

PUBLIC EMPLOYMENT RELATIONS BOARD

1997-98 ANNUAL REPORT

NOVEMBER 1998



PETE WILSON

GOVERNOR

STATE OF CALIFORNIA

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATUTORY AUTHORITY AND JURISDICTION	2
III.	THE BOARD AND ITS DUTIES	3
IV.	THE ORGANIZATION AND FUNCTIONS OF PERB	5
	Organization of PERB	5
	PERB Functions	6
V.	OTHER PERB FUNCTIONS AND ACTIVITIES	9
VI.	1997-98 WORKLOAD STATISTICS	11
	Unfair Practice Charge Workload	12
	Representation Case Workload	14
	Decisions of the Board Itself	16
	PERB Litigation	33

I. INTRODUCTION

The Public Employment Relations Board (PERB) is pleased to submit its 1997-98 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 1997-98, PERB continued to experience the significant increase in charge filings which began in the prior year. There were 621 unfair practice charges filed in 1997-98, the second highest total in PERB's history. In the last two years this workload has increased by 19 percent over the number of filings in the preceding two fiscal years. A significant portion of the recent workload increase is attributable to the fact that the State of California and most employee organizations representing State employees have not completed negotiations over collective bargaining agreements to succeed those which expired in 1995.

Despite this substantial workload increase, PERB was able to continue its high level of case dispositions in 1997-98, and there were no increases in case backlogs or processing timelines during the year. The members of the Public Employment Relations Board would like to take this opportunity to congratulate and commend the PERB staff for its record of superior accomplishment during 1997-98.

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, ensures 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-Millias-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 1997-98, 80 cases were added to the docket of the Board itself. With 14 open cases on the docket as of July 1, 1997, the Board's 1997-98 caseload consisted of 94 cases. The Board decided 79 of these cases

in 1997-98 and ended the fiscal year with 15 cases on its docket. A summary of the Board's 1997-98 decisions is included in Section VI of this report. Over the last four years, the Board itself has issued 316 decisions, an average of 79 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, 1998, 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 621 in the year just completed. In the past two years, this workload has increased by 19 percent over the two preceding years. The majority of this increase is attributable to the fact that the State employer and most 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 1997-98 CFIER conference was held in October 1997 in Oakland.

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. 1997-98 WORKLOAD STATISTICS

The major components of PERB's 1997-98 workload are summarized on the following pages, including:

- a numerical summary of PERB's unfair practice charge workload during 1997-98;
- a numerical summary of PERB's representation case workload during 1997-98.
- a brief description of the cases decided by the Board itself during 1997-98;
- a brief description of the 1997-98 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.

1997-98 UNFAIR PRACTICE CHARGE WORKLOAD

I. Unfair Practice Charges Filed By Office

	1st Half	2nd Half	Total
Sacramento	114	139	253
San Francisco	46	54	100
Los Angeles	141	127	268
Total	301	320	621

II. Unfair Practice Charge Dispositions by Office

	Charge Withdrawn	Charge Dismissed	Complaint Issued	Total
Sacramento	49	46	125	220
San Francisco	16	37	40	93
Los Angeles	123	66	113	302
Total	188	149	278	615

1997-98 UNFAIR PRACTICE CHARGE WORKLOAD

III. Prior Year Workload Comparison: Charges Filed

	1994-95	1995-96	1996-97	1997-98	4-Year Average
1st Half	252	266	309	301	282
2nd Half	280	280	351	320	308
Total	532	546	660	621	590

1997-98 REPRESENTATION CASE ACTIVITY

I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Representation Petitions	37	27
Decertification Petitions	12	9
Amended Certification Requests	1	1
Unit Modification Petitions	38	40
Organizational Security Petitions	4	1
Mediation Requests	203	211
Factfinding Requests	23	24
Arbitration Panel Requests	0	0
Public Notice Complaints	6	2
Compliance	20	21
Total	344	336

1997-98 REPRESENTATION CASE ACTIVITY

II. Prior Year Workload Comparison: Cases Filed

	1994-95	1995-96	1996-97	1997-98	4-Year Average
1st Half	205	172	160	213	188
2nd Half	236	217	165	131	187
Total	441	389	325	344	375

15

III. Elections Conducted

Representation	8
Decertification	4
Organizational Security	2
Amendment of Certification	0
Total	14

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1125a-S	John Kalko & David Ruger v. CA Department of Parks & Recreation	Employees requested reconsideration of Board's dismissal of their unfair practice charge that the State unlawfully retaliated against them.	Request denied for failure to timely file.
1212a	Margarita Gonzalez v. CA School Employees Assn., Chapter 413	Employee requested reconsideration of Board's decision dismissing her unfair practice charge that Union did not fairly represent her.	Request denied for failure to timely file.
1215-S	CA State Employees Assn. v. CA Department of Youth Authority	Union appealed partial dismissal of unfair practice charge that the State unilaterally changed teacher shifts and assignments and assigned work during preparation time.	Dismissed. Union had waived right to negotiate over decision to change teacher shifts and assign work in the contract.
1216-S	CA Department of Forestry & Fire Protection & CA Department of Forestry Firefighters, IAFF & International Union of Operating Engineers	State appealed decision approving a unit modification petition.	Affirmed in part and dismissed in part. Board affirmed part of unit modification petition placing certain employees in State Bargaining Unit 8 but found other employees to be supervisors and dismissed part of the unit modification petition placing them in Unit 8.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1217-S	William F. Horspool v. CA Correctional Peace Officers Assn.	Employee appealed dismissal of his unfair practice charge against the Union for settling a group of grievances against the State.	Dismissed. No violation of the duty of fair representation found in nondiscriminatory settlement agreement which benefits some unit members but not others.
1218-S	Victor X. Negrete v. CA Correctional Peace Officers Assn.	Employee appealed dismissal of his unfair practice charge against the Union for settling a group of grievances against the State.	Dismissed. No violation of the duty of fair representation found in nondiscriminatory settlement agreement which benefits some unit members but not others.
1219	Ira Wardlaw v. Service Employees International Union	Employee appealed dismissal of his unfair practice charge against the Union for breaching its duty of fair representation under EERA.	Dismissed. No breach of duty found as complained of activity was not arbitrary, discriminatory or in bad faith. PERB decisions do not extend union's duty to extra-contractual forums like <u>Skelley</u> hearings.
1219a	Ira Wardlaw v. Service Employees International Union	Employee filed for reconsideration of Board decision dismissing his charge against the union for breaching its duty of fair representation under EERA.	Request denied for failure to meet reconsideration standard.

1997-98 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1220	Nick Fox v. Duarte Unified Education Assn.	Employee appealed proposed decision dismissing his complaint and unfair practice charge against the Union for breaching its duty of fair representation under EERA.	Dismissed. No breach of duty found as Union representation strategy complained of was not arbitrary, discriminatory or in bad faith.
1221-H	LLNL Protective Service Officers Assn. v. The Regents of the University of CA	University filed exceptions to proposed decision finding that it violated HEERA when it refused to meet and confer over the effects of staff reduction.	Violation found. University ordered to bargain over the effects of reduction in staff.
1222	George V. Mrvichin v. Los Angeles Community College District	Employee filed appeal of dismissal of his unfair practice charge against District for interference and discrimination against him for protected activity.	Dismissed. Employee failed to show District took action which harmed his protected rights.
1223	Richard A. Hernandez v. East Side Teachers Assn., CTA/NEA	Employee appealed dismissal of unfair practice charge against union for failing to assist him with a grievance.	Dismissed. Employee failed to show Union decision on arbitrating grievance was unreasonable or devoid of rational basis.
1224-S	Victor Lee Martin v. CA Department of Corrections	State appealed finding that temporary employee was state civil service employee under the Dills Act.	Dismissed. Board concludes ALJ properly determined temporary employee was civil service employee.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1225	Assn. of Sonoma County Office of Education/CTA/NEA v. Sonoma County Office of Education	County appealed proposed decision finding violation of EERA by increase in class size without providing Union opportunity to bargain over the impact of the unilateral change.	Violation found. County ordered to cease and desist and to negotiate with Union over change in class size.
1226-S	Daniel Smith, et al. v. CA Correctional Peace Officers Assn.	Employees appeal dismissal of their unfair practice charge against union for violating its duty of fair representation by filing against them at the State Personnel Board.	Dismissed. Union charged with the activity was not the exclusive representative of charging parties and had no duty of fair representation to them.
1227-S	Professional Engineers in CA Government v. CA Departments of Personnel Administration & Transportation	State appeals proposed decision finding it violated the Dills Act by not freely exchanging information with the Union.	Violation found. State ordered to comply with three information requests, but not eight others.
1228	Victoria Garcia v. Little Lake School District	Employee appealed dismissal of unfair practice charge against District claiming it harassed and terminated her.	Dismissed. Employee failed to prove District had knowledge of her protected activities.
1229	Victoria Garcia v. Sulphur Springs Union Elementary School District	Employee appealed dismissal of unfair practice charge against District claiming it violated her rights when it gave her two unfavorable evaluations.	Dismissed. Employee failed to show she participated in protected activity.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1230	Victoria Garcia v. Centinela Valley Union High School District	Employee appealed dismissal of unfair practice charge against District claiming it violated her rights when it refused to hire her and gave her an unfavorable evaluation.	Dismissed. Employee failed to show she had participated in protected activity or that the District was motivated by its knowledge of such.
1231-H	Academic Professionals of CA v. Trustees of the CA State University	Union appealed proposed decision dismissing the unfair practice charge against the University alleging that it had made unilateral changes in grievance and arbitration procedures without giving the Union notice and opportunity to negotiate.	Dismissed. Dispute was under collective bargaining agreement which Board has no authority to enforce.
1232	Chula Vista Elementary Education Assn., CTA/NEA v. Chula Vista Elementary School District	Union appealed dismissal and deferral to arbitration of its charge against the District for allegedly discriminating against unit members and changing its policy regarding facsimile machines.	Dismissed and deferred to arbitration.
1232a	Chula Vista Elementary Education Assn., CTA/NEA v. Chula Vista Elementary School District	Union requests reconsideration of dismissal and deferral of all of the elements of the charge and refusal to issue a complaint against the District for changing its policy regarding facsimile machines.	Request denied for failure to meet standard for reconsideration.

1997-98 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1233	Caroline A. Daniels v. Associated Administrators of Los Angeles	Employee appealed the dismissal of her charge alleging Union breached its duty of fair representation under EERA when it reported her threats to proper authorities.	Dismissed. Employee failed to show Union actions were arbitrary, discriminatory or in bad faith.
1234	CA School Employees Assn. v. Milpitas Unified School District	Union appealed dismissal of its unfair practice charge alleging District violated EERA when it unilaterally changed work calendar by closing school facilities during winter break.	Dismissed. Union charge was not timely filed.
1235-S	CA State Employees Assn. v. CA Board of Equalization	Union appealed dismissal of unfair practice charge against the state alleging that it unilaterally relocated an office without giving the union notice and an opportunity to negotiate.	Dismissed. Union failed to make a timely demand to bargain.
1236	Richard A. Hernandez v. East Side Union High School District	Employee appealed dismissal of his unfair practice charge alleging District violated EERA when it assigned him to position outside his credentialed area.	Dismissed. Employee failed to demonstrate generalized effect or continuing impact of District's actions.
1237	Annette M. Deglow v. Los Rios College Federation of Teachers/CFT/AFT	Employee appealed dismissal of unfair practice charge alleging Union breached its duty of fair representation in handling her grievance.	Dismissed. Employee failed to show Union conduct arbitrary, discriminatory or in bad faith. Board reversed award of litigation costs against employee.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1238	Annette M. Deglow v. Los Rios College Federation of Teachers/CFT/AFT	Employee appealed dismissal of unfair practice charge alleging Union breached its duty of fair representation in handling her grievance.	Dismissed. Employee failed to show Union actions were arbitrary, discriminatory or in bad faith. Board reversed award of litigation costs against employee.
1239-H	William L. Harris v. Regents of the University of CA	Employee appealed dismissal of unfair practice charge alleging University violated HEERA when it denied employee's request for a salary increase.	Dismissed. Employee failed to show he participated in protected activity.
1240	Fremont Unified District Teachers Assn., CTA/NEA v. Fremont Unified School District	District appealed proposed decision finding it had violated EERA by unilaterally changing its past practice for rehiring temporary teachers without providing union notice and an opportunity to negotiate.	Violation found. District ordered to restore status quo at request of Union and make employees whole, including offer of re-employment.
1241	Annette Deglow v. Los Rios College Federation of Teachers/CFT/AFT	Employee appealed dismissal of unfair practice charge alleging Union violated its duty of fair representation.	Dismissed. Employee failed to show Union discriminated against her.
1242	CA School Employees Assn. v. Redwoods Community College District	District appealed proposed decision finding that the District violated EERA when it failed to meet and negotiate with the Union about contracting out of certain services.	Violation found. District ordered to offer to meet and negotiate with Union regarding issues.

1997-98 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1243-H	Academic Professionals of CA v. Trustees of the CA State University	University appealed proposed decision finding the University violated HEERA by unilaterally adopting and implementing eligibility date for one-time payment to employees represented by Union.	Dismissed. Union did not meet standards for demonstrating that a unilateral change had occurred.
1244-S	CA Assn. of Professional Scientists v. CA Department of Personnel Administration	State appealed proposed decision finding it had violated Dills act by unilaterally changing the vision care benefits of Union members without giving union notice and opportunity to negotiate.	Dismissed. Union failed to demonstrate change in vision care had significant effect or impact on actual benefits received by employees.
1245-S	International Union of Operating Engineers, Craft-Maintenance Division v. CA Department of Corrections	Union appealed dismissal of unfair practice charge alleging State violated Dills Act by denying employee union representation at a meeting with management.	Dismissed. Union failed to demonstrate employee had right to representation at meeting.
1246	CA School Employees Assn. & Its Oakdale Elementary Chapter 685 v. Oakdale Union Elementary School District	District appealed proposed decision finding that it had violated EERA when it disciplined employee for reporting alleged safety violations to third party and for harassing a co-worker and discussing union business during work hours.	Violation found. District ordered to destroy letters and memoranda in employees' files and cease and desist disciplinary actions.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1247-S	CA State Employees Assn., SEIU Local 1000, AFL-CIO v. CA Employment Development Department	Union appealed partial dismissal of unfair practice charge alleging state violated Dills Act by making unilateral changes.	Dismissed. State's action was consistent with expired agreement, most of which remained in effect during successor negotiations.
1248	Alisal Teachers Assn., CTA/NEA v. Alisal Union Elementary School District	District and Union appealed proposed decision finding District violated EERA when it placed disciplinary memorandum in employee's personnel file.	Violation found. District ordered to destroy letters in employee's personnel file and remove reference to other disciplinary actions by District.
1249-S	CA State Employees Assn. v. CA Department of Personnel Administration	Union appealed the dismissal of unfair practice charge alleging State breached its duty to meet and confer in good faith with the Union.	Dismissed. Union failed to show State engaged in bad faith bargaining.
1250	United Educators of San Francisco v. San Francisco Unified School District	Union appealed dismissal of unfair practice charge alleging that District violated EERA by intimidating and retaliating against unit members.	Dismissed and deferred to arbitration.
1251-S	CA Union of Safety Employees v. CA Department of Motor Vehicles	State appealed proposed decision finding State violated Dills Act by unilaterally eliminating a stipend for certain employees without affording Union notice and the opportunity to negotiate.	Dismissed. Union failed to show any deviation from past practice or the parties' memorandum of understanding.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1252-H	University Professional & Technical Employees v. Regents of the University of CA	University appealed proposed decision finding it violated HEERA by unilaterally changing duties of firefighters without providing the Union notice and an opportunity to bargain.	Dismissed. The dynamic status quo was maintained during the transition to exclusive representation by Union, so no unilateral change was shown.
1253	Katherine Mary Patterson v. San Francisco Unified School District	Employee appealed dismissal of her unfair practice charge alleging that the District discriminated against her for protected activities.	Dismissed. Employee failed to show District retaliated against her.
1254	Katherine Mary Patterson v. Service Employees International Union	Employee appealed dismissal of her charge that Union failed to fairly represent her by not protecting her from discriminatory conduct.	Dismissed. Employee's charge was not timely filed.
1255-H	CA Nurses Assn. v. Regents of the University of CA	University and Union appealed decision finding University violated HEERA by making a unilateral change, refusing to provide relevant information to Union and discriminating against Union activist because of his protected activities.	Violations found. University ordered to cease and desist from violating HEERA and to meet and confer and restore employees whose duties had been unilaterally changed.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1256	Carolyn Twyman v. Val Verde Unified School District	Employee appealed dismissal of her unfair practice charge against District alleging that District retaliated against her by attempting to transfer her from a teaching to a counseling position.	Dismissed. Employee's charge was not timely filed.
1257	Carolyn Twyman v. Val Verde Teachers Assn., CTA/NEA	Employee appealed dismissal of her charge that Union failed to fairly represent her.	Dismissed. Employee's charge was not timely filed.
1258-S	CA State Employees Assn. v. CA Board of Equalization	State appealed proposed decision finding State violated Dills Act by unlawfully implementing a change.	Dismissed. Union failed to show State refused to bargain.
1259	Fall River Education Assn., CTA/NEA v. Fall River Joint Unified School District	Union and District appealed proposed decision finding that District retaliated against an employee, unilaterally changed transfer policy and teacher swap policy without affording Union notice and opportunity to bargain.	Violation found. District ordered to cease and desist and restore status quo concerning teacher swap program. Union failed to show retaliation and unilateral change regarding transfer policy, so those charges were dismissed.
1259a	Fall River Education Assn., CTA/NEA v. Fall River Joint Unified School District	Union requested reconsideration of Board decision finding District had not retaliated against an employee and unilaterally changed transfer policy.	Request denied for failure to meet reconsideration standard.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1260-S	CA Department of Forestry Firefighters v. CA Department of Forestry and Fire Protection	State appealed proposed decision finding State violated the Dills Act when it unilaterally changed vision care benefits of Union employees without providing Union notice and opportunity to meet and confer over change.	Dismissed. Union failed to demonstrate that there had been significant impact on benefits as a result of State's action.
1261-H	Regents of the University of CA v. Assn. of Student Employees, U.A.W., et al.	University appealed ALJ decision that determined certain student employees at UCSD are employees under HEERA.	Affirmed. Students employed in reader, tutor and associate positions are employees under HEERA.
1262	CA School Employees Assn. v. Bakersfield City School District	District appealed proposed decision that it had violated EERA by refusing to supply Union with information necessary to its representation duties and making unilateral change in mechanics of release of employee information.	Violation found. District ordered to meet and negotiate with Union over mechanics of providing members' home addresses and telephone numbers to Union.
1263-H	University Professional and Technical Employees v. Regents of the University of CA	University appealed proposed decision finding that it had violated HEERA by imposing reprisals on employees who had participated in protected activities.	Violation found. University ordered to rescind disciplinary letters and reinstate employee and to cease and desist from retaliating.
1264	Ventura County Federation of College Teachers, AFT v. Ventura County Community College District	Union appealed dismissal of unfair practice charge against the District alleging bad faith bargaining.	Dismissed. No bad faith bargaining nor refusal to provide information were demonstrated.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1265	Kern High School District v. CA School Employees Assn.	District appealed dismissal of unfair practice charge against the Union that alleged violation of duty to bargain in good faith by Union representatives actively campaigning against ratification of agreement.	Appeal granted. Board orders complaint issued alleging that Union breached its duty to bargain in good faith.
1266	Service Employees International Union v. Los Angeles Unified School District	Union appealed dismissal of unfair practice charge alleging the District violated EERA by unilaterally changing substance abuse policy without providing Union with notice or opportunity to bargain.	Dismissed. Union's charge was not timely filed.
1267	Los Angeles Unified School District & Busdrivers Assn. for Unity & Service Employees International Union	Union appealed denial of its severance request that busdrivers be in a separate bargaining unit.	Affirmed. Severance petition denied.
1268	Elizabeth Kiszely v. North Orange County Community College District	Employee appealed dismissal of her unfair practice charge alleging District retaliation against her for participating in protected activities.	Dismissed. Employee's charge was not timely filed.
1268a	Elizabeth Kiszely v. North Orange County Community College District	Employee requests reconsideration of the Board decision dismissing her charge of retaliation.	Request denied for failure to meet reconsideration standard.

1997-98 DECISIONS OF THE BOARD

DECISION NO. CASE NAME DESCRIPTION DISPOSITION

1269	Elizabeth Kiszely v. United Faculty Assn. of North Orange County Community College District	Employee appealed dismissal of her charge that Union failed to fairly represent her.	Dismissed. Employee failed to demonstrate that Union action was arbitrary, discriminatory or in bad faith.
1269a	Elizabeth Kiszely v. United Faculty Assn. of North Orange County Community College District	Employee requests reconsideration of the Board decision dismissing her charge against the Union.	Request denied for failure to meet reconsideration standard.
1270	CA School Employees Assn. v. San Bernardino City Unified School District	District appealed proposed decision that it had violated EERA in various ways including unilateral implementation of sick leave review policies, refusing to provide Union with relevant and necessary information, threatening Union for protected activities, bad faith bargaining, and unilaterally cancelling a commuter agreement.	Violations found. District ordered to cease and desist from violating Union's rights.
1271-H	Federated University Police Officers Assn. v. Regents of the University of CA	Union appealed partial dismissal of its unfair practice charge against the University.	Dismissed. Union failed to allege prima facie case of a violation and its appeal included new allegations and new evidence not previously offered without showing good cause.

1997-98 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

Ad-285-H	CA State Employees' Assn., CSU/SEIU v. Trustees of the CA State University	Union requests withdrawal of its appeal of PERB administrative determination regarding salary adjustments.	Appeal withdrawn.
Ad-286-S	CA Department of Forestry Firefighters v. CA Department of Forestry and Fire Protection	Union appealed rejection of its response to exceptions as untimely filed.	Granted because good cause shown for inadvertent one-day delay even though Union used carrier not specified in regulations.
Ad-287-S	William F. Horspool v. CA Department of Corrections	Employee appealed rejection of his untimely filed appeal of determination that he is not a party in a certain case.	Denied. No good cause shown to excuse late filing.
Ad-288-H	Regents of the University of CA v. University of CA Assn. of Interns and Residents	University requested stay of proceedings in case because of internal Union dispute.	Denied.
Ad-289	Elizabeth Kiszely v. United Faculty Assn. of North Orange County Community College District	Employee requested that the Board accept late filed corrections to her appeal of a dismissal of her unfair practice charge.	Denied.
I.R. 389	International Union of Operating Engineers, Craft Mtc. Unit v. CA Highway Patrol	Union requested interim injunctive relief restraining State from unilaterally adding inspection of hazardous tank and materials to the duties of its members.	Request withdrawn.

1997-98 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 390	International Union of Operating Engineers, Craft Maintenance Division v. CA Highway Patrol	Union requested interim injunctive relief restraining State from implementing new job duties for its members prior to completion of its meet and confer obligation.	Request denied.
I.R. 391	Society of Professional Scientists and Engineers v. Regents of University of CA	Non-exclusive representative requests injunctive relief restraining University's change in application of various personnel policies to its members.	Request denied.
I.R. 392	Cessaly D. Hutchinson and Jean Laosantos v. CA State Employees Assn.	Members requested injunctive relief against the Union for realigning its internal structure making it more difficult for them to win re-election within the Union.	Request denied.
I.R. 393	Jim Hard and Cathy R. Hackett v. CA State Employees Assn.	Members requested injunctive relief against the Union for retaliatory interference and discrimination against Union members who also belong to a reform movement within the Union.	Request withdrawn.
I.R. 394	Jim Hard and Cathy R. Hackett, et al. v. CA State Employees Assn.	Members requested injunctive relief against the Union for retaliatory interference and discrimination against Union members who also belong to a reform movement within the Union.	Request denied.

1997-98 DECISIONS OF THE BOARD

DECISION NO. CASE NAME DESCRIPTION DISPOSITION

I.R. 395	Frederick L. Kay v. Oakland Unified School District	Employee requested injunctive relief against District for retaliation and conspiratorial conduct against him.	Request denied.
I.R. 396	Frederick L. Kay v. Oakland Education Assn.	Employee requested injunctive relief against Union for not providing him representation.	Request denied.
I.R. 397	CA State Employees Assn v. CA State Compensation Fund.	Union requested injunctive relief against State restraining investigatory interrogation of two Union stewards.	Request withdrawn.
I.R. 398	Cessaly D. Hutchinson and Jean Laosantos v. CA State Employees Assn.	Members requested injunctive relief against Union preventing it from conducting election ultimately allowing Union to form separate corporation.	Request denied.

1997-1998 LITIGATION ACTIVITY

1. Parviz Karim-Panahi v. Pete Wilson, Office of Emergency Services, PERB, et. al. [PERB Decision No. 1122-S]; US 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. Petition denied on 2/24/98.
2. 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. Court issued Order Denying Petition on 10/8/97.
3. 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. The Court denied the Petition for Rehearing on 8/21/97. Petitioner filed in the US Supreme Court and the Writ of Certiorari was denied on 9/4/97.
4. Tommie R. Dees v. California State University et al. (D'Orazio) [PERB Decision No. 869-H] US District Court, Northern District, San Francisco, Case No. C-96-4245 MEJ; 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.
5. Jack Einheber v. PERB/Regents of the University of California (Berkeley) [PERB Decision No. 949-H] California Supreme Court, Case No. S0626360; ISSUE: Did the Appellate Court correctly dismiss the Petition for Extraordinary Relief? Petition for Review of Appellate Court Decision filed on 6/23/97. Petition denied on 7/30/97.
6. Professional Engineers in California Government v. PERB/State of California (DOT) [PERB Decision No. 1113-S] Third District Court of Appeal, Case No. 3 Civ C027117; ISSUE: Did PERB err in dismissing and deferring to arbitration an unfair practice charge alleging a unilateral change? The Professional Engineers in California Government filed its Petition for Writ of Review on 7/30/97. The Court denied the Petition on 12/18/97.
7. Jack Einheber v. PERB/Regents of the University of California (Berkeley) [PERB Decision No. 949-H] US Supreme Court; ISSUE: Did the California Supreme Court correctly uphold the Appellate Court's dismissal of Petitioner's request for

reconsideration based on timeliness? Petition for Writ of Certiorari was filed on 10/28/97. The US Supreme Court denied the Petition for Writ of Certiorari on 1/12/98.

8. Fremont Unified School District v. PERB/Fremont Unified District Teachers Association, CTA/NEA [PERB Decision No. 1240] First District Court of Appeal, Division Three, Case No. A081177; ISSUE: Was PERB's decision in excess of its jurisdiction in ordering the reemployment of certain temporary teachers? The District filed its Petition for Review on 1/2/98. PERB filed its Brief in Opposition on 6/18/98. Case pending.
9. Redwoods Community College District v. PERB/California School Employees Association [PERB Decision No. 1242] First District Court of Appeal, Division Two, Case No. A081356; ISSUE: Did PERB err when it found that the District had illegally contracted out bargaining unit work? Petition for Writ of Review filed on 1/20/98. PERB filed its Brief in Opposition on 5/22/98. Case pending.
10. California Faculty Association v. Superior Court for the County of San Luis Obispo/PERB as Amicus Curiae Second District Court of Appeal, Division Six, Case No. B119132. ISSUE: Should a case filed in the Superior Court be subject to PERB's jurisdiction in the first instance? Petition for Writ of Mandate filed on 2/4/98. The Court denied the Petition on 3/6/98.
11. Alicia Lydia Holeman Sproul v. California State University; California Faculty Association and PERB [PERB Injunctive Relief Request Nos. 386 and 387] Second District Court of Appeal, Division Seven, Case No. BC 179736; ISSUE: Did the Court err when it dismissed Sproul's case against PERB and other named defendants? Petition for rehearing filed 3/5/98. Court issued Notice Re Appeal on 3/17/98.
12. Nancy J. Hudock v. Lodi Unified School District Third District Court of Appeal, Case No. C027110. ISSUE: Should PERB file an Amicus Curiae brief on behalf of Respondent regarding PERB's exclusive jurisdiction in this matter? On 2/20/98, Lodi USD requested PERB file an Amicus Curiae brief. PERB declined the opportunity to file the Amicus brief on 3/16/98.
13. Muriel Boxley v. State of California, Board of Equalization, CSEA, et al. Sacramento Superior Court, Case No. 96AS05417. ISSUE: Should PERB file an Amicus Curiae brief on behalf of Defendant CSEA, supporting the contention that PERB has exclusive jurisdiction in this matter? On 3/3/98, CSEA requested that PERB file an Amicus Curiae brief in the above matter. PERB filed the Brief of Amicus Curiae on 5/22/98 and the Court granted Defendant's motion for summary judgment on 5/29/98.
14. Alvin Washington v. Public Employment Relations Board [SF-CO-493] US Supreme Court, Case No. 97-8525. ISSUE: Did the US District Court err in

dismissing Washington's complaint against PERB? Petition for Writ of Certiorari was filed on 3/30/98. Court issued Order denying the Petition on 6/3/98.

15. Parviz Karim-Panahi v. Pete Wilson, Office of Emergency Services, PERB et al. US Supreme Court, [Appealing Case No. CV-95-6933 MRP (BQR)] ISSUE: Did the Ninth Circuit Court of Appeals err when it upheld the US District Court's decision to dismiss the case. Petition for Writ of Certiorari filed on 5/4/98. Case pending.