

**PUBLIC EMPLOYMENT RELATIONS BOARD**

**1996-97 ANNUAL REPORT**

**DECEMBER 1997**



**PETE WILSON**

**GOVERNOR**

**STATE OF CALIFORNIA**

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## I. INTRODUCTION

The Public Employment Relations Board (PERB) is pleased to submit its 1996-97 annual report. The report presents a brief overview of PERB's statutory authority, organizational structure, major functions, and workload.

It is the mission of PERB to administer and enforce California public sector collective bargaining laws in an expert, fair and consistent manner; to thereby promote improved public sector employer-employee relations; and to provide a timely and cost effective method through which employers, employee organizations and employees can resolve their labor relations disputes.

The unfair practice charge is the fundamental component of PERB's workload. In recent years, PERB has experienced a steady increase in charge filings. In 1996-97, PERB experienced the highest level of unfair practice charge filings, 660, which it has seen in fifteen years. This represented a workload increase of 24% over the number of filings from just two years prior in 1994-95. It appears that a significant portion of the recent workload increase is attributable to the fact that the State of California and employee organizations representing State employees have not completed negotiations over collective bargaining agreements to succeed those which expired in 1995.

The substantial 1996-97 workload increase strained PERB's ability to adjudicate cases in a timely fashion. However, by virtue of the professionalism and commitment of PERB staff, the agency was able to rise to this challenge and actually completed more case dispositions in 1996-97 than the number of new charges filed. The collaborative efforts of a skilled, generalist staff who continue to develop and make use of new technological tools are responsible for this high level of productivity. The members of the Public Employment Relations Board would like to take this opportunity to commend the PERB staff for its record of superior accomplishment during 1996-97.

To obtain additional information about PERB, its organization, functions and workload, please contact the Public Employment Relations Board Sacramento Headquarters at (916) 322-3198.

David M. Caffrey, Chairman  
James C. Johnson, Member  
Martin B. Dyer, Member  
Antonio C. Amador, Member  
Donald A. Jackson, Member

## **II. STATUTORY AUTHORITY AND JURISDICTION**

The Public Employment Relations Board (PERB) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. PERB administers three collective bargaining statutes, insures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB 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.

Approximately 900,000 public sector employees and nearly 1,200 public employers are included within the jurisdiction of the three Acts administered by PERB. The majority of these employees (c. 675,000) work for California's public education system from pre-kindergarten through and including the community college level. The remainder are employees of the State of California (c. 125,000), or the University of California, the California State University and the Hastings College of Law (c. 100,000).

Collective bargaining involving California's municipal, county, and local special district employers and employees is authorized by the Meyers-Milias-Brown Act, which is not subject to PERB's jurisdiction.

### III. THE BOARD AND ITS DUTIES

The Public Employment Relations Board itself is composed of five members appointed by the Governor and subject to confirmation by the State Senate. Board members are appointed to five-year terms, with the term of one member expiring at the end of each calendar year. In addition to the overall responsibility for administering the three statutes, the Board itself acts as an appellate body to hear challenges to proposed decisions that are issued by the staff of the Board. Decisions of the Board itself may be appealed under certain circumstances, and then only to the state appellate courts. The Board, through its actions and those of its staff, is empowered to:

- conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- deal with impasses that may arise between employers and employee organizations in their labor relations in accordance within statutorily established procedures;
- ensure that the public receives accurate information and has the opportunity to register its opinions regarding the subjects of negotiations between public sector employers and employee organizations;
- interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- conduct research and training programs related to public sector employer-employee relations;
- take such other action as the Board deems necessary to effectuate the purposes of the Acts it administers.

During fiscal year 1996-97, 80 cases were added to the docket of the Board itself. With 8 open cases on the docket as of July 1, 1996, the Board's 1996-97 caseload consisted of 88 cases. The Board decided 74 of these cases

in 1996-97 and ended the fiscal year with 14 cases on its docket. A summary of the Board's 1996-97 decisions is included in Section VI of this report. Over the last four years, the Board itself has issued 303 decisions, an average of approximately 76 decisions per year.

## IV. THE ORGANIZATION AND FUNCTIONS OF PERB

### ORGANIZATION OF PERB

The Board staff consists of approximately 40 persons. PERB is headquartered in Sacramento and maintains regional offices in Los Angeles and San Francisco. The major organizational elements of PERB, in addition to the Board itself, are the Division of Administrative Law, the Office of the General Counsel, the Representation Section, and the Administration Section.

The relatively small size of the PERB staff makes it essential that the organizational boundaries of PERB be flexible, providing the ability to direct personnel resources to the priority workload at any point in time. Accordingly, regional attorneys may serve as ad hoc Administrative Law Judges (ALJ) to relieve a backlog of cases awaiting formal hearing. Similarly, representation staff may investigate unfair practice charges under the direction of a PERB regional attorney. By utilizing its staff resources in this way, PERB has been able to effectively handle its workload.

The **Division of Administrative Law** houses PERB's ALJs, who serve as impartial judges of the labor disputes which fall under PERB's jurisdiction. PERB ALJs conduct informal conferences with the parties to unfair practice cases in an effort to settle disputes before proceeding to formal hearing. If no settlement is reached, PERB ALJs conduct adjudicative proceedings complete with the presentation of evidence and examination of witnesses under oath. The ALJs then issue proposed decisions consisting of written findings of fact and legal conclusions.

The **Office of the General Counsel** includes PERB's chief legal officer and regional attorneys. The office is responsible for managing the processing of unfair practice charges, and for providing legal representation to PERB in all court proceedings.

The **Representation Section** oversees the statutory process through which employees come to form a bargaining unit and select an organization to represent them in their labor relations with their employer. As of June 30, 1997, there were approximately 2,300 represented bargaining units within PERB's jurisdiction.

The **Administration Section** provides support services to PERB, such as business services, personnel, accounting, information technology, mail and duplicating. This section also maintains liaison with the Legislature, the Department of Finance and other agencies within state government.

## PERB FUNCTIONS

The major functions performed by PERB staff involve the evaluation and adjudication of the unfair practice charges filed annually with PERB, and the administration of the statutory process through which public employees select employee organizations to represent them in their labor relations with their employer.

An **unfair practice charge** may be filed with PERB by an employer, employee organization, or employee, alleging that an employer or employee organization has committed an act which is unlawful under one of the Acts administered by PERB. Examples of unlawful employer conduct are: refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; or failing to represent bargaining unit members fairly in their employment relationship with the employer.

**Unfair practice charge workload has increased steadily over the last several years, from 532 filings in 1994-95, to 660 in the year just completed, an increase of 24% in two years.** The vast majority of this increase is attributable to the fact that the State employer and employee organizations representing State employees have been without collective bargaining agreements since 1994-95, and have been engaged in protracted negotiations. Nonetheless, PERB has been able to manage this increased workload within existing staffing levels without experiencing an increase in case backlogs due to the success of its efforts to increase productivity. A summary of unfair practice charge workload is included in Section VI of this report.

An unfair practice charge filed with PERB is evaluated by staff to determine whether a prima facie case of an unlawful action 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 has occurred. If it is determined that the charge fails to state a prima facie case, a Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. If the charge is neither amended nor withdrawn, the Board agent dismisses it. The charging party may appeal the dismissal to the Board itself.

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

Once a complaint has been issued, an ALJ or other PERB agent is assigned to the case and calls the parties together for an informal settlement conference, usually within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled, normally within 60 days of the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party to the case may then file an appeal of the proposed decision to the Board itself. The Board itself may affirm, modify, reverse or remand the proposed decision. Proposed decisions which are not appealed to the Board itself are binding upon the parties to the case.

Proposed decisions which have not been appealed to the Board itself may not be cited as precedent in other cases before the Board. Decisions of the Board itself are both precedential and binding on the parties to a particular case. A digest of PERB decisions is available upon request.

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

- defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in state appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order or ruling, or with a subpoena issued by PERB;
- seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- 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.

A summary of the litigation activity of the Office of the General Counsel is included in Section VI of this report.

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications which reflect an internal and occupational community of interest. If only one employee organization petition is filed and the parties agree on the description of the bargaining unit, 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 bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent convenes a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination which 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, PERB conducts a representation election in cases in which the employer has not granted voluntary recognition to an employee organization. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of "No Representation" appears on the ballot in every representation election.

Representation Section staff also assist parties in reaching negotiated agreements through the mediation process provided in the three Acts PERB administers, and through the factfinding process provided under EERA and HEERA. 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 at which their differences are so substantial or prolonged that further meetings without the assistance of a mediator would be futile. Once PERB has determined that an impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

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

A summary of PERB's representation activity is included in Section VI of this report.

## **V. OTHER PERB FUNCTIONS AND ACTIVITIES**

### **File of Collective Bargaining Agreements**

PERB regulations require that employers file with PERB a copy of all collective bargaining agreements reached pursuant to the three Acts PERB administers, within 60 days of the date of execution. These contracts are maintained as public records in PERB's regional offices.

### **Financial Reports**

The law requires recognized or certified employee organizations to file with PERB an annual financial report of income and expenditures. Organizations which have negotiated a fair share fee arrangement for bargaining unit members have additional filing requirements. Complaints alleging noncompliance with these requirements may be filed with PERB, which may take action to bring the organization into compliance.

### **PERB Advisory Committee**

The Advisory Committee to the Public Employment Relations Board consists of approximately 100 people from throughout California representing employers, employee organizations, law firms, negotiators, professional consultants, the public and scholars. The Advisory Committee was originally established several years ago to assist the Board in its regulation review process. Currently, the Advisory Committee continues to assist the Board in its search for ways to improve PERB's effectiveness and efficiency in working with public sector employers and employee organizations to promote the resolution of disputes and contribute to greater stability in employer-employee relations. Advisory Committee meetings are usually held semi-annually.

### **Conference Sponsorship**

The California Foundation for Improvement of Employer-Employee Relations (CFIER) is a non-profit foundation dedicated to assisting public education employers and employees in their efforts to improve working relationships, solve problems and provide leadership in the education community. CFIER began in 1987 as a project within PERB. Each year CFIER presents a conference entitled "Public Education: Meeting the Challenge." PERB is joined by the Institute of Industrial Relations at the University of California, Berkeley; the California State Mediation and Conciliation Service; and the Federal Mediation and Conciliation Service in sponsoring the annual conference. The 1996-97 CFIER conference was held in October 1996 in Anaheim.

## **Information Requests**

As California's expert administrative agency in the area of public sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations and formal decisions. Information requests from the Legislature and the general public are also received and processed. Additionally, PERB cooperates with the Institute of Industrial Relations of the University of California, Berkeley, in the dissemination of information concerning PERB policies and actions to interested parties throughout the state.

## **VI. 1996-97 WORKLOAD STATISTICS**

The major components of PERB's 1996-97 workload are summarized on the following pages, including:

- a numerical summary of PERB's unfair practice charge workload during 1996-97;
- a numerical summary of PERB's representation case workload during 1996-97.
- a brief description of the cases decided by the Board itself during 1996-97;
- a brief description of the 1996-97 litigation activity of PERB's Office of the General Counsel;

More detailed information concerning PERB decisions and workload may be obtained by contacting PERB's headquarters office.

## 1996-97 UNFAIR PRACTICE CHARGE WORKLOAD

### I. Unfair Practice Charges Filed By Office

	1st Half	2nd Half	Total
Sacramento	121	140	261
San Francisco	60	64	124
Los Angeles	128	147	275
Total	309	351	660

### II. Unfair Practice Charge Dispositions by Office

	Charge Withdrawn	Charge Dismissed	Complaint Issued	Total
Sacramento	48	55	154	257
San Francisco	22	35	68	125
Los Angeles	85	82	116	283
Total	155	172	338	665

## 1996-97 UNFAIR PRACTICE CHARGE WORKLOAD

### III. Prior Year Workload Comparison: Charges Filed

	1993-94	1994-95	1995-96	1996-97	4-Year Average
1st Half	268	252	266	309	274
2nd Half	233	280	280	351	286
Total	501	532	546	660	560

## 1996-97 REPRESENTATION CASE ACTIVITY

### I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Representation Petitions	30	32
Decertification Petitions	14	18
Amended Certification Requests	0	2
Unit Modification Petitions	46	50
Organizational Security Petitions	8	11
Mediation Requests	172	179
Factfinding Requests	31	24
Arbitration Panel Requests	0	0
Public Notice Complaints	0	0
Compliance	24	20
Total	325	336

## 1996-97 REPRESENTATION CASE ACTIVITY

### II. Prior Year Workload Comparison: Cases Filed

	1993-94	1994-95	1995-96	1996-97	4-Year Average
1st Half	187	205	172	160	181
2nd Half	256	236	217	165	219
Total	443	441	389	325	400

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### III. Elections Conducted

Representation	12
Decertification	10
Organizational Security	8
Amendment of Certification	1
Total	31

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

949a-H	Jack Einheber v. Regents of the University of CA	Employee requests reconsideration of Board's dismissal of his unfair practice charge alleging he was unlawfully fired by UC	Request denied for failure to meet reconsideration standard.
1093b-H	CA State Employees Association v. CA State University	The CA Court of Appeal Second Appellate District remanded the case to PERB for issuance of order directing CSU to restore merit salary adjustment pay increases unlawfully denied employees.	CSU ordered to pay eligible employees backpay plus interest.
1093c-H	CA State Employees Association v. CA State University	CSU requested the Board to reconsider the interest rate it awarded to employees receiving backpay.	Request denied for failure to meet reconsideration standard.
1111a	Elmer (John) Sanders et al. v. Los Rios College Federation of Teachers	Employees request reconsideration of Board's dismissal of their charge that the union did not fairly represent them.	Request denied for failure to be timely filed.
1133a	Annette Deglow v. Los Rios College Federation of Teachers	Employee requests reconsideration of Board's dismissal of her unfair practice charge that union did not fairly represent her.	Request denied for failure to be timely filed.
1138b	CA School Employees Association v. Barstow Unified School District	Board reconsidered its decision that contracting out pupil transportation services by District was not unlawful.	District's action was not prohibited by the Education code and was not unlawful.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1145a-S	CA Union of Safety Employees v. CA Department of Personnel Administration	Union requests reconsideration of Board's determination that its unfair practice charge should be deferred to binding arbitration.	Request denied for failure to meet reconsideration standard.
1164	Barstow Education Association v. Barstow Unified School District	Association alleged that District denied an employee union representation and unlawfully retaliated against her.	Dismissed. Employee not entitled to union representation under the particular circumstances, and unlawful retaliation not proven.
1165	Peggy J. McClure v. Valley of the Moon Teachers Association	Employee alleged that union failed to fairly represent her.	Dismissed. Employee did not establish that union breached its duty of fair representation.
1166	Compton Unified School District v. Compton Education Association	District requested withdrawal of its unfair practice charge against Association after reaching a settlement.	Request approved.
1167	Frederick L. Mickle v. Ventura County Community College District	Employee appealed dismissal of his charge alleging District unlawfully applied a provision of a collective bargaining agreement.	Dismissed. District complied with the provision of the agreement.
1168	Frederick L. Mickle v. Service Employees International Union	Employee appealed dismissal of his charge alleging that the union unlawfully negotiated a provision of a collective bargaining agreement.	Dismissed. Union lawfully negotiated the provision of the agreement.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1169-H	University Professional and Technical Employees v. Regents of the University of CA	Union appealed dismissal of charge that UC unilaterally changed employee health benefits.	Dismissed. Union failed to demonstrate that UC departed from established past practice in making the change.
1170	Jan Zalemini v. CA Teachers Association	Employee appealed dismissal of her charge that union failed to fairly represent her.	Dismissed. Employee's charge is untimely and failed to establish that union breached its duty of fair representation.
1171	Fresno County Office Educators Association v. Fresno County Office of Education	Employer appealed order to comply with a Board order in an earlier unfair practice case.	Dismissed. Employer failed to meet its burden of showing that employees did not make reasonable efforts to mitigate their damages.
1172-S	CA State Employees Association v. CA Department of Transportation	Union appealed dismissal of charge that a supervisor unlawfully retaliated against several employees.	Dismissed. Union's charge is untimely and fails to establish that supervisor unlawfully retaliated.
1173-H	John Shek v. American Federation of State, County and Municipal Employees	Employee appealed dismissal of his charge that union did not fairly represent him.	Dismissed. Employee did not establish that union breached its duty of fair representation.
1173a-H	John Shek v. American Federation of State, County and Municipal Employees	Employee requested reconsideration of Board's decision dismissing his charge that union did not fairly represent him.	Request denied for failure to meet reconsideration standard.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1174-H	Trustees of the CA State University v. Academic Professionals of CA	Union appealed dismissal of its charge that CSU unilaterally changed working conditions.	Dismissed. CSU acted in compliance with the terms of the collective bargaining agreement.
1175	Berkeley Federation of Teachers v. Berkeley Unified School District	Union appealed dismissal of its charge that District unilaterally changed working conditions.	Dismissed. The subject of the change falls outside the scope of bargaining.
1176-S	International Union of Operating Engineers v. CA Department of Transportation	Union appealed dismissal of its charge that employer interfered with union rights by soliciting employees to resign membership.	Dismissed. Employer informed employees of the right to withdraw membership but did not solicit withdrawal.
1177	CA School Employees Association v. Gavilan Joint Community College District	Union appealed dismissal of its charge that District failed to bargain in good faith.	Dismissed. Union failed to demonstrate that District lacked intent to reach an agreement.
1178	College of the Canyons Faculty Association v. Santa Clarita Community College District	Union appealed dismissal of its charge that District unlawfully disciplined an employee.	Dismissed. Union failed to establish that District's action was in retaliation for employee's protected conduct.
1179-S	CA Union of Safety Employees v. CA Department of Personnel Administration	Union appealed dismissal of its charge that employer interfered with union rights by soliciting employees to resign membership.	Dismissed. Employer's communications were protected free speech and did not solicit membership withdrawal.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1180	Association of Public School Supervisory Employees v. Los Angeles Unified School District	Union appealed dismissal of its charge that the District unilaterally changed working conditions.	Dismissed. Union's charge was not timely filed.
1181	Service Employees International Union v. Los Angeles Unified School District	Union appealed dismissal of its charge that the District unilaterally changed the drug and alcohol policy.	Dismissed. Union's charge was not timely filed.
1182-H	University Professional and Technical Employees v. Regents of the University of CA	Union appealed dismissal of its charge that UC unilaterally changed working conditions.	Remanded/Dismissed. One aspect of charge remanded for further hearing; remainder dismissed as not timely filed.
1183	Lewis R. Shade v. United Teachers of Los Angeles	Employee appealed dismissal of his charge that union did not fairly represent him.	Dismissed. Employee did not establish that union breached its duty of fair representation.
1184	CA School Employees Association v. Hacienda La Puente Unified School District	District appealed finding that it unlawfully failed to provide union with information necessary and relevant to its representational duties.	Violation found. District ordered to cease and desist and to provide union with requested information.
1185	CA School Employees Association v. Healdsburg Union High School District	Union appealed dismissal of its charge that District retaliated against employee for his exercise of protected rights.	Dismissed. Union failed to demonstrate that District's actions were unlawfully motivated.

**1996-97 DECISIONS OF THE BOARD**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1186	CA School Employees Association v. Hacienda La Puente Unified School District	District appealed finding that it unilaterally changed shift and work hours.	Violation found. District ordered to cease and desist, and to return employee to prior shift and reimburse expenses.
1187	Hacienda La Puente Teachers Association v. Hacienda La Puente Unified School District	District appealed finding that it unlawfully failed to provide union with information necessary and relevant to its representational duty.	Dismissed. Allegation that District failed to provide information was not litigated and cannot be considered.
1188-H	University Professional and Technical Employees v. Regents of the University of CA	UC appealed finding that it retaliated against employees and unilaterally changed working conditions by denying them a promised pay raise.	Violation found. UC ordered to cease and desist and pay eligible employees backpay plus interest.
1189-H	John R. Woods, et al. v. Regents of the University of CA	Employees appealed dismissal of their charge that UC failed to negotiate in good faith.	Dismissed. UC decision to lay off employees is not within scope of representation.
1190	American Federation of State, County, and Municipal Employees v. Elk Grove Unified School District	Union appealed dismissal of its charge that District interfered with union rights and unlawfully retaliated against an employee.	Dismissed. Union failed to demonstrate that District acted unlawfully.
1191	Domingo P. Guerra v. Bakersfield City School District	Employee appealed dismissal of his charge that District unlawfully retaliated against him.	Dismissed. Employee failed to demonstrate that District's action was unlawfully motivated.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.                      CASE NAME                                      DESCRIPTION                                      DISPOSITION

1192	Jena Anne Summer v. Los Angeles Unified School District	Employee appealed dismissal of her charge that District unlawfully retaliated against her.	Dismissed. Employee failed to demonstrate that District's action was unlawfully motivated.
1193	Elaine Levan v. Berkeley Federation of Teachers	Employee appealed dismissal of her charge that union failed to fairly represent her.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1194	Lincoln Unified School District v. CA School Employees Association	Union appealed dismissal of its petition to add 11 positions to the bargaining unit.	Dismissed. The positions in question are supervisory and must remain excluded from the bargaining unit.
1195-S	Lorelei Nylander-McGuire v. CA State Employees Association	Employee requested withdrawal of her appeal of dismissal of unfair practice charge.	Request granted.
1196	Francelle Vercher v. Service Employees International Union	Employee appealed dismissal of his charge that union failed to fairly represent him.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1197-S	Lorelei Nylander-McGuire v. CA Department of Insurance	Employee appealed dismissal of her charge that employer unlawfully cancelled her benefits.	Dismissed. Employee's charge was not timely filed.
1198	CA School Employees Association v. San Ysidro School District	District appealed finding that it unlawfully reduced the hours of positions without negotiating.	Violation found. District ordered to cease and desist, and to restore employees to previous hours with backpay plus interest.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1199-S	Gloria A. Carrillo v. CA State Employees Association	Employee appealed dismissal of her charge that union failed to fairly represent her.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1200	Margarita Maestas-Flores v. San Jose Community College Faculty Association	Employee appealed dismissal of her charge that union failed to fairly represent her.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1201-S	CA State Employees Association v. CA Department of Corrections	Union appealed dismissal of its charge that employer unilaterally changed working conditions and unlawfully retaliated against employees.	Dismissed. Employer acted in compliance with collective bargaining agreement. Union did not demonstrate that employer's conduct was unlawfully motivated.
1202-S	Lydia Ramirez and Linda Roberts v. CA State Teachers Retirement System	Employees appealed dismissal of their charge that employer unlawfully retaliated against them.	Dismissed. Employees failed to demonstrate that employer's conduct was unlawfully motivated.
1203-S	International Union of Operating Engineers v. CA Prison Industry Authority	Union appealed dismissal of its charge that employer unilaterally changed working conditions.	Dismissed. Union's charge was not timely filed.
1204-S	CA State Employees Association v. CA Department of Corrections	Union appealed finding that an arbitrator's award was not repugnant to the purpose of the collective bargaining agreement.	Dismissed. Union failed to meet standard for demonstrating repugnancy.

**1996-97 DECISIONS OF THE BOARD**

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1205-S	CA State Employees Association v. CA Department of Health Services	Union appealed dismissal of its charge that employer unilaterally changed working conditions.	Dismissed. Union failed to demonstrate that a change in working conditions had occurred.
1206	CA School Employees Association v. San Ysidro School District	District appealed finding that it unlawfully converted a position into two part-time positions.	Violation found. District ordered to cease and desist, and to restore the position to its prior status.
1207-S	Lynda G. Brushia v. CA State Employees Association	Employee appealed dismissal of her charge that union failed to fairly represent her.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1208	Noel Lance Bernath v. Los Rios College Federation of Teachers	Employee appealed dismissal of his charge that union failed to fairly represent him.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1209	United Faculty of Grossmont-Cuyamaca Community College District v. Grossmont-Cuyamaca Community College District	Union requested to withdraw its appeal of dismissal of its unfair practice charge.	Request granted.
1210-S	CA State Employees Association v. Department of CA Highway Patrol	Union appealed dismissal of its charge that employer unlawfully denied employee union representation.	Dismissed. Employee had no right to union representation in the meetings in question.

**1996-97 DECISIONS OF THE BOARD**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1211	Stockton Teachers Association v. Stockton Unified School District	District appealed finding that it unlawfully adopted a policy allowing weapons search of employees and students.	Dismissed. Union's charge was not timely filed.
1212	Margarita Gonzalez v. CA School Employees Association	Employee appealed dismissal of her charge that union failed to fairly represent her.	Dismissed. Employee failed to demonstrate that union violated its duty of fair representation.
1213-S	Professional Engineers in CA Government v. CA Department of Transportation	Employer appealed finding that it unlawfully changed working conditions.	Dismissed. Union's charge must be deferred to binding arbitration.
1214	Bellflower Education Association v. Bellflower Unified School District	Union appealed dismissal of its charge that District unlawfully changed working conditions.	Dismissed. Union's charge must be deferred to binding arbitration.
Ad-279	Alum Rock Union Elementary School District and Teamsters and CA School Employees Association	Union appealed finding that a decertification election petition was properly filed resulting in an election order.	Stay ordered. The Board stayed the decertification election pending consideration of the union's appeal.
Ad-280	Alum Rock Union Elementary School District and Teamsters and CA School Employees Association	Union appealed finding that a decertification election petition was properly filed resulting in an election order.	Petition dismissed. The decertification petition was filed outside the statutory window period.

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DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

Ad-281	Domingo Guerra v. Bakersfield Elementary Teachers Association	Employee appealed rejection of his untimely filed appeal.	Denied. Employee failed to demonstrate good cause to excuse his late filing.
Ad-282-S	Lorelei Nylander-McGuire v. CA Department of Insurance/CA State Employees Association	Employee appealed rejection of her untimely filed documents.	Denied. Employee failed to demonstrate good cause to excuse her late filed documents.
Ad-283	Paulette Jackson v. Los Angeles Unified School District	Employee appealed rejection of her untimely filed appeal.	Denied. Employee failed to demonstrate good cause to excuse her late filing.
Ad-284	Margarita Maestas-Flores v. San Jose Community College Faculty Association	Union appealed rejection of its untimely filed documents.	Granted. Union demonstrated good cause to excuse its late filing.
I.R. 380	CA State Employees Association v. CA Department of Youth Authority	Union alleged employer interfered with union rights and intimidated employees.	Request withdrawn.
I.R. 381	CA State Employees Association v. CA Department of Youth Authority	Union alleged employer unlawfully assisted a rival union and interfered with union rights.	Request denied.
I.R. 382	American Federation of State, County and Municipal Employees v. University of CA, San Francisco	Union alleged that UC unlawfully decided to lay off employees.	Request denied.

**1996-97 DECISIONS OF THE BOARD**

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 383	Elizabeth S. Balin v. San Francisco Unified School District	Employee alleged that District retaliated against her for filing a grievance.	Request denied.
I.R. 384	CA Union of Safety Employees v. CA Department of Justice	Union alleged that employer unlawfully transferred work out of the bargaining unit.	Request withdrawn.
I.R. 385	Fontana School Police Officers Association v. Fontana Unified School District	Union alleged that District unlawfully decided to eliminate its security force.	Request denied.
I.R. 386	Alicia Lydia Holeman Sproul v. CA State University, Northridge	Employee alleged that CSU unlawfully harassed and discriminated against her.	Request denied.
I.R. 387	Alicia Lydia Holeman Sproul v. CA Faculty Association	Employee alleged that union failed to fairly represent her.	Request denied.
I.R. 388	Henry Hao, et al. v. The Regents of the University of CA, UCLA	Employees alleged that UC discriminated against them in rehire procedures.	Request denied.

## 1996-1997 LITIGATION ACTIVITY

1. Parviz Karim-Panahi v. Pete Wilson, Office of Emergency Services, PERB, et. al. [PERB Decision No. 1122-S]; United States Ninth Circuit Court of Appeals, Case No. 96-55843. ISSUE: Did the District Court dismiss the case due to political pressure? Panahi filed Notice of Appeal on 5/30/96. Case pending.
2. Department of Parks and Recreation v. PERB, John Kalko and David Ruger, Real Parties in Interest [PERB Decision No. 1125]; Fourth District Court of Appeal, Case No. G0189991. ISSUE: Did PERB exceed its jurisdiction on this matter and should the matter have been deferred to arbitration? The Department of Parks and Recreation filed a Petition for Writ of Extraordinary Relief on 12/29/95. Court dismissed the Petition on 9/3/96.
3. California State Employees Association v. PERB [PERB Decision No. 1100-S]; First District Court of Appeal, Case No. A071644. ISSUE: Did PERB err by dismissing the unfair practice charge and deferring to the parties' contractual grievance and arbitration procedure? The California State Employees Association filed a Petition for Writ of Review on 9/29/95. Court issued Notice that Petition for Writ of Review is Denied on 8/27/96.
4. California State Employees Association v. PERB, [PERB Decision No. 1093-H]; Second District Court of Appeal, Case No. B095012. ISSUE: Did PERB err by finding no unilateral change violation and dismissing the Complaint? California State Employees Association filed a Writ for Review on 8/18/95. PERB filed its Brief in Opposition to the Petition on 4/3/96. The Court issued its Decision Reversing and Remanding the PERB Decision on 12/17/96.
5. Joyce Saxton v. PERB [PERB Decision No. 1109]; Los Angeles County Superior Court, Case No. BS034557. ISSUE: Did PERB err in dismissing Saxon's duty of fair representation Complaint? Saxon filed a Writ of Mandate on 7/5/95. PERB filed a Preliminary Opposition to Writ on 7/11/95. Court dismissed the case on 7/25/96.
6. Desert Sands Unified School District and Washington Charter School v. PERB and the California School Employees Association [PERB Case No. LA-CE-3473]; Los Angeles Superior Court, Case No. BC126357. ISSUE: District seeks to enjoin PERB from processing a Complaint issued against the District. District filed Notice of Motion for Preliminary Injunction on 4/24/95. Preliminary Injunction issued 5/30/95. The Court issued its Statement of Decision; and Order Granting Permanent Injunction and Judgment in Favor of Plaintiff on 11/1/96.
7. California Union of Safety Employees v. PERB, State of California (Department of Corrections) [PERB Decision Nos. 1145-S and 1145a-S]; Third District Court of Appeal, Case No. 3 CIV C024787. ISSUE: Should PERB have issued a

complaint alleging unilateral modification of Bargaining Unit 7? California Union of Safety Employees filed Petition for Writ of review on 9/25/96. The Court granted PERB's Motion to Dismiss on 12/19/96.

8. Joyce Saxton v. PERB, American Federation of Teachers College Guild, Local 1521 [PERB Case No. LA-CO-633]; Second District Court of Appeal, Case No. 2 B106365. ISSUE: Did PERB err in dismissing Ms. Saxton's duty of fair representation complaint? Saxton filed the Petition for Writ of Review on 10/10/96. The Court issued Order Denying Petition on 10/28/96.
9. Regents of the University of California v. PERB, California Association of Interns and Residents [PERB Case No. SF-CE-450-H]; San Francisco Superior Court, Case No. 982082. ISSUE: Should the ALJ have consolidated the unfair practice charge with the representation case and not have placed the unfair practice charge in abeyance? The Regents filed the Petition for Writ of Mandate on 10/25/96. Court issued Order Granting Petition for Writ of Mandate on 12/27/96.
10. John Shek v. PERB, American Federation of State, County and Municipal Employees [PERB Decision No. 1173-H]; San Francisco Superior Court, Case No. 982641. ISSUE: Did PERB err in dismissing the charge of breach of duty of fair representation against AFSCME? Shek filed Petition for Writ of Extraordinary Relief on 11/18/96. Court issued Order Denying Petition for Writ of Mandate on 12/20/96.
11. Academic Professionals of California v. PERB, California State University [PERB Decision No. 1174-H]; Second District Court of Appeal, Division Two, Case No. B107922. ISSUE: Was PERB's dismissal of the complaint based on the parties' contract error as contrary to the record? Academic Professionals of California filed Petition for Writ of Review on 12/12/96. Case pending.
12. John Shek v. PERB/American Federation of State, County and Municipal Employees First District Court of Appeal, Division Five, Case No. A076839 [PERB Decision No. 1173-H]; ISSUE: Did PERB err in dismissing the charge of breach of duty of fair representation against AFSCME? Shek filed his Notice of Appeal; Petition for Writ of Extraordinary Relief on 1/10/97. Court issued Notice Striking the Filing of the Petition on 1/21/97.
13. Coalition for Economic Equity, et al. v. Pete Wilson, et al. US District Court, Northern District, San Francisco, Case No. C-96-4024 TEH. ISSUE: Does Proposition 209 violate the Equal Protection and Supremacy Clauses of the United States Constitution? Court issued Notice of Issuance of Preliminary Injunction Against Defendant Class on 1/6/97. The Ninth Circuit Court of

Appeals overturned the preliminary injunction on 4/8/97. Petition for Rehearing En Banc was filed on 4/28/97. Case pending.

14. Tommie R. Dees v. California State University et al. (D'Orazio) US District Court, Northern District, San Francisco, Case C-96-4245 MEJ [PERB Decision No. 869-H]; ISSUE: Did PERB err in dismissing Petitioner's claims of employer retaliation? PERB was served with Employment Discrimination Complaint on 3/5/97. (Complaint was filed on 11/22/96.) Case pending.
15. Alicia Lydia Holeman Spröul v. Kristin Rosi, et al. Los Angeles County Superior Court, Case No. BS 043 927 [PERB Case Nos. LA-CE-477-H and LA-CO-58-H]; ISSUE: Should PERB have reassigned the unfair practice charges? Petition for Injunction Prohibiting Harassment; and Application for Temporary Restraining Order filed on 3/13/97. Matter taken off calendar on 4/1/97.
16. Alvin Washington v. Oakland Unified School District, et al. United States Supreme Court, Case 96-8840 [PERB Case No. SF-CO-493]; ISSUE: Did the US District Court err in dismissing Washington's complaint against PERB? Application for Writ of Certiorari; and Application for Stay filed on 3/18/97. Certiorari denied on 6/27/97.
17. Jack Einheber v. PERB First District Court of Appeal, Division 3, Case No. A078695 [PERB Decision No. 949-H]; ISSUE: Did PERB correctly deny Petitioner's request for reconsideration based upon timeliness? Einheber filed Petition on 6/5/97. Court denied the Petition on 6/12/97.
18. Jack Einheber v. PERB California Supreme Court, Case S0626360 [PERB Decision No. 949-H]; ISSUE: Did the Appellate Court correctly dismiss the Petition for Extraordinary Relief? Petition for Review of Appellate Court Decision filed on 6/23/97. Case pending.