

**PUBLIC EMPLOYMENT RELATIONS
BOARD**

1998-99 ANNUAL REPORT

NOVEMBER 1999



GRAY DAVIS

GOVERNOR

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

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I. INTRODUCTION

The Public Employment Relations Board (PERB) is pleased to submit its 1998-99 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 1998-99, that workload remained heavy with new filings totaling 604 charges. Over the past three fiscal years an average of 628 unfair practice charges were filed, the highest three-year workload in PERB's history. By comparison, that workload was 19 percent higher than that of the preceding three fiscal years (1993-94 through 1995-96).

Despite the continuing heavy workload, PERB productivity continued to increase. During 1998-99, case dispositions totaled 646 resulting in a reduced case backlog by the end of the fiscal year. Additionally, the Board itself decided 93 cases, the highest number of decisions issued since 1990-91. Also during 1998-99, PERB introduced its new website which contains general information and provides access to the laws and regulations governing PERB's programs, as well as guidance and information about making use of the services provided by PERB.

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 1998-99.

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

David M. Caffrey, Chairman
Martin B. Dyer, Member
Antonio C. Amador, 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-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 1998-99, 96 cases were added to the docket of the Board itself. With 15 open cases on the docket as of July 1, 1998, the Board's 1998-99 caseload consisted of 111 cases. The Board decided 93 of these cases

in 1998-99 and ended the fiscal year with 18 cases on its docket. A summary of the Board's 1998-99 decisions is included in Section VI of this report. Over the last four years, the Board itself has decided 325 cases, an average of 81 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, 1999, 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.

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.

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 1998-99 CFIER conference was held in October 1998 in Los Angeles.

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. 1998-99 WORKLOAD STATISTICS

The major components of PERB's 1998-99 workload are summarized on the following pages, including:

- a numerical summary of PERB's unfair practice charge workload during 1998-99;
- a numerical summary of PERB's representation case workload during 1998-99.
- a brief description of the cases decided by the Board itself during 1998-99;
- a brief description of the 1998-99 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.

1998-99 UNFAIR PRACTICE CHARGE WORKLOAD

I. Unfair Practice Charges Filed By Office

	1st Half	2nd Half	Total
Sacramento	92	98	190
San Francisco	66	84	150
Los Angeles	132	132	264
Total	290	314	604

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II. Unfair Practice Charge Dispositions by Office

	Charge Withdrawn	Charge Dismissed	Complaint Issued	Total
Sacramento	64	46	134	244
San Francisco	26	36	71	133
Los Angeles	86	76	107	269
Total	176	158	312	646

1998-99 UNFAIR PRACTICE CHARGE WORKLOAD

III. Prior Year Workload Comparison: Charges Filed

	1995-96	1996-97	1997-98	1998-99	4-Year Average
1st Half	266	309	301	290	292
2nd Half	280	351	320	314	316
Total	546	660	621	604	608

1998-99 REPRESENTATION CASE ACTIVITY

I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Representation Petitions	32	37
Decertification Petitions	12	14
Amended Certification Requests	4	4
Unit Modification Petitions	32	22
Organizational Security Petitions	11	13
Mediation Requests	180	185
Factfinding Requests	36	34
Arbitration Panel Requests	0	0
Public Notice Complaints	2	5
Compliance	19	19
Severance	4	6
Financial Statement	2	2
Total	334	341

1998-99 REPRESENTATION CASE ACTIVITY

II. Prior Year Workload Comparison: Cases Filed

	1995-96	1996-97	1997-98	1998-99	4-Year Average
1st Half	172	160	213	117	166
2nd Half	217	165	131	217	183
Total	389	325	344	334	348

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III. Elections Conducted

Representation	21
Decertification	8
Organizational Security	8
Amendment of Certification	2
Total	39

1998-99 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1272-S	CA Correctional Peace Officers Assn. v. CA Department of Corrections	Following settlement agreement, parties requested withdrawal of their respective exceptions, vacation of the proposed decision and dismissal of unfair practice charge complaint.	Request granted. Board found it was in best interest of parties and consistent with purposes of the Dills Act.
1273	Strathmore Elementary Teachers Assn. v. Strathmore Union Elementary School District	Following settlement agreement, parties requested withdrawal of respective exceptions, vacation of the proposed decision and dismissal of unfair practice charge and complaint.	Request granted. Board found it was in best interest of parties and consistent with purposes of EERA.
1274	Annette (Barudoni) Deglow v. Los Rios Community College District	Employee appealed dismissal of her unfair practice charge alleging the District interfered with EERA rights when it agreed to contract language limiting individual grievant's right to representation at grievance meetings.	Dismissed. Employee failed to establish prima facie case.
1275	Annette (Barudoni) Deglow v. Los Rios College Federation of Teachers/CFT/AFT	Employee appealed dismissal of her unfair practice charge against the Union for breaching its duty of fair representation by agreeing to contract language limiting individual grievant's right to representation at grievance meetings.	Dismissed. Employee failed to establish prima facie case.

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<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1276	William John Reilly v. United Teachers Los Angeles	Employee appealed dismissal of his unfair practice charge against the Union for breaching its duty of fair representation by not arbitrating grievance.	Dismissed. Employee failed to establish that Union's decision was arbitrary, discriminatory or in bad faith.
1277	Doris J. Williams v. United Teachers Los Angeles	Employee appealed dismissal of her unfair practice charge against the Union for breaching its duty of fair representation by not pursuing grievance to arbitration.	Dismissed. Employee failed to establish that Union's decision was arbitrary, discriminatory or in bad faith.
1278	CA School Employees Assn. v. Long Beach Community College District	Union filed exceptions to dismissal of charge and complaint against the District for placing a rival employee organization's severance presentation on mandatory in-service training agenda.	Reversed. Board found District's action in violation of EERA.
1278a	CA School Employees Assn. v. Long Beach Community College District	District requested reconsideration of Board's decision finding the District violated EERA by requiring unit members to attend rival union's severance presentation.	Request denied. Failure to meet reconsideration standards.

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CASE NAME

DESCRIPTION

DISPOSITION

1279-S	CA State Employees Assn., SEIU v. CA Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization	Exceptions were filed to a Board agent's finding that the State violated the Dills Act by applying policies regarding employee use of e-mail in a discriminatory manner.	Violation found. Departments ordered to not prohibit Union members from incidental and minimal use of state's e-mail for communication regarding Union activities if such is permitted for other non-business purposes.
1280	CA School Employees Assn. and its Hacienda La Puente Chapter #115 v. Hacienda La Puente Unified School District	District appealed Board agent's decision ordering the District to comply with prior Board Order awarding attorney's fees and costs.	Violation found. District ordered to comply with document production per order and to pay Union attorneys' costs and fees.
1281	David Nagle, James Rickman and Timothy Lee v. Peralta Community College District	Employees appealed dismissal of their untimely unfair practice charge alleging District retaliated against them for protected activity.	Reversed/remanded. Board found charge was timely.
1282	Southwestern Community College District v. Southwestern College Education Assn., CTA	District appealed dismissal of unfair practice charge alleging the Union engaged in bad faith bargaining during negotiations over successor bargaining agreement.	Dismissed. No violation of duty.
1283	Donald Santolanni v. Los Angeles Community College District	Employee appealed dismissal of his unfair practice charge against the District for laying him off and failing to rehire him.	Dismissed. Prima facie case of discrimination not proven.

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DISPOSITION

1284-S	CA State Employees Assn. v. CA Employment Development Department	Employee organization appealed dismissal of charge and complaint against the State for unilaterally increasing number of determination interviews scheduled for certain employees.	Dismissed. Board adopted Board agent's decision and dismissed charge and complaint as no change in status quo had been demonstrated.
1285-H	Kenneth Edward Scudder v. The Regents of the University of CA	Employee appealed dismissal of his unfair practice charge against the University for laying him off and dismissing his grievance.	Dismissed. No discrimination demonstrated since no nexus between protected activity and employer's adverse action.
1286	Oak Park Classified Assn. v. Oak Park Unified School District	Union appealed dismissal of unfair practice charge against the District for engaging in bad faith bargaining.	Dismissed. No violation found since information presented by District to employees was factually accurate and not threatening or coercive.
1287	CA School Employees Assn. v. Antelope Valley Union High School District	District filed exceptions to Board agent's decision finding the District violated EERA by unilaterally changing promotional interview policies.	Dismissed. Board dismissed charge and complaint because contract language which survived contract expressly permitted District's behavior.
1288-S	Kofi Opong-Mensah v. CA Assn. of Professional Scientists	Employee appealed dismissal of his unfair practice charge against the Union for failing to represent him in termination proceedings before Superior Court.	Dismissed. No violation of duty of fair representation found in Union's refusal to assist employee in Superior Court proceedings and/or filing for unemployment/disability claims.

1998-99 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1289	Paula Seliga v. United Teachers of Los Angeles	Employee appealed dismissal of her unfair practice charge against the Union for failing to represent her.	Dismissed. No violation of duty of fair representation found.
1290-S.	Kofi Opong-Mensah v. CA Department of Food and Agriculture	Employee appealed dismissal of his unfair practice charge against the State for denying his information request and discriminating against him for participating in protected activities.	Dismissed. State has no duty to provide information to individuals and discrimination charge was untimely.
1290a-S	Kofi Opong-Mensah v. CA Department of Food and Agriculture	Employee requested reconsideration of Board decision dismissing his unfair practice charge.	Request denied. Failure to meet reconsideration standard.
1291-S	CA State Employees Assn. v. CA Department of Motor Vehicles	State appealed Board agent's decision finding that the State had violated the Dills Act by establishing new performance standards without complying with provisions of expired MOU between State and CSEA.	Violation found. Board adopted Board agent's decision.
1292-S	Darrell Richard Creed v. CA Department of Corrections	Employee appealed his unfair practice charge alleging the State violated the Dills Act by issuing a letter of instruction and counseling memorandum in retaliation for his protected activity.	Dismissed. No evidence to support inference of unlawful motivation by State.

1998-99 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1293-S	CA State Employees Assn. v. CA Department of Youth Authority	Union appealed Board agent's partial dismissal of its unfair practice charge alleging the State violated the Dills Act when it refused to meet and confer over implementation of a new check-in/check-out system.	Dismissed. System was not within mandatory subject of bargaining so State had no duty to negotiate over the decision.
1294	Adrian Peter Maaskant v. Kern High School District	Employee appealed partial dismissal of his unfair practice charge against the District alleging it violated EERA when it refused to allow him to withdraw from a maintenance of membership provision.	Dismissed. Individual lacks standing to assert unilateral change violation against District.
1295	Steve Murray, Richard Neville, and Rod Ziolkowski v. ABC Federation of Teachers, AFT	Employees appealed Board agent's partial dismissal of their unfair practice charge against the Union for failing to properly determine the amount of agency fee to be paid by non-union members.	Dismissed. Union is not required to calculate an agency fee with absolute precision and the insignificant error in calculation did not demonstrate a prima facie violation of EERA.
1296-S	CA Union of Safety Employees v. CA Department of Personnel Administration	State filed exceptions to Board agent's proposed decision finding State violated the Dills Act when it unilaterally rescinded its past practice of providing increases in travel and mileage reimbursement to Unit 7 members.	Violation found. State ordered to reinstate reimbursement policy and make whole any adversely affected Unit 7 members.

1998-99 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1297-S	CA State Employees Assn. v. CA Department of Corrections	Union appealed Board agent's proposed decision dismissing charge and complaint alleging the State violated the Dills Act by interfering with protected rights when a State manager refused to answer Union representative's question.	Dismissed. The Union representative's question at end of meeting was not an attempt to represent employees.
1298	Mountain Empire Federation of Teachers v. Mountain Empire Unified School District	District filed exceptions to Board agent's proposed decision finding the District violated EERA when it transferred employee from high school to elementary school position in retaliation of his protected activities.	Violation found. Board ordered District to rescind transfer at end of school year and pay employee stipend and mileage plus interest.
1299-S	Professional Engineers in CA Government v. CA Department of Industrial Relations	State and Union filed exceptions to Board agent's proposed decision finding the State violated the Dills Act when it retaliated against a probationary employee for exercise of his protected rights.	Dismissed. Board determined that the State demonstrated that its actions would have occurred irrespective of probationary employee's protected activity.
1299a-S	Professional Engineers in CA Government v. CA Department of Industrial Relations	Union requested reconsideration of Board's dismissal of its unfair practice charge and complaint alleging the State violated the Dills Act by retaliating against a probationary employee for his exercise of protected activity.	Request denied. Failure to meet reconsideration standard.

1998-99 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1300	Paula J. Seliga v. Los Angeles Unified School District	Employee appealed dismissal of her unfair practice charge alleging the District retaliated against her for her exercise of protected activities.	Dismissed. Employee failed to prove a prima facie case of retaliation.
1300a	Paula J. Seliga v. Los Angeles Unified School District	Employee requested reconsideration of Board decision dismissing her unfair practice charge against the District.	Request denied. Failure to meet reconsideration standard.
1301-H	The Regents of the University of CA and Student Assn. of Graduate Employees, et al.	University filed exceptions to Board agent's proposed decision which determined that certain student employees at UCLA are employees under HEERA and are, therefore, an appropriate bargaining unit.	Affirmed. Board determined graduate student instructors, readers and remedial tutors were employees under HEERA and ordered an election at the UCLA campus.
1302	Philip A. Kok v. Coachella Valley Federation of Teachers, CFT/AFT	Employee appealed Board agent's dismissal of his unfair practice charge against the Union for breaching its duty of fair representation by failing to assist him in processing a grievance to arbitration.	Dismissed. Charge untimely.
1302a	Philip A. Kok v. Coachella Valley Federation of Teachers, CFT/AFT	Employee requested reconsideration of Board's dismissal of his unfair practice charge against the Union.	Request denied. Failure to meet reconsideration standard.

1998-99 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1303	Phillp A. Kok v. Coachella Valley Unified School District	Employee appealed Board agent's dismissal of his unfair practice charge against the District for violating EERA by failing to process a grievance to arbitration and by retaliating against him for participating in protected activity.	Dismissed. Charge untimely.
1303a	Philip A. Kok v. Coachella Valley Unified School District	Employee requested reconsideration of Board's decision dismissing his unfair practice charge against the District.	Request denied. Failure to meet reconsideration standard.
1304-S	Cessaly D. Hutchinson and Jean Laosantos v. CA State Employees Assn.	Employees appealed Board agent's dismissal of their unfair practice charge against the Union.	Dismissed. Board found allegations of unlawful conduct involved matters of solely internal activities which did not impact employer-employee relations and, therefore, were not protected by the Dills Act except in limited situations not at issue here.
1305-S	International Union of Operating Engineers, AFL-CIO v. CA Department of Personnel Administration	State filed exceptions to Board agent's proposed decision which found the State violated the Dills Act when it refused to negotiate on a statewide basis with the Union and insisted bargaining take place at the departmental level.	Reversed. Board dismissed charge and complaint.

1998-99 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1306	Jose Antonio Cooke v. Service Employees International Union	Employee appealed Board agent's dismissal of his unfair practice charge against the Union alleging that it violated its duty of fair representation.	Dismissed. Charge untimely filed.
1306a	Jose Antonio Cooke v. Service Employees International Union	Employee requested reconsideration of Board's decision dismissing his charge against the Union.	Request denied. Failure to meet reconsideration standard.
1307	John Rossmann, Et Al. v. Orange Unified Education Assn., CTA	Employees appealed Board agent's dismissal of unfair practice charge against the Union alleging that it violated its duty of fair representation under EERA.	Dismissed. Charge untimely filed.
1308-S	California Correctional Peace Officers Assn. v. CA Department of Corrections	Union appealed Board agent's dismissal of unfair practice charge against the State for interfering with the administration of the Union and thereby violating the Dills Act.	Dismissed. Union failed to establish prima facie case of interference or domination.

1998-99 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1309	James R. Bettencourt, Et Al. v. Oakland Education Assn.	Appeal of Board agent's partial dismissal of charging parties' unfair practice charge against the Union alleging that it violated EERA when it used a portion of agency fees to support activities not related to contract administration and collective bargaining.	Partial dismissal affirmed. Employees had not exhausted the agency fee appeal procedure.
1310	Paul Akers, Et Al. v. Teachers Assn. of Long Beach	Appeal of Board agent's dismissal of charging parties' unfair practice charge against the Union alleging that it violated EERA when it used a portion of agency fees to support activities not related to contract administration and collective bargaining.	Dismissed. Employees had not exhausted the agency fee appeal process.
1311	Richard Aragon, Et Al. v. Teachers Assn. of Long Beach	Appeal of Board agent's dismissal of charging parties' unfair practice charge against the Union alleging that it violated EERA when it used a portion of agency fees to support activities not related to contract administration and collective bargaining.	Dismissed. Employees had not exhausted the agency fee appeal process.

1998-99 DECISIONS OF THE BOARD

DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1312	Ken L. Filinuk, Et Al. v. Teachers Assn. of Long Beach	Appeal of Board agent's dismissal of charging parties' unfair practice charge against the Union alleging that it violated EERA when it used a portion of agency fees to support activities not related to contract administration and collective bargaining.	Dismissed. Employees had not exhausted the agency fee appeal process.
1313-S	CA State Employees Assn., SEIU v. Department of Personnel Administration	Both parties filed exceptions to Board agent's proposed decision dismissing unfair practice charge and complaint against the State alleging unilateral change in union leave policy and interference of protected rights.	Dismissed. Union had not proffered sufficient evidence that the State violated the Dills Act.
1314-H	Coalition of University Employees v. Regents of the University of CA	Union appealed Board agent's dismissal of unfair practice charge against the University alleging that it violated HEERA by withholding information and dismissing employee in retaliation for her protected activities.	Dismissed. Union failed to state a prima facie case.
1315	Long Beach Community College District and Long Beach Community College Police Officers Assn. and CA School Employees Assn.	Union filed exceptions to Board agent's determination that a unit of college safety officers is an appropriate bargaining unit under EERA and should be severed from the wall-to-wall unit.	Affirmed. Board orders election.

1998-99 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1316-H	Society of professional Scientists and Engineers v. Regents of the University of CA	Union appealed Board agent's proposed decision dismissing charge and complaint against the University alleging that it had made a unilateral change in personnel policies.	Dismissed. Union failed to demonstrate that unilateral change occurred.
1317-S	CA State Employees Assn. v. CA Department of Corrections	State filed exceptions to a Board agent's proposed decision finding the State violated the Dills Act when it unilaterally modified its overtime policy for nurses.	Reversed. Board found State's actions permitted by contract. Unfair practice charge and complaint dismissed.
1318-S	CA State Employees Assn. v. CA Employment Development Department	Union filed exceptions to Board agent's proposed decision dismissing unfair practice charge and complaint alleging the State violated the Dills Act by changing policy concerning compensation of on-call employees without providing Union with notice and opportunity to negotiate.	Reversed. Board found that policy was established past practice and ordered State to cease and desist and reimburse affected employees for lost compensation.
1319	Adrian Pieter Maaskant v. Kern High School District	Employee appealed Board agent's ruling granting District's Motion to dismiss charge and complaint based on application of premature extension doctrine to maintenance of membership arrangement contained in CBA.	Appeal granted. Charge reinstated and remanded to Board agent for further proceedings.

1998-99 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1320	CA School Employees Assn. v. Ocean View School District	Union appealed Board agent's partial dismissal of unfair practice charge against the District alleging that the District violated EERA when it unilaterally transferred bargaining unit work to an outside company.	Affirmed partial dismissal. Board agreed CBA permitted District's contracting out.
1321	Jeremy Peterson Martin v. American Federation of State, County and Municipal Employees	Employee appealed Board agent's dismissal of his unfair practice charge against the Union alleging that the Union violated EERA by failing to continue to appeal the employee's grievance arbitration.	Dismissed. Employee failed to establish a prima facie case against Union.
1322	Valerie Himes, Et Al. v. San Juan Teachers Assn., CTA/NEA	Employees appealed Board agent's dismissal of their unfair practice charge alleging the Union violated EERA by its behavior surrounding negotiations of a new CBA.	Dismissed. Employees failed to state a prima facie case of a violation of the Union's duty of fair representation.
1323	Ventura County Federation of College Teachers v. Ventura County Community College District	District filed exceptions to Board agent's proposed decision finding that the District violated EERA when it issued a disciplinary letter to an employee in retaliation for his attendance at a grievance meeting.	Dismissed charge and complaint. District's actions were consistent with written policy and would have been the same even without protected activity.

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DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1324	Linda Kennis v. Oakland Unified School District	Employee appealed Board agent's dismissal of her unfair practice charge against the District for retaliating against her for her participation in Union activities.	Dismissed. Grievance machinery of the CBA covers the dispute and ends in binding arbitration.
1325	David John Sanchez v. Los Angeles Community College District	Employee appealed Board agent's dismissal of his unfair practice charge against the District for violation of EERA when it terminated his employment in retaliation for his protected activities.	Dismissed. Facts did not support allegation that employer's action was based on employee's protected conduct.
1326	Associated Chino Teachers, CTA/NEA v. Chino Valley Unified School District	Union appealed Board agent's partial dismissal of unfair practice charge against the District alleging that it violated EERA by breaching its duty to bargain in good faith.	Reversed. Board found sufficient evidence to state a prima facie case and directed that a complaint be issued.
1327-H	Kurt L. Benfield v. Regents of the University of CA	Employee appealed Board agent's dismissal of his unfair practice charge against the University alleging that it violated HEERA by terminating his employment.	Dismissed. Charge untimely filed.

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<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1328-S	CA State Employees Assn., SEIU, AFL-CIO, CLC v. CA Department of Mental Health	Union appealed Board agent's dismissal of unfair practice charge alleging the State violated the Dills Act by failing and refusing to provide information to the Union.	Dismissed. Charge untimely filed and no evidence documents were requested by Union.
1329-S	Keith Wimer, Et Al. v. CA Department of Corrections	Employees appealed Board agent's dismissal of their unfair practice charge alleging the State violated the Dills Act when it unilaterally changed the sick leave policy and retaliated against them.	Dismissed. Individuals did not have standing to allege unilateral change violations.
1330-S	CA Union of Safety Engineers v. CA Department of Personnel Administration	Union appealed Board agent's unfair practice charge alleging the State violated the Dills Act by not agreeing to a successor MOU unless the Union supported civil service reform legislation.	Dismissed. Alleged action did not rise to the level of bad faith bargaining.
1331	Roy Albert Schulz v. Pasadena Unified School District	Employee appealed his unfair practice charge alleging the District violated EERA by discriminating against him for his participation in protected activities.	Dismissed. Charge failed to demonstrate requisite nexus between adverse action and protected conduct.

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DECISION NO.

CASE NAME

DESCRIPTION

DISPOSITION

1332	Plumas Unified School District and Plumas County Superintendent of Schools and Plumas County Teachers Assn.	Union filed exceptions to proposed decision holding that the superintendent of schools and the District constituted separate employers under EERA and granting unit modification to reflect same.	Affirmed. Board agreed with finding that the facts described separate EERA employers.
1333-H	Trustees of the CA State University v. CA Faculty Assn.	University appealed Board agent's partial dismissal of unfair practice charge alleging that the Union insisted to Impasse over non-mandatory subjects of bargaining.	Affirmed partial dismissal. University failed to establish a prima facie case.
1334	Timothy G. Simeral v. Madera County Office of Education	Employee filed exceptions to Board agent's decision dismissing his unfair practice charge alleging that the Office of Education retaliated against him for exercise of his protected conduct in violation of EERA.	Dismissed. Insufficient evidence to support an inference of unlawful motivation.
1335	SEIU v. Fresno Unified School District	Employee appealed Board agent's dismissal of unfair practice charge filed by the Union on his behalf which alleged District violated EERA by discriminating against him for his exercise of protected conduct.	Dismissed. Employee failed to prove a nexus between his protected activity and adverse action by the District.

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DECISION NO.

CASE NAME

DESCRIPTION

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1336	Alum Rock Union Elementary School District v. Alum Rock Educators Assn.	District filed an appeal of Board agent's dismissal of unfair practice charge alleging the Union failed to bargain in good faith in violation of EERA.	Dismissed and appeal withdrawn at the mutual request of the parties.
Ad-290	Howard O. Watts v. Associated Administrators of Los Angeles	Employee appealed Board agent's administrative determination that the Union had complied with Board agent's order.	Affirmed. Employee's assertions of non-compliance unfounded.
Ad-291	Howard O. Watts and Los Angeles Community College District	Employee appealed Board agent's dismissal of charge against the District alleging that its proposal for year-round calendar did not meet requirements of the Government Code public notice provisions.	Dismissed. Notice given was sufficient to meet requirements.
Ad-292	Phillip A. Kok v. Coachella Valley Unified School District	Employee requested that the Board accept his late filed amendment to an appeal of a Board agent's dismissal of his unfair practice charge.	Denied. No good cause shown to excuse late filing.

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DESCRIPTION

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Ad-292a	Philip A. Kok v. Coachella Valley Unified School District	Employee requested reconsideration of Board's decision denying his request that the Board accept a late filed amendment to an appeal of a Board agent's dismissal of his unfair practice charge.	Denied. Failure to meet reconsideration standard.
Ad-293-H	CA Nurses Assn., University Professional and Technical Employees, CWA v. The Regents of the University of CA	Union filed interlocutory appeal concerning Board agent's order denying the Union's motion to amend complaint and order denying request for reconsideration. Board agent joined the Union's request for interlocutory appeal.	Affirmed. PERB does not have jurisdiction over the entity resulting from the merger of two medical centers, one public and one private.
Ad-294-S	Professional Engineers in CA Government v. CA Water Resources Control Board	Union filed request that Board accept late filed response to exceptions.	Denied. No good cause shown to excuse late filing.
Ad-295	Oakland Unified School District and CA School Employees Assn. and Oakland Child Development Paraprofessional Assn.	Union appealed Board agent's administrative determination that another Association was an employee organization as defined by EERA.	Denied. Board upheld agent's determination.

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J.R. 18-H	Regents of the University of CA and Assn. of Student Employees, et al.	University requested the Board to join in seeking judicial review of its decision to recognize student academic employees under HEERA at its San Diego campus.	Request denied. University failed to demonstrate that case was of special importance meriting Board's joining in request for judicial review.
J.R. 19-H	Regents of the University of CA and Student Assn. of Graduate Employees, et al.	University requested the Board to join in seeking judicial review of its decision to recognize student academic employees under HEERA at its Los Angeles campus.	Request denied. University failed to demonstrate that case was of special importance meriting Board's joining in request for judicial review.
I.R. 399	Frederick L. Kay v. Oakland Unified School District	Employee filed two requests for injunctive relief against the District for retaliation against him for exercise of protected activities.	Request denied.
I.R. 399 (Request for Reconsideration)	Frederick L. Kay v. Oakland Unified School District	Employee requested reconsideration of Board's denial of his requests for injunctive relief against the District.	Request denied. Failure to meet the reconsideration standard.
I.R. 400	CA State Employees Assn. v. CA Department of Corrections	Union requested Interim injunctive relief against the State to prevent the State from implementing new job duties for registered nurses prior to completing its meet and confer obligation with Union.	Request denied.

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DECISION NO.

CASE NAME

DESCRIPTION

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I.R. 401	International Union of Operating Engineers, Craft-Maintenance Division v. State of CA (Department of Corrections)	Union filed request for injunctive relief against the State alleging State's failure to take proper medicare deductions and its intentions to recoup monies from certain employees.	Request withdrawn.
I.R. 402	San Francisco Community College District v. SEIU	District filed request for injunctive relief against the Union for striking during pendency of their fact finding process and for engaging in intermittent striking.	Request withdrawn.
I.R. 403	CA State Employees Assn., SEIU v. CA Department of Corrections	Union filed request for injunctive relief against the State seeking to order the State to reassign correctional officers to restore "the appropriate level of security" for Union employees.	Request withdrawn.
I.R. 404	IUOE, Craft-Maintenance Division, State Unit 12, AFL-CIO v. CA Department of Personnel Administration	Union requested injunctive relief against the State to prevent the implementation of new health plans which were scheduled to take effect in two weeks from date of request.	Request withdrawn.

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CASE NAME

DESCRIPTION

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I.R. 405	Jim Hard & Cathy Hackett v. CA State Employee Assn.	Employees within a division of the Union requested injunctive relief against the Union and its leadership seeking a court order to end alleged reprisals, discrimination and interference with the division's right to be the exclusive bargaining agent in certain units.	Request withdrawn.
I.R. 406	Jim Hard & Cathy Hackett v. CA State Employees Assn.	Employees within a division of the Union requested injunctive relief against the Union for attempting to remove an employee from office within the Union.	Request denied.
I.R. 407	Jim Hard & Cathy Hackett v. CA Department of Personnel Administration	Employees requested injunctive relief against the Union for violation of the Dills Act.	Request withdrawn.
I.R. 408	CA State Employee Organization, SEIU, AFL-CIO, CLC Civil Service Division v. CA State Employees Association	Employees requested Injunctive relief against the Union alleging interference of their rights under Union policy and discrimination for protected activity.	Request withdrawn.

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<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I. R. 409	CA State Employees Assn., et al. v. State Employee Caucus for a Democratic Union	Union requested injunctive relief against a Union faction and individual employees for their retaliation against employees who complained of the faction's actions.	Request denied.

1998-1999 LITIGATION ACTIVITY

1. Fall River Education Association, CTA/NEA v. PERB/Fall River Joint Unified School District, Third District Court of Appeal, Case 3 Civil C030046, (PERB Decision 1259). Issue: Did PERB err when it dismissed the allegation of discrimination in this case? Verified Petition for Writ of Extraordinary Relief filed on July 16, 1998. PERB filed its Brief in Opposition on November 9, 1998 and the Court denied the Petition on January 22, 1999.
2. California State Employees Association v. PERB/State of California (Employment Development Department), Third District Court of Appeal, Case 3 Civil C030807, (PERB Decision 1284-S). Issue: Did PERB err in determining that the State did not unilaterally change employee workload and deny CSEA the right to meet and confer over the decision? Petition for Writ of Review filed on July 16, 1998. PERB filed its Brief in Response on March 31, 1999.
3. Annette M. Deglow v. PERB/Los Rios College Federation of Teachers, Third District Court of Appeal, Case 3 Civil C030309, (PERB Decision 1275). Issue: Did PERB err when it dismissed the charge without issuing a complaint? Petition for Writ of Review filed on August 12, 1998. PERB filed Motion to Dismiss Petition for Lack of Jurisdiction on August 21, 1998. The Court granted PERB's Motion to Dismiss on October 1, 1998.
4. Annette M. Deglow v. PERB/Los Rios Community College District, Third District Court of Appeal, Case 3 Civil C030310, (PERB Decision 1274). Issue: Did PERB err when it dismissed the charge without issuing a complaint? Petition for Writ of Review filed on August 12, 1998. PERB filed Motion to Dismiss Petition for Lack of Jurisdiction on August 21, 1998. The Court granted PERB's Motion to Dismiss on October 1, 1998.
5. Busdrivers Association for Unity v. PERB/Los Angeles Unified School District and SEIU, Local 99, Second District Court of Appeal, Division Three, Case 2 Civil B124691, (PERB Decision 1267). Issue: Did PERB err when it dismissed the petition to sever parts of the bargaining unit exclusively represented by the SEIU, Local 99? Petition for Writ of Mandamus was filed on August 14, 1998. PERB filed Motion to Dismiss Petition for Lack of Jurisdiction on August 24, 1998. The Court denied the Petition on August 31, 1998.
6. Fremont Unified School District v. PERB/Fremont Unified District Teacher Association, CTA/NEA, California Supreme Court (Appealing Case A081177). Issue: Did the First District Court of Appeal err when it denied the Petition for Writ of Review of PERB's Final Order? Petition for Writ of Review filed September 14, 1998. PERB filed its Answer to Petition for review on October 5, 1998. The Court denied the Petition for Review on November 24, 1998.

7. Busdrivers Association for Unity v. PERB, United States District Court, Central District, Case 98-6694 JSL (Mcx), (PERB Decision 1267). Issue: Did the First District Court of Appeal err when it denied the Petition for Writ of Review of PERB's Final Order? Complaint re: PERB's Denial of Worker "Free Choice Rights" and Denial of BAFU's Administrative Appeal was filed on October 9, 1998. PERB filed its Notice of Motion and Motion to Dismiss Complaint for Lack of Jurisdiction and Failure to State a Claim Upon Which Relief Can Be Granted; Memorandum of Points and Authorities; Declaration of Robert Thompson; Request for Judicial Notice; and [Proposed] Order on October 29, 1998. The Court issued Order Denying Plaintiff's Application for Reconsideration on December 28, 1998.
8. IUOE, AFL-CIO, Locals 3, 12, 39 and 501 v. PERB/State of California (DPA), Third District Court of Appeal, Case C031669. Issue: Did PERB err when it found the State had not violated the Dills Act by refusing to negotiate with IUOE over the impacts of federal gun control legislation and insisting that bargaining take place at the departmental level? Petition for Writ of Mandate filed January 20, 1999. PERB filed its Brief in Opposition on April 23, 1999. The parties stipulated to Voluntary Abandonment and Dismissal of Petition for Writ of Review on May 25, 1999. The Court dismissed the petition pursuant to the parties' stipulation on May 26, 1999.
9. Alicia Sproul and Jerry C. Sproul v. California Supreme Court; Second District Court of Appeal; California State University, California Faculty Association; and PERB, U.S. Bankruptcy Court, Central District, Case 99-04597 NM (PERB IR Nos. 386 and 387). Issue: Should the Sprouls be released from their financial obligations including repayment of a \$30,000 student loan owed to the California State University? The Sprouls filed their Complaint and other documents on February 22, 1999. PERB received the Complaint on April 3, 1999. The Sprouls filed Case No. CC-00-1300 in the 9th Circuit Bankruptcy Appellate Panel on June 3, 1999. On June 7, 1999, the Court issued an Order granting the Sprouls a discharge under section 727 of title 11 of the United States Code. The Sprouls filed a Notice of Appeal to the 9th Circuit Court of Appeals on June 23, 1999.
10. Tommie R. Dees v. California State University, et al. (Fred D'Orazio), Ninth Circuit Court of Appeals, San Francisco, Case 99-15396 (appealing Case C-96-4245 MEJ). (PERB Decision 869-H). Issue: Did the U.S. District Court, Northern District err when it granted all Defendants' Motions to Dismiss. Dees filed Notice of Appeal on March 5, 1999. Appellant's opening brief is due on August 25, 1999.
11. State of California (Employment Development Department) v. PERB/California State Employees Association, Third District Court of Appeals, Case CO32277, (PERB Decision 1318-S). Issue: Did PERB err when it determined that the State violated the Dills Act by changing the terms and conditions of certain

employees with regard to "on call" compensation? The State filed its Request for Immediate Stay; Petition for Writ of Extraordinary Relief, Mandate and/or Prohibition on April 2, 1999. On April 22, 1999, the Court issued Order denying Petitioner's Request for Immediate Stay.