

PUBLIC EMPLOYMENT RELATIONS BOARD

October 15, 1994

**1993-1994 Report
To The Legislature**



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State of California

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PUBLIC EMPLOYMENT RELATIONS BOARD

MESSAGE FROM THE CHAIRPERSON

We are pleased to submit our 1993-94 annual report of the activities of the Public Employment Relations Board (PERB).

This fiscal year marks the first full year both the Board and staff have functioned under a re-stated and strengthened mission statement adopted in June 1993. This statement was intended to guide us in staying focused on our most important functions as the fiscal resources continue to diminish.

This Board 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.

This fiscal year the Board, itself, analyzed, deliberated and issued written decisions on 66 cases. As in prior years, the Board continues to experience a good success rate in that only two of the decisions issued were appealed to the state appellate courts. Of those, one was dismissed and the other one is still pending.

In addition to the Board's primary focus as a quasi-judicial body, it undertook a complete analysis of its Regulations. This process involved special meetings of PERB's Advisory Committee as well as two public hearings where the Board received both written and oral comment on the proposals to amend, repeal or create new regulations.

Should any member of the Legislature, staff or public have questions regarding the Board's activities, I am personally available by telephone or in person to discuss them.

Sincerely,



SUE BLAIR

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-Milias-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

procedures to resolve such disputes;

- ensure that the public receives accurate information and has time to register its opinion regarding negotiations;
- interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- monitor the financial activities of employee organizations; and
- conduct research, perform public education and conduct training programs related to public sector employer - employee relations.

During the majority of fiscal year 1993-94, the Board functioned with four of the five members authorized. There were 80 appeals docketed and 66 decisions issued. The average number of days to issue decisions was 106 days. Of the 66 decisions, four were injunctive relief requests.

The Board experienced a good success rate in that of the 66 decisions issued, only 2 were appealed to the State appellate courts. Of those, 1 was dismissed and 1 is still pending.

THE AGENCY OF THE BOARD

The Board employs approximately 40 persons and is headquartered in Sacramento with regional offices in Los Angeles and

San Francisco. The major organizational elements of the agency consist of the Board and the Divisions of Administrative Law, General Counsel, which includes Representation, and Administration.

The Division of Administrative Law houses PERB's Administrative Law Judges (ALJ). The ALJs hold informal settlement conferences on the unfair practice cases and conduct formal hearing, if no settlement is reached. The ALJs issue proposed decisions of written findings of fact and legal conclusions that are binding on the parties if no appeal is filed. If a party disagrees with the proposed decision, an appeal may be filed with the Board itself. The Board issues a decision and if the parties still disagree, the case may be appealed to the State Appellate Courts.

The General Counsel is the Board's chief legal officer 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 Administrative Officer. 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 original regulation revision has long been completed, the Advisory Committee worked with the Board on a new regulation review process during this review period. In addition, the Advisory Committee continues to assist the Board in its search for creative ways in which its professional staff can cooperate with parties to promote the peaceful resolution of disputes and contribute to greater stability in employer-employee relations. Generally, Advisory Committee meetings are held quarterly and, depending on the agenda, 25 - 40 interested parties participate. This dialogue has aided PERB in its preparation of further regulatory changes and in

evaluating the impact of budgetary reductions.

The Chairperson of PERB convenes the Advisory Committee meetings and all Board members are invited to attend. This direct participation with the Advisory Committee ensures communication between the Board and its constituents.

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.

In the 1993-94 reporting period, PERB conducted a total of 45 elections. Fifteen of these elections were to determine which employee organization, if any, would represent the employees of a particular negotiating unit.

An additional 16 decertification elections were held, and 14 organizational security elections occurred in order for employees to approve (under EERA) or rescind (under EERA and Dills Act) an organizational security or a fair share fee arrangement.

Representation staff also conducted 75 settlement conferences and held 14 days of formal hearing or prehearing conferences concerning representation cases.

Election procedures are contained in PERB regulations (sec. 32700 et seq.). The Board agent or the representative of a party to the election may challenge the voting eligibility of any person who casts a ballot. In addition, 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.

IMPASSE RESOLUTION

PERB 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 without the assistance of a mediator 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 appropriate. Once it is determined that an impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator. During the 1993-94 fiscal year, 247 impasse declarations were filed with PERB.

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 1993-94, there were 501 unfair practice charges filed, compared to 467 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 of time and resources for PERB and the parties. **During this fiscal year, evaluations or investigations were completed in 509 cases. Of these cases, 277 were withdrawn or dismissed at the investigation stage.**

If the Board agent determines that a charge, in whole or in part, constitutes a prima facie case, a complaint is issued. **During this fiscal year, 183 complaints, 19 complaints/partial dismissals, and 30 complaints/partial withdrawals were issued.** Once a complaint is issued, the respondent is given an opportunity to file an answer to the complaint.

An ALJ or another Board agent is assigned to the case and calls the parties together for an informal settlement conference. **There were 238 days of settlement conferences in fiscal year 1993-94.** These conferences are scheduled to be held within 30 days of the date the complaint issued. At the informal conference, the parties are free to discuss the

case in confidence with the ALJ. If settlement is not reached, a formal hearing is scheduled. During this fiscal year, 108 cases were closed as a result of settlement following issuance of the complaint. If the case proceeds to formal hearing, the case is normally heard within 60 days of the informal conference. At the hearing, the ALJ rules on motions and takes sworn testimony and other evidence which becomes part of an administrative record.

There were 134 days of formal hearing. After the hearing, the ALJ then studies the record, considers the applicable law, and issues a proposed decision. A proposed 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. Proposed decisions that are not appealed are binding only upon the parties to the case. There were 51 proposed decisions issued during the fiscal year.

If a party to the case is dissatisfied with a proposed decision, it may file a statement of exceptions and supporting brief with the Board. After evaluating the case, the Board may:

- affirm the proposed decision;
- modify it in whole or in part;
- reverse; or

- send the matter back to the ALJ to take additional evidence.

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 1993-94 fiscal year, PERB opened 6 new superior court and appellate court files.

During 1993-94, 9 requests for injunctive relief were deliberated. Of those, 5 were ultimately withdrawn, 2 denied by the Board, 1 granted and the remaining request being held in abeyance.

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. One complaint was received in 1993-94. 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.