goal of a turnaround time of 90 days. This was the result of the Board focusing on moving a backlog of older cases.

In addition to the decisions issued, the Board deliberated on eight injunctive relief requests. As in prior years, the Board continues to experience a good success rate in that only four of the 90 decisions issued were appealed to the state appellate courts. Of those, three were dismissed and the fourth is still pending.

In closing, on behalf of the Board, I wish to thank former Chairperson Deborah M. Hesse for her more than nine years as a Board Member and her leadership through the 1980's and early 1990's. Ms. Hesse asked to be replaced as Chairperson during the last year of her current term. Her institutional knowledge and in-depth understanding of the state's three labor relations statutes has been invaluable.

It has been my pleasure to serve as PERB Chairperson since mid-February 1993.



SUE BLAIR

PUBLIC EMPLOYMENT RELATIONS BOARD

MISSION STATEMENT

The Public Employment Relations Board (PERB) promotes improved employee/employer relations, provides an opportunity for employees to participate in collective bargaining through the selection of a representative, and provides employees, employers and employee organizations a neutral forum for cost-effective dispute resolution. Through its decisions and policies, PERB provides guidance for successful labor relations in an increasingly complex environment.

PERB pursues its mission through the application of its unique expertise and by the consistent, fair and impartial administration and enforcement of the Educational Employment Relations Act, the Ralph C. Dills Act and the Higher Education Employer-Employee Relations Act, while encouraging voluntary resolution of disputes.

PERB values timely and voluntary settlement of disputes. Timely resolution of disputes provides more relevant solutions. Settlement of disputes avoids costly litigation, and fosters productive labor relations, thus promoting better use of public resources.

PUBLIC EMPLOYMENT RELATIONS BOARD

DUTIES AND JURISDICTION

STATUTORY AUTHORITY

The Public Employment Relations Board is the quasi-judicial agency established to administer three collective bargaining statutes and adjudicate disputes that arise out of them. Those statutes are: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code, sec. 3540, et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code, sec. 3512, et seq.), establishing collective bargaining for State Government employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code, sec. 3560, et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

JURISDICTION

Approximately 855,640 public sector employees and 1,185 employers are included under the jurisdiction of these three Acts. The majority of these employees (645,587+) work for California's public school system from pre-kindergarten through and including the community college system. The

remainder of the employees covered are employed by the State of California (121,708) or the University of California, the California State University, and the Hastings College of Law (88,345). Municipal, county, and local special district employers and employees are not subject to PERB jurisdiction, but rather are covered under the Meyers-Miliias-Brown Act.

THE BOARD AND ITS DUTIES

The Board is composed of five members appointed by the Governor and subject to confirmation by the State Senate. In addition to the overall responsibility for administering the three statutes, the Board acts as an appellate body to hear challenges to proposed decisions that are issued by Board agents. The Board also is empowered to:

- conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them at the bargaining table;
- prevent and remedy unfair practices, whether committed by employers or employee organizations;
- break impasses that may arise at the bargaining table by establishing

and, in addition, manages the agency's charge processing, litigation and representation functions.

The litigation functions include:

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

The Representation section has staff in each regional office and is responsible for handling bargaining unit configurations, unit modification requests, certification and decertification elections, and elections to approve or rescind organizational security

arrangements. This section also handles public notice complaints, requests to certify negotiation disputes to mediation and factfinding, and allegations of noncompliance with PERB orders.

The Division of Administration is directed by the Executive Director. This unit provides support services to PERB, such as business services, personnel, accounting, information technology, mail and duplicating. This division also maintains liaison with the Legislature and the Executive branch of State Government.

In keeping with State of California guidelines, PERB maintains an affirmative action policy as a means of achieving equal employment opportunities. PERB's policy prohibits discrimination based on age, race, sex, color, religion, national origin, political affiliation, ancestry, marital status, sexual orientation or disability.

ADVISORY COMMITTEE

The Advisory Committee to the Public Employment Relations Board was organized in 1980 to assist PERB in the review of its regulations as required by AB 1111. The Advisory Committee consists of approximately 100 people from throughout California representing employers, employee organizations, law firms, negotiators, professional consultants, the public and scholars. Although the regulation revision has long been completed, the Advisory Committee continues to

DESCRIPTION OF PERB FUNCTIONS AND ANNUAL STATISTICS

REPRESENTATION

The representation process normally begins when a petition is filed by an employee organization to represent classifications of employees which reflect an internal and occupational community of interest. If only one employee organization petition is filed 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 representational rights of the same unit, an election is mandatory.

If either the employer or an employee organization 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 Board has historically stressed voluntary settlements and has consistently and effectively offered the assistance of Board agents to work with the parties toward agreement on unit configurations.

If the dispute cannot be settled voluntarily, a Board agent will conduct a formal investigation and/or hearing and issue a written determination which is appealable to the Board itself. This decision sets forth the appropriate bargaining unit, or modification of that unit, and

is based upon application of statutory unit determination criteria and appropriate case law to the facts obtained in the investigation or hearing.

Once an initial bargaining unit has been established and an exclusive representative has been chosen, another employee organization or group of employees may try to decertify the incumbent 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. As of June 30, 1993, there were approximately 2,280 represented bargaining units within PERB's jurisdiction.

ELECTIONS

A primary function of PERB is to conduct representation and organizational security elections. PERB conducts initial representation elections in all cases in which the employer has not granted voluntary recognition. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent. The choice of "No Representation" appears on the ballot in every representation election.

impasse declarations were filed with PERB. Approximately 85 percent of all such disputes closed during 1992-93 were settled by the mediator, resulting in the need for appointment of a factfinding panel in only 15 percent of all impasse cases.

In the event settlement is not reached during mediation, either party (under EERA or HEERA) may request the implementation of factfinding procedures. If the mediator agrees that factfinding is appropriate, PERB provides a list of neutral factfinders from which 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 ten days after its issuance. Under HEERA, publication is discretionary. Both laws provide that mediation can continue after the factfinding process has been completed.

UNFAIR PRACTICES

An employer, employee organization, or employee may file a charge with PERB alleging that an employer or employee organization has committed an unfair practice. Examples of unlawful employer conduct are: coercive questioning of employees regarding their union activity; disciplining or threatening employees for participating in

union activities, or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union, disciplining a member for filing an unfair practice charge against the union, or an exclusive representative's failure to represent bargaining unit members fairly in the employment relationship with the employer.

After the charge is filed, a Board agent evaluates the charge and the underlying facts to determine whether a prima facie case of an unfair practice has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, or HEERA exists.

If the Board agent determines that the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies. If the charge is neither amended nor withdrawn, the Board agent will dismiss it. The charging party may appeal the dismissal to the Board itself.

In fiscal year 1992-93, there were 467 unfair practice charges filed, compared to 599 in the last reporting period.

Evaluations by Board agents have been successful in minimizing the issuance of formal complaints in cases involving spurious charges. This has resulted in a savings

Approximately 30 percent of the proposed decisions issued this fiscal year were appealed to the Board itself. An important distinction exists between (ALJ or Board agent) proposed decisions that become final and decisions of the Board itself. Proposed decisions may not be cited as precedent in other cases before the Board, but are binding on the parties in that case. Board decisions are both precedential and binding on the parties to a particular case. A digest of cases is available upon request to the Board Chairperson.

LITIGATION

The Board is represented in litigation by the General Counsel.

During the 1992-93 fiscal year, PERB opened 11 new superior court and appellate court files.

During 1992-93, 16 requests for injunctive relief were received. Six requests were withdrawn; 8 requests were denied by the Board (all by letters of the General Counsel), and 2 requests were placed in abeyance pending settlement discussions.

A digest of cases for 1992-93 is available upon request to the Board Chairperson.

FINANCIAL REPORTS

The law requires recognized or certified employee organizations to file with PERB an annual financial report of income and expenditures. Organizations who have

negotiated a fair share fee arrangement have additional filing requirements. Complaints alleging noncompliance with these requirements may be filed with PERB. No complaints were received in 1992-93. PERB may take action to bring the organization into compliance.

BARGAINING AGREEMENTS

PERB regulations require that employers file, with PERB regional offices, a copy of collective bargaining agreements or amendments to those agreements (contracts) within 60 days of the date of execution. These contracts are maintained on file as public records in regional offices.

RESEARCH AND TRAINING

Although major reductions in PERB's budget over the last three years have necessitated a moratorium in research and training efforts, the statutes which are administered by PERB clearly authorize the agency to conduct research. The Educational Employment Relations Act provides in Government Code section 3541.3(f) that PERB has the authority to conduct research and studies "relating to employee-employer relations, including the collection, analysis, 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."

REQUESTS FOR INFORMATION

Legislators and their staff, the Executive Branch of state government, the press, academicians, the public, and organizations representing labor and management frequently request information about the collective bargaining process.

Should PERB have the financial resources to conduct research and training, it would follow the following goals:

- encourage and conduct high quality research in labor-management relations;
- provide a forum for the discussion of labor relations problems and their solutions;
- assist PERB in rendering improved services to the parties, the public and the executive, legislative, and judicial branches of government;
- improve employer-employee relationships in the public sector and promote the peaceful resolution of employer-employee and labor-management disputes; and
- develop the public's interest in labor relations, and to aid labor, management, and the public in obtaining a better understanding of their respective responsibilities under the laws administered by PERB.