

ITEM 8

PROPOSED STATEWIDE COST ESTIMATE

\$335,585

**(Estimated Annual Cost for Fiscal Year 2018-2019
and following is \$1,719,873)**

Government Code Sections 3505.4(a-d) and 3505.5(a-d)
Statutes 2012, Chapter 314 (AB 1606)

Local Agency Employee Organizations: Impasse Procedures II

16-TC-04

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Public Employment Relations Board (PERB) 2015-2016 Annual Report,
<https://www.perb.ca.gov/AnnualReports.aspx> (accessed on April 23, 2019)

PERB 2016-2017 Annual Report, <https://www.perb.ca.gov/AnnualReports.aspx> (accessed
on April 23, 2019)

PERB 2017-2018 Annual Report, <https://www.perb.ca.gov/AnnualReports.aspx>
(accessed on April 23, 2019)

1. TEST CLAIM TITLE

Impasse Procedures pursuant to AB 646 and AB 1606 (Ch 680, 2011 and Ch 314, 2012)

2. CLAIMANT INFORMATION

City of Oxnard
 Name of Local Agency or School District
 James Throop
 Claimant Contact
 Chief Financial Officer
 Title
 300 West Third Street
 Street Address
 Oxnard, CA 93030
 City, State, Zip
 (805) 385-7475
 Telephone Number
 (805) 385-7466
 Fax Number
 Jim.Throop@oxnard.org
 E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Patrick J. Dyer
 Claimant Representative Name
 Director
 Title
 MGT Consulting
 Organization
 2251 Harvard Street, Suite 134
 Street Address
 Sacramento, CA 95815
 City, State, Zip
 916-443-3411, ext 1003
 Telephone Number
 916-443-1766
 Fax Number
 pdyer@mgtconsulting.com
 E-Mail Address

<i>For CSM Use Only</i>	
Filing Date:	RECEIVED May 12, 2017 Commission on State Mandates
Test Claim #:	16-TC-04

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections (include statutes, chapters, and bill numbers) (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]), regulations (include register number and effective date), and executive orders (include effective date) that impose the alleged mandate .

Chapter 680, Statutes of 2011 (AB 646) adding sections 3505.4, 3505.5 and 3505.7 to the government code and Chapter 314 of 2012 (AB 1606) adding clarifying language to 3505.

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, and 7 are attached as follows:
5. Written Narrative: pages 1 to 12 .
6. Declarations: pages 13 to 16 .
7. Documentation: pages 17 to 28 .

8. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the test claim submission.*

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

James Throop

Print or Type Name of Authorized Local Agency or School District Official

CFO

Print or Type Title

[Handwritten Signature]

Signature of Authorized Local Agency or School District Official

9/19/17

Date

* If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.

**BEFORE THE
COMMISSION ON STATE MANDATES**

Test Claim of:
The City of Oxnard

Local Public Employee Organizations: Impasse Procedures

Chapter 680, Statutes of 2011
Chapter 314, Statutes of 2012

STATEMENT OF THE CLAIM

OVERVIEW

On June 22, 2011, Assembly Bill 646 (Atkins) added duties to Collective Bargaining activities falling under Milias-Meyers-Brown Act (MMBA). Specifically Section 3403.4 was repealed and replaced with a new section, and sections 3505.5 and 3503.7 were added. On September 14, 2012 Assembly Bill 1606 (Perea) prohibited a waiver of the factfinding process and provided further clarifying language and legislative intent of the process outlined in AB 646. 3505.4 was changed to clarify the ambiguity of AB 464 and imposes additional restrictions with respect to collective bargaining and additional state mandated activity on local agencies.

The bills authorized the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

These bills would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

Specifically, AB 646:

- 1) Requires the fact-finding panel shall meet with the parties within 10 days after appointment and take other steps it deems appropriate. Specifies that the fact-finding panel consist of one member selected by each party and a chairperson selected by the Public Employment Relations Board (PERB) or by agreement of the parties.

- 2) Authorizes the fact-finding panel to make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of witnesses.
- 3) Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.
- 4) Specifies the criteria the fact-finding panel should be guided by in arriving at their findings and recommendations.
- 5) Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. This information must first be provided to the parties before being made available to the public.
- 6) Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson. Any other costs incurred will be borne equally by the parties, as specified.
- 7) Allows an employer to implement their last, best and final offer once any applicable mediation and fact-finding procedures have been exhausted and despite the implementation of the best and final offer, allows a recognized employee organization the right each year to meet and confer.

Government Code §3505.4 currently reads:

3505.4.

(a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its

request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Government Code §3505.5 currently reads:

3505.5.

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

Government Code §3505.7 currently reads:

3505.7.

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral

implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

Specifically, AB 1606:

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations.

Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer. Existing law further authorizes the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the parties' differences be submitted to a factfinding panel.

This bill would instead authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules.

The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would specify that the procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived. The bill would also specify that its provisions are intended to be technical and clarifying of existing law.

Changes to 3505.4 (from AB 1606)

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

A. NEW ACTIVITIES

This new legislation has led to increased costs to the Collective Bargaining process as it relates to Impasse declaration activities. The impasse activities are new and not revised or amended. The City did not have any previous requirements on or activities related to Impasse prior to AB 646 and AB 1606.

If mediation did not result in settlement after 30 days and if the employee organization requests factfinding (646):

- 1) **646 – 1:** The agency must notice impasse hearing if delay in factfinding request.
- 2) **646 – 2:** Agency must select a person to serve as its member of the factfinding panel, and pay for the costs of its member

- 3) **646 – 3:** If chairperson is not approved by other party, agency must select a different chairperson.
- 4) **646 – 4:** PERB shall appoint a panel Chairperson and the agency shall pay for half of the panel chairperson's costs.
- 5) **646 – 5:** The agency shall review and respond to all requests and subpoenas made by the panel and furnish panel with all relevant documents as requested. (This includes both administrative time to review and approve materials as well as clerical time to process these requests. Travel time would also be reimbursable if required.)
- 6) **646 – 6:** The agency shall participate in all factfinding hearings.
- 7) **646 – 7:** The agency shall review and make the panel findings publicly available within 10 days of receipt.
- 8) **646 – 8:** The agency shall pay for half of the costs of the factfinding.
- 9) **646 – 9:** The agency must hold a public impasse hearing, if it chooses to impose its last, best offer.
- 10) **646 – 10:** The agency shall meet and confer with union and submit/resubmit last, best offer.

AB 1606:

1. **1606 – 1:** This bill would again authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules.
2. **1606 – 2:** Select Mediator- Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.
3. **1606 – 3:** The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.
4. **1606 – 4:** The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.
5. **1606 – 5:** Respond to inquiries by all parties resulting from panel contemplating 3505.4 (d) Items/paragraphs 1 through 8.
6. **1606 – 6:** Process procedural right of an employee organization to request a factfinding panel. Ensure that this cannot be expressly or voluntarily waived.

One-time costs would include:

For AB 646:

- 1) **646 – 1 (OTC):** Train staff on new requirements

- 2) **646 – 2 (OTC):** Revise local agency manuals, polices, and guidelines related to new factfinding requirements.

For AB 1606

- 1) **1606 – 1 (OTC):** Update policies and procedures as well as any city codes or resolutions to comply with clarifying language of 1606.
- 2) **1606 – 2 (OTC):** Training for staff on updated employee organization impasse process/rights/rules updated by 1606.

B. LEGISLATIVE HISTORY PRIOR TO 1975

There was no Mandatory Impasse Procedures requirement prior to 1975, nor in any of the intervening years, until the passage of Chapter 680, Statutes of 2011, filed on October 9, 2011. This process and mandatory procedures were further clarified by Chapter 314, Statutes of 2012, filed on September 14, 2012.

The Commission on State mandates has found other similar mandates pertaining to Personnel issues such as BINDING ARBITRATION (01-TC-07), LOCAL GOVERNMENT EMPLOYEE RELATIONS (02-TC-30), COLLECTIVE BARGAINING (97-TC-08) to be reimbursable State Mandated programs.

C. SPECIFIC STATUTORY SECTIONS THAT CONTAIN THE MANDATED ACTIVITIES

Government Code Sections 3504.4, 3505.5.5 and 3505.7 were added by specified legislation and relate to the reimbursable provisions of this test claim.

D. COST ESTIMATES

The City of Oxnard contends that the actual increased costs to comply with this new mandate is \$373,836.57 in total. For fiscal year 2015-16, its total costs were \$327,302.63 when the City had to enter mediation as required by these statutes for two separate impasse cases. The City first incurred increased costs as a result of this statute on May 12, 2016. A detail of the 2015-16 costs by new activity are as follows:

FY 2015-2016		Activities																Units (hours) / TOTAL			
Resource	Unit Cost per Hour	646-2 (OCT)	1606-1 (OCT)	646-1 (OCT)	1606-2 (OCT)	646-1	1606-1	1606-3	646-2	646-3	646-4	1606-2	646-5	646-6	646-7	1606-4	1606-5		1606-6	646-9	646-10
Policy/Training																					
HR Director	\$85.79	23	23	2	2																50
City Attorney	\$98.56	14	14	2	2																32
Police Impasse Case																					
HR Director	\$85.79					1	1	1		1		2	4	4	8	4	12	14	2	2	56
City Attorney	\$98.56					1	1	1		1		4	4	2	4	8	10	2	2	40	
Sr. HR Coord.	\$33.02								0.5	0.5		1	4	4	2	4	10	14			40
Conf. Legal	\$250	44	44								96	96	260	148	48	260	46				
Fire Impasse Case																					
HR Director	\$85.79					0.5	1.5	1	1			2	2	2	12	4	8	12	1	1	48
City Attorney	\$98.56					0.5	1.5	0.5	0.5			1	1	1	2	4	4	6	1	1	24
Sr. HR Coord.	\$33.02											6	12			8	10				36
Conf. Legal	\$250																42				
TOTAL																					
Labor \$ by Activity		\$3,353	\$3,353	\$369	\$369	\$277	\$184	\$461	\$152	\$336	\$0	\$475	\$1,338	\$1,536	\$2,176	\$1,871	\$3,559	\$4,270	\$553	\$553	\$25,182.94
Overhead		\$682	\$682	\$75	\$75	\$56	\$37	\$94	\$31	\$68	\$0	\$97	\$272	\$312	\$442	\$380	\$724	\$868	\$112	\$112	\$5,119.69
Contract Legal		\$11,000	\$11,000								\$24,000	\$24,000	\$65,000	\$37,000	\$12,000	\$65,000	\$22,000	\$18,000	\$4,000	\$4,000	\$297,000.00
TOTAL		\$15,035	\$15,035	\$444	\$444	\$333	\$222	\$555	\$182	\$404	\$24,000	\$24,571	\$66,610	\$38,848	\$14,618	\$47,251	\$24,282	\$23,138	\$4,665	\$4,665	\$327,302.63

Estimated annual costs to be incurred by the City of Oxnard to implement the alleged mandate during the fiscal year 2016-2017 is \$46,533.94 – the fiscal year immediately following the fiscal year for which the claim was filed.

FY 2016-2017		Activities																Units (hours) / TOTAL			
Resource	Unit Cost per Hour	646-2 (OCT)	1606-1 (OCT)	646-1 (OCT)	1606-2 (OCT)	646-1	1606-1	1606-3	646-2	646-3	646-4	1606-2	646-5	646-6	646-7	1606-4	1606-5		1606-6	646-9	646-10
Policy/Training																					
HR Director	\$79.26	23	23	2	2																50
City Attorney	\$100.53	14	14	2	2																32
Police Impasse Case																					
HR Director	\$79.26					1	1	1		1		2	4	4	8	4	12	14	2	2	56
City Attorney	\$100.53					1	1	1		1		4	4	2	4	8	10	2	2	40	
Sr. HR Coord.	\$35.36								0.5	0.5		1	4	4	2	4	10	14			40
Conf. Legal	\$250.00																36				
Fire Impasse Case																					
HR Director	\$79.26					0.5	1.5	1	1			2	2	2	12	4	8	12	1	1	48
City Attorney	\$100.53					0.5	1.5	0.5	0.5			1	1	1	2	4	4	6	1	1	24
Sr. HR Coord.	\$35.36												6	12		8	10				36
Conf. Legal	\$250.00																32				
TOTAL																					
Labor \$ by Activity		\$3,230	\$3,230	\$360	\$360	\$270	\$180	\$449	\$147	\$327	\$0	\$453	\$1,332	\$1,544	\$2,058	\$1,863	\$3,499	\$4,164	\$539	\$539	\$24,544.28
Overhead		\$657	\$657	\$73	\$73	\$55	\$37	\$91	\$30	\$66	\$0	\$92	\$271	\$314	\$418	\$379	\$711	\$847	\$110	\$110	\$4,989.66
Contract Legal		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$17,000	\$0	\$0	\$0	\$17,000.00
TOTAL		\$3,887	\$3,887	\$433	\$433	\$325	\$214	\$541	\$177	\$393	\$0	\$545	\$1,603	\$1,858	\$2,476	\$2,241	\$21,210	\$5,011	\$649	\$649	\$46,533.94
TOTAL																					\$373,836.57

E. STATEWIDE COST ESTIMATES

Per the Assembly Floor Analysis, “There could be substantial state mandated reimbursement of local costs. The amount would depend on the number of requests for fact finding. PERB staff raised the possibility of exceeding 100 cases annually in the first years of the program. Assuming an individual case is likely to cost around \$10,000, with the local agency footing half the bill, reimbursable costs could exceed \$2.5 million statewide. The Commission on State Mandates has approved a test claim for any local government subject

to the jurisdiction of PERB that incurs increased costs as a result of a mandate, meaning their costs are eligible for reimbursement.” (*K. Green – September 1, 2011*)

Using similar methodology, the cost of policy and training would raise per case cost substantially. Using the Oxnard per case cost, multiplied by the assumption from the Floor Analysis above case count of 100, we have updated the statewide cost estimate. That statewide total could exceed \$3.8 million with a million of that being for training and policy changes at agencies with impasse cases.

F. FUNDING SOURCES

The City of Oxnard is unaware of any funding sources for the new activities mandated.

G. ELIGIBILITY FOR REIMBURESMENT

The costs incurred by the City of Oxnard as a result of the statute on which this test claim is based are all reimbursable costs as such costs are “costs mandated by the State” under Article XIII B (6) of the California Constitution, and Government Code §17500 *et seq.* of the Government Code. Section 17514 of the Government Code defines “costs mandated by the state”, and specifies the following three requirements:

1. There are “increased costs which a local agency is required to incur after July 1, 1980.”
2. The costs are incurred “as a result of any statute enacted on or after January 1, 1975.”
3. The costs are the result of “a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

All three of the above requirements for finding costs mandated by the State are met as described previously herein.

MANDATE MEETS BOTH SUPREME COURT TESTS

The mandate created by this statute clearly meets both tests that the Supreme Court in the *County of Los Angeles v. State of California* (1987) created for determining what constitutes a reimbursable state mandated local program. Those two tests, which the Commission on State Mandates relies upon to determine if a reimbursable mandate exists, are the “unique to government” and the “carry out a state policy” tests. Their application to this test claim is discussed below.

Mandate Is Unique to Local Government

The sections of the law claimed involve the Miliias-Meyers-Brown Act (MMBA). As described in Government Code section 3500 and highlighted by the Public Employment Relations Board (PERB), the MMBA applies specifically and solely to Local Agencies (Cities, Counties and Special Districts) and their employees. Similar to the Education Employment Relations Act (EERA) for public school and college districts only, with this law, the MMBA now requires uniform Impasse Procedures to local agencies. Thus, this requirement is unique to government.

Mandate Carries Out a State Policy

From the legislation, it is clear that the Legislature wishes to require uniform Impasse Procedures for local agencies after a public employee organization requests a factfinding panel. Prior to the passage of this legislation, the MMBA contained no requirements related for the creation of and activities relating to a factfinding panel.

In summary, this statute mandates that local government add a level of service in the Collective Bargaining process with the requirement of uniform factfinding procedures. The City of Oxnard believes that uniform factfinding process as set forth above satisfies the constitutional requirements for a mandate.

STATE FUNDING DISCLAIMERS ARE NOT APPLICABLE

There are seven disclaimers specified in Government Code §17556 which could serve to bar recovery of “costs mandated by the State”, as defined in Government Code §17556. None of the seven disclaimers apply to this test claim:

1. The claim is submitted by a local agency or school district which requests legislative authority for that local agency or school district to implement the Program specified in the statutes, and that statute imposes costs upon the local agency or school district requesting the legislative authority.
2. The statute or executive order affirmed for the State that which had been declared existing law or regulation by action of the courts.
3. The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
4. The local agency or school district has the authority to levy service charges, fees or assessments sufficient to pay for the mandated program or increased level of service.
5. The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts,

or includes additional revenue that was specifically intended to fund the costs of the State mandate in an amount sufficient to fund the cost of the State mandate.

6. The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a Statewide election.
7. The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

None of the above disclaimers have any application to the test claim herein stated by the City of Oxnard.

CONCLUSION

The enactment of Chapter 680, Statutes of 2011 adding sections 3505.4, 3505.5 and 3505.7 and the Chapter 314, Statutes of 2012 adding clarifying language to 3505.5 have imposed a new state mandated program and higher level of service which resulted in increased costs to the City of Oxnard by establishing a program within the Collective Bargaining process with Local Agencies and their employee organizations under the Milias-Meyers-Brown Act. The mandated program meets all of the requirements established by the California Constitution and Government Codes as a reimbursable State mandated program.

G. CLAIM REQUIREMENTS

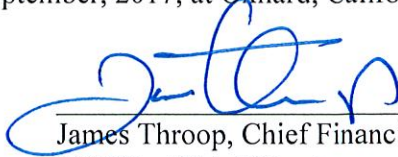
The following elements of this test claim are provided pursuant to Section 1183, Title 2, of the California Code of Regulations:

- Exhibit 1: Chapter 680, Statutes of 2011
- Exhibit 2: Chapter 314, Statutes of 2012

CLAIM CERTIFICATION

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein. I declare under penalty of perjury under the laws of the State of California that the statements made in this document are true and complete to the best of my personal knowledge and as to all matters, I believe them to be true.

Executed this 14 day of September, 2017, at Oxnard, California.



James Throop, Chief Financial Officer
300 West Third Street
Oxnard, California 93030
805-385-7475
Jim.Throop@Oxnard.org
City of Oxnard

DECLARATION OF JAMES THROOP

I James Throop, make the following declaration under oath:

I am the Chief Financial Officer for the City of Oxnard. As part of my duties, I am responsible for the complete and timely recovery of costs mandated by the State.

I declare that I have examined the City of Oxnard's State mandated duties and resulting costs, in implementing the subject law, and find that such costs are, in my opinion, "costs mandated by the State", as defined in Government Code, Section 17514:

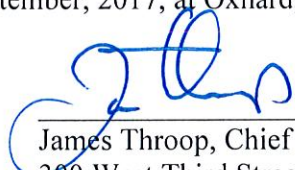
“ ‘Costs mandated by the State’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The City of Oxnard first incurred increased costs as a result of this Test Claim statute on May 12, 2016.

I am personally conversant with the foregoing facts, and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, except as to the matters which are stated upon information or belief, and as to those matters, I believe them to be true.

Executed this 14 day of September, 2017, at Oxnard, California.



James Throop, Chief Financial Officer
300 West Third Street
Oxnard, California 93030
805-385-7475
Jim.Throop@Oxnard.org
City of Oxnard

Declaration of Actual or Estimated Costs, Offsets and New Activities

Pursuant to 17553 (b) (2) of the Government code and per the Commission on State Mandates, I James Throop, Chief Financial Officer, under penalty of perjury, based on my personal knowledge, information and belief, I declare the following:

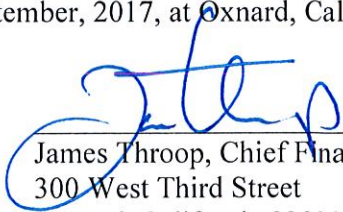
- A. The City of Oxnard determined that costs required to comply with this mandated program totals \$327,302.63 in the 2015-2016 fiscal year. For the 2016-2017 fiscal year, the City of Oxnard expended \$46,533.94 to comply with the new activities. In total the City of Oxnard's costs of \$373,836.57 are directly a result of the new activities required by Chapter 680, Statutes of 2011 and Chapter 314, Statutes of 2012 as follows:

FY 2015-2016		Activities															Units (hours) / TOTAL				
Resource	Unit Cost per Hour	646-2 (OCT)	1606 - 1 (OCT)	646-1 (OCT)	1606 - 2 (OCT)	646-1	1606-1	1606-3	646-2	646-3	646-4	1606-2	646-5	646-6	646-7	1606-4		1606-5	1606-6	646-9	646-10
Policy/training																					
HR Director	\$85.79	23	23	2	2																50
City Attorney	\$98.56	14	14	2	2																32
Police Impasse Case																					
HR Director	\$85.79					1	1	1		1		2	4	4	8	4	12	14	2	2	56
City Attorney	\$98.56					1	1	1		1			4	4	2	4	8	10	2	2	40
Sr. HR Coord.	\$33.02								0.5	0.5		1	4	4	2	4	10	14			40
Conf. Legal	\$250	44	44								96	96	260	148	48	260	46				
Fire Impasse Case																					
HR Director	\$85.79					0.5	1.5	1	1			2	2	2	12	4	8	12	1	1	48
City Attorney	\$98.56					0.5	1.5	0.5	0.5			1	1	1	2	4	4	6	1	1	24
Sr. HR Coord.	\$33.02												6	12		8	10				36
Conf. Legal	\$250																42				
Activity		\$3,353	\$3,353	\$369	\$369	\$277	\$184	\$461	\$152	\$336	\$0	\$475	\$1,338	\$1,536	\$2,176	\$1,871	\$3,559	\$4,270	\$553	\$553	\$25,182.94
Overhead		\$682	\$682	\$75	\$75	\$56	\$37	\$94	\$31	\$68	\$0	\$97	\$272	\$312	\$442	\$380	\$724	\$868	\$112	\$112	\$5,119.69
Contract Legal		\$11,000	\$11,000								\$24,000	\$24,000	\$65,000	\$37,000	\$12,000	\$65,000	\$22,000	\$18,000	\$4,000	\$4,000	\$297,000.00
TOTAL		\$15,035	\$15,035	\$444	\$444	\$333	\$222	\$555	\$182	\$404	\$24,000	\$24,571	\$66,610	\$38,848	\$14,618	\$67,251	\$26,282	\$28,138	\$4,645	\$4,645	\$327,302.63

FY 2014-2017		Activities														Units (hours) / TOTAL						
Resource	Unit Cost per Hour	646-2 (OCT)	1606-1 (OCT)	646-1 (OCT)	1606-2 (OCT)	646-1	1606-1	1606-3	646-2	646-3	646-4	1606-2	646-5	646-6	646-7		1606-4	1606-5	1606-6	646-9	646-10	
Policy/Training																						
HR Director	\$79.26	23	23	2	2																	50
City Attorney	\$100.53	14	14	2	2																	32
Police Impasse Case																						
HR Director	\$79.26					1	1	1		1		2	4	4	8	4	12	14	2	2		56
City Attorney	\$100.53					1	1	1		1			4	4	2	4	8	10	2	2		40
Str. HR Coord.	\$35.36								0.5	0.5		1	4	4	2	4	10	14				40
Cont. Legal	\$250.00																36					
Fire Impasse Case																						
HR Director	\$79.26					0.5		1.5	1	1		2	2	2	12	4	8	12	1	1		48
City Attorney	\$100.53					0.5		1.5	0.5	0.5		1	1	1	2	4	4	6	1	1		24
Str. HR Coord.	\$35.36												6	12			8	10				36
Cont. Legal	\$250.00																32					
Labor \$ by Activity		\$3,230	\$3,230	\$360	\$360	\$270	\$180	\$449	\$147	\$327	\$0	\$453	\$1,332	\$1,544	\$2,058	\$1,863	\$3,499	\$4,164	\$539	\$539		\$24,544.28
Overhead		\$657	\$657	\$73	\$73	\$55	\$37	\$91	\$30	\$66	\$0	\$92	\$271	\$314	\$418	\$379	\$711	\$847	\$110	\$110		\$4,989.66
Contract Legal		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$17,000	\$0	\$0	\$0		\$17,000.00
TOTAL		\$3,887	\$3,887	\$433	\$433	\$325	\$216	\$541	\$177	\$393	\$0	\$845	\$1,603	\$1,858	\$2,476	\$2,241	\$21,210	\$5,011	\$649	\$649		\$46,533.94
TOTAL																					\$373,836.57	

- B. The City of Oxnard has no local, state, federal funding or fee authority to offset the increased costs that will be incurred by the city to implement this program.
- C. The City of Oxnard is required to perform new activities as a result of both Chapter 680, Statutes of 2011 and Chapter 314, Statutes of 2012. These statutory changes require the city to process the procedural right of an employee organization to request a factfinding panel, select a mediator, respond to inquiries by all parties resulting from panel contemplating 3505.4 (d) Items/paragraphs 1 through 8.
- D. This test claim is not for a Legislatively Determined Mandate and no payments have been received by City of Oxnard for the implementation of the new activities required by the statutes in question.

Executed this 14 day of September, 2017, at Oxnard, California.



 James Throop, Chief Financial Officer
 300 West Third Street
 Oxnard, California 93030
 805-385-7475
 Jim.Throop@Oxnard.org
 City of Oxnard

TEST CLAIM BACKUP DOCUMENTATION
IMPASSE PROCEDURES

AB 646, AB 1606

Pages 17-28

TEST CLAIM BACKUP DOCUMENTATION

IMPASSE PROCEDURES

1. City Council Agenda Report, Attorney Services
2. Bill Text for AB 646
3. Bill Text for AB 1606
4. Larger copy of Costs for New Activities FY 2015-16
5. Larger copy of Cost for New Activities FY 2016-17



CITY COUNCIL
AGENDA REPORT

TYPE OF ITEM: Report

AGENDA ITEM NO.: L-3

DATE: November 17, 2015

TO: City Council

THROUGH: Greg Nyhoff, City Manager
Office of the City Manager

FROM: J. Tabin Cosio, Director of Human Resources

SUBJECT: **Third Amendment to Attorney Services Agreement for Special Counsel to Represent the City of Oxnard in a Variety of Human Resources Related Matters**

CONTACT: J. Tabin Cosio, Director of Human Resources
Tabin.Cosio@ci.oxnard.ca.us, 805-385-7947

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute a Third Amendment to Attorney Services Agreement with Renne Sloan Holtzman Sakai LLP (Agreement No. 6862-14-CA) to increase the contract amount by \$549,000 for a total not to exceed amount of \$1,089,000; and
2. Authorize an appropriation in the amount of \$235,000 cost allocated as follows: \$177,444 (or 62%) from the one time Successor Agency Residual pass-through Loan Payment, which currently resides in the General Fund Reserve fund, \$13,429 (or 5%) to Water fund, \$17,859 (or 7%) to the Waste Water fund and \$26,268 to the Environmental Resources fund (or 26%).

BACKGROUND

On March 24, 2015, your Council approved a Second Amendment to the original agreement to include in the scope of services representation in labor negotiations, drafting of memoranda of understanding (“MOU”), ongoing advice regarding negotiations and the administration of MOUs and such other services relating to labor relations matters as requested by the City Attorney or Human Resources Department. Since the approval of the Second Amendment, the City has entered into full scale labor negotiations over successor MOUs with six of the seven employee organizations (“unions”) representing City employees. And, the City anticipates entering into labor negotiations with the seventh union on or around January 1, 2016.

The Myers-Milias Brown Act (“MMBA”) is the state law that governs the labor negotiations process within California local governments. Specific to the collective bargaining process, the MMBA requires the parties to “meet and confer in good faith” (GC 3505) regarding wages, hours and other terms and conditions of employment. In the definition of “good faith” bargaining, the MMBA sets as one of the criteria the requirement for the parties to “endeavor to reach an agreement” on matters within the scope of representation. If the parties are not successful in reaching an agreement, the MMBA provides for impasse procedures including mediation and fact-finding – at the request of the union (GC 3505.4).

The labor team for the City of Oxnard is fully committed and intends to reach a mutual agreement over a successor agreement with each of the unions. However, the labor team must recognize the bilateral nature of the collective bargaining process that permits mediation and fact-finding should the union request it. Accordingly, the labor team has prepared an estimate for the cost of concluding these negotiations based on the amount of time and effort needed to be expended.

1. Comprehensive, Mutually Agreed Upon Tentative Agreement:	\$200,000
2. Mediation Process	\$69,000
3. Factfinding	<u>\$280,000</u>
Grand Total	\$549,000

The above costs are the team’s best estimate for concluding the collective bargaining process for each of the seven unions. It is staff’s goal and intent to achieve a mutually agreed upon successor agreement, but should that not be the case, we are requesting funds for mediation and factfinding should the need arise. Of course, should mutual agreement be reached and mediation or factfinding not be utilized, then the cost for those activities would not be realized.

FINANCIAL IMPACT

The approved Fiscal Year 2015/2016 budget has available funds in the amount of \$314,000. Staff will cost allocate the \$235,000 in the following manner: \$177,444 (62%) from the one time Successor Agency Residual pass-through Loan Payment, which currently resides in the General Fund Reserve fund, \$13,429 (5%) to Water fund, \$17,859 (7%) to the Waste Water fund and \$26,268 (26%) to Environmental Resources fund.

ATTACHMENTS

- #1 – Third Amendment to Agreement for Attorney Services
- #2 – Special Budget Appropriation

THIRD AMENDMENT TO ATTORNEY SERVICES AGREEMENT

This Third Amendment ("Third Amendment") to the Attorney Services Agreement ("Agreement") is made and entered into in the County of Ventura, State of California, this 17th day of November 2015, by and between the City of Oxnard, a municipal corporation ("City"), and Renne Sloan Holtzman Sakai LLP ("Special Counsel"). This Third Amendment amends the Agreement entered into on July 25, 2014, by City and Special Counsel. The Agreement previously has been amended by a First Amendment on October 20, 2014 and a Second Amendment on March 24, 2015.


City and Special Counsel agree as follows:

1. In Section 10. a. (1) Compensation and Reimbursement, the figure "\$540,000" is deleted and replaced with the figure "\$1,089,000".
2. As so amended, the Agreement remains in full force and effect.

CITY OF OXNARD

SPECIAL COUNSEL


Tim Flynn, Mayor



Charles Sakai, Esq.

APPROVED AS TO FORM:

APPROVED AS TO INSURANCE:



Stephen M. Fischer, Interim City Attorney



Risk Manager



AB-646 Local public employee organizations: impasse procedures. (2011-2012)

SHARE THIS:



Assembly Bill No. 646

CHAPTER 680

An act to add Sections 3505.5 and 3505.7 to, and to repeal and add Section 3505.4 of, the Government Code, relating to local public employee organizations.

[Approved by Governor October 09, 2011. Filed with Secretary of State
October 09, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 646, Atkins. Local public employee organizations: impasse procedures.

The Meyers-Millias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations. Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer.

This bill would authorize the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel. The bill would require that the factfinding panel consist of one member selected by each party as well as a chairperson selected by the board or by agreement of the parties. The factfinding panel would be authorized to make investigations and hold hearings, and to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The bill would require all political subdivisions of the state to comply with the panel's requests for information.

This bill would require, if the dispute is not settled within 30 days, the factfinding panel to make findings of fact and recommend terms of settlement, for advisory purposes only. The bill would require that these findings and recommendations be first issued to the parties, but would require the public agency to make them publicly available within 10 days after their receipt. The bill would provide for the distribution of costs associated with the factfinding panel, as specified.

This bill would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3505.4 of the Government Code is repealed.

SEC. 2. Section 3505.4 is added to the Government Code, to read:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

SEC. 3. Section 3505.5 is added to the Government Code, to read:

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

SEC. 4. Section 3505.7 is added to the Government Code, to read:

3505.7. After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.



AB-1606 Local public employee organizations: impasse procedures. (2011-2012)

SHARE THIS:  

Assembly Bill No. 1606

CHAPTER 314

An act to amend Section 3505.4 of the Government Code, relating to public employment.

[Approved by Governor September 14, 2012. Filed with Secretary of State September 14, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1606, Perea. Local public employee organizations: impasse procedures.

The Meyers-Milias-Brown Act contains various provisions that govern collective bargaining of local represented employees, and delegates jurisdiction to the Public Employment Relations Board to resolve disputes and enforce the statutory duties and rights of local public agency employers and employees. The act requires the governing body of a public agency to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations.

Under the act, if the representatives of the public agency and the employee organization fail to reach an agreement, they may mutually agree on the appointment of a mediator and equally share the cost. If the parties reach an impasse, the act provides that a public agency may unilaterally implement its last, best, and final offer. Existing law further authorizes the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the parties' differences be submitted to a factfinding panel.

This bill would instead authorize the employee organization to request that the parties' differences be submitted to a factfinding panel not sooner than 30 days or more than 45 days following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. The bill would also authorize an employee organization, if the dispute was not submitted to mediation, to request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. The bill would specify that the procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived. The bill would also specify that its provisions are intended to be technical and clarifying of existing law.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 3505.4 of the Government Code is amended to read:

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences

be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

SEC. 2. The Legislature finds and declares that the amendments to Section 3505.4 of the Government Code made by this act are intended to be technical and clarifying of existing law.

FY 2015-2016

Resource	Unit Cost per Hour	Activities																			Units (hours) / TOTAL
		646-2 (OCT)	1606 - 1 (OCT)	646-1 (OCT)	1606 - 2 (OCT)	646-1	1606-1	1606-3	646-2	646-3	646-4	1606-2	646-5	646-6	646-7	1606-4	1606-5	1606-6	646-9	646-10	
Policy/Training																					
HR Director	\$85.79	23	23	2	2																50
City Attorney	\$98.56	14	14	2	2																32
Police Impasse Case																					
HR Director	\$85.79					1	1	1		1	2	4	4	8	4	12	14	2	2		56
City Attorney	\$98.56					1	1	1		1		4	4	2	4	8	10	2	2		40
Sr. HR Coord.	\$33.02								0.5	0.5	1	4	4	2	4	10	14				40
Cont. Legal	\$250	44	44								96	96	260	148	48	260	46				
Fire Impasse Case																					
HR Director	\$85.79					0.5		1.5	1	1	2	2	2	12	4	8	12	1	1		48
City Attorney	\$98.56					0.5		1.5	0.5	0.5	1	1	1	2	4	4	6	1	1		24
Sr. HR Coord.	\$33.02											6	12		8	10					36
Cont. Legal	\$250															42					
Labor \$ by Activity		\$3,353	\$3,353	\$369	\$369	\$277	\$184	\$461	\$152	\$336	\$0	\$475	\$1,338	\$1,536	\$2,176	\$1,871	\$3,559	\$4,270	\$553	\$553	\$25,182.94
Overhead		\$682	\$682	\$75	\$75	\$56	\$37	\$94	\$31	\$68	\$0	\$97	\$272	\$312	\$442	\$380	\$724	\$868	\$112	\$112	\$5,119.69
Contract Legal		\$11,000	\$11,000								\$24,000	\$24,000	\$65,000	\$37,000	\$12,000	\$65,000	\$22,000	\$18,000	\$4,000	\$4,000	\$297,000.00
TOTAL		\$15,035	\$15,035	\$444	\$444	\$333	\$222	\$555	\$182	\$404	\$24,000	\$24,571	\$66,610	\$38,848	\$14,618	\$67,251	\$26,282	\$23,138	\$4,665	\$4,665	\$327,302.63

FY 2016-2017

Resource	Unit Cost per Hour	Activities																		Units (hours) / TOTAL	
		646-2 (OCT)	1606-1 (OCT)	646-1 (OCT)	1606-2 (OCT)	646-1	1606-1	1606-3	646-2	646-3	646-4	1606-2	646-5	646-6	646-7	1606-4	1606-5	1606-6	646-9		646-10
Policy/Training																					
HR Director	\$79.26	23	23	2	2																50
City Attorney	\$100.53	14	14	2	2																32
Police Impasse Case																					
HR Director	\$79.26					1	1	1		1		2	4	4	8	4	12	14	2	2	56
City Attorney	\$100.53					1	1	1		1			4	4	2	4	8	10	2	2	40
Sr. HR Coord.	\$35.36								0.5	0.5		1	4	4	2	4	10	14			40
Cont. Legal	\$250.00																36				
Fire Impasse Case																					
HR Director	\$79.26					0.5		1.5	1	1		2	2	2	12	4	8	12	1	1	48
City Attorney	\$100.53					0.5		1.5	0.5	0.5		1	1	1	2	4	4	6	1	1	24
Sr. HR Coord.	\$35.36												6	12		8	10				36
Cont. Legal	\$250.00																32				
Labor \$ by Activity		\$3,230	\$3,230	\$360	\$360	\$270	\$180	\$449	\$147	\$327	\$0	\$453	\$1,332	\$1,544	\$2,058	\$1,863	\$3,499	\$4,164	\$539	\$539	\$24,544.28
Overhead		\$657	\$657	\$73	\$73	\$55	\$37	\$91	\$30	\$66	\$0	\$92	\$271	\$314	\$418	\$379	\$711	\$847	\$110	\$110	\$4,989.66
Contract Legal		\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$17,000	\$0	\$0	\$0	\$17,000.00
TOTAL		\$3,887	\$3,887	\$433	\$433	\$325	\$216	\$541	\$177	\$393	\$0	\$545	\$1,603	\$1,858	\$2,476	\$2,241	\$21,210	\$5,011	\$649	\$649	\$46,533.94

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 18, 2017, I served the:

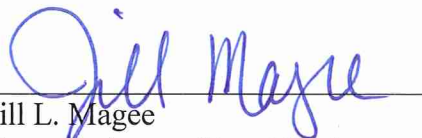
- **Notice of Complete Test Claim Filing, Tentative Hearing Date, and Schedule for Comments issued September 18, 2017**
- **Test Claim filed by City of Oxnard on May 12, 2017**

Impasse Procedures, 16-TC-04

Government Code Sections 3505.4, 3505.5, and 3505.7; as added or amended by Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 18, 2017 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/18/17

Claim Number: 16-TC-04

Matter: Impasse Procedures

Claimant: City of Oxnard

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Cindy Black, *City Clerk, City of St. Helena*

1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742

cityclerk@cityofsthelena.org

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916)595-2646

Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@munil.com

Anita Dagan, Manager, Local Reimbursement Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-4112
Adagan@sco.ca.gov

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Patrick Dyer, Director, *MGT Consulting*
Claimant Representative
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-3411
pdyer@mgtconsulting.com

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Justyn Howard, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anne Kato, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
akato@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompany@um.att.com

Hortensia Mato, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Andy Nichols, *Nichols Consulting*

1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Steven Pavlov, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Steven.Pavlov@dof.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Nick Romo, Policy Analyst, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8254
nromo@cacities.org

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 327-6490
carla.shelton@csm.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Derk Symons, Staff Finance Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Derk.Symons@dof.ca.gov

James Throop, Chief Financial Officer, *City of Oxnard*
300 West Third Street, Oxnard, CA 93030
Phone: (805) 385-7475
Jim.Throop@oxnard.org

Jolene Tollenaar, *MGT of America*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913

jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660

Phone: (949) 644-3127

etseng@newportbeachca.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*

3609 Bradshaw Road, H-382, Sacramento, CA 95927

Phone: (916) 797-4883

dwa-renee@surewest.net

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8249

jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8281

pwhitnell@cacities.org

Hasmik Yaghobyan, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov



May 30, 2018

Mr. Patrick J. Dyer
MGT Consulting
2251 Harvard Street, Suite 134
Sacramento, CA 95815

Mr. Justyn Howard
Department of Finance
915 L Street
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Decision**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4, 3505.5, and 3505.7; as added or amended by
Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

Dear Mr. Dyer and Mr. Howard:

On May 25, 2018, the Commission on State Mandates adopted the Decision partially approving the Test Claim on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:
Government Code Sections 3505.4,
3505.5, and 3505.7;
Statutes 2011, Chapter 680 (AB 646)
And
Statutes 2012, Chapter 314 (AB 1606)
Filed on May 12, 2017
City of Oxnard, Claimant

Case No.: 16-TC-04
*Local Agency Employee Organizations:
Impasse Procedures II*
DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.
(Adopted May 25, 2018)
(Served May 30, 2018)

DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 25, 2018. Patrick Dyer appeared on behalf of the City of Oxnard. Chris Hill appeared on behalf of the Department of Finance (Finance). Andy Nichols, of Nichols Consulting, appeared as an interested person.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Proposed Decision to partially approve the Test Claim by a vote of 4-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Ken Alex, Director of the Office of Planning and Research	Yes
Richard Chivaro, Representative of the State Controller	Absent
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	Yes
Sarah Olsen, Public Member	Absent
Carmen Ramirez, City Council Member	Absent
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	Yes

Summary of the Findings

This Test Claim alleges reimbursable state-mandated activities arising from amendments to the Meyers-Milias-Brown Act (MMBA) by Statutes 2011, chapter 680 (AB 646) and Statutes 2012, chapter 314 (AB 1606).¹ The Test Claim statutes added a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations.

The Test Claim is timely filed pursuant to Government Code section 17551 and section 1183.1 of the Commission's regulations. A test claim must be filed not later than 12 months after the effective date of the statute or executive order, or within 12 months of the date costs are first incurred. At the time of filing, Commission regulations defined "within 12 months" for purposes of filing based on the date costs are first incurred to mean by the end of the fiscal year (June 30) following the fiscal year in which costs were first incurred. This Test Claim was filed May 12, 2017, based on costs first incurred May 12, 2016, and is therefore timely.

The Commission, however, does not have jurisdiction to reconsider its prior decision denying Statutes 2011, chapter 680 (*Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01). Therefore the Commission's jurisdiction in this Test Claim is limited to Statutes 2012, chapter 314, which amended Government Code section 3505.4.

Government Code section 3505.4, as amended by the 2012 test claim statute, authorizes an employee organization to request factfinding whether or not the parties previously engaged in voluntary mediation. The Commission finds that section 3505.4, as amended by the 2012 test claim statute, imposes state-mandated activities and costs when the employee organization requests factfinding. The mandated activities are new, with respect to prior law, because Statutes 2012, chapter 314 is clarifying of existing law and relates back to the January 1, 2012 operative date of the existing regulations. In addition, the statute is uniquely imposed on local government and provides a service to the public and, therefore, constitutes a new program or higher level of service. Finally, claimant has experienced increased costs mandated by the state within the meaning of Government Code section 17514 and no exceptions in Government Code section 17556 apply to deny this Test Claim.

Accordingly, the Commission partially approves this Test Claim, with a reimbursement period beginning July 1, 2015, for local agencies defined in Government Code section 17518 that are eligible to claim reimbursement under article XIII B, section 6 of the California Constitution (other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e)), for the following reimbursable state-mandated activities and costs:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay

¹ The claimant did not plead the Public Employment Relations Board's regulations implementing Statutes 2011, chapter 680, which were effective January 1, 2012.

half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)

- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

All other activities and costs alleged in the Test Claim are denied.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 10/09/2011 | Statutes 2011, chapter 680 was enacted. |
| 01/01/2012 | Effective date of Statutes 2011, chapter 680. |
| 01/01/2012 | Effective date of PERB emergency regulations. ² |
| 07/30/2012 | OAL approved PERB's timely Certificate of Compliance, making the emergency regulations permanent. ³ |
| 09/14/2012 | Statutes 2012, chapter 314 was enacted. |
| 05/12/2016 | Date the claimant alleges it first incurred costs under Statutes 2011, chapter 680. ⁴ |
| 05/12/2017 | The claimant filed the Test Claim with the Commission. ⁵ |
| 10/18/2017 | Finance filed comments on the Test Claim. ⁶ |
| 11/20/2017 | The claimant filed late rebuttal comments. ⁷ |

² Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, pages 99; 106.

³ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 218.

⁴ Exhibit A, Test Claim, page 10.

⁵ Exhibit A, Test Claim, page 1. If the Test Claim is approved by the Commission, the period of reimbursement would begin July 1, 2015, pursuant to Government Code section 17557(e).

⁶ Exhibit B, Finance's Comments on Test Claim.

⁷ Exhibit C, Claimant's Late Rebuttal Comments.

03/23/2018 Commission staff issued the Draft Proposed Decision.⁸

04/13/2018 Finance filed comments on the Draft Proposed Decision.⁹

II. Background

This Test Claim addresses Statutes 2011, chapter 680, and Statutes 2012, chapter 314, which amended the Meyers-Milias-Brown Act to add a factfinding procedure after a local agency and an employee union reach an impasse in negotiations.

A. Prior Law

1. The General Provisions of the Meyers-Milias-Brown Act

The collective bargaining rights of many local agency employees are governed by the Meyers-Milias-Brown Act, which is codified at Government Code sections 3500 to 3511. Specifically, the Meyers-Milias-Brown Act (also referred to herein as the “MMBA” or the “Act”) applies to employees of California cities, counties, and certain types of special districts.¹⁰

The Meyers-Milias-Brown Act obligates each local agency to meet with the relevant “recognized employee organization” — the Act’s term for a labor union — and to meet and confer in good faith regarding wages, hours, and other terms and conditions of employment.¹¹ The relevant provision of the Act, which was added in 1971 and has not been amended since, reads:

The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law or by such governing body, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations, as defined in subdivision (b) of Section 3501, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

“Meet and confer in good faith” means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to

⁸ Exhibit D, Draft Proposed Decision.

⁹ Exhibit E, Finance’s Comments on Draft Proposed Decision.

¹⁰ The Meyers-Milias-Brown Act applies to each “public employee,” which is defined as any person employed by a “public agency.” (Government Code section 3501(d).) A “public agency” is then defined as “every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not.” (Government Code section 3501(c).)

¹¹ Government Code section 3505. See also Government Code section 3501(b) (definition of “recognized employee organization”).

endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.¹²

The courts have interpreted the duty to meet and confer on terms and conditions of employment to include all matters “directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls.”¹³ “Thus, the duty to bargain extends to matters *beyond what might typically be incorporated into a comprehensive MOU*, including, as here, the implementation and effects of a decision to lay off employees.”¹⁴ Accordingly, the scope of the MMBA is held to be very broad, and an impasse may occur on any matter that is subject to the expansive scope of collective bargaining.

Meeting and conferring is intended to result in a tentative agreement which, if adopted, is formalized into a Memorandum of Understanding (MOU).¹⁵ From 1969 to 2013, the relevant provision of the Act, which was not amended by the test claim statutes, read:

If agreement is reached by the representatives of the public agency and a recognized employee organization or recognized employee organizations, they shall jointly prepare a written memorandum of such understanding, which shall not be binding, and present it to the governing body or its statutory representative for determination.¹⁶

¹² Government Code section 3505. See also Government Code section 3501(b) (definition of “recognized employee organization”).

¹³ *San Diego Housing Commission v. Public Employment Relations Board* (2016) 246 Cal.App.4th 1, 9 [quoting *International Association of Fire Fighters, Local 188, AFL-CIO v. Public Employment Relations Board* (2011) 51 Cal.4th 259, 272].

¹⁴ *San Diego Housing Commission v. Public Employment Relations Board* (2016) 246 Cal.App.4th 1, 9.

¹⁵ Government Code section 3505.1.

¹⁶ Government Code section 3505.1. The quoted language was in effect from 1969 to 2013. After the test claim statutes were enacted, Statutes 2013, chapter 785, which was not pled and is not before the Commission, amended Government Code section 3505.1 to read:

If a tentative agreement is reached by the authorized representatives of the public agency and a recognized employee organization or recognized employee organizations, the governing body shall vote to accept or reject the tentative agreement within 30 days of the date it is first considered at a duly noticed public meeting. A decision by the governing body to reject the tentative agreement shall not bar the filing of a charge of unfair practice for failure to meet and confer in good faith. If the governing body adopts the tentative agreement, the parties shall jointly prepare a written memorandum of understanding.

2. The Impasse Provisions of the Meyers-Milias-Brown Act, Under Prior Law, Were Limited to Voluntary Mediation.

An “impasse” occurs when “despite the parties best efforts to achieve an agreement, neither party is willing to move from its respective position.”¹⁷

The Meyers-Milias-Brown Act contains several provisions regarding what happens when an impasse in negotiations is reached.

As quoted above, the provision of the Act which requires a local agency and a union to meet and confer in good faith also counsels the negotiating parties to allocate time for a potential impasse. Government Code section 3505 reads in relevant part, “The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent.”

In addition, the Meyers-Milias-Brown Act recognizes the right of the negotiating parties to engage in voluntary mediation. Government Code section 3505.2 — which has not been amended since it was enacted in 1968 — reads:

If after a reasonable period of time, representatives of the public agency and the recognized employee organization fail to reach agreement, the public agency and the recognized employee organization or recognized employee organizations together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation shall be divided one-half to the public agency and one-half to the recognized employee organization or recognized employee organizations.

The courts have concluded that mediation under the Meyers-Milias-Brown Act is voluntary. “In the event of a failure to reach agreement after good faith efforts over a reasonable time to do so, the parties may agree to place the disputed matters in the hands of a mediator, but are not required to do so.”¹⁸ “[S]ection 3505.2 does not require mediation. Instead it allows the parties to agree on mediation and a mediator.”¹⁹ “We conclude, therefore, that there is a duty to ‘meet and confer in good faith,’ but there is no duty to agree to mediation.”²⁰

While other potential impasse procedures exist in the field of labor law (such as, for example, submission of the dispute to a form of binding arbitration named “interest arbitration” or to a factfinding panel), the Meyers-Milias-Brown Act (as it existed prior to enactment of the test claim statutes) did not contain an impasse procedure other than voluntary mediation. Courts have stated: “Several California statutes applicable to different kinds of public employees contain mandatory procedures for identifying and resolving a bargaining impasse, usually requiring mediation. (Citations.) [¶] In contrast with those statutes, the applicable version of

¹⁷ *Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802, 827.

¹⁸ *Placentia Fire Fighters, Local 2147 v. City of Placentia* (1976) 57 Cal.App.3d 9, 21.

¹⁹ *Santa Clara County Correctional Peace Officers’ Ass’n v. County of Santa Clara* (2014) 224 Cal.App.4th 1016, 1034.

²⁰ *Alameda County Employees’ Ass’n v. County of Alameda* (1973) 30 Cal.App.3d 518, 534.

the MMBA did not mandate an impasse resolution procedure.”²¹ “Moreover, the Meyers-Milias-Brown Act provides for negotiation and permits the local agency and the employee organization to agree to mediation but not to fact-finding or binding arbitration.”²²

B. Statutes 2011, Chapter 680

1. The Plain Language Statutes 2011, Chapter 680

Statutes 2011, chapter 680, effective January 1, 2012, contains four provisions. In Section One, the statute repeals the pre-existing version of Government Code section 3505.4, which read:²³

If after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency’s last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.²⁴

In Section Two, the statute replaces Government Code Section 3505.4 to read:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties’ differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any

²¹ *Santa Clara County Correctional Peace Officers’ Ass’n v. County of Santa Clara* (2014) 224 Cal.App.4th 1016, 1033-1034.

²² *Bagley v. City of Manhattan Beach* (1976) 18 Cal.3d 22, 25.

²³ Statutes 2011, chapter 680, section 1.

²⁴ Statutes 2000, chapter 316, section 1.

board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.²⁵

In Section Three, the 2011 test claim statute adds to the Government Code a new Section 3505.5, which reads:

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees

²⁵ Government Code section 3505.4 (Stats. 2011, ch. 680 (AB 646)).

shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.²⁶

In Section Four, the test claim statute adds to the Government Code a new Section 3505.7, which reads:

3505.7. After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.²⁷

2. The Legislative History of Statutes 2011, Chapter 680 (AB 646)

The legislative history of AB 646 includes evidence that the author intended to insert a new factfinding procedure into the Meyers-Milias-Brown Act which would have been made mandatory by the inclusion of mandatory mediation provisions. However, the author removed the mandatory mediation provisions from the bill when it was heard by the Assembly Committee on Public Employees, Retirement, and Social Security.

The Assembly Committee on Public Employees, Retirement, and Social Security bill analysis on the AB 646 quotes the bill's author, Assembly Member Toni G. Atkins, who recognized that the Meyers-Milias-Brown Act, in its then-current form, did not mandate factfinding or any other form of impasse procedure stating: "Currently, there is no requirement that public agency

²⁶ Government Code section 3505.5 (Stats. 2011, ch. 680 (AB 646)).

²⁷ Government Code section 3505.7 (Stats. 2011, ch. 680 (AB 646)).

employers and employee organizations engage in impasse procedures where efforts to negotiate a collective bargaining agreement have failed.”²⁸

However, although Assembly Member Atkins argued in favor of the perceived benefits of *mandatory* impasse procedures stating that “[t]he creation of mandatory impasse procedures is likely to increase the effectiveness of the collective bargaining process, by enabling the parties to employ mediation and fact-finding in order to assist them in resolving differences that remain after negotiations have been unsuccessful,”²⁹ and “[f]act-finding panels can also help facilitate agreement, by making objective, factual determinations that can help the parties engage in productive discussions and reach reasonable decisions,”³⁰ opponents of AB 646 argued that “requiring mediation and factfinding prior to imposing a last, best and final offer would simply add costs and be unhelpful to both the employer and the employees.”³¹

The author agreed to a series of amendments, which the Committee memorialized as follows:

- 1) *Remove all of the provisions related to mediation*, making no changes to existing law.
- 2) *Remove the requirements that an employer and employee organization submit their differences to a fact-finding panel* and instead provides employees organizations with the *option* to participate in the fact-finding process established in Government Section 3505.4 which is added by this measure.
- 3) Clarify the existing requirement for a public employer to conduct a public impasse hearing prior to imposing its last, best, and final offer.³²

After the amendments were made, the Senate Floor Analysis stated that AB 646:

1. Allows an employee organization to request fact-finding when a mediator has been unsuccessful at effectuating a resolution to a labor dispute within 30 days of appointment. . . .
3. Requires the fact-finding panel to meet with the parties within 10 days after appointment, and take other steps it deems appropriate. . . .
5. Requires state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating

²⁸ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 646 as amended March 23, 2011, page 2.

²⁹ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 646 as amended March 23, 2011, page 2.

³⁰ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 646 as amended March 23, 2011, page 2.

³¹ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 646 as amended March 23, 2011, page 3.

³² Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 646 as amended March 23, 2011, page 3, emphasis added.

to any matter under investigation by the panel. . . .

7. Requires the fact-finding panel to make findings of fact and recommend terms of a settlement if the dispute is not settled within 30 days. . . .
8. Requires the costs of the chairperson of the fact-finding panel to be paid for by both parties whether or not PERB selected the chairperson.”³³

3. Critiques of Statutes 2011, Chapter 680

Almost immediately after enactment, Statutes 2011, Chapter 680 was criticized on the grounds that, while the author’s intent had been to make factfinding mandatory under the Meyers-Milias-Brown Act, the statute as enacted merely made factfinding voluntary, not mandatory.

AB 646, as enacted, stated that mediation was a pre-requisite to factfinding. Since mediation under the Meyers-Milias-Brown Act is voluntary, and AB 646 as enacted did not include provisions to make it mandatory, this drafting rendered factfinding voluntary as well.

Specifically, the first sentence of newly added Section 3505.4 was drafted to read, “If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties’ differences be submitted to a factfinding panel.”

Commentators and practitioners promptly criticized the language. Twelve days after the Governor signed AB 646, the employment law firm of Littler Mendelson P.C. posted the following analysis to its web site:

It is questionable whether this new law actually fulfills the bill sponsor’s apparent intent of requiring an employer to submit to factfinding before implementing its last, best and final offer in *all* cases where the union has requested factfinding. The bill sponsor’s comments regarding AB 646 reference “the creation of *mandatory* impasse procedures,” giving the impression of an intent to require these impasse procedures (e.g., factfinding and a public hearing) in all cases where a union requests them.

However, the law, as written, arguably does not achieve this goal. AB 646 specifically states that “[i]f the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request . . . factfinding . . .” Because mediation is not required under the current version of the MMBA and, importantly, AB 646 did not change the voluntariness of mediation under the statute, it appears the union may not be able to insist on factfinding in the absence of a failed attempt at settling the dispute before a mediator. If true, it is possible that an employer can avoid the costs and delays associated with factfinding by declining to participate in mediation and, thereafter, implementing its last, best and final offer. Indeed, new Government Code section 3505.7, which was added by AB 646 and permits implementation of the last, best and final offer “[a]fter any applicable mediation and factfinding procedures have been exhausted,” lends some support to this

³³ Exhibit F, Senate Rules Committee, Floor Analysis of AB 646, as amended on June 22, 2011, pages 2-3.

interpretation of the new law because it opens the door to the possibility that such procedures are permissive, but not necessarily required.³⁴

Other commentators shared the concern. “[T]he statute’s vague and inconsistent language leaves many questions unanswered as to how this new process will really work. . . . We believe the legislative history clearly shows that AB 646 does not require mediation. However, without mediation, there is no clear trigger for fact-finding.”³⁵ “Without mediation — voluntary or mandatory — there is no explicit trigger for fact-finding, and opinions as to whether fact-finding is truly mandatory are already split.”³⁶ “Can factfinding be avoided by not agreeing to mediation?”³⁷ “The question ‘Is mediation required before the union can request factfinding?’ may be the most obvious point of confusion created by the statute, but others exist.”³⁸

C. PERB Emergency Regulations, Effective January 1, 2012

1. The Plain Language of PERB Emergency Regulations

After the enactment of Statutes 2011, chapter 680 (AB 646) PERB adopted emergency regulations to address whether the factfinding process was required if the parties had not gone through mediation. As discussed above, the issue of whether factfinding was mandated by the 2011 statute was the subject of some dispute and confusion. PERB filed the emergency rulemaking package with the Office of Administrative Law (OAL) on December 19, 2011.³⁹

³⁴ Exhibit F, Edward Ellis and Jill Albrecht, “California Governor Signs New Collective Bargaining Law Requiring Factfinding Procedures for Impasse Resolution for Public Sector Employers Covered by the MMBA” dated October 21, 2011 [emphases in original], pages 2-3, <http://www.littler.com/california-governor-signs-new-collective-bargaining-law-requiring-factfinding-procedures-impasse>, accessed November 9, 2016.

³⁵ Exhibit F, Renne Sloan Holtzman Sakai LP, Navigating the Mandatory Fact-Finding Process Under AB 646 [November 2011], pages 4, 11, http://www.pccfacultyassociation.org/wp-content/uploads/2012/09/fact_finding.pdf, accessed November 9, 2016.

³⁶ Exhibit F, Emily Prescott, *Mandatory Fact-Finding Under the Meyers-Milias-Brown Act*, California Labor & Employment Law Review, Vol. 26 No. 1 [January 2012], page 2, <http://www.publiclawgroup.com/wp-content/uploads/2012/01/Mandatory-Fact-Finding-Under-Meyers-Milias-Brown-Act-by-Emily-Prescott-Cal-Labor-and-Employment-Law-Review.pdf>, accessed November 9, 2016.

³⁷ Exhibit F, Best Best & Krieger LLP, *AB 646’s Impact On Impasse Procedures Under the MMBA (Mandated Factfinding)*, dated December 2011, page 6, <http://www.bbklaw.com/88E17A/assets/files/News/MMBA-Impasse%20Procedures%20After%20AB%20646.pdf>, accessed November 9, 2016.

³⁸ Exhibit F, Stefanie Kalmin, *A.B. 646 Raises Many Questions*, U.C. Berkeley Institute for Research on Labor and Employment, page 1, <http://cper.berkeley.edu/journal/online/?p=952>, accessed November 9, 2016.

³⁹ Exhibit F, Senate Committee on Public Employment and Retirement, Analysis of AB 1606, as introduced February 7, 2012, page 2.

The emergency regulations became operative on January 1, 2012⁴⁰ — the same date that AB 646 became effective.⁴¹ The emergency regulations became permanent after PERB transmitted a Certificate of Compliance to OAL on or about June 22, 2012.⁴²

Section 32802 of the regulations makes factfinding available at the option of the employee organization's representative whether or not an impasse has been submitted to mediation. Section 32802 provides:

32802. Request for Factfinding Under the MMBA.

(a) An exclusive representative may request that the parties' differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

(1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties' agreement to mediate or a mediation process required by a public agency's local rules; or

(2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice of a declaration of impasse.

(b) A request for factfinding must be filed with the appropriate regional office; service and proof of service pursuant to Section 32140 are required.

(c) Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a)(1) or (2), above, no further action shall be taken by the Board. If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days.

(d) "Working days," for purposes of this Section and Section 32804, shall be those days when the offices of the Public Employment Relations Board are officially open for business.

(e) The determination as to whether a request is sufficient shall not be appealable

⁴⁰ See History at the bottom of Code of California Regulations, title 8, section 32802. See also Register 2011, No. 52.

⁴¹ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 106.

⁴² See History at the bottom of Code of California Regulations, title 8, section 32802. See also Register 2012, No. 31; Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 330.

to the Board itself.⁴³

Thus, section 32802(a)(1) specifies a timeline for the initiation of factfinding after mediation, and section 32802(a)(2) specifies a timeline for the initiation of factfinding when mediation has not occurred.

2. The Dispute Surrounding the PERB Emergency Regulations

On November 8 and 10, 2011 — about one month after the Governor signed AB 646 — PERB staff members met in Oakland and Glendale with members of the public, including officials of unions representing city and county employees, regarding the draft regulations.⁴⁴ PERB also held formal meetings in its Sacramento headquarters about the regulations on December 8, 2011, and April 12, 2012.⁴⁵ At these meetings, whether Statutes 2011, chapter 680 mandated factfinding in the absence of mediation was questioned. At one of the meetings, a union official “stated that at the PERB meeting he attended, the unions agreed that factfinding *should be required* even when mediation was not required by law.”⁴⁶

PERB member Dowdin Calvillo “commented on concerns expressed by some constituents with regard to staff’s recommendation that factfinding would be required in situations where mediation was not required by law.”⁴⁷ Member Calvillo “said she was not sure if the Board had authority to require factfinding in those situations given that AB 646 was silent in that regard but that she was willing to allow the language to move forward as staff proposed and allow OAL to make that determination.”⁴⁸ As noted, OAL ultimately approved the regulations.⁴⁹

According to PERB Minutes, Mr. Chisholm, the Division Chief of PERB’s Office of General

⁴³ Register 2011, No. 52. Subdivision (e) of Regulation 32802 was repealed as of October 1, 2013. (Register 2013, No. 34.)

⁴⁴ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, pages 177-181 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, pages 4-8).

⁴⁵ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, pages 178-181 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, pages 5-8); Exhibit F, Minutes, Public Employment Relations Board Meeting, April 12, 2012, pages 6-7.

⁴⁶ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 180 [emphasis added] (Minutes, Public Employment Relations Board Meeting, December 8, 2011, page 7).

⁴⁷ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 180 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, page 7).

⁴⁸ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 180 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, page 7).

⁴⁹ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 330.

Counsel, “stated that AB 646 provides, for the first time, a mandatory impasse procedure under the MMBA.”⁵⁰ Mr. Chisholm stated that AB 646 “established a mandatory factfinding procedure under the MMBA that did not exist previously.”⁵¹ “Mr. Chisholm acknowledged the comments and discussions held regarding whether factfinding may be requested where mediation has not occurred. PERB, having considered all aspects, including comments and discussions held, related statutes, and legislative history and intent, drafted a regulatory package that would provide certainty and predictability.”⁵²

During the period of time when the emergency regulations were being reviewed by OAL, the City of San Diego submitted comments arguing that section 32802(a) was inconsistent with AB 646 and also lacked clarity. “PERB’s proposed regulation 32802(a) is not consistent with A.B. 646, nor does it provide clarity to the public agencies subject to it,” the City of San Diego wrote, through its City Attorney.⁵³ “A.B. 646 does not authorize or mandate factfinding when the parties do not engage in mediation of a dispute, nor does A.B. 646 mandate mediation.”⁵⁴

In response to the City of San Diego’s letter, PERB agreed “that nothing in AB 646 changes the voluntary nature of mediation under the MMBA,” but stated that “any attempt to read and harmonize all of the statutory changes made by AB 646 must end in the conclusion that factfinding is mandatory”⁵⁵ PERB argued that its proposed emergency regulations were consistent with legislative intent and that the “majority of interested parties, both employer and labor representatives, also urged a reading of AB 646 that provides for a factfinding request whether mediation occurs or not.”⁵⁶ PERB also argued that, since the test claim statute repealed

⁵⁰ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 178 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, page 5).

⁵¹ Exhibit F, Minutes, Public Employment Relations Board Meeting, April 12, 2012, page 6.

⁵² Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 179 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, page 6).

⁵³ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 120 (Letter from Joan F. Dawson, Deputy City Attorney, to Kathleen Eddy, Office of Administrative Law, and Les Chisholm, PERB, dated December 22, 2011, page 1).

⁵⁴ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 121 (Letter from Joan F. Dawson, Deputy City Attorney, to Kathleen Eddy, Office of Administrative Law, and Les Chisholm, PERB, dated December 22, 2011, page 2).

⁵⁵ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 124 (Letter from Les Chisholm, PERB, to Peggy J. Gibson, Office of Administrative Law, dated December 28, 2011, page 1).

⁵⁶ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 125 (Letter from Les Chisholm, PERB, to Peggy J. Gibson, Office of Administrative Law, dated December 28, 2011, page 2).

the prior language regarding when an employer could implement its last, best, and final offer, the replacement language — which references factfinding — implies that factfinding must be a mandatory step in the process which leads to the ability of the employer to implement its last, best, and final offer.⁵⁷

D. Statutes 2012, Chapter 314 (AB 1606), Effective January 1, 2013.⁵⁸

1. The Plain Language of Statutes 2012, Chapter 314

Statutes 2012, chapter 314 (AB 1606), enacted on September 14, 2012, contains two sections. Section One codifies the timelines and language contained in PERB Regulation 32802(a) and provides, as did the PERB Regulation, that an employee organization may demand factfinding whether or not mediation has occurred. Government Code section 3505.4(a) is amended to read (in underline and italic):

3505.4(a) ~~If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the~~ *The* employee organization may request that the parties' differences be submitted to a factfinding panel: *not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.* Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

Section One also adds to Government Code section 3505.4 a new subdivision (e) which reads:

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

⁵⁷ “[I]t also is important to consider that AB 646 *repealed* the prior language of section 3505.4, which set forth the conditions under which an employer could implement its last, best and final offer (LBFO). In new section 3505.7, added by AB 646, the MMBA now provides that implementation of the employer’s LBFO may occur only ‘[a]fter any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders’ written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5.’ (Emphasis added.)” Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, pages 124-125 (Letter from Les Chisholm, PERB, to Peggy J. Gibson, Office of Administrative Law, dated December 28, 2011, pages 1-2).

⁵⁸ Statutes 2012, chapter 314 did not state that it was an urgency statute, and therefore its effective date is January 1 of the following calendar year. (California Constitution, article IV, section 8(c).) However, as discussed herein, Section Two of the bill states that it is intended to be clarifying of existing law, which would indicate an intent that the statute operate retrospectively. This issue is discussed further below.

Section Two makes a finding that the legislation is technical and clarifying of existing law, by stating:

SEC. 2. The Legislature finds and declares that the amendments to Section 3505.4 of the Government Code made by this act are intended to be technical and clarifying of existing law.

2. The Legislative History of Statutes 2012, Chapter 314

The analysis of the Assembly Committee on Public Employees, Retirement, and Social Security, quotes the author of AB 1606 stating, “Ambiguity in the drafting of AB 646 has called into question whether an employer can forgo all impasse procedures, including mediation and fact-finding. In fact, several government employers argue that AB 646 does not require fact-finding if the parties do not engage in mediation.”⁵⁹

According to the Assembly committee analysis, the author stated, prior to the PERB regulations being made permanent, “the issue whether AB 646 requires that mediation occur as a precondition to an employee organization’s ability to request fact-finding remains unresolved.”⁶⁰ And, according to the committee analysis, supporters of AB 1606 stated:

During the PERB rulemaking process, it became apparent that AB 646 was drafted in a manner that called into question whether mediation was a precondition to an employee organization’s ability to request factfinding. . . . AB 1606 seeks to provide a final, statutory clarification of this question, by revising the Government Code to allow factfinding in all circumstances in which a local public employer and its employees have reached an impasse in their negotiations.⁶¹

Finally, the committee analysis quotes the author stating: “AB 1606 would clarify that fact-finding is available to employee organizations in all situations, regardless of whether the employer and employee have engaged in mediation.”⁶² This interpretation is consistent with the regulations adopted by PERB.

According to the Senate Public Employment and Retirement Committee, AB 1606, “clarifies that if the dispute leading to impasse was not submitted to mediation, the employee organization may request factfinding within 30 days after the date that either party provided the other with written

⁵⁹ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, page 1.

⁶⁰ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, page 1.

⁶¹ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, pages 1-2.

⁶² Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, page 1.

notice of the declaration of impasse.”⁶³

**E. The Prior Test Claim Filed on Statutes 2011, Chapter 680 (AB 646)
(15-TC-01, adopted January 27, 2017)**

On January 27, 2017, the Commission denied the Test Claim filed by the City of Glendora on Government Code sections 3505.4, 3505.5, and 3505.7, as amended by Statutes 2011, chapter 680 (AB 646), (*Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01).⁶⁴ The record of that Test Claim indicated that the claimant pled only Statutes 2011, chapter 680 (AB 646), and the Commission took jurisdiction only as to that statute. Though claimant did not plead the PERB regulations or the later enacted 2012 statute, at the hearing on 15-TC-01 the claimant acknowledged the emergency regulations issued by PERB and the subsequent amendments made by AB 1606 (the 2012 statute), but stated “the intent and the effect of AB 646 was always clear that it was mandatory for an employer to go to fact-finding, should it be requested by the employee organization... [a]nd to say not that it’s not mandatory or that Glendora has some choice about going to fact-finding or not...it leads to an absurd result.”⁶⁵ In addition, the claimant focused entirely on the perspective that in 2015, when it experienced an impasse with one of its employee organizations, the claimant engaged in a factfinding process “not because it wanted to, but because it was required to under section 3505.4 of the Government Code.”⁶⁶ The claimant argued “that statute, 3505.4, was pled in our test claim.”⁶⁷

The Commission denied the Test Claim on the ground that Government Code section 3505.4, as amended by Statutes 2011, chapter 680, did not impose a state-mandated program. The plain language of Government Code section 3505.4 as amended by that test claim statute made factfinding, and all activities triggered by the factfinding request (as provided in sections 3505.5 and 3505.7), required *only* if an impasse is voluntarily submitted to mediation. Thus, the 2011 statute did not legally compel local agencies to engage in factfinding or any of the activities required in conjunction with the factfinding process. In addition, there was no evidence in the record that the claimant or any other local agency was, as a practical matter, compelled to engage in factfinding. Finally, the requirement to hold a public hearing before the implementation of a last, best, and final offer, as provided in Government Code section 3505.7, does not legally compel local agencies to hold a public hearing because the implementation of a last, best and final offer is a voluntary act.⁶⁸

⁶³ Exhibit F, Senate Committee on Public Employment and Retirement, Analysis of AB 1606 as introduced February, 7, 2012 [emphases omitted], page 2.

⁶⁴ Exhibit F, Test Claim Decision *Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01, adopted January 27, 2017.

⁶⁵ Exhibit F, Excerpt of Transcript of Commission Hearing, January 27, 2017, page 8.

⁶⁶ Exhibit F, Excerpt of Transcript of Commission Hearing, January 27, 2017, page 6.

⁶⁷ Exhibit F, Excerpt of Transcript of Commission Hearing, January 27, 2017, page 7 [Emphasis added. Claimant’s testimony and argument during the hearing may reflect a misunderstanding of the distinction between a code section and a “statute.”].

⁶⁸ Exhibit F, Test Claim Decision on *Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01, adopted January 27, 2017.

III. Positions of the Parties and Interested Person

A. City of Oxnard

The claimant alleges that Statutes 2011, chapter 680 (AB 646) and Statutes 2012, chapter 314 (AB 1606), read together, “authorized the employee organization, if the mediator is unable to effect settlement of the controversy within 30 days of his or her appointment, to request that the matter be submitted to a factfinding panel.”⁶⁹ In addition, “[t]hese bills would prohibit a public agency from implementing its last, best, and final offer until at least 10 days after the factfinders’ written findings of fact and recommended terms of settlement have been submitted to the parties and the agency has held a public hearing regarding the impasse.”⁷⁰ In other words, factfinding, and related activities described in the test claim statutes, are mandatory on the local government, at the option of the public employee union.

Claimant alleges specific new activities and costs under Statutes 2011, chapter 680 (AB 646) and Statutes 2012, chapter 314 (AB 1606), including:

- Selecting a member of the factfinding panel and a mutually agreeable chairperson;
- Participating in factfinding hearings, including providing documentation as requested;
- Reviewing and making publicly available the findings of the panel within 10 days of receipt;
- Paying for half the costs of the factfinding;
- Providing notice of an impasse hearing, and holding a public impasse hearing, before implementing the agency’s last, best, and final offer;
- Meet and confer with the public employee union and “submit/resubmit last, best offer.”⁷¹
- Train staff on new requirements;
- Revise local agency manuals, policies and guidelines related to new factfinding requirements;
- Update policies and procedures, as well as city codes or resolutions, to comply with AB 1606;
- Train staff on “updated employee organization impasse process/rights/rules updated by [AB] 1606.”⁷²

The claimant alleges that it first incurred costs for these activities on May 12, 2016, and during fiscal year 2015-2016, the total costs were \$327,302.63.⁷³ During fiscal year 2016-2017, alleged

⁶⁹ Exhibit A, Test Claim, page 3.

⁷⁰ Exhibit A, Test Claim, page 3.

⁷¹ Exhibit A, Test Claim, pages 8-9.

⁷² Exhibit A, Test Claim, pages 9-10.

⁷³ Exhibit A, Test Claim, page 10.

costs of \$46,533.94 were incurred.⁷⁴

Finally, claimant argues that the new activities and costs alleged are uniquely imposed on local government, and are intended to carry out a state policy of requiring uniform impasse procedures for local governments when negotiating with their employee unions.⁷⁵

The claimant did not file comments on the Draft Proposed Decision.

B. Department of Finance

Finance argues that the Test Claim does not allege a new program or higher level of service, because “[w]hen a local agency participates in a fact-finding panel with a public employee organization to resolve disputes concerning employment conditions, the local agency is not providing a service to the public.”⁷⁶ In addition, Finance argues that the test claim statutes do not create a new program, but instead “add a new fact-finding element to the existing collective bargaining program.”⁷⁷

Finance further argues that the one-time costs for training and revising local agency manuals and policies to comply with the test claim statutes are not required by the plain language of the test claim statutes. Finance refers to the Commission’s Decision in a prior test claim *Binding Arbitration*, 01-TC-07, in which the Commission found that training agency staff and management was not required.⁷⁸

In comments on the Draft Proposed Decision, Finance agreed that the Commission’s jurisdiction in this Test Claim is limited to AB 1606, but disagreed with the recommendation that the Commission partially approve the Test Claim. Finance maintains that the activities identified do not constitute a new program or higher level of service as follows:

In *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, the court stated that “(a) higher cost to the local government for compensating its employees is not the same as a higher cost of providing services *to the public* (emphasis added).” Thus, to be state-reimbursable, there must be a higher level of service provided to the public.

The activities that Commission staff conclude are reimbursable mandated activities do not constitute a new program or higher level of service. When a local agency participates in a fact-finding panel with a public employee organization to resolve disputes concerning employment conditions, the local agency is not providing a service to the public. The local agency’s participation may have the salutary effect of promoting employer-employee relations and thus ensuring government services are delivered in a fair, cost-effective manner. However, the act of participating in the fact-finding panel does not, in itself, represent the

⁷⁴ Exhibit A, Test Claim, page 11.

⁷⁵ Exhibit A, Test Claim, pages 12-13.

⁷⁶ Exhibit B, Finance’s Comments on the Test Claim, page 2.

⁷⁷ Exhibit B, Finance’s Comments on the Test Claim, page 2.

⁷⁸ Exhibit B, Finance’s Comments on the Test Claim, page 2.

provision of a service to the public. Consequently, none of the City’s alleged costs qualify for reimbursement.

Furthermore, the statutes merely add a new fact-finding element to the existing collective bargaining program. Because the activities do not represent a new program that provides a higher level of service to the public, none of the activities identified as qualifying for reimbursement are, in fact, state-reimbursable.⁷⁹

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”⁸⁰ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁸¹

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁸²
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁸³

⁷⁹ Exhibit E, Finance’s Comments on the Draft Proposed Decision, page 2.

⁸⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁸¹ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46, 56.

⁸² *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

⁸³ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁸⁴
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁸⁵

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁸⁶ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁸⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁸⁸

A. This Test Claim is Timely Filed Pursuant to Government Code Section 17551 and California Code of Regulations, Title 2, Section 1183.1.

Government Code section 17551(c) provides that test claims “shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”⁸⁹ The Commission’s regulations effective at the time this claim was filed provided that “[f]or purposes of claiming based on the date of first incurring costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”⁹⁰

This Test Claim was filed on May 12, 2017, more than five years after the effective date of the earlier of the two test claim statutes.⁹¹ However, the claimant alleges costs were first incurred on May 12, 2016.⁹² Therefore, the fiscal year in which costs were first incurred, for purposes of the

⁸⁴ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

⁸⁵ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

⁸⁶ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁸⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁸⁸ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

⁸⁹ Government Code section 17551(c) (Stats. 2007, ch. 329).

⁹⁰ California Code of Regulations, title 2, section 1183.1(c) (Register 2016, No. 38).

⁹¹ Exhibit A, Test Claim, page 1.

⁹² Exhibit A, Test Claim, page 10.

Commission’s regulations, is fiscal year 2015-2016, and the claimant had until June 30 of fiscal year 2016-2017 to file its claim. A May 12, 2017 filing is therefore timely. Based on the filing date of this test claim, the potential reimbursement period begins July 1, 2015,

B. The Commission Does Not Have Jurisdiction to Reconsider Its Prior Final, Binding Decision on Statutes 2011, Chapter 680; the Commission’s Jurisdiction Is Limited to Statutes 2012, Chapter 314, Which Amended Government Code Section 3505.4.

This Test Claim pleads Statutes 2011, chapter 680 (AB 646) and Statutes 2012, chapter 314 (AB 1606).⁹³

The Commission, however, does not have jurisdiction to re-hear and decide Statutes 2011, chapter 680. As indicated in the Background, the City of Glendora filed a Test Claim on that statute on June 2, 2016, which the Commission denied on the grounds that Statutes 2011, chapter 680 did not impose any state-mandated activities. (*Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01, adopted January 27, 2017.) Successive test claims on the same statute are not permitted under the Government Code. Government Code section 17521 defines a “test claim” as “the *first claim filed with the commission alleging that a particular statute or executive order imposes costs mandated by the state...*”⁹⁴ Accordingly, the Commission may only accept and decide, under the Government Code, the first claim filed alleging state-mandated costs from a particular statute or executive order. Moreover, the Commission’s decision in *Local Agency Employee Organizations: Impasse Procedures* (15-TC-01) is a final, binding decision that cannot be reconsidered by the Commission.⁹⁵

Based on the foregoing, the Commission’s jurisdiction with respect to this Test Claim is limited to Statutes 2012, chapter 314 (AB 1606), which amended Government Code section 3505.4.

C. Government Code Section 3505.4, as Amended by Statutes 2012, Chapter 314 (AB 1606), Imposes a Reimbursable State-Mandated Program Within the Meaning of Article XIII B, Section 6 of the California Constitution.

As described below, the Commission finds that Government Code section 3505.4, as amended by the 2012 test claim statute, imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

1. Government Code Section 3505.4, as amended by the 2012 test claim statute, mandates local agencies to perform activities related to the factfinding process when the employee organization requests factfinding to resolve an impasse.

As determined by the Commission in *Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01, the plain language of section 3505.4, prior to the 2012 test claim statute, made factfinding contingent on first voluntarily submitting a dispute to mediation. Only if mediation did not result in a settlement, then the factfinding process, when requested by the

⁹³ Exhibit A, Test Claim, pages 1, 8-10, 18, 24-28.

⁹⁴ Government Code section 17521 (Stats. 2007, ch. 329) (Emphasis added.).

⁹⁵ Government Code section 17559; *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

employee organization, was required to resolve the impasse. Thus, all activities triggered by the voluntary decision to engage in mediation, including factfinding, were not mandated by the state, but were instead triggered by the local agency's discretionary decision to mediate.

The plain language of section 3505.4, as amended by Statutes 2012, chapter 314, now requires local agency employers to submit to factfinding when requested by the employee organization whether or not the dispute has been first submitted to voluntary mediation; either 30 to 45 days after the appointment or selection of a mediator, or if the dispute is not submitted to mediation, 30 days after the impasse in negotiations is noticed by either party:

~~3505.4(a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the~~ *The* employee organization may request that the parties' differences be submitted to a factfinding panel: *not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.* Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.⁹⁶

Accordingly, the plain language of section 3505.4(a), as amended by the test claim statute, now allows the employee organization to unilaterally request factfinding, whether or not the dispute was submitted to voluntary mediation. The Commission finds that a local agency's participation in the factfinding process, when requested by the employee organization, is required and mandated by the state. Government Code section 3506.5 provides that a public agency shall not "[r]efuse to participate in good faith in an applicable impasse procedure."⁹⁷ And the plain language of section 3505.4(a) requires the public agency to select a person to serve on the factfinding panel within five days after receipt of the employee organization's request. Thus, public agencies have no choice but to participate in the factfinding process. However, Government Code section 3505.5(e) expressly exempts charter cities, charter counties, and a charter city and county from the factfinding process *if their charter outlines impasse procedures that include, at a minimum, a process for binding arbitration.*⁹⁸

⁹⁶ Government Code section 3505.4 (as amended by Stats. 2012, ch. 314 (AB 1606)).

⁹⁷ Government Code section 3506.5 (Stats. 2011, ch. 271 (AB 195)).

⁹⁸ Government Code section 3505.5(e) states the following: "A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies."

Thus, except for the charter agencies described in section 3505.5(e), local agencies are mandated by the state to participate in the factfinding process.⁹⁹

Further analysis is required, however, to determine what factfinding activities are mandated by the state. Under the rules of statutory construction, the plain language of the test claim statute must be construed in the context of the statute as a whole and the overall statutory scheme, and the courts give “significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.”¹⁰⁰

As indicated above, section 3505.4(a) states that

Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.¹⁰¹

Accordingly, the local agency employer must select a person to serve on the factfinding panel, and PERB will select a chairperson.¹⁰² Section 3505.4(b) provides that within five days after PERB selects a chairperson, the parties may mutually agree on an alternate chairperson.¹⁰³ There is no express provision governing one party’s unilateral disapproval of the chairperson selected by PERB, as implied by the claimant; the section only provides that the parties may mutually agree on an alternate chairperson.¹⁰⁴ Section 3505.5 then addresses the costs of factfinding and provides that the costs of the chairperson, whether selected by PERB¹⁰⁵ or agreed to by the parties,¹⁰⁶ including per diem fees and travel expenses, as well as any other “mutually

⁹⁹ See also, *San Diego Housing Commission v. Public Employment Relations Board* (2016) 256 Cal.App.4th 1, 9, addressed the factfinding process and stated that “if a public agency and a union reach an impasse in their negotiations, the union may now require the public agency to participate in one type of impasse procedure – submission of the parties’ differences to a factfinding panel for advisory findings and recommendations – before the public agency may unilaterally impose its last, best, and final offer.”

¹⁰⁰ *People v. Canty* (2004) 32 Cal.4th 1266, 1277.

¹⁰¹ Government Code section 3505.4(a) (Stats. 2011, ch. 680 (AB 646)).

¹⁰² The PERB regulations state that “the Board shall request that each party provide notification of the name and contact information of its panel member within *five working days*.”

¹⁰³ Government Code section 3505.4(b) (Stats. 2011, ch. 680 (AB 646)).

¹⁰⁴ The claimant alleges a requirement that the agency must select a different chairperson if the PERB-selected chair is “not approved by other party.” (Exhibit A, Test Claim, page 9.)

¹⁰⁵ Government Code section 3505.5(b) (Stats. 2011, ch. 680 (AB 646)).

¹⁰⁶ Government Code section 3505.5(c) (Stats. 2011, ch. 680 (AB 646)).

incurred costs,”¹⁰⁷ shall be shared equally by the parties, but the costs of the panel member selected by each party shall be borne by that party only.¹⁰⁸

Therefore, reading the sections together, the test claim statute requires the local agency employer, upon receiving a written request for factfinding, to select its panel member, whose costs it will bear; and to pay half the costs of the chairperson, including per diem fees, if any, whether the chairperson is selected by PERB or mutually agreed upon by the parties; and half of any other “mutually incurred costs.”¹⁰⁹

Section 3505.4(c) then provides that the factfinding panel shall meet with the parties or their representatives within 10 days, and shall make inquiries and hold investigations, and shall have subpoena power.¹¹⁰ Although this requirement is directed to the factfinding panel itself, local agencies are also required to meet with the factfinding panel, pursuant to their responsibility under section 3505 to meet and confer in good faith “regarding wages, hours, and other terms and conditions of employment...”¹¹¹ Accordingly, the Commission finds that meeting with the factfinding panel within 10 days is a requirement of section 3505.4(c).

Section 3505.4(c) further provides that “[a]ny state agency, as defined in Section 11000, the California State University, or *any political subdivision of the state*, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.”¹¹² This provision imposes a requirement to “furnish the panel” certain documentation and information, but it is not clear what entities are meant to be subject to this requirement. Counties are generally held to be “political subdivisions” of the state,¹¹³ but cities and special districts are not always viewed the same.¹¹⁴ Courts have at times considered both cities and counties to be

¹⁰⁷ Government Code section 3505.5(d) (Stats. 2011, ch. 680 (AB 646)).

¹⁰⁸ Government Code section 3505.5(b-d) (Stats. 2011, ch. 680 (AB 646)).

¹⁰⁹ Government Code section 3505.4(a-b); 3505.5(b-d).

¹¹⁰ Government Code section 3505.4 (Stats. 2012, ch. 314 (AB 1606)).

¹¹¹ Government Code section 3505 (Stats. 1971, ch 1676). See also, *San Diego Housing Commission v. Public Employment Relations Board* (2016) 246 Cal.App.4th 1, 9 [Duty to bargain extends to matters beyond what might typically be incorporated into a comprehensive MOU, including, implementation and effects of a decision to lay off employees.].

¹¹² Government Code section 3505.4 (Stats. 2012, ch. 314 (AB 1606)).

¹¹³ California Constitution, article XI, section 1 [“The State is divided into counties which are legal subdivisions of the State.”]; *Dineen v. City and County of San Francisco* (1940) 38 Cal.App.2d 486.

¹¹⁴ *Griffin v. Colusa County* (1941) 44 Cal.App.2d 915, 920 [“Counties are state agencies which exercise within their boundaries the sovereignty of the state, and in the absence of a specific statute imposing liability upon them they are no more liable than the state itself. Cities, however, are municipal corporations and not state agencies.”]

“political subdivisions of the state” with respect to the operation of specific statutes, when the Legislative intent is apparent.¹¹⁵

Here, the Assembly Floor Analysis of AB 646 (which added section 3505.4(c)) stated that the bill would require “state and local public agencies, if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.”¹¹⁶ This is consistent with the broad coverage of the MMBA as a whole: section 3501 defines a “public agency” subject to the Act to include “every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not.”¹¹⁷ Therefore, despite the lack of clarity in the statutory language, it appears that the legislative intent was that all state and local agencies would “if requested by the panel, to furnish the panel with all records, papers and information in their possession relating to any matter under investigation by the panel.” Moreover, as stated, all local agencies subject to the act are required to meet and confer in good faith.¹¹⁸ It would be incongruous, and potentially leading to absurd results, to interpret the requirements of section 3505.4(c) to apply to counties, but not cities and special districts. That would mean that counties would be required to furnish documents and information upon request, while cities and other local agencies could withhold information absent the exercise of the panel’s subpoena power. Reading the MMBA as a whole, and in light of the legislative history, the more sensible interpretation is that all local agencies subject to the Act and to factfinding in the event of an impasse are subject to the requirement of section 3505.4(c) to provide documentation and information within their control “upon request.” Accordingly, the Commission finds that all local agencies, other than charter cities and charter counties exempt from factfinding under section 3505.5(e), must furnish the panel, upon request, with all documents and information in their possession relating to any matter under investigation by the panel.

Section 3505.4(d) outlines some of the criteria that the panel is to consider, including:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and

¹¹⁵ See, e.g., *State ex rel. Harris v. PricewaterhouseCoopers, LLP* (2006) 39 Cal.4th 1220 [noting definition of “political subdivision” in Government Code section 12560 permits a city attorney, on behalf of the city, to bring suit under the California False Claims Act].

¹¹⁶ Exhibit F, Assembly Floor Analysis of AB 646, as amended June 22, 2011, page 1.

¹¹⁷ Government Code section 3501 (Stats. 2003, ch. 215).

¹¹⁸ Government Code section 3505 (Stats. 1971, ch. 1676).

conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.¹¹⁹

These criteria are not, themselves, required activities, but help to illuminate the kinds of documents, records, or other evidence that would be requested by the panel, for purposes of the activity to “furnish, upon request.”¹²⁰

The claimant asserts that an agency must respond “to inquiries by all parties,”¹²¹ but the plain language of section 3505.4(c) only requires claimant to “furnish the *panel*, upon its request,” records and information relating to the panel’s investigation. Moreover, the general requirement to participate in good faith is not sufficient in itself to impose a plain language requirement to “respond to inquiries by all parties...” Thus, section 3505.4(d) provides for the scope of the panel’s inquiry (though non-inclusive, pursuant to paragraph (8), above), but nothing in section 3505.4(c) or (d) requires the agency to respond to inquiries from “all parties.”

Section 3505.5(a) provides that if the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the factfinding panel shall make written advisory findings of fact and recommend terms of settlement, which the agency shall make publicly available within ten days.¹²²

Accordingly, Government Code section 3505.4, as amended by the 2012 test claim statute, results in the following state-mandated activities for local agencies eligible to claim reimbursement under article XIII B, section 6 (other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e)):

- Within five (5) days after receipt of the written request from the employee organization to submit the parties’ differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay

¹¹⁹ Government Code section 3505.4(d)(1-8) (Stats. 2012, ch. 314).

¹²⁰ Government Code section 3505.4(d) [“In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria...”].

¹²¹ Exhibit A, Test Claim, page 9.

¹²² Government Code section 3505.5(a) (Stats. 2011, ch. 680 (AB 646)).

half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)

- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

In addition to these activities, the claimant is seeking reimbursement to meet with the union and hold a public impasse hearing, after the factfinding process, *if it chooses* to impose its last, best offer.”¹²³ Government Code section 3505.7, as amended by Statutes 2011, chapter 646, provides that “a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer.” As indicated above, the Commission fully addressed this statute in *Local Agency Employee Organizations: Impasse Procedures*, 15-TC-01, and denied the activity on the ground that imposing the last, best, and final offer is a voluntary decision of the local agency and is not mandated by the state. That Decision is a final, binding Decision and cannot be reconsidered by the Commission.¹²⁴ Thus, reimbursement is not required for these requested activities.

Furthermore, the claimant alleges that it is required under the test claim statute to “[p]roceed procedural right of an employee organization to request a factfinding panel...”¹²⁵ Government Code section 3505.4(e) provides that the “procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.”¹²⁶ But this provision is phrased in prohibitive, rather than mandatory language; there is nothing in the plain language that requires the local agency employer to take any affirmative action to safeguard the “procedural right” of an employee organization to request a factfinding panel. Nor is there anything in the plain language that requires the local agency employer to “ensure” that those rights are not waived. Section 3505.4(e) does not impose an activity on the local agency employer. Thus, reimbursement is not required for this requested activity.

Finally, the claimant requests reimbursement for the one-time costs for training and updating policies and procedures.¹²⁷ These activities are not mandated by the plain language of the test claim statute. However, such activities may be proposed for inclusion in parameters and

¹²³ Exhibit A, Test Claim, pages 8-9.

¹²⁴ Government Code section 17559; *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

¹²⁵ Exhibit A, Test Claim, page 9.

¹²⁶ Government Code section 3505.4 (Stats. 2012, ch. 314 (AB 1606)).

¹²⁷ Exhibit A, Test Claim, page 10.

guidelines, and may be approved by the Commission if they are supported by evidence in the record as reasonably necessary activities.¹²⁸

2. The mandated activities constitute a new program or higher level of service.

A mandated activity must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order, and provide a service to the public, in order to be eligible for reimbursement under article XIII B, section 6.¹²⁹ Here, PERB promulgated emergency regulations prior to the enactment of Statutes 2012, chapter 314, which Statutes 2012, chapter 314 substantially restated and recodified. Accordingly, the mandatory provisions of Statutes 2012, chapter 314 do not appear, facially, to require anything new. However, the statute also provides that it is intended to be clarifying of existing law, and thus it relates back to the operative date of the regulations, if that provision is given full effect. As described below, the Commission finds that the mandated activities are new, with respect to prior law, and constitute a new program or higher level of service.

- a) The mandated activities are new, with respect to prior law, because Statutes 2012, chapter 314 is clarifying of existing law and relates back to January 1, 2012, the operative date of the regulations.

Ordinarily, “a statute enacted at a regular session shall go into effect on January 1 next following a 90-day period from the date of enactment of the statute and a statute enacted at a special session shall go into effect on the 91st day after adjournment of the special session at which the bill was passed.”¹³⁰ Accordingly, under this general rule, Statutes 2012, chapter 314, enacted September 14, 2012, would become operative and effective January 1, 2013. Since the PERB regulations became effective a year prior, on January 1, 2012, and required factfinding whether or not the parties went through mediation to resolve their disputes, the factfinding provisions of Statutes 2012, chapter 314, which includes the same language, would not impose any new requirements. Statutes 2012, chapter 314 largely restates and follows the PERB regulations both in the timeframes articulated and in the essential structure of the mandatory requirements. Section 32802 of the PERB regulations states:

(a) An exclusive representative may request that the parties’ differences be submitted to a factfinding panel. The request shall be accompanied by a statement that the parties have been unable to effect a settlement. Such a request may be filed:

- (1) Not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant either to the parties’ agreement to mediate or a mediation process required by a public agency’s local rules; or
- (2) If the dispute was not submitted to mediation, not later than 30 days following the date that either party provided the other with written notice

¹²⁸ California Code of Regulations, title 2, sections 1183.7(d), 1187.5.

¹²⁹ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹³⁰ California Constitution, article IV, section 8(c).

of a declaration of impasse.

- (b) A request for factfinding must be filed with the appropriate regional office; service and proof of service pursuant to Section 32140 are required.
- (c) Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a)(1) or (2), above, no further action shall be taken by the Board. If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days.
- (d) “Working days,” for purposes of this Section and Section 32804, shall be those days when the offices of the Public Employment Relations Board are officially open for business.
- (e) The determination as to whether a request is sufficient shall not be appealable to the Board itself.¹³¹

Section 3505.4 as amended by the 2012 test claim statute provides:

3505.4(a) ~~If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the~~ *The* employee organization may request that the parties’ differences be submitted to a factfinding panel: *not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties’ agreement to mediate or a mediation process required by a public agency’s local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties’ differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse.* Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

[¶...¶]

- (e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.¹³²

Thus, section 3505.4, as amended by Statutes 2012, chapter 314 substantially restates and codifies the regulation in question, and does not, on its face, impose any new or additional requirements. If Statutes 2012, chapter 314 is operative on January 1, 2013, in accordance with the general rule, the Commission would be compelled to find that the PERB regulations, effective January 1, 2012, impose the mandate, and the test claim statute does not impose

¹³¹ Register 2011, No. 52. Subdivision (e) of Regulation 32802 was repealed as of October 1, 2013. (Register 2013, No. 34.)

¹³² Statutes 2012, chapter 314 (AB 1606).

anything new, with respect to prior law. And, since the regulations have not been pled, this Test Claim would then be denied.

However, in uncodified section 2, Statutes 2012, chapter 314 (AB 1606) also expressly states that the amendments to section 3505.4 are intended to be *technical* and *clarifying* of existing law.¹³³ If taken at face value, that provision could mean the amendments relate back to the operative date of the *prior law* regarding factfinding (here, the regulations).

The meaning and effect of a statute must be analyzed using the canons of construction. Foremost among them is to ascertain the intent of the Legislature.¹³⁴ All other rules of statutory construction “are subject to the controlling principle that the object and purpose of all interpretation is to arrive at the intent of the legislature.”¹³⁵ In ascertaining intent, “[w]e look first to the words of the statute because they are the most reliable indicator of legislative intent.”¹³⁶ If the plain language of the statute “answers the question, that answer is binding unless we conclude the language is ambiguous or it does not accurately reflect the Legislature’s intent.”¹³⁷ There is a presumption against the retroactive application of statutes, “rooted in constitutional principles” of due process and the prohibition against *ex post facto* application of penal laws.¹³⁸ Statutes therefore “do not operate retrospectively unless the Legislature plainly intended them to do so.”¹³⁹

But “when the Legislature clearly intends a statute to operate retrospectively, [the courts] are obliged to carry out that intent unless due process considerations prevent [them].”¹⁴⁰ The courts have found a later enactment clarifying of existing law when there is express legislative intent language or substantial legislative history that the change is clarifying of existing law, rather than a substantive change in law;¹⁴¹ ambiguity in the prior law or inconsistency in the courts’

¹³³ Statutes 2012, chapter 314 (AB 1606), § 2.

¹³⁴ *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1271. See also, *Yoshisato v. Superior Court* (1992) 2 Cal.4th 978, 989. See also *Mannheim v. Superior Court* (1971) 3 Cal.3d 678 [The canon of construction which “counsels that ‘statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent’ ...*expressly subordinates its effect* to the most fundamental rule of construction, namely that a statute must be interpreted so as to effectuate legislative intent.”].

¹³⁵ *In re Potter’s Estate* (1922) 188 Cal. 55, 75.

¹³⁶ *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1271 [citing *In re J.W.* (2002) 29 Cal.4th 200, 209].

¹³⁷ *Palmer v. GTE California, Inc.* (2003) 30 Cal.4th 1265, 1271

¹³⁸ *Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 841 [citing *Landgraf v. USI Film Products* (1994) 511 U.S. 244].

¹³⁹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

¹⁴⁰ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

¹⁴¹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 245-246.

interpretation;¹⁴² an existing interpretation by an agency charged with administering the statute;¹⁴³ and prompt legislative action to address either a novel legal question or an undesirable judicial interpretation.¹⁴⁴

One of the seminal cases is *Western Security Bank v. Superior Court*, where the Legislature amended several provisions of the Code of Civil Procedure and the Civil Code with the express intent of clarifying the law applicable to letters of credit, before the matter reached the Supreme Court on appeal from the Second District Court of Appeal.¹⁴⁵ The Court recounted the Legislative intent language:

The Legislature made its purpose explicit: “It is the intent of the Legislature in enacting Sections 2 and 4 of this act to confirm the independent nature of the letter of credit engagement and to abrogate the holding [of the Court of Appeal in this case].... [¶] The Legislature also intends to confirm the expectation of the parties to a contract that underlies a letter of credit, that the beneficiary will have available the value of the real estate collateral and the benefit of the letter of credit without regard to the order in which the beneficiary may resort to either.” (Stats.1994, ch. 611, § 5.) The same purpose was echoed in the bill’s statement of the facts calling for an urgency statute: “In order to confirm and clarify the law applicable to obligations which are secured by real property or an estate for years therein and which also are supported by a letter of credit, it is necessary that this act take effect immediately.” (Stats.1994, ch. 611, § 6.)¹⁴⁶

In considering whether to accept the Legislature’s statement of intent, the Court first observed that “statutes do not operate retrospectively unless the Legislature plainly intended them to do so.”¹⁴⁷ But “[o]f course, when the Legislature clearly intends a statute to operate retrospectively, we are obliged to carry out that intent unless due process considerations prevent us.”¹⁴⁸ The Court continued:

A corollary to these rules is that a statute that merely *clarifies*, rather than changes, existing law does not operate retrospectively even if applied to transactions predating its enactment. We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. (Cf. *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568.) Our consideration of the

¹⁴² *In re Marriage of McClellan* (2005) 130 Cal.App.4th 247, 257-258; *Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 930; *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318.

¹⁴³ *Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 399-400.

¹⁴⁴ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243; *Carter v. Department of Veterans Affairs* (2006) 38 Cal.4th 914, 923.

¹⁴⁵ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 241-242.

¹⁴⁶ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 242.

¹⁴⁷ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 242.

¹⁴⁸ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

surrounding circumstances can indicate that the Legislature made material changes in statutory language in an effort only to clarify a statute's true meaning. (*Martin v. California Mut. B. & L. Assn.* (1941) 18 Cal.2d 478, 484; *GTE Sprint Communications Corp. v. State Bd. of Equalization* (1991) 1 Cal.App.4th 827, 833; see *Balen v. Peralta Junior College Dist.* (1974) 11 Cal.3d 821, 828, fn. 8.) [...¶]

One such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation: “‘An amendment which in effect construes and clarifies a prior statute must be accepted as the legislative declaration of the meaning of the original act, where the amendment was adopted soon after the controversy arose concerning the proper interpretation of the statute... [¶] If the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act—a formal change—rebutting the presumption of substantial change.’ (1A Singer, *Sutherland Statutory Construction* (5th ed. 1993) § 22.31, p. *244 279, fns. omitted.)” (*RN Review for Nurses, Inc. v. State of California* (1994) 23 Cal.App.4th 120, 125.)

Even so, a legislative declaration of an existing statute's meaning is neither binding nor conclusive in construing the statute. Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts. (*California Emp. etc. California Employment Stabilization Com'n v. Payne* (1947) 31 Cal.2d 210, 213; *Bodinson Mfg. Co. v. California E.. Com.* (1941) 17 Cal.2d 321, 326; see *Del Costello v. State of California* (1982) 135 Cal.App.3d 887, 893, fn. 8.) Indeed, there is little logic and some incongruity in the notion that one Legislature may speak authoritatively on the intent of an earlier Legislature's enactment when a gulf of decades separates the two bodies. (Cf. *Peralta Community College Dist. v. Fair Employment & Housing Com.* (1990) 52 Cal.3d 40, 51–52.) Nevertheless, the Legislature's expressed views on the prior import of its statutes are entitled to due consideration, and we cannot disregard them.¹⁴⁹

The Court went on to discuss the express language of legislative intent in the bill and in the preamble to the bill, and observed that “[t]he Legislature's unmistakable focus was the disruptive effect of the Court of Appeal's decision on the expectations of parties to transactions...”¹⁵⁰ The Court then reiterated that “[i]f the Legislature acts promptly to correct a perceived problem with a judicial construction of a statute, the courts generally give the Legislature's action its intended effect.”¹⁵¹

Carter v. California Department of Veterans Affairs (Carter) and *Salazar v. Diversified Paratransit, Inc. (Salazar II)* also addressed a situation in which the Legislature acted to overrule

¹⁴⁹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243-244.

¹⁵⁰ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 245.

¹⁵¹ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 246.

or abrogate an unfavorable court of appeal decision by clarifying the intent of the prior law.¹⁵² Both cases involved a 2003 amendment to the Fair Employment and Housing Act (FEHA), which the Legislature expressly declared to be clarifying of existing law.¹⁵³ In October 2002, the Second District Court of Appeal found that FEHA does not protect employees from harassment by an employer's customers or clientele.¹⁵⁴ The Supreme Court granted review, but before the matter was heard, the Legislature amended FEHA to provide:

An employer may also be responsible for the acts of nonemployees, with respect to sexual harassment of employees, applicants, or persons providing services pursuant to a contract in the workplace, where the employer, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action.¹⁵⁵

The Supreme Court then transferred the matter back to the Court of Appeal for reconsideration in light of the enactment of Statutes 2003, chapter 671.¹⁵⁶ *Carter v. California Department of Veterans Affairs* was also pending Supreme Court review at the time of the 2003 amendment to the FEHA, and was also remanded to consider that legislation.¹⁵⁷ Both cases observed the inconsistency between the preamble to the 1984 amendments to the FEHA, which referred to protecting employees from harassment by "clientele," and the plain text of the Act, limiting liability to harassment by employers.¹⁵⁸ And both cases ignored the statements of the bill author regarding the limited scope of liability.¹⁵⁹ Ultimately, following *Western Security Bank*,¹⁶⁰ both cases gave substantial weight to the Legislature's expression of intent, and to the Legislature's prompt response to the unresolved legal question.¹⁶¹

Here, the evidence of legislative intent with respect the 2012 test claim statute as clarifying of

¹⁵² *Carter v. California Department of Veterans Affairs (Carter)* (2006) 38 Cal.4th 914, 921; *Salazar v. Diversified Paratransit, Inc. (Salazar II)* (2004) 117 Cal.App.4th 318, 322

¹⁵³ *Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 921; *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 322.

¹⁵⁴ *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 323 [citing *Salazar v. Diversified Paratransit, Inc.* (2002) 103 Cal.App.4th 131].

¹⁵⁵ *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 324; Government Code section 12940(j)(1) (Stats. 2003, ch. 671, § 1).

¹⁵⁶ *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 324.

¹⁵⁷ *Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 920.

¹⁵⁸ *Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 927-929; *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 326-328.

¹⁵⁹ *Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 927-929; *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 326-328.

¹⁶⁰ (1997) 15 Cal.4th 232.

¹⁶¹ *Carter v. California Department of Veterans Affairs* (2006) 38 Cal.4th 914, 922-923; *Salazar v. Diversified Paratransit, Inc.* (2004) 117 Cal.App.4th 318, 325.

existing law is supported by the statute and the legislative history. As noted, the statute itself provides, in uncodified language in section 2: “The Legislature finds and declares that the amendments to Section 3505.4 of the Government Code made by this act are intended to be technical and clarifying of existing law.”¹⁶² This represents an express statement of Legislative intent, appearing on the face of the statute itself, and thus, the Commission is not in a position to ignore it completely: “when the Legislature clearly intends a statute to operate retrospectively, [the courts] are obliged to carry out that intent unless due process considerations prevent [them].”¹⁶³ And, according to the Assembly Committee on Public Employees, Retirement, and Social Security analysis of the bill the author of the bill states, “[a]mbiguity in the drafting of [the 2011 statute,] AB 646 has called into question whether an employer can forgo all impasse procedures, including mediation and fact-finding. In fact, several government employers argue that AB 646 does not require fact-finding if the parties do not engage in mediation.”¹⁶⁴ The bill author further acknowledged, “the issue whether AB 646 requires that mediation occur as a precondition to an employee organization’s ability to request fact-finding remains *unresolved*.”¹⁶⁵ “AB 1606 would *clarify* that fact-finding is available to employee organizations in all situations, regardless of whether the employer and employee have engaged in mediation,” just as stated in the regulations adopted by PERB.¹⁶⁶

Furthermore, Statutes 2012, chapter 314 was proposed and adopted just months after the PERB regulations took effect. The timing of the amendment can be one of the circumstances indicating the Legislature intended to clarify existing law: “[o]ne such circumstance is when the Legislature promptly reacts to the emergence of a novel question of statutory interpretation...”¹⁶⁷ As discussed above, after the enactment of AB 646 there was substantial concern and confusion as to whether the bill in fact made factfinding mandatory, or whether that had been the Legislature’s intention;¹⁶⁸ PERB’s emergency regulations were an attempt to ensure that

¹⁶² Exhibit A, Test Claim, page 28 [Stats. 2012, ch. 314, § 2 (AB 1606)].

¹⁶³ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

¹⁶⁴ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, page 1.

¹⁶⁵ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, page 1 [emphasis added].

¹⁶⁶ Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 1606 as introduced on February 7, 2012, page 1 [emphasis added].

¹⁶⁷ *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243. See also, *In re Marriage of McClellan* (2005) 130 Cal.App.4th 247, 257-258 [Amendment to Family Code held to be clarifying where it was clear from both timing and express language that Legislature intended to correct an inconsistent application of the law among the courts and abrogate a poorly-supported decision by the court of appeal.

¹⁶⁸ See Exhibit F, Assembly Committee on Public Employees, Retirement, and Social Security, Analysis of AB 646 as amended March 23, 2011, pages 2-3 [Describing bill author’s statements and the amendments made prior to enactment]; Exhibit F, Renne Sloan Holtzman Sakai LP, Navigating the Mandatory Fact-Finding Process Under AB 646 [November 2011], pages 4, 11, http://www.pccfacultyassociation.org/wp-content/uploads/2012/09/fact_finding.pdf, accessed

factfinding would be mandatory in impasse cases.¹⁶⁹ The Legislature’s prompt reaction to the confusion, by amending Government Code section 3505.4 only months later (and employing a language and structure similar to the PERB regulations)¹⁷⁰ is a circumstance that militates in favor of a finding that the 2012 statute, AB 1606, was intended to be clarifying, rather than a substantive change and was intended to codify the PERB regulations.

Accordingly, the Commission finds that Statutes 2012, chapter 314 is clarifying of existing law and relates back to January 1, 2012, the operative date of the *prior law* regarding factfinding (here, the regulations). Therefore, the factfinding activities mandated by the state are new.

- b) The mandated activities are unique to local government and provide a service to the public.

The Court in *County of Los Angeles I*¹⁷¹ held that a new “program” or higher level of service means “programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.”¹⁷² The Court explained:

The concern which prompted the inclusion of section 6 in article XIII B was the perceived attempt by the state to enact legislation or adopt administrative orders creating programs to be administered by local agencies, thereby transferring to those agencies the fiscal responsibility for providing services which the state believed should be extended to the public. In their ballot arguments, the proponents of article XIII B explained section 6 to the voters: “Additionally, this measure: (1) Will not allow the state government to *force programs* on local governments without the state paying for them.” [citation omitted.] In this context the phrase “to force programs on local governments” confirms that the intent underlying section 6 was to require reimbursement to local agencies for the costs involved in carrying out functions peculiar to government, not for expenses

November 9, 2016; Exhibit F, Emily Prescott, *Mandatory Fact-Finding Under the Meyers-Milias-Brown Act*, California Labor & Employment Law Review, Vol. 26 No. 1 [January 2012], page 2, <http://www.publiclawgroup.com/wp-content/uploads/2012/01/Mandatory-Fact-Finding-Under-Meyers-Milias-Brown-Act-by-Emily-Prescott-Cal-Labor-and-Employment-Law-Review.pdf>, accessed November 9, 2016.

¹⁶⁹ Exhibit F, PERB Response to Commission Request for the Rulemaking Files, August 26, 2016, page 179 (Minutes, Public Employment Relations Board Meeting, December 8, 2011, page 6) [“Mr. Chisholm acknowledged the comments and discussions held regarding whether factfinding may be requested where mediation has not occurred. PERB, having considered all aspects, including comments and discussions held, related statutes, and legislative history and intent, drafted a regulatory package that would provide certainty and predictability.”].

¹⁷⁰ Compare Government Code section 3505.4(a) (Stats. 2012, ch. 680 (AB 1606) with PERB Regulation 32802(a) (effective January 1, 2012).

¹⁷¹ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46.

¹⁷² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

incurred by local agencies as an incidental impact of laws that apply generally to all state residents and entities. Laws of general application are not passed by the Legislature to “force” programs on localities.¹⁷³

Accordingly, the Court held that changes to workers’ compensation did not result in reimbursable costs: “Workers’ compensation is not a program administered by local agencies to provide a service to the public. Although local agencies must provide benefits to their employees either through insurance or direct payment, they are indistinguishable in this respect from private employers.”¹⁷⁴

In 1998, the Third District Court of Appeal decided *City of Richmond v. Commission on State Mandates*,¹⁷⁵ involving legislation requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System (PERS) and the workers’ compensation system. This resulted in survivors of local safety members of PERS who were killed in the line of duty receiving both a death benefit under worker’s compensation and a special death benefit under PERS, instead of the greater of the two as under prior law. The court held that the legislation did not constitute a new program or higher level of service even though the benefits might generate a higher quality of local safety officers and thereby, in a general and indirect sense, provide the public with a higher level of service by its employees.¹⁷⁶ The court in *City of Richmond* stated:

Increasing the costs of providing services cannot be equated with requiring an increased level of service under [article XIII B,] section 6 ... A higher cost to the local government for compensating its employees is not the same as a higher cost of providing services to the public.¹⁷⁷

Similarly, in *City of Sacramento v. State*,¹⁷⁸ the Court held that requiring local governments to provide unemployment compensation protection to their employees was not a “service to the public,” and did not impose a state policy uniquely on local government:

Most private employers in the state already were required to provide unemployment protection to their employees. Extension of this requirement to local governments, together with the state government and nonprofit corporations, merely makes the local agencies “indistinguishable in this respect from private employers.”¹⁷⁹

¹⁷³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56–57.

¹⁷⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58.

¹⁷⁵ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190.

¹⁷⁶ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1195.

¹⁷⁷ *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1196.

¹⁷⁸ *City of Sacramento v. State* (1990) 50 Cal.3d 51.

¹⁷⁹ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 67 [citing *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 58].

Therefore, the Court held, consistently with *County of Los Angeles I*, that requiring local government employers to participate in unemployment compensation with respect to their employees was not a governmental “program” within the meaning of article XIII B. In both of these cases, the alleged mandate did not provide a service to the public, but rather a benefit to employees of the local government; and in both cases the statute alleged to impose the mandate resulted in the local government as an employer being treated under the law the same as private employer entities.

County of Los Angeles v. Dept. of Industrial Relations (1989) 214 Cal.App.3d 1538 (*County of Los Angeles II*) provides another example. In that case the County sought reimbursement for complying with earthquake and fire safety regulations applicable to elevators in public buildings, but the court concluded that the regulations did not impose a new program or higher level of service under the test articulated in *County of Los Angeles I*.¹⁸⁰ “County acknowledges that the elevator safety regulations apply to all elevators, not just those which are publicly owned.”¹⁸¹ The court concluded that therefore the regulations “do not impose a ‘unique requirement’ on local government, [and] they do not meet the second definition of ‘program’ established by [County of Los Angeles I].”¹⁸² Additionally, the court found the deputy county counsel’s declaration that passenger elevators in all county buildings are necessary for the performance of peculiarly governmental functions unpersuasive:

Even if we were to treat the submitted declaration as something more than mere opinion, County has missed the point. The regulations at issue do not mandate elevator service; they simply establish safety measures. In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not “a governmental function of providing services to the public.”¹⁸³

Thus, the elevator safety regulations were held not to constitute a new program or higher level of service *both* because they were not imposed uniquely, or differentially, on local government; *and* because the regulations did not provide a *governmental* service to the public.

Relying on the above cases, and in particular the *City of Richmond* case, Finance argues that the 2012 test claim statute does not impose a new program or higher level of service. Finance argues that the statute merely adds new elements to the existing collective bargaining program. Finance also asserts that local agency participation in the factfinding process “may have the salutary effect of promoting employer-employee relations and thus ensuring government services are

¹⁸⁰ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

¹⁸¹ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

¹⁸² *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545.

¹⁸³ *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1546 [quoting *County of Los Angeles I*, 43 Cal.3d at p. 56].

delivered in a fair, cost-effective manner. However, the act of participating in the fact-finding panel does not, in itself, represent the provision of a service to the public.”¹⁸⁴

The Commission disagrees with Finance, and finds that the test claim statute imposes a new program or higher level of service. First, the MMBA, and specifically the mandatory factfinding provisions and attendant activities imposed by the test claim statute, are not a law of general application resulting in incidental costs to local government. The MMBA and the impasse procedures apply specifically and exclusively to local agencies. Section 3500 of the Government Code provides, in pertinent part provides:

It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. Nothing contained herein shall be deemed to supersede the provisions of existing state law . . . nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter. This chapter is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees and the public agencies by which they are employed.¹⁸⁵

In addition, the test claim statute provides a service to the public: “The overall purpose of Government Code section 3500 et seq., was to establish a procedure for discussion of working conditions, etc., by organizations representing employees who are without the traditional means of enforcing their demands by collective bargaining and striking, thus providing an alternative which would discourage strikes and yet serve the public employees’ interests.”¹⁸⁶ With respect to AB 1606 specifically, the Assembly Floor Analysis quotes the bill’s author stating:

AB 1606 properly reflects the intent of the Legislature to strengthen collective bargaining by ensuring employers and employees operate in good faith and work collaboratively to deliver government services in a fair, cost-efficient manner.¹⁸⁷

Therefore the stated purpose of the mandatory factfinding provisions of the MMBA is to promote employer-employee relations and ensure that the parties negotiate in good faith and

¹⁸⁴ Exhibit E, Finance’s Comments on the Draft Proposed Decision.

¹⁸⁵ Government Code section 3500 (Stats. 2000, ch. 901).

¹⁸⁶ *Service Employees’ International Union, Local No. 22 v. Roseville Community Hospital* (1972) 24 Cal.App.3d 400, 409.

¹⁸⁷ Exhibit F, Assembly Floor Analysis of AB 1606, Third Reading, page 2.

“work collaboratively to deliver government services in a fair, cost-efficient manner.”¹⁸⁸ This represents a clear state policy to promote efficiency in the collective bargaining process between public employers and their employee organizations, such that public services provided by those employees and their employers may be efficiently and continuously provided.

Thus, the test claim statute addresses the mandated *process* for providing good employee-employer relations for the purpose of delivering governmental services to the public, and is no different than other similar test claims approved by the Commission, including *Local Government Employment Relations*, (01-TC-30;¹⁸⁹ *Peace Officers Procedural Bill of Rights*, CSM 4499; *Collective Bargaining*, CSM 4425;¹⁹⁰ and *Collective Bargaining Agreement Disclosure*, 97-TC-08.¹⁹¹ The test claim statute does not require the payment of any particular employee benefit and is, therefore, distinguishable from the *County of Los Angeles*, *City of Richmond*, and *City of Sacramento* cases cited above, which addressed test claims seeking reimbursement for the cost of the benefits to the employee or the employee’s family (worker’s compensation, death benefits, and unemployment insurance).

Based on the foregoing, the test claim statute imposes a new program or higher level of service within the meaning of article XIII B, section 6.

3. The mandated activities impose costs mandated by the state.

For the mandated activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in local agencies incurring increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. Government Code section 17564(a) requires that no claim shall be made unless the claim exceeds \$1,000. And, a finding of costs mandated by the state means that none of the exceptions in Government Code section 17556 apply to deny the claim.

Here, there are new state-mandated activities imposed on local agencies that are required to be performed by staff or contractors. The claimant has alleged costs totaling \$327,302.64 for fiscal year 2015-2016 and \$46,533.94 for fiscal year 2016-2017 for city staff participating in impasse procedures, including the City Attorney, [Human Resources] Director, and Senior HR

¹⁸⁸ Exhibit F, Assembly Floor Analysis of AB 1606, Third Reading, page 2.

¹⁸⁹ *Local Government Employment Relations*, 01-TC-30 also involves the MMBA and authorizes reimbursement for local agencies to respond to unfair labor charges before PERB. (<https://csm.ca.gov/decisions/doc19.pdf>)

¹⁹⁰ *Peace Officers Procedural Bill of Rights*, CSM 4499 authorizes reimbursement to provide procedural protections to peace officers employed by local agencies when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. (<https://csm.ca.gov/decisions/doc95.pdf>)

¹⁹¹ *Collective Bargaining*, CSM 4425 and *Collective Bargaining Agreement Disclosures*, 97-TC-08 authorize reimbursement for school districts to perform the activities for collective bargaining, including impasse and factfinding proceedings. (<https://csm.ca.gov/decisions/274.pdf>)

Coordinator; as well as costs for “Contract Legal.”¹⁹² Some of these costs may go beyond the scope of the mandated activities as indicated in this Decision, but clearly exceed the \$1,000 minimum requirement for filing a test claim.¹⁹³

Additionally, no law or facts in the record support a finding that the exceptions specified in Government Code section 17556 apply to this claim. There is, for example, no law or evidence in the record that additional funds have been made available for the new state-mandated activities, or that there is any fee authority specifically intended to pay the costs of the alleged mandate.¹⁹⁴

Based on the foregoing, the Commission finds that the 2012 test claim statute results in increased costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

V. Conclusion

Based on the foregoing analysis, the Commission partially approves this Test Claim, with a reimbursement period beginning July 1, 2015, for local agencies defined in Government Code section 17518 that are eligible to claim reimbursement under article XIII B, section 6 of the California Constitution¹⁹⁵ (other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e)), for the following reimbursable state-mandated activities and costs:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties’ differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)

¹⁹² Exhibit A, Test Claim, pages 10-11.

¹⁹³ Exhibit A, Test Claim, page 11.

¹⁹⁴ See Government Code section 17556(d-e).

¹⁹⁵ Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.])

- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

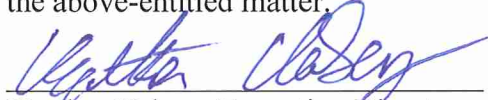
All other activities and costs alleged in the Test Claim are denied.



RE: **Decision**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4, 3505.5, and 3505.7; as added or amended by
Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

On May 25, 2018, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: May 30, 2018

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 30, 2018, I served the:

- **Decision adopted May 25, 2018**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4, 3505.5, and 3505.7; as added or amended by
Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

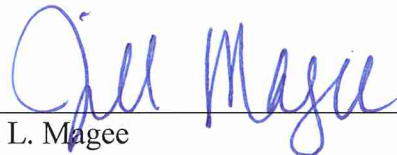
AND

- **Draft Expedited Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued May 30, 2018**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4(a-d) and 3505.5(a-d);
Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 30, 2018 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 5/30/18

Claim Number: 16-TC-04

Matter: Local Agency Employee Organizations: Impasse Procedures II

Claimant: City of Oxnard

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Cindy Black, *City Clerk, City of St. Helena*

1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742

ctzafoopoulos@cityofstheleena.org

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916)595-2646

Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Anita Dagan, Manager, Local Reimbursement Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-4112
Adagan@sco.ca.gov

J. Felix De La Torre, General Counsel, *Public Employment Relations Board (D-12)*
1031 18th Street, Sacramento, CA 95811
Phone: (916) 322-3198
fdelatorre@perb.ca.gov

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-4320
mdelfin@sco.ca.gov

Patrick Dyer, Director, *MGT Consulting*
Claimant Representative
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-3411
pdyer@mgtconsulting.com

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814

Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
dillong@csda.net

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Justyn Howard, Program Budget Manager, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-1546
justyn.howard@dof.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anita Kerezsi, *AK & Company*
3531 Kersey Lane, Sacramento, CA 95864
Phone: (916) 972-1666
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Hortensia Mato, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3000
hmato@newportbeachca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*
3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Steven Pavlov, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Steven.Pavlov@dof.ca.gov

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Derk Symons, Staff Finance Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Derk.Symons@dof.ca.gov

James Throop, Chief Financial Officer, *City of Oxnard*
300 West Third Street, Oxnard, CA 93030
Phone: (805) 385-7475
Jim.Throop@oxnard.org

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov



October 3, 2018

Mr. Patrick J. Dyer
MGT Consulting
2251 Harvard Street, Suite 134
Sacramento, CA 95815

Ms. Jill Kanemasu
Division of Accounting and Reporting
State Controller's Office
3301 C Street, Suite 700
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Decision and Parameters and Guidelines

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4(a-d) and 3505.5(a-d);
Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

Dear Mr. Dyer and Ms. Kanemasu:

On September 28, 2018, the Commission on State Mandates adopted the Decision and Parameters and Guidelines on the above-entitled matter.

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Government Code Sections 3505.4(a-d),
and 3505.5(a-d);

Statutes 2012, Chapter 314 (AB 1606)

The period of reimbursement begins
July 1, 2015.

Case No.: 16-TC-04

*Local Agency Employee Organizations:
Impasse Procedures II*

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted September 28, 2018)

(Served October 3, 2018)

PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Decision and Parameters and Guidelines on September 28, 2018.



Heather Halsey, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES
FOR:**

Government Code Sections 3505.4(a-d),
and 3505.5(a-d);

Statutes 2012, Chapter 314 (AB 1606)

The period of reimbursement begins
July 1, 2015.

Case No.: 16-TC-04

*Local Agency Employee Organizations:
Impasse Procedures II*

**DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500 ET
SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.**

(Adopted September 28, 2018)

(Served October 3, 2018)

DECISION

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 28, 2018. Patrick Dyer appeared on behalf of the claimant. Donna Ferebee appeared on behalf of the Department of Finance (Finance). Andy Nichols, of Nichols Consulting, appeared as an interested person.

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission adopted the Decision and Parameters and Guidelines by a vote of 7-0, as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
John Chiang, State Treasurer, Vice Chairperson	Yes
Richard Chivaro, Representative of the State Controller	Yes
Scott Morgan, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	Yes

I. Summary of the Mandate

These Parameters and Guidelines address the state-mandated activities arising from amendments to the Meyers-Milias-Brown Act (MMBA) by Statutes 2012, chapter 314 (AB 1606).¹ The Test Claim statutes added a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations.

On May 25, 2018, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that the test claim statute imposes a reimbursable state-mandated program on local government within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

II. Procedural History

On May 25, 2018, the Commission adopted the Decision partially approving the Test Claim.² On May 30, 2018, Commission staff issued the Test Claim Decision and Draft Expedited Parameters and Guidelines.³ On June 20, 2018, the State Controller's Office (Controller) filed comments concurring with the Draft Expedited Parameters and Guidelines, but seeking additional clarification with respect to eligible claimants.⁴ Neither the claimant nor the Department of Finance (Finance) filed comments on the Draft Expedited Parameters and Guidelines. On June 29, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.⁵ On July 20, 2018, the Controller filed Comments on the

¹ The claimant did not plead the Public Employment Relations Board's regulations implementing Statutes 2011, chapter 680, which were effective January 1, 2012.

² Exhibit A, Test Claim Decision.

³ Exhibit B, Draft Expedited Parameters and Guidelines.

⁴ Exhibit C, Controller's Comments on the Draft Expedited Parameters and Guidelines.

⁵ Exhibit D, Draft Proposed Decision and Proposed Parameters and Guidelines.

Draft Proposed Decision and Proposed Parameters and Guidelines concurring with the Draft Proposed Parameters and Guidelines.⁶ Neither the claimant nor Finance filed comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

III. Discussion

The Draft Expedited Parameters and Guidelines were issued in accordance with section 1183.9 of the Commission’s regulations, based on the findings in the Test Claim Decision. The only substantive comment, that charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e) are not eligible claimants, was filed by the Controller on the Draft Expedited Parameters and Guidelines.⁷ No “reasonably necessary activities” have been proposed by the parties.

The Parameters and Guidelines for this program include the findings adopted by the Commission in its Test Claim Decision with respect to the period of reimbursement, eligible claimants, and reimbursable activities. The Controller’s proposed clarification to eligible claimants is approved and is consistent with the Test Claim Decision. The Commission therefore finds that the Parameters and Guidelines are supported by the findings in the Test Claim Decision and this Decision on the Parameters and Guidelines.

The Parameters and Guidelines contain the following information.

A. Eligible Claimants (Section II. of the Parameters and Guidelines)

Government Code section 3505.5(e) provides an exemption from the mandated activities for charter cities and charter counties, as follows:

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

The Test Claim Decision found that all mandated activities under the MMBA arise from sections 3505.4 and 3505.5. Therefore, section 3505.5(e) effectively exempts charter cities and charter counties, if their charter contains binding arbitration provisions, from the entire mandated program. Accordingly, the Controller requests⁸ that the Commission include exemption language in the Parameters and Guidelines, as follows:

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the

⁶ Exhibit E, Controller’s Comments on the Draft Proposed Decision and Proposed Parameters and Guidelines.

⁷ Exhibit C, Controller’s Comments on the Draft Expedited Parameters and Guidelines.

⁸ Exhibit C, Controller’s Comments on the Draft Expedited Parameters and Guidelines.

California Constitution,⁹ other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

The proposed language is consistent with the plain language of the Government Code and the Commission's Test Claim Decision, and is included in the Parameters and Guidelines.

B. Period of Reimbursement (Section III. of the Parameters and Guidelines)

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing reimbursement eligibility for the 2015-2016 fiscal year, beginning July 1, 2015.

C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)

The Commission approved the following reimbursable activities:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)

⁹ Government Code section 17518 defines "local agency" to mean "any city, county, special district, authority, or other political subdivision of the state." However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 ["[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues."]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B's spending limits.])

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

Neither the claimant nor any other interested parties or persons proposed additional reasonably necessary activities. Accordingly, only these activities approved in the Test Claim Decision are included in the Parameters and Guidelines.

D. The Remaining Sections of the Parameters and Guidelines

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, contracted services, and fixed assets. However, training and travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test Claim Decision, nor has the claimant requested these costs as reasonably necessary to perform the mandated activities or submitted any evidence to support such a request.¹⁰

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

IV. Conclusion

Based on the foregoing, the Commission hereby adopts the Decision and Parameters and Guidelines.

¹⁰ California Code of Regulations, title 2, section 1183.6 states: “The parameters and guidelines shall describe the claimable reimbursable costs and contain the following information: [¶] ... [¶] (d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. ‘Reasonably necessary activities’ are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.”

PARAMETERS AND GUIDELINES

Government Code Sections 3505.4(a-d) and 3505.5(a-d)

Statutes 2012, Chapter 314 (AB 1606)

Local Agency Employee Organizations: Impasse Procedures II

16-TC-04

The period of reimbursement begins July 1, 2015.

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address the mandated activities arising from amendments to the Meyers-Milias-Brown Act by Statutes 2012, chapter 314 (AB 1606), which imposed a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations, available at the option of the employee organization.

On May 25, 2018, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, (other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e)). The Commission partially approved the Test Claim, finding only the following activities to be reimbursable:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the California Constitution,¹ other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing eligibility for reimbursement for the 2015-2016 fiscal year. Therefore, costs incurred beginning on or after July 1, 2015 are reimbursable.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

¹ Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.])

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs,² the following activities are reimbursable:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)

² Government Code section 3505.5(e) provides that charter cities, charter counties, and charter cities and counties are exempt from sections 3505.5 and 3505.4 if their charter provides a procedure that applies in the case of an impasse with its employee organizations that includes, at a minimum, a process for binding arbitration, therefore they are not eligible claimants for this program.

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts

disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for

³ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the Test Claim and Parameters and Guidelines are legally binding on all parties and provide the legal and factual basis for the Parameters and Guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

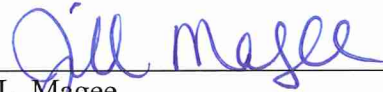
On October 3, 2018, I served the:

- **Decision and Parameters and Guidelines adopted September 28, 2018**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4, 3505.5, and 3505.7; as added or amended by
Statutes 2011, Chapter 680 (AB 646) and Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 3, 2018 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/26/18

Claim Number: 16-TC-04

Matter: Local Agency Employee Organizations: Impasse Procedures II

Claimant: City of Oxnard

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Cindy Black, *City Clerk, City of St. Helena*

1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742

ctzafoopoulos@cityofstheleena.org

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916)595-2646

Bburgess@mgtamer.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Annette Chinn, *Cost Recovery Systems, Inc.*
705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcrs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*
2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Anita Dagan, Manager, Local Reimbursement Section, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-4112
Adagan@sco.ca.gov

J. Felix De La Torre, General Counsel, *Public Employment Relations Board (D-12)*
1031 18th Street, Sacramento, CA 95811
Phone: (916) 322-3198
fdelatorre@perb.ca.gov

Patrick Dyer, Director, *MGT Consulting*
Claimant Representative
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-3411
pdyer@mgtconsulting.com

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*
1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887
dillong@cgsda.net

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Erika Li, Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*

3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

David Millican, Interim Chief Financial Officer, *City of Oxnard*
Finance Department, 300 West Third Street, Oxnard, CA 93030
Phone: (805) 385-7461
david.millican@oxnard.org

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legal Analyst's Office*
925 L Street, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Steven Pavlov, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Steven.Pavlov@dof.ca.gov

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Deanne Purcell, Assistant Chief Financial Officer, *City of Oxnard*
300 West Third Street, Oxnard, CA 93030
Phone: (805) 385-7475
Deanne.Purcell@oxnard.org

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Theresa Schweitzer, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3140
tschweitzer@newportbeachca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Derk Symons, Staff Finance Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Derk.Symons@dof.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Jennifer Whiting, Assistant Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8249
jwhiting@cacities.org

Patrick Whitnell, General Counsel, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8281
pwhitnell@cacities.org

Hasmik Yaghobyan, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653
hyaghobyan@auditor.lacounty.gov

Office of the State Controller
State-Mandated Costs Claiming Instructions No. 2018-02
Local Agency Employee Organizations: Impasse Procedures II – Program No. 371

December 27, 2018

In accordance with Government Code (GC) sections 17560 and 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state-mandated cost programs. This document contains claiming instructions and forms that eligible claimants must use for filing claims for the Local Agency Employee Organizations: Impasse Procedures II program. SCO issues these claiming instructions subsequent to the Commission on State Mandates (CSM) adopting the program's Parameters and Guidelines (Ps & Gs). The Ps & Gs are included as an integral part of the claiming instructions.

On May 25, 2018, CSM adopted a Statement of Decision finding that the test claim legislation imposes a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and GC section 17514.

Exception

There will be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

Eligible Claimants

Any city, county, city and county, or special district, as defined in GC section 17518, that incurs increased costs as a result of this mandate is eligible to claim for reimbursement, other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to GC section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Special districts, subject to tax and spend limitations pursuant to the provisions of articles XIII A and B of the California Constitution, are eligible to file a claim for reimbursement. To establish proof of eligibility and to minimize payment delays, SCO requests that special district claimants submit a supporting document affirming that the special district received an annual allocation of property tax revenue from the county pursuant to article XIII A of the California Constitution. This may include a Board of Directors Resolution establishing the appropriation limit for the fiscal year being claimed, in compliance with article XIII B of the California Constitution.

Reimbursement Claim Deadline

Initial reimbursement claims must be filed within 120 days from the issuance date of the claiming instructions. Costs incurred for compliance with this mandate are reimbursable for the period beginning July 1, 2015, through June 30, 2016, for fiscal year 2015-16; the period beginning July 1, 2016, through June 30, 2017, for fiscal year 2016-17; and the period July 1, 2017, through June 30, 2018, for fiscal year 2017-18, must be filed with the SCO by **April 26, 2019**. Claims filed after the deadline must be reduced by a late penalty.

Claims filed more than one year after the deadline will not be accepted.

Penalty

- **Initial Reimbursement Claims**

When filed within one year of the initial filing deadline, claims are assessed a late penalty of 10% of the total amount of the initial claim without limitation pursuant to GC section 17561(d)(3).

- **Annual Reimbursement Claims**

When filed within one year of the annual filing deadline, claims are assessed a late penalty of 10% of the claim amount; not to exceed \$10,000, pursuant to GC section 17568.

Minimum Claim Cost

GC section 17564(a), states that no claim may be filed pursuant to section 17551 and 17561, unless such a claim exceeds one thousand dollars (**\$1,000**).

Reimbursement of Claims

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. These costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating: "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5.

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, these documents cannot be substituted for source documents.

Audit of Costs

All claims submitted to SCO are subject to review to determine if costs are related to the mandate, are reasonable and not excessive, and if the claim was prepared in accordance with the SCO's claiming instructions and the Ps & Gs adopted by CSM. If any adjustments are made to a claim, the claimant will be notified of the amount adjusted, and the reason for the adjustment.

On-site audits will be conducted by SCO as deemed necessary. Pursuant to GC section 17558.5(a), a reimbursement claim for actual costs filed by a claimant is subject to audit by SCO no later than three years after the date the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds were appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for SCO to initiate an audit will commence to run from the date of initial payment of the claim.

Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, these documents cannot be substituted for source documents.

Record Retention

All documentation to support actual costs claimed must be retained and made available to the State Controller's Office (SCO) upon request (Gov. Code §17558.5(a)) for a minimum period of three years after the date of initial payment of the claim and/or until the ultimate resolution of any audit findings.

Claim Submission

Submit a signed original Form FAM-27 and one copy with required documents. **Please sign the Form FAM-27 in blue ink and attach the copy to the top of the claim package.**

Mandated costs claiming instructions and forms are available online at the SCO's website: **www.sco.ca.gov/ard_mancost.html**.

Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Local Government Programs and
Services Division
P.O. Box 942850
Sacramento, CA 94250

If delivered by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Local Government Programs and
Services Division
3301 C Street, Suite 700
Sacramento, CA 95816

For more information, contact the Local Reimbursements Section by email at LRSLGPSD@sco.ca.gov, by telephone at (916) 324-5729, or by writing to the address above.

PARAMETERS AND GUIDELINES

Government Code Sections 3505.4(a-d) and 3505.5(a-d)

Statutes 2012, Chapter 314 (AB 1606)

Local Agency Employee Organizations: Impasse Procedures II

16-TC-04

The period of reimbursement begins July 1, 2015.

I. SUMMARY OF THE MANDATE

These Parameters and Guidelines address the mandated activities arising from amendments to the Meyers-Milias-Brown Act by Statutes 2012, chapter 314 (AB 1606), which imposed a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations, available at the option of the employee organization.

On May 25, 2018, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, (other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e)). The Commission partially approved the Test Claim, finding only the following activities to be reimbursable:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the California Constitution,¹ other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing eligibility for reimbursement for the 2015-2016 fiscal year. Therefore, costs incurred beginning on or after July 1, 2015 are reimbursable.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

¹ Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.])

6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs,² the following activities are reimbursable:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)

² Government Code section 3505.5(e) provides that charter cities, charter counties, and charter cities and counties are exempt from sections 3505.5 and 3505.4 if their charter provides a procedure that applies in the case of an impasse with its employee organizations that includes, at a minimum, a process for binding arbitration, therefore they are not eligible claimants for this program.

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts

disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in 2 Code of Federal Regulations (CFR) part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10 percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10 percent.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B)). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be: (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.); (2) direct salaries and wages; or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) classifying a department's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for

³ This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The decisions adopted for the Test Claim and Parameters and Guidelines are legally binding on all parties and provide the legal and factual basis for the Parameters and Guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

PROGRAM 371	LOCAL AGENCY EMPLOYEE ORGANIZATIONS: IMPASSE PROCEDURES II CLAIM FOR PAYMENT	For State Controller Use Only	FORM FAM-27
		(19) Program Number 00371	
		(20) Date Filed	
		(21) LRS Input	
(01) Claimant Identification Number		Reimbursement Claim Data	
(02) Claimant Name		(22) FORM 1, (04) 1. (e)	
County of Location		(23) FORM 1, (04) 2. (e)	
Street Address or P.O. Box		(24) FORM 1, (04) 3. (e)	
City		(25) FORM 1, (04) 4. (e)	
		Type of Claim	(26) FORM 1, (06)
		(03) (09) Reimbursement <input type="checkbox"/>	(27) FORM 1, (07)
		(04) (10) Combined <input type="checkbox"/>	(28) FORM 1, (09)
		(05) (11) Amended <input type="checkbox"/>	(29) FORM 1, (10)
Fiscal Year of Cost		(12)	(30)
Total Claimed Amount		(13)	(31)
Less: 10% Late Penalty (refer to attached Instructions)		(14)	(32)
Less: Prior Claim Payment Received		(15)	(33)
Net Claimed Amount		(16)	(34)
Due from State		(17)	(35)
Due to State		(18)	(36)
(37) CERTIFICATION OF CLAIM			
<p>In accordance with the provisions of Government Code sections 17560 and 17561, I certify that I am the officer authorized by the school district or county office of education to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of Title 1 of the Government Code.</p> <p>I further certify that there was no application other than from the claimant, nor any grant(s) or payment(s) received, for reimbursement of costs claimed herein; claimed costs are for a new program or increased level of services of an existing program; and claimed amounts do not include charter school costs, either directly or through a third party. All offsetting revenues and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements.</p> <p>I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>			
Signature of Authorized Officer		Date Signed	_____
_____		Telephone Number	_____
_____		Email Address	_____
Type or Print Name and Title of Authorized Signatory			
(38) Name of Agency Contact Person for Claim		Telephone Number	_____
_____		Email Address	_____
Name of Consulting Firm/Claim Preparer		Telephone Number	_____
_____		Email Address	_____

PROGRAM 371	LOCAL AGENCY EMPLOYEE ORGANIZATIONS: IMPASSE PROCEDURES II CLAIM FOR PAYMENT INSTRUCTIONS	FORM FAM-27
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- (01) Enter the claimant identification number assigned by the State Controller's Office.
- (02) Enter claimant official name, county of location, street or postal office box address, city, State, and zip code.
- (03) to (08) Leave blank.
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
Note: Combined claims may be filed only when the county is the fiscal agent for the claimant.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year in which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate Form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim as shown on Form 1, line (11). The total claimed amount must exceed \$1,000; minimum claim must be \$1,001.
- (14) Initial reimbursement claims must be filed as specified in the claiming instructions. Annual reimbursement claims must be filed by **February 15**, or as specified in the claiming instructions following the fiscal year in which costs were incurred. Claims filed after the specified date must be reduced by a late penalty. Enter zero if the claim was filed on time. Otherwise, enter the penalty amount as a result of the calculation formula as follows:
 - Late Initial Reimbursement Claims: Form FAM-27, line (13) multiplied by 10%, without limitation; or
 - Late Annual Reimbursement Claims: Form FAM-27, line (13) multiplied by 10%, late penalty not to exceed \$10,000.
- (15) Enter the amount of payment, if any, received for the claim. If no payment was received, enter zero.
- (16) Enter the net claimed amount by subtracting the sum of lines (14) and (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (29) Bring forward the cost information as specified on the left-hand column of lines (22) through (28) for the reimbursement claim, e.g., Form 1, (04) 1. (e) means the information is located on Form 1, section (04), line 1., column (e). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. The indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the process.**
- (30) to (36) Leave blank.
- (37) Read the statement of Certification of Claim. The claim must be signed and dated by the agency's authorized officer, type or print name and title, telephone number, and email address. **Claims cannot be paid unless accompanied by an original signed certification. (Please sign the Form FAM-27 in blue ink and attach the copy to the top of the claim package.)**
- (38) Enter the name, telephone number, and email address of the agency contact person for the claim. If the claim was prepared by a consultant, type or print the name of the consulting firm, the claim preparer, telephone number, and email address.

SUBMIT A SIGNED ORIGINAL FORM FAM-27 AND ONE COPY WITH ALL OTHER FORMS TO:

Address, if delivered by U.S. Postal Service:
**Office of the State Controller
Attn: Local Reimbursements Section
Local Government Programs and Services Division
P.O. Box 942850
Sacramento, CA 94250**

Address, if delivered by other delivery service:
**Office of the State Controller
Attn: Local Reimbursements Section
Local Government Programs and Services Division
3301 C Street, Suite 700
Sacramento, CA 95816**

PROGRAM 371	LOCAL AGENCY EMPLOYEE ORGANIZATIONS: IMPASSE PROCEDURES II CLAIM SUMMARY	FORM 1
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(01) Claimant	(02) Fiscal Year 20 ___ /20 ___
---------------	------------------------------------

(03) Leave blank.

Direct Costs	Object Accounts
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(04) Reimbursable Activities	(a) Salaries and Benefits	(b) Materials and Supplies	(c) Contract Services	(d) Fixed Assets	(e) Total
------------------------------	------------------------------------	-------------------------------------	-----------------------------	------------------------	--------------

1. Within five (5) days after receipt of a written request, select a member of the factfinding panel, and pay the costs of that member. <i>(See Form 1, Claim Summary Instructions for more details.)</i>					
--	--	--	--	--	--

2. Meet with the factfinding panel within ten (10) days after its appointment.					
--	--	--	--	--	--

3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel.					
---	--	--	--	--	--

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within thirty (30) days of appointment of the panel.					
--	--	--	--	--	--

(05) Total Direct Costs					
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Indirect Costs

(06) Indirect Cost Rate	[From ICRP or 10%]	%
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(07) Total Indirect Costs	[Refer to Claim Summary Instructions]	
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(08) Total Direct and Indirect Costs	[Line (05)(e) + line (07)]	
--------------------------------------	----------------------------	--



Cost Reduction

(09) Less: Offsetting Revenues		
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(10) Less: Other Reimbursements		
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(11) Total Claimed Amount	[Line (08) – {(line (09) + line (10))}]	
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PROGRAM 371	LOCAL AGENCY EMPLOYEE ORGANIZATIONS: IMPASSE PROCEDURES II CLAIM SUMMARY INSTRUCTIONS	FORM 1
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year in which costs were incurred.
- (03) Leave blank.
- (04) For each reimbursable activity, enter the total from Form 2, line (05), columns (d) through (g), to Form 1, section (04), columns (a) through (d), in the appropriate row. Total each row.

Activities:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process.
 2. Meet with the factfinding panel within ten (10) days after its appointment.
 3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel.
 4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within thirty (30) days of appointment of the panel.
- (05) Total columns (a) through (e).
 - (06) Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an Indirect Cost Rate Proposal (ICRP). If an indirect cost rate of greater than 10% is used, include the ICRP with the claim.
 - (07) Local agencies have the option of using the flat rate of 10% of direct labor costs or using a department's ICRP in accordance with the Office of Management and Budget Circular 2 CFR, Chapter I and Chapter II, Part 200 et al. If the flat rate is used for indirect costs, multiply Total Salaries, line (05)(a), by 10%. If an ICRP is submitted, multiply applicable costs used in the distribution base for the computation of the indirect cost rate, by the Indirect Cost Rate, line (06). If more than one department is reporting costs, each must have its own ICRP for the program.
 - (08) Enter the sum of Total Direct Costs, line (05)(e), and Total Indirect Costs, line (07).
 - (09) If applicable, enter any revenue received by the claimant for this mandate from any state or federal source.
 - (10) If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funding, and other state funding that reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
 - (11) From the Total Direct and Indirect Costs, line (08), subtract the sum of Offsetting Revenues, line (09), and Other Reimbursements, line (10). Enter the remainder on this line and carry the amount forward to Form FAM-27, line (13) of the Reimbursement Claim.

PROGRAM 371	LOCAL AGENCY EMPLOYEE ORGANIZATIONS: IMPASSE PROCEDURES II ACTIVITY COST DETAIL	FORM 2
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(01) Claimant	(02) Fiscal Year 20__ / 20__
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(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

<input type="checkbox"/> 1. Within five (5) days after receipt of a written request, select a member of the factfinding panel, and pay the costs of that member. (See Form 1, Claim Summary Instructions for more details.)	<input type="checkbox"/> 3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel.
<input type="checkbox"/> 2. Meet with the factfinding panel within ten (10) days after its appointment.	<input type="checkbox"/> 4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within thirty (30) days of appointment of the panel.

(04) Description of Expenses			Object Accounts			
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked	(d) Salaries and Benefits	(e) Materials and Supplies	(f) Contract Services	(g) Fixed Assets

(05) Total <input type="checkbox"/> Subtotal <input type="checkbox"/> Page: ____ of ____					
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PROGRAM 371	LOCAL AGENCY EMPLOYEE ORGANIZATIONS: IMPASSE PROCEDURES II ACTIVITY COST DETAIL INSTRUCTIONS	FORM 2
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year in which costs were incurred.
- (03) Check the box which indicates the activity being claimed. Check only one box per form. A separate Form 2 must be prepared for each applicable activity.
- (04) The following table identifies the type of information required to support reimbursable costs. To itemize costs for the activity box checked in section (03), enter each employee name, job classification, a brief description of the activities performed, productive hourly rate, actual time spent, fringe benefits, materials and supplies used, contract services, fixed assets, and training expenses. **The descriptions required in column (04)(a) must be of sufficient detail to explain the cost of activities or items being claimed.**

All documentation to support actual costs claimed must be retained and made available to the State Controller's Office (SCO) upon request (Gov. Code §17558.5(a)) for a minimum period of three years after the date of initial payment of the claim and/or until the ultimate resolution of any audit findings.

Object Accounts	Columns							Submit supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	
Salaries and Benefits	Employee Name and Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate X Hours Worked				
	Activities Performed	Benefit Rate		Benefits = Benefit Rate X Salaries				
Materials and Supplies	Description of Supplies Used	Unit Cost	Quantity Used		Cost = Unit Cost X Quantity Used			
Contract Services	Name of Contractor and Specific Tasks Performed	Hourly Rate	Hours Worked and Inclusive Dates of Service			Cost = Hourly Rate X Hours Worked or Total Contract Cost		Copy of Contract and Invoices
Fixed Assets	Description of Equipment Purchased	Unit Cost X Quantity	Usage				Cost = Total Cost X Usage	Copy of Contract and Invoices

- (05) Total line (04), columns (d) through (g) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the activity costs, number each page. Enter totals from line (05), columns (d) through (g) on Form 1, section (04), columns (a) through (d) in the appropriate row.



May 29, 2019

Mr. Patrick J. Dyer
MGT Consulting
2251 Harvard Street, Suite 134
Sacramento, CA 95815

Ms. Natalie Sidarous
State Controller's Office
Local Government Programs and
Services Division
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

**Re: Draft Proposed Statewide Cost Estimate, Schedule for Comments,
and Notice of Hearing**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4(a-d) and 3505.5(a-d);
Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

Dear Mr. Dyer and Ms. Sidarous:

The Draft Proposed Statewide Cost Estimate for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Statewide Cost Estimate by
June 19, 2019.

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

Hearing

This matter is set for hearing on **Friday, July 26, 2019**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Statewide Cost Estimate will be issued on or about July 12, 2019.

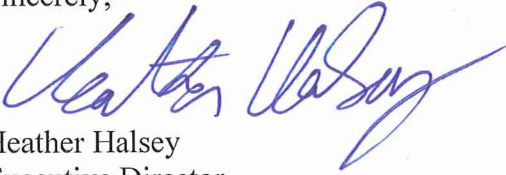
This matter is proposed for the Consent Calendar. Please let us know in advance if you oppose having this item placed on the Consent Calendar.

Please also notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer be sending reminder emails.

Mr. Dyer and Ms. Sidarous
May 29, 2019
Page 2

Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately 2 weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

Sincerely,



Heather Halsey
Executive Director

ITEM ____

DRAFT PROPOSED STATEWIDE COST ESTIMATE

\$1,006,755 (for initial claiming period of 2015-2016 through 2017-2018)

(Estimated Annual Cost for Fiscal Year 2018-2019 and following ranges from \$335,731 to \$1,794,652 plus the implicit price deflator)

Government Code Sections 3505.4(a-d) and 3505.5(a-d)

Statutes 2012, Chapter 314 (AB 1606)

Local Agency Employee Organizations: Impasse Procedures II

16-TC-04

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate by a vote of [vote count will be included in the adopted Statewide Cost Estimate] during a regularly scheduled hearing on July 26, 2019 as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller, Vice Chairperson	

STAFF ANALYSIS

Background and Summary of the Mandate

The City of Oxnard (claimant) filed the Test Claim on May 12, 2017, establishing a potential period of reimbursement beginning July 1, 2015. The Test Claim statute¹ amended the Meyers-Miliias-Brown Act (MMBA) to add a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations.

¹ Though the claimant plead two statutes, the Commission found that it only had jurisdiction over one: Statutes 2012, Chapter 314 (AB 1606). The claimant did not plead the Public Employment Relations Board’s regulations implementing Statutes 2011, chapter 680, which were effective January 1, 2012.

In the Test Claim filing, the claimant included the following cost information:

The City of Oxnard contends that the actual increased costs to comply with this new mandate is \$373, 836.57 in total. For fiscal year 2015-2016, its total costs were \$327, 302.63 when the City had to enter mediation as required by these statutes for two separate impasse cases. The City first incurred increased costs as a result of this statute on May 12, 2016...Estimated annual costs to be incurred by the City of Oxnard to implement the alleged mandate during the fiscal year 2016-2017 is \$46,533.94 – the fiscal year immediately following the fiscal year for which the claim was filed.²

The claimant also provided a statewide cost estimate (as required by Government Code 17553) of \$3.8 million, based on the claimant’s per-case cost and an estimated annual statewide case count of 100.³

On May 25, 2018, the Commission adopted the Test Claim Decision, finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, as specified.⁴

The Decision and Parameters and Guidelines were adopted on September 28, 2018.⁵

The State Controller’s Office (Controller) issued claiming instructions on December 27, 2018.⁶ Eligible claimants were required to file initial reimbursement claims with the Controller for costs incurred for fiscal years 2015-2016, 2016-2017, and 2017-2018 by April 26, 2019.⁷ Late initial claims may be filed until April 26, 2020, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation, pursuant to Government Code section 17561(d)(3).⁸ Thereafter, annual claims are due on the date specified in Government Code section 17560 (currently February 15), and late claims filed within one year of that deadline will incur a late penalty of 10 percent late filing penalty not to exceed \$10,000, pursuant to Government Code section 17568 and claims filed more than one year after that deadline will not be accepted.⁹

Eligible Claimants and Period of Reimbursement:

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the California Constitution,¹⁰ other than a

² Exhibit A, Test Claim, page 10-11.

³ Exhibit A, Test Claim, page 11-12.

⁴ Exhibit B, Test Claim Decision.

⁵ Exhibit C, Decision and Parameters and Guidelines.

⁶ Exhibit D, Controller’s Claiming Instructions Program No. 371, page 1.

⁷ Exhibit D, Controller’s Claiming Instructions Program No. 371, page 1.

⁸ Government Code Sections 17560 and 17568.

⁹ Exhibit D, Controller’s Claiming Instructions Program No. 371, pages 1-2.

¹⁰ Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it

charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing eligibility for reimbursement for increased costs incurred beginning with the 2015-2016 fiscal year. Therefore, increased costs incurred on or after July 1, 2015 are reimbursable.

Reimbursable Activities

The Parameters and Guidelines authorize reimbursement as follows:

For each eligible claimant that incurs increased costs,¹¹ the following activities are reimbursable:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)

clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.]

¹¹ Government Code section 3505.5(e) provides that charter cities, charter counties, and charter cities and counties are exempt from sections 3505.5 and 3505.4 if their charter provides a procedure that applies in the case of an impasse with its employee organizations that includes, at a minimum, a process for binding arbitration, therefore they are not eligible claimants for this program.

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)¹²

Offsetting Revenues and Reimbursements

The Parameters and Guidelines provide the following:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.¹³

Statewide Cost Estimate

Commission staff reviewed the 23 reimbursement claims filed by 18 local agencies and data compiled by the Controller.¹⁴ The unaudited reimbursement claims total \$532,224 for fiscal year 2015-2016, \$106,277 for fiscal year 2016-2017, and \$368,254 for fiscal year 2017-2018 totaling \$1,006,755 for the initial reimbursement period.¹⁵

Assumptions

Based on the claims data, staff made the following assumptions and used the following methodology to develop the Statewide Cost Estimate for this program.

- *The annual amount claimed for reimbursement may increase and exceed this Statewide Cost Estimate.*

There are approximately 481 cities, 57 counties, and 1 city and county which, except for an unknown number of which that have a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505(e),¹⁶ are eligible to seek reimbursement for this program. In addition there are over 3,000 special districts, an unknown number of which are subject to the taxing restrictions of article XII A, and the spending limits of article XIII B, of the

¹² Exhibit C, Decision and Parameters and Guidelines, pages 9-10.

¹³ Exhibit C, Decision and Parameters and Guidelines, page 12.

¹⁴ Claims data reported as of May 15, 2019.

¹⁵ Claims data reported as of May 15, 2019.

¹⁶ See Exhibit B, Test Claim Decision, pages 1, 25, and 42 and Exhibit C, Decision and Parameters and Guidelines, page 8 (excluding "...a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e)..." from subvention for this program).

California Constitution,¹⁷ and are therefore eligible to seek reimbursement for this program.¹⁸ Of those, only 18 local agencies filed a total of only 23 reimbursement claims for the initial reimbursement period: 7 for fiscal year 2015-2016, 7 for fiscal year 2016-2017, and 9 for fiscal year 2017-2018. The 18 local agencies that filed reimbursement claims consist of 11 cities, 6 counties, and one special district. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the Statewide Cost Estimate. Late initial claims may be filed until April 26, 2020.¹⁹ There were total of 122 impasses that resulted in approved MMBA factfinding panels during the initial claiming period for an average of 41 impasses per year.²⁰ However, only 23 reimbursement claims were filed for the initial claiming period and therefore, less than 20 percent of such claims that could have been filed were in fact filed. See Table A below:

Table A²¹

Fiscal Year	Number of Initial Claims Filed	Activity 1 Select a Member and Pay Costs	Activity 2 Meet Within 10 Days	Activity 3 Furnish Records	Activity 4 Receive and Make Findings Publicly Available	Indirect Costs	Total
2015-2016	7	\$91,891	\$241,995	\$145,272	\$22,701	\$30,366	\$532,224
2016-2017	7	\$25,786	\$38,376	\$38,830	\$2,058	\$1,227	\$106,277

¹⁷ Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.])

¹⁸ Exhibit C, Decision and Parameters and Guidelines (“...other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate.”), page 8.

¹⁹ Exhibit D, Controller’s Claiming Instructions Program No. 371, pages 1-2.

²⁰ See Exhibit X, PERB 2015-2016 Annual Report; Exhibit X, PERB 2016-2017 Annual Report, Exhibit X, PERB 2017-2018 Annual Report, <https://www.perb.ca.gov/AnnualReports.aspx> (accessed on April 23, 2019).

²¹ Claims data reported as of May 15, 2019.

Fiscal Year	Number of Initial Claims Filed	Activity 1 Select a Member and Pay Costs	Activity 2 Meet Within 10 Days	Activity 3 Furnish Records	Activity 4 Receive and Make Findings Publicly Available	Indirect Costs	Total
2017-2018	9	\$71,402	\$86,765	\$202,106	\$6,146	\$3,765	\$368,254 ²²

There may be several reasons that non-claiming local agencies did not file reimbursement claims, including but not limited to: they did not incur costs of more than \$1,000 during a fiscal year; they had relatively low reimbursable costs after identifying offsetting revenues used for this program and determined that it was not cost-effective to participate in the reimbursement claim process.

- *The total amount for this program may be lower than the Statewide Cost Estimate based on the Controller’s audit findings.*

The Controller may conduct audits and reduce any claim it deems to be excessive or unreasonable. Therefore, costs may be lower than the Statewide Cost Estimate based on the audit findings.

- *The future annual costs for this program may increase or decrease proportionately with the growth or reduction in occurrences of impasses that result in factfinding.*

The future annual costs of this program have a direct correlation with the number of occurrences of impasse which result in factfinding. This assumption is based on future occurrences of impasse that result in factfinding, which may increase or decrease.²³ However, the number of impasses that resulted in MMBA factfinding remained virtually unchanged during fiscal years 2015-2016 through 2017-2018, with an average of about 41 factfinding panels being approved annually.²⁴

- *The future annual costs for this program may increase or decrease proportionately depending on the salaries and benefits of the selected member of the factfinding panel*

²² According to the claims data reported as of May 15, 2019, this amount reflects offsetting revenue applied to one claim of \$1,930.

²³ Note that prior to the factfinding process under the MMBA, PERB must review the request and determine whether it meets the requirements to require a factfinding panel: “Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a)(1) or (2), above, no further action shall be taken by the Board. If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days.” (Cal. Code. Regs., tit. 8 § 32802(c).)

²⁴ See Exhibit X, PERB 2015-2016 Annual Report; Exhibit X, PERB 2016-2017 Annual Report, Exhibit X, PERB 2017-2018 Annual Report, <https://www.perb.ca.gov/AnnualReports.aspx> (accessed on April 23, 2019).

and the PERB-selected or mutually agreed upon chairperson, the per diem, travel, and subsistence expenses, and any other mutually incurred costs for the factfinding process (activity 1); the duration of the MMBA factfinding panel proceedings (activity 2); and with the amount of materials and supplies required to furnish the MMBA factfinding panel with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel (activity 3).

Occurrences of impasse that result in factfinding have remained virtually unchanged during fiscal years 2015-2016 through 2017-2018, with an average of about 41 factfinding panels being approved annually. Therefore, though an increase or decrease in the number of impasses that result in MMBA factfinding would affect future costs, future annual costs are more likely to fluctuate based on: (1) an increase or decrease in the salaries and benefits of employees performing the reimbursable activities and the cost of expenses incurred by the panel member selected and the PERB-selected or mutually-agreed chairperson and any other mutually incurred costs for the factfinding process; (2) the duration of participation in the MMBA factfinding panel; and (3) in the cost of materials and supplies.

In fact, only three of the seven local agencies that filed claims for FY 2015-2016, one of the seven for FY 2016-2017, and three of the nine for FY 2017-2018 actually claimed for activities 1, 2, 3, and 4 for that year and approximately half claimed indirect costs for all three fiscal years. The lowest claim was filed by the City of Livermore, with \$1,233 in total costs claimed for FY 2017-2018, for only activity 1 with no costs claimed for activities 2, 3, or 4 and no indirect costs. On the other hand, the highest claim was filed by the test claimant, the City of Oxnard, for FY 2015-2016 with costs of \$257,670 in total, \$70,962 for activity 1, \$105,406 for activity 2, \$66,338 for activity 3, and \$14,176 for activity 4, plus \$788 in indirect costs to perform those activities.²⁵

This variability in claiming and in costs per activity and per impasse demonstrates several things. First, the data being relied upon for this estimate is limited since less than 20 percent of the number of instances of MMBA factfinding approved by PERB annually actually resulted in a reimbursement claim being filed for the initial claiming period, and therefore assumptions about future costs may prove to be incorrect in the future. Second, costs may vary per local agency and per impasse for a variety of reasons including the number of approved requests for MMBA factfinding the agency experiences, the level of employee selected to perform the mandated activities, whether the agency files reimbursement claims for costs for one or more of the reimbursable activities. Finally, it is not clear how many instances of impasse are represented by the number of reimbursement claims filed, since an impasse proceeding could span multiple fiscal years and an agency could have multiple impasse proceedings happening simultaneously.

It is noteworthy, that several local agencies did not claim for all four reimbursable activities and half of the reimbursement claims failed to claim activity 4. See Table B below:

²⁵ Claims data reported as of May 15, 2019.

Table B²⁶

Claimant	Reimbursable Activities					Total
	1	2	3	4	Ind. Costs	
City of Concord	\$501	\$105,291	\$302	-	-	\$106,904
City of Glendora	\$1,200	\$7,574	\$43,054	\$7,215	\$15,872	\$74,914
City of Oxnard	\$70,962	\$105,406	\$66,338	\$14,176	\$788	\$257,670
County of Sacramento	\$11,544	-	-	-	-	\$11,544
County of San Bernardino	\$4,609	\$15,625	\$2,950	-	\$9,780	\$32,964
County of Santa Barbara	-	\$54	\$9,086	-	\$3,926	\$13,066
County of Sonoma	\$3,075	\$8,045	\$23,542	\$1,310	-	\$35,972
Total 7 Claims FY15-16	\$91,891	\$241,995	\$145,272	\$22,701	\$30,366	\$532,224
City of Concord	\$4,256	-	-	-	-	\$4,256
City of Santa Barbara	-	-	\$7,595	-	-	\$7,595
City of Palo Alto	\$1,219	-	\$12,572	-	-	\$13,791
City of Sunnyvale	\$9,500	\$1,256	-	-	\$454	\$11,210
City of Oxnard	\$928	\$3,407	\$1,333	\$2,058	\$773	\$8,499
County of Riverside	\$1,433	\$16,079	\$17,330	-	-	\$34,842
County of Sacramento	\$8,450	\$17,634	-	-	-	\$26,084
Total 7 Claims FY16-17	\$25,786	\$38,376	\$38,830	\$2,058	\$1,227	\$106,277
City of Livermore	\$1,233	-	-	-	-	\$1,233
City of Salinas	\$11,941	-	-	-	-	\$11,941
City of Corona	\$6,997	-	\$49,767	-	-	\$56,764
City of Hesperia	\$2,515	\$9,146	\$14,892	\$2,898	\$1,919	\$31,370
City of Santa Maria	\$5,731	-	-	-	\$765	\$6,496
County of Riverside	\$16,243	\$49,322	\$120,484	\$2,795	-	\$188,844
County of Sacramento	\$4,039	-	-	-	-	\$4,039
County of Yuba	\$3,068	\$12,431	\$618	-	\$835	\$16,952
Moraga Fire Prot. District	\$19,635	\$15,866	\$16,345	\$453	\$246	\$50,615
Total 9 Claims FY17-18	\$71,402	\$86,765	\$202,106	\$6,146	\$3,765	\$368,254²⁷

- *The future annual costs for this program may increase or decrease proportionately with the receipt and public posting of the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within thirty (30) days of the appointment of the panel (activity 4).*

The Parameters and Guidelines allow for reimbursement for receiving and making publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel (activity 4). Thus these costs will be higher the more often the dispute is not settled within 30 days of the appointment of the panel, but it is also possible that all disputes could be settled within 30 days of appointment of the panel and thus reimbursable activity 4 could be eliminated entirely resulting in no costs for

²⁶ Claims data reported as of May 15, 2019.

²⁷ According to the claims data reported as of May 15, 2019, this amount reflects offsetting revenue applied to one claim of \$1,930.

this activity.²⁸ It is unclear whether those local agencies that did not claim activity 4 for the initial claiming period settled within 30 days of appointment of the panel, failed to perform all of the activities as required by law, misclaimed costs, or did not adequately document costs for some of the activities to allow for proper claiming of those specific activities.

Methodology

The Statewide Cost Estimate for the initial claiming period of fiscal years 2015-2016, 2016-2017, and 2017-2018 was developed by totaling the 23 unaudited reimbursement claims filed by 18 local agencies to the Controller.

Following is a breakdown of actual costs claimed per fiscal year for the initial reimbursement period. See Table C below:

Table C²⁹

Reimbursement Period	Number of Initial Claims Filed	Cost
Fiscal Year 2015-2016	7	\$532,224
Fiscal Year 2016-2017	7	\$106,277
Fiscal Year 2017-2018	9	\$368,254
TOTAL	23	\$1,006,755

Assuming that each reimbursement claim reflects a single impasse proceeding,³⁰ the actual claims data indicates that reimbursement claims were filed for just under 20 percent of the impasses that resulted in factfinding panels during the initial claiming period. Of the local agencies filing claims, one agency filed claims for each of the three fiscal years 2015-2016, 2016-2017, and 2017-2018; three filed claims for two of the three fiscal years, and the remaining 14 local agencies filed one claim each for the initial claiming period. The ongoing annual cost estimate takes the average costs claimed per reimbursement claim (\$43,772) and multiplies that number times 7.67 (the average number of claims filed per year for the initial claiming period) and by 41 (the average number of impasses that result in approved factfinding statewide annually over the past three years) to provide a range of potential future costs. Thus the potential future cost ranges from \$335,731 (if the same number of claims are filed annually as were filed for the initial claiming period) to \$1,794,652 (if costs for every impasse that resulted in an approved factfinding panel were claimed) plus the implicit price deflator annually. See Table D below:

²⁸ Exhibit C, Decision and Parameters and Guidelines (“4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)”), page 10.

²⁹ Claims data reported as of May 15, 2019.

³⁰ As discussed above, it is unclear whether each claim represents one or more (or fewer, if a multiple-year proceeding) impasse proceeding. However, we are making this assumption for the sake of analysis.

Table D

Average Cost Per Reimbursement Claim	Multiplied by Number of Claims Filed	Ongoing Annual Cost
\$43,772	7.67 ³¹	\$335,731, plus the implicit price deflator
\$43,772	41 ³²	\$1,794,652, plus the implicit price deflator

Accordingly, assuming that the average number of reimbursement claims per fiscal year continues to be 7.67 in fiscal year 2018-2019 and forward, the estimated average annual cost will be \$335,730.90 (\$43,771.96 x 7.67) plus the implicit price deflator.

Additionally, if every local agency with an approved MMBA factfinding by PERB is eligible to file and actually files a reimbursement claim (average of 41 x average cost per claim of \$43,772 = \$1,794,652) statewide costs could potentially increase up to \$1,794,652, annually. This is a possible but unlikely scenario.

Draft Proposed Statewide Cost Estimate

On May 29, 2019, Commission staff issued the Draft Proposed Statewide Cost Estimate.³³

Staff Recommendation

Staff recommends that the Commission adopt this Proposed Statewide Cost Estimate of \$335,731, plus the implicit price deflator for the initial reimbursement period of fiscal years 2015-2016, 2016-2017, and 2017-2018 and the estimated cost for fiscal year 2018-2019 and following of \$335,731 to \$1,794,652 plus the implicit price deflator.

³¹ Average number of claims filed per fiscal year for the initial claiming period.

³² The average number of requests for a factfinding panel that are approved by PERB annually. Note that because some special districts are not subject to the tax and spend limitations of the California Constitution, those districts are not eligible for reimbursement. Data is not available to support a determination of what number of ineligible districts might have an impasse that would result in a factfinding panel. However, for the initial claiming period, 23 claims were filed by cities and counties and only one claim was filed by a non-enterprise special district.

³³ Exhibit E, Draft Proposed Statewide Cost Estimate.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On May 29, 2019, I served the:

- **Draft Proposed Statewide Cost Estimate, Schedule for Comments, and Notice of Hearing issued May 29, 2019**

Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04
Government Code Sections 3505.4(a-d) and 3505.5(a-d);
Statutes 2012, Chapter 314 (AB 1606)
City of Oxnard, Claimant

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 29, 2019 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/22/19

Claim Number: 16-TC-04

Matter: Local Agency Employee Organizations: Impasse Procedures II

Claimant: City of Oxnard

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services, LLC*

5325 Elkhorn Blvd. #307, Sacramento, CA 95842

Phone: (916) 727-1350

harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-0254

lbaysinger@sco.ca.gov

Cindy Black, *City Clerk, City of St. Helena*

1480 Main Street, St. Helena, CA 94574

Phone: (707) 968-2742

ctzafoopoulos@cityofstheleena.org

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831

Phone: (916) 203-3608

allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*

895 La Sierra Drive, Sacramento, CA 95864

Phone: (916)595-2646

Bburgess@mgtamer.com

Evelyn Calderon-Yee, *Bureau Chief, State Controller's Office*

Local Government Programs and Services, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Gwendolyn Carlos, *State Controller's Office*

Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
gcarlos@sco.ca.gov

Daniel Carrigg, Deputy Executive Director/Legislative Director, *League of California Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8222
Dcarrigg@cacities.org

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630
Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Michael Coleman, *Coleman Advisory Services*

2217 Isle Royale Lane, Davis, CA 95616
Phone: (530) 758-3952
coleman@muni1.com

Anita Dagan, Manager, Local Reimbursement Section, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 324-4112
Adagan@sco.ca.gov

J. Felix De La Torre, General Counsel, *Public Employment Relations Board (D-12)*

1031 18th Street, Sacramento, CA 95811
Phone: (916) 322-3198
fdelatorre@perb.ca.gov

Patrick Dyer, Director, *MGT Consulting*

Claimant Representative

2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 443-3411
pdyer@mgtconsulting.com

Donna Ferebee, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
donna.ferebee@dof.ca.gov

Susan Geanacou, *Department of Finance*

915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Dillon Gibbons, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814

Phone: (916) 442-7887
dillong@cgsda.net

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Sunny Han, Project Manager, *City of Huntington Beach*
2000 Main Street, Huntington Beach, CA 92648
Phone: (714) 536-5907
Sunny.han@surfcity-hb.org

Chris Hill, Principal Program Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Hill@dof.ca.gov

Edward Jewik, *County of Los Angeles*
Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012
Phone: (213) 974-8564
ejewik@auditor.lacounty.gov

Matt Jones, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
matt.jones@csm.ca.gov

Anita Kerezsi, *AK & Company*
2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446
Phone: (805) 239-7994
akcompanysb90@gmail.com

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Erika Li, Program Budget Manager, *Department of Finance*
915 L Street, 10th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
erika.li@dof.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Jane McPherson, Financial Services Director, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
JmcPherson@oceansideca.org

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Meredith Miller, Director of SB90 Services, *MAXIMUS*

3130 Kilgore Road, Suite 400, Rancho Cordova, CA 95670
Phone: (972) 490-9990
meredithcmiller@maximus.com

David Millican, Interim Chief Financial Officer, *City of Oxnard*
Claimant Contact

Finance Department, 300 West Third Street, Oxnard, CA 93030
Phone: (805) 385-7461
david.millican@oxnard.org

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Artiano Shinoff*
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@as7law.com

Johnnie Pina, Legislative Policy Analyst, *League of Cities*
1400 K Street, Suite 400, Sacramento, CA 95814
Phone: (916) 658-8214
jpina@cacities.org

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@atc.sbcounty.gov

Deanne Purcell, Assistant Chief Financial Officer, *City of Oxnard*
Claimant Contact
300 West Third Street, Oxnard, CA 93030
Phone: (805) 385-7475
Deanne.Purcell@oxnard.org

Mark Rewolinski, *MAXIMUS*
808 Moorefield Park Drive, Suite 205, Richmond, VA 23236
Phone: (949) 440-0845
markrewolinski@maximus.com

Brian Rutledge, Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Brian.Rutledge@dof.ca.gov

Theresa Schweitzer, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3140
tschweitzer@newportbeachca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Michelle Skaggs Lawrence, City Manager, *City of Oceanside*
300 North Coast Highway, Oceanside, CA 92054
Phone: (760) 435-3055
citymanager@oceansideca.org

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Joe Stephenshaw, Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Joe.Stephenshaw@sen.ca.gov

Derk Symons, Staff Finance Budget Analyst, *Department of Finance*
Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Derk.Symons@dof.ca.gov

Jolene Tollenaar, *MGT of America*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Evelyn Tseng, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3127
etseng@newportbeachca.gov

Brian Uhler, Principal Fiscal & Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
Brian.Uhler@LAO.CA.GOV

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Patrick Whitnell, General Counsel, *League of California Cities*

1400 K Street, Suite 400, Sacramento, CA 95814

Phone: (916) 658-8281

pwhitnell@cacities.org

Hasmik Yaghobyan, *County of Los Angeles*

Auditor-Controller's Office, 500 W. Temple Street, Room 603, Los Angeles, CA 90012

Phone: (213) 974-9653

hyaghobyan@auditor.lacounty.gov



PUBLIC EMPLOYMENT RELATIONS BOARD

2015-2016 ANNUAL REPORT

October 15, 2016



EDMUND G. BROWN JR., GOVERNOR

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

2015-2016 ANNUAL REPORT

October 15, 2016



Board Members

ANITA I. MARTINEZ
A. EUGENE HUGUENIN
PRISCILLA S. WINSLOW
ERIC R. BANKS
MARK C. GREGERSEN

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PUBLIC EMPLOYMENT RELATIONS BOARD

Board Office
1031 18th Street, Board Suite 204
Sacramento, CA 95811-4174
Telephone: (916) 323-8000
Fax: (916) 327-7960



October 15, 2016

Dear Members of the State Legislature and fellow Californians:

On behalf of the Public Employment Relations Board (PERB), we are pleased to submit our 2015-2016 Annual Report. PERB is committed to conducting all agency activities with transparency and accountability. This Report describes PERB's statutory authority, jurisdiction, purpose and duties. The Report further describes case dispositions and other achievements for the Board's divisions, including results of litigation.

PERB began the 2015-2016 fiscal year with a full complement of five members. We ended the year with only three members after the retirement of Anita I. Martinez, Chair, and the expiration of the term of A. Eugene Huguenin, Board Member. Both served PERB with great distinction and brought to PERB a combined experience in labor relations of approximately 80 years.

The eight public sector collective bargaining statutes administered by PERB guarantee the right of public employee to organize, bargain collectively and to participate in the activities of employee organizations, and to refrain from such activities. The statutory schemes protect public employees, employee organizations and employers alike from unfair practices, with PERB providing the impartial forum for the settlement and resolution of their disputes.

Statistical highlights during the 2015-2016 fiscal year include:

- 652 unfair practice charged filed
- 116 representations petitions filed
- 129 mediation requests filed pursuant to the Educational Employment Relations Act (EERA), Higher Education Employer-Employee Relations Act (HEERA), and Ralph C. Dills Act
- 22 EERA/HEERA factfinding requests approved
- 54 Meyers-Milias-Brown Act (MMBA) factfinding requests filed
- 132 unfair practice charges withdrawn/settled prior to formal hearing
- 266 days of unfair practice informal settlement conferences conducted by regional attorneys
- 87 formal hearings completed by administrative law judges
- 76 proposed decisions issued by administrative law judges
- 552 cases filed with State Mediation and Conciliation Service
- 70 decisions issued and 18 injunctive relief requests decided by the Board

October 15, 2016
Page Two

It is worth noting that the number of proposed decisions issued by PERB's Division of Administrative Law is the highest in recent history. We are also proud to report that this year the Office of the General Counsel has successfully defended every case decided by the Board from which parties have appealed to the courts of appeal.

We invite you to explore the Report for more detailed information about PERB's 2015-2016 activities and case dispositions. Also enclosed is a summary of all Board decisions describing the myriad issues the Board addressed in the last fiscal year.

We hope you find this Report informative. Please visit our website at www.perb.ca.gov or contact PERB at (916) 323-8000 for any further information.

Respectfully submitted,

Priscilla S. Winslow
Board Member

Eric R. Banks
Board Member

Mark C. Gregersen
Board Member

I. OVERVIEW

Statutory Authority and Jurisdiction

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board administers eight collective bargaining statutes, ensures their consistent implementation and application, and adjudicates labor relations disputes between the parties. PERB administers the following statutes under its jurisdiction:

- (1) Educational Employment Relations Act (EERA) (Government Code § 3540 et seq.)—California’s public schools (K-12) and community colleges;
- (2) State Employer-Employee Relations Act (Dills Act) (Government Code § 3512 et seq.)—State employees;
- (3) Higher Education Employer-Employee Relations Act (HEERA) (Government Code § 3560 et seq.)—California State University and University of California systems and Hastings College of Law;
- (4) Meyers-Milias-Brown Act (MMBA) (Government Code § 3500 et seq.)—California’s city, county, and local special district employers and employees (excludes specified peace officers, and the City and County of Los Angeles);
- (5) Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Public Utilities Code § 99560 et seq.);
- (6) Trial Court Employment Protection and Governance Act (Trial Court Act) (Government Code § 71600 et seq.);
- (7) Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Government Code § 71800 et seq.); and
- (8) In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA) (Government Code § 110000 et seq.).

The history of PERB’s statutory authority and jurisdiction is included in the Appendices, beginning at page 17.

PERB's Purpose and Duties

The Board

By statute, the Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to a term of up to five years, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the eight statutory schemes, the Board acts as an appellate body to decide challenges to decisions issued by Board agents. Decisions of the Board itself may be appealed, under certain circumstances, to the State appellate and superior courts. The Board, through its actions and those of its agents, is empowered to:

- Conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Remedy unfair practices, whether committed by employers or employee organizations;
- Investigate impasse requests that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register 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 statutory schemes;
- Bring legal actions 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; and
- Take such other action as the Board deems necessary to effectuate the purposes of the statutory schemes it administers.

A summary of the Board's 2015-2016 decisions is included in the Appendices, beginning at page 30.

Major PERB Functions

The major functions of PERB include: (1) the investigation and adjudication of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) adjudication of appeals of Board agent determinations to the Board itself; (4) the legal functions performed by the Office of the General Counsel; and (5) the mediation services provided to the public and some private constituents by the State Mediation and Conciliation Service (SMCS).

A detailed description of PERB's major functions is included in the Appendices, beginning at page 19.

Other PERB Functions and Activities

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.

Administrative Services

The Division of Administration provides services to support PERB operations and its employees. This includes strategic policy development, administration, and communication with the State's control agencies to ensure operations are compliant with State and Federal requirements. A full range of services are provided for both annual planning/reporting cycles and ongoing operations in fiscal, human resources, technology, facility, procurement, audits, security, and business services areas.

II. LEGISLATION AND RULEMAKING

Legislation

In the 2015-2016 fiscal year, the Legislature did not pass any bills that affect PERB or amend any of the labor relations statutes under its jurisdiction.

Rulemaking

The Board did not consider any rulemaking proposals in the 2015-2016 fiscal year.

III. CASE DISPOSITIONS

Unfair Practice Charge Processing

The number of unfair practice charges filed with PERB has increased as a result of various statutory expansions to PERB's jurisdiction over the last two decades. In 2015-2016, 652 new charges were filed with PERB.

Dispute Resolutions and Settlements

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process—the investigation. During this step of the process in fiscal year 2015-2016, 132 cases (about 22 percent of 599 completed charge investigations) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 266 days of settlement conferences for cases in which a complaint was issued.

PERB's success rate in mediating voluntary settlements is attributable, in part, to the tremendous skill and efforts of its Regional Attorneys. It also requires commitment by the parties involved to look for solutions to problems. As the efforts of PERB staff demonstrate, voluntary settlements are the most efficient and timely way of resolving disputes, as well as an opportunity for the parties to improve their collective bargaining relationships. PERB looks forward to continuing this commitment to voluntary dispute resolution.

Administrative Adjudication

Complaints that are not resolved through mediation are sent to the Division of Administrative Law (Division) for an evidentiary hearing (formal hearing) before an Administrative Law Judge (ALJ).

In fiscal year 2015-2016, the Division had eight ALJs conducting formal hearings and writing proposed decisions. The Division's production of proposed decisions issued in fiscal year 2015-2016 (76 proposed decisions) was greater than fiscal year 2014-2015 (70 proposed decisions) and the same as fiscal years 2012-2013 and 2013-2014 (76 proposed decisions), when the Division achieved an all-time high in its issuance of proposed decisions. In fiscal year 2015-2016, the 76 proposed decisions were issued in an average of 135 days per decision.

For the 2015-2016 fiscal year, the number of proposed decisions issued (76 proposed decisions) was less than the number of formal hearings completed (87 formal hearings). Additionally, the number of pending proposed decisions to write at the end of the fiscal year was higher than fiscal year 2014-2015 (42 proposed decisions to write) to 2015-2016 (44 proposed decisions to write). This increase in the number of pending decisions to write indicates that the net backlog of cases has incrementally increased.

The total number of cases assigned in fiscal year 2015-2016 was 183 cases. Of the 183 cases, the ALJs closed a total of 182 cases and 45 cases were held in abeyance pending resolution or other reasons. Last fiscal year (2014-2015), 209 cases were assigned to the ALJs which was an all-time Division high. The current decrease in case assignments from the previous fiscal year was most likely caused by the number of attorney vacancies in the Office of the General Counsel, as well as the increase in litigation assignments to that office.

Over the last four fiscal years, the regional distribution of the caseload has been focused primarily in the PERB Glendale office. Approximately 50 percent of all PERB unfair practice formal hearings have been held in the Glendale office, and this trend is expected to continue.

Board Decisions

Proposed decisions issued by Board agents may be appealed to the Board itself. During the 2015-2016 fiscal year, the Board issued 70 decisions as compared to 74 during the 2014-2015 fiscal year. The Board also considered 18 requests for injunctive relief as compared to 19 during the 2014-2015 fiscal year. A summary of injunctive relief requests filed compared to prior years is included in the Appendices at page 27.

Litigation

PERB's litigation projects¹ increased in fiscal year 2015-2016. Specifically, PERB attorneys completed 121 litigation-related assignments (compared to 82 litigation projects last fiscal year). In addition, the number of active litigation cases increased in fiscal year 2015-2016 to its highest in several years. A total of 37 litigation cases, including new and continuing matters, were handled during the 2015-2016 fiscal year (compared to 32 last year, and 21 the year before that). A summary of these cases is included in the Appendices, beginning at page 64.

Representation Activity

For fiscal year 2015-2016, 116 new representation petitions were filed, which is a slight increase from the 110 petitions filed in the prior fiscal year. The fiscal year 2015-2016 total includes 41 recognition petitions, 1 petition for certification, 6 severance requests, 30 decertification petitions, 8 requests for amendment of certification, and 30 unit modification petitions. In addition to the 266 days of informal conference in unfair practice charge cases, PERB attorneys held 12 days of informal conference and 18 days of formal hearing in representation matters.

¹ PERB's court litigation primarily involves: (1) injunctive relief requests to immediately stop unlawful actions at the superior court level; (2) defending decisions of the Board at the appellate level; and (3) defending the Board's jurisdiction in all courts, including the California and United States Supreme courts. Litigation consists of preparing legal memoranda, court motions, points and authorities, briefs, stipulations, judgments, orders, etc., as well as making court appearances.

Election activity remained the same, with 11 elections conducted in fiscal year 2015-2016, compared to 11 elections in the prior fiscal year. The 11 elections conducted by PERB included 9 decertification elections, 1 organizational security-rescission election, and 1 amendment of certification election. More than 1,594 employees were eligible to participate in these elections, in bargaining units ranging in size from 7 to 482 employees.

Mediation/Factfinding/Arbitration

During the 2015-2016 fiscal year, PERB received 129 mediation requests under EERA/HEERA/Dills. The number of mediation requests under EERA/HEERA increased from the prior year (120 such requests were filed in 2014-2015). Of those requests, 100 were approved for mediation. Subsequently, 22 of those mediation cases were approved for factfinding.

During this same period of time, 54 factfinding requests were filed under the MMBA. Of those requests, 44 were approved. The number of factfinding requests under the MMBA increased from the prior year (41 such requests were filed in 2014-2015).

Compliance

PERB staff commenced compliance proceedings regarding 27 unfair practice cases, in which a final decision resulted in a finding of a violation of the applicable statute. This is a slight decrease in activity over the prior year (33 compliance proceedings were initiated in 2014-2015).

State Mediation and Conciliation Service Division

SMCS was fully staffed in fiscal year 2015-2016. The fiscal year caseload was low, as the public sector economic recovery continued to be reflected in labor contract negotiations in most, but not all, parts of the state.

SMCS received a total of 552 new cases between July 1, 2015 and June 30, 2016, and closed 684. The closed cases include:

Contract Impasses

- 91 EERA/HEERA
- 104 MMBA
- 4 Transit
- 8 State Trial Courts
- 1 Los Angeles City/County

Grievances and Disciplinary Appeals

- 205 EERA/HEERA
- 105 MMBA
- 9 Transit
- 3 State Trial Courts
- 21 City/County
- 37 Private Sector

Other

- 51 representation and election cases
- 29 workplace conflict or training/facilitation assignments
- 16 miscellaneous cases related to education, outreach, and internal mediation or program administration projects.

IV. APPENDICES

Introduction of Board Members, Legal Advisors and Managers

Board Members

Anita I. Martinez has been employed with PERB since 1976. In May 2011, Governor Edmund G. Brown Jr. appointed her to a three-year term as Board Member and Chair of the Board. Ms. Martinez was reappointed to a new five-year term in January 2014. Ms. Martinez retired effective July 5, 2016.

Prior to her Board Member and Chair appointment, Ms. Martinez served as the PERB San Francisco Regional Director since 1982. Her duties included supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of informal settlement conferences, representation hearings, representation elections, interest based bargaining training for PERB constituents and PERB staff training.

Before joining PERB, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, *California Public Sector Labor Relations*, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her BA in Political Science from the University of San Francisco.

A. Eugene Huguenin was appointed to the Board by Governor Edmund G. Brown Jr. in May 2011. Prior to his appointment, Mr. Huguenin practiced labor, employment, and education law in the Sacramento-area. He advised and represented public employees and their organizations in judicial and administrative proceedings, and consulted on educational policy and procedures. From 2005 to 2009, he served as a commissioner on the Fair Political Practices Commission.

Before relocating to Sacramento in 2000, Mr. Huguenin practiced labor and education law in Los Angeles and Burlingame for more than 20 years, advising and representing the California Teachers Association (CTA) and its locals throughout the state. From 1973 to 1979, Mr. Huguenin consulted for CTA on labor relations issues. Prior to joining CTA, he was employed in the Seattle area by a local teachers association and a national accounting firm.

Mr. Huguenin is a member of the Los Angeles County Bar Association, the State Bar of California, and the American Bar Association. He received a Bachelor's degree in Business Administration in 1966, and a Juris Doctor in 1969, from the University of Washington. Mr. Huguenin's term expired December 2015.

Priscilla S. Winslow was appointed to the Board by Governor Edmund G. Brown Jr. on February 1, 2013. She previously served as Legal Advisor to Board Member A. Eugene Huguenin beginning July 2012.

Prior to coming to PERB, Ms. Winslow was the Assistant Chief Counsel of the California Teachers Association where she worked from 1996 to 2012, representing and advising local chapters and CTA on a variety of labor and education law matters.

Prior to her employment at CTA, Ms. Winslow maintained a private law practice in Oakland and San Jose representing individuals and public sector unions in employment and labor law matters. In addition to practicing law, Ms. Winslow taught constitutional law at New College of California, School of Law as an adjunct professor from 1984 to 1993.

From 1979 to 1983 Ms. Winslow served as Legal Advisor to PERB Chairman Harry Gluck.

Ms. Winslow is a member of the Labor & Employment Law Section of the State Bar of California and served as Chair of that section in 2000-2001. She is also a member of the American Constitution Society. She received a Bachelor of Arts degree in History and Philosophy from the University of California, Santa Cruz, and a Juris Doctor degree from the University of California, Davis. Ms. Winslow's term expires December 2017.

Eric R. Banks was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, and reappointed in February 2015. Prior to his appointment, Mr. Banks worked at Ten Page Memo, LLC as a partner providing organizational consulting services. He served in multiple positions at the Service Employees International Union, Local 221 from 2001 to 2013, including President, Advisor to the President, Chief of Staff, and Director of Government and Community Relations, representing public employees in San Diego and Imperial Counties. Prior to his work at Local 221, Mr. Banks was Policy Associate for State Government Affairs at the New York AIDS Coalition, in Albany, New York, from 2000 to 2001. He worked in multiple positions at the Southern Tier AIDS Program, in Upstate New York from 1993 to 2000, including Director of Client Services, Assistant Director of Client Services, and Case Manager. Mr. Banks received his Bachelor's degree in 1993 from Binghamton University. Mr. Banks' term expires December 2016.

Mark C. Gregersen was appointed to the Board by Governor Edmund G. Brown on February 6, 2015. Mr. Gregersen's career in public sector labor relations spans over 35 years. Prior to his appointment, Mr. Gregersen was a principal consultant at Renne Sloan Holtzman Sakai LLP. He has also served as director of labor and work force strategy for the City of Sacramento and director of human resources for a number of California cities and counties. He has held similar positions for local government in the states of Nevada and Wisconsin. Mr. Gregersen has also served as an assistant county manager for the County of Washoe in Nevada.

Mr. Gregersen received a Bachelor's degree in business administration from the University of Wisconsin-Madison, and received a Master of Business Administration degree from the University of Wisconsin-Oshkosh.

Mr. Gregersen's term expires December 2019.

Legal Advisors

Sarah L. Cohen was appointed as Legal Advisor to Board Chair Anita I. Martinez in July 2011. Previously, Ms. Cohen served as Industrial Relations Counsel IV in the Office of the Director - Legal Unit at the Department of Industrial Relations, where she worked from 1994 to 2011. Prior to entering state service, Ms. Cohen was a legal services attorney in the Employment Law Office at the Legal Aid Foundation of Los Angeles from 1988 to 1994. Ms. Cohen received her Juris Doctor degree from the University of California, Hastings College of the Law. Ms. Cohen also holds a Bachelor of Arts degree from the University of California, Los Angeles.

Maximiliano C. Garde was appointed as Legal Advisor to Member A. Eugene Huguenin in June 2013. Previously, Mr. Garde had served as an Attorney at La Raza Centro Legal in San Francisco and prior to that as a Law Clerk with the California Teachers Association in Burlingame. Mr. Garde received his Juris Doctor from the University of California, Hastings College of the Law and received a Bachelor of Arts degree in Sociology from the University of California, Berkeley.

Scott Miller was appointed as Legal Advisor to Board Member Eric R. Banks in May 2013. Mr. Miller is a 2007 graduate of the University of California, Los Angeles School of Law's Public Interest Law and Policy Program and, from 2008-2013, practiced labor and employment law as an associate attorney at Gilbert & Sackman. He holds a Bachelor of Arts in English literature and a Masters in history from Kansas State University.

Russell Naymark has served as Legal Advisor to Board Member Priscilla S. Winslow since November 2013.

Prior to coming to PERB, Mr. Naymark was an associate at the law firm of Weinberg, Roger & Rosenfeld, where he worked in the Sacramento office from 2011 to 2013, representing and advising various public and private sector unions on a variety of labor law matters.

Prior to his employment at the Weinberg firm, Mr. Naymark served as Assistant General Counsel and Counsel for SAG-AFTRA (formerly Screen Actors Guild) in Los Angeles from 2005 to 2011, where he represented actors and other screen talent.

Prior to his employment with SAG, Mr. Naymark served as District Counsel for Communication Workers of America, AFL-CIO, District Nine in Sacramento from 2001-2005, where he represented employees predominately in the telecommunications and cable industries.

Mr. Naymark is a member of the Labor & Employment Law Section of the State Bar of California. He received a Bachelor of Arts degree in Political Economy from Princeton University, and a Juris Doctor degree from the University of California, Davis.

Katharine M. Nyman was appointed as Legal Advisor to Member Mark C. Gregersen in June 2015. Previously, Ms. Nyman served as Regional Attorney in the Office of the General Counsel at PERB, where she worked from 2007 to 2015. Ms. Nyman received her Juris Doctor from the

University of the Pacific (UOP), McGeorge School of Law, and received a Bachelor of Science degree in Environmental Design from the University of California, Davis.

Administrators

J. Felix De La Torre was appointed General Counsel in February 2015. Prior to his appointment, Mr. De La Torre served as Chief Counsel for Service Employees International Union, Local 1000, where he was the Chief Counsel from 2012 to 2015, Assistant Chief Counsel from 2010 to 2012, and a Senior Staff Attorney from 2008 to 2010. From 2000 to 2008, Mr. De La Torre was a shareholder and partner at Weinberg, Roger and Rosenfeld, where he represented both public and private sector employees in a wide range of labor and employment matters, including federal and State court litigation, labor arbitrations, collective bargaining, union elections, unfair labor practices, and administrative hearings. Mr. De La Torre also served as a member of the Board of Directors for the AFL-CIO Lawyers Coordinating Committee and the Sacramento Center for Workers Rights. In addition, Mr. De La Torre was as a staff attorney at the California Rural Legal Assistance Foundation (CRLAF) and, before that, the State Policy Analyst for the Mexican American Legal Defense and Educational Fund (MALDEF). Mr. De La Torre is also an Instructor at the University of California (U.C.) Davis Extension in the Labor Management Certificate Program. Mr. De La Torre is a 1999 graduate of U.C. Davis' King Hall School of Law.

Wendi L. Ross, Deputy General Counsel [Acting General Counsel (May 2014 – February 2015), Interim General Counsel (December 2010 – April 2011)], joined PERB in April 2007 and has more than 27 years of experience practicing labor and employment law. Ms. Ross was employed for over ten years by the State of California, Department of Human Resources as a Labor Relations Counsel. Prior to that position, she was employed as an Associate Attorney with the law firms of Pinnell & Kingsley and Thierman, Cook, Brown & Prager. Ms. Ross received her Bachelor of Arts degree in Political Science-Public Service from U.C. Davis and her law degree from UOP, McGeorge School of Law. She has served as the Chair of the Sacramento County Bar Association, Labor and Employment Law Section and previously taught an arbitration course through the U.C. Davis Extension.

Shawn P. Cloughesy is the Chief Administrative Law Judge for PERB. He has over 20 years' experience as an Administrative Law Judge with two state agencies (PERB and the State Personnel Board) conducting hundreds of hearings involving public sector labor and employment matters. Prior to being employed as an administrative law judge, Mr. Cloughesy was a Supervising Attorney for the California Correctional Peace Officers Association, practicing and supervising attorneys who practiced before PERB and other agencies.

Loretta van der Pol is the Chief of the State Mediation and Conciliation Service Division. She joined the agency in March 2010, after working for eight years as a Senior Employee Relations Manager for the Orange County Employees Association, an independent labor union. Prior to working for the union, Ms. van der Pol worked as an analyst, supervisor and mid-level manager for twenty years. Nearly half of those years were spent in the line organizations of electric and water utilities, and in facilities maintenance and operations. The amount of labor relations work involved in those positions lead to her full transition into human resources. She has several years of experience as chief negotiator in labor negotiations and advocacy on both

sides of the table. Most of her professional working life has also involved providing workplace training in conflict management, interest-based bargaining, employee performance management, and statutory compliance requirements. She also facilitates interest-based contract negotiations and workplace interpersonal conflict intervention. Ms. van der Pol earned her undergraduate degree in Social Sciences from Chapman University, and has completed coursework in the Master of Public Administration degree program at California State University, Fullerton.

Mary Ann Aguayo joined PERB in January 2014 as its Chief Administrative Officer. Her primary responsibilities include providing leadership, under the direction of the Board itself, in areas of strategic planning, policy development and implementation, as well as communications with State's control agencies to ensure the Board's fiscal, technology, human resources, procurement, facilities, and security and safety programs remain compliant with current requirements.

Prior to assuming her current role, Ms. Aguayo spent over 20 years managing various administrative offices and programs within State agencies. Beginning her career at the State Personnel Board, she recently served as the Chief Administrative Officer for the Department of Water Resources' State Water Project Operations. This position included oversight of administrative services for over 1,100 employees and several multi-million dollar contracts.

Ms. Aguayo holds a Bachelor of Arts degree in Business Administration with a concentration in Human Resources Management from California State University, Sacramento. She is a graduate of the University of California, Davis' Executive Program, and in January 2014 obtained her certification as a Senior Professional in Human Resources.

History of PERB's Statutory Authority and Jurisdiction

Authored by State Senator Albert S. Rodda, EERA of 1976 establishes 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) establishes collective bargaining for State employees; and HEERA, authored by Assemblyman Howard Berman, extends the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the MMBA of 1968, which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes specified peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include TEERA, establishing collective bargaining for supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Act of 2000 and the Court Interpreter Act of 2002.

PERB's jurisdiction and responsibilities were changed in late June 2012 by the enactment of Senate Bill 1036, which enacted the relevant part of the In-Home Supportive Service Employer-Employee Relations Act (IHSSEERA). The IHSSEERA is within the jurisdiction of PERB to administer and enforce, with respect to both unfair practices and representation matters. The IHSSEERA initially covers only eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, Santa Clara, San Diego, and San Mateo. On July 1, 2015, the County of San Bernardino, the County of Riverside, the County of San Diego, and the County of Los Angeles transitioned to the Statewide Authority under the IHSSEERA. The transition brought Los Angeles County under PERB's jurisdiction for the first time, while the other three counties were formerly subject to PERB's jurisdiction under the MMBA.

In fiscal year 2015-16, more than 2.5 million public sector employees and their employers fell under the jurisdiction of the collective bargaining statutory schemes administered by PERB. The approximate number of employees under these statutes is as follows: 796,000 work for California's public education system from pre-kindergarten through and including the community college level; 240,000 work for the State of California; 400,000 work for the University of California, California State University, and Hastings College of Law; 366,000 work under the auspices of the IHSSEERA statewide; and 663,000 work for California's cities, counties, special districts; with the remainder working in the trial courts, and the Los Angeles County Metropolitan Transportation Authority.

Effective July 1, 2012, Senate Bill 1038 repealed and recast existing provisions of law establishing the State Mediation and Conciliation Service (SMCS) within the Department of Industrial Relations. The legislation placed SMCS within PERB, and vested PERB with all of

the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department of Industrial Relations and exercised or carried out through SMCS.

Governor's Reorganization Plan 2, submitted to the Legislature on May 3, 2012, stated that PERB would be placed under the California Labor and Workforce Development Agency. Pursuant to Government Code section 12080.5, the change became effective on July 3, 2012.

PERB's Major Functions—Detailed Description

Unfair Practice Charges

The investigation and resolution of unfair practice charges is the major function performed by PERB's Office of the General Counsel. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA. Unfair practice charges can be filed online, as well as by mail, facsimile, or personal delivery.

An unfair practice charge alleges an employer or employee organization engaged in conduct that is unlawful under one of the statutory schemes 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; and 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; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of an applicable statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the Dills Act, EERA, HEERA, MMBA, TEERA, Trial Court Act, Court Interpreter Act, or IHSSEERA has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, the Board agent must dismiss it. The charging party may appeal the dismissal to the Board itself. Under regulations adopted effective July 1, 2013, the Board can designate whether or not its decision in these cases will be precedential or non-precedential.

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 may file an answer to the complaint.

Once a complaint is issued, usually another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 60 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled. A hearing generally occurs within 90 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision.

Proposed decisions that are not appealed to the Board are binding upon the parties to the case, but may not be cited as precedent in other cases before the Board.

Final decisions of the Board are both binding on the parties to a particular case and precedential, except as otherwise designated by a majority of the Board members issuing dismissal decisions pursuant to PERB Regulation 32320, subdivision (d). Text and headnotes for all but non-precedential Board decisions are available on our website (www.perb.ca.gov) or by contacting PERB. On the PERB website, interested parties can also sign-up for electronic notification of new Board decisions.

Representation

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications that have an internal and occupational community of interest. In most situations, if only one petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If two or more employee organizations are competing for representational rights of an appropriate 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 may hold an informal 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 in some cases a hearing, and issues an administrative determination or a proposed decision. That determination or decision sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB may conduct a representation election, unless the applicable statute and the facts of the case require the employer to grant recognition to an employee organization as the exclusive representative. 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.

PERB staff also assists parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA, HEERA, and the MMBA.

If the parties are unable to reach an agreement during negotiations under EERA, HEERA, or the Dills Act, either party may declare an impasse and request the appointment of a mediator. A Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, a SMCS mediator assists the parties in reaching an agreement. If settlement is not reached during mediation under EERA or HEERA, either party may request the initiation of statutory factfinding procedures. PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

If the parties reach impasse during negotiations under the MMBA, and a settlement is not achieved through impasse dispute resolution procedures authorized by applicable local rules, only the employee organization may request the initiation of statutory factfinding procedures under the MMBA. If factfinding is requested, PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

A summary of PERB's 2015-2016 representation activity is on page 28.

Appeals Office

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. The office maintains case files, issues decisions rendered, and assists in the preparation of administrative records for litigation filed in California's appellate courts. The Appeals Office is the main contact with parties and their representatives while cases are pending before the Board itself.

Office of the General Counsel

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 the State appellate courts, as well as preparing the administrative record for litigation filed in California's 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
- defending the jurisdiction of the Board, submitting motions, pleadings, and amicus curiae briefs, and appearing in cases in which the Board has a special interest.

A summary of PERB's 2015-2016 litigation activity begins at page 64.

State Mediation and Conciliation Service

SMCS was created in 1947, and mediates under the provisions of all of the California public and quasi-public sector employment statutes, as well as the National Labor Relations Act. This is a non-adjudicatory function within PERB that performs mediation and related work

specific to the promotion of harmonious labor-management relations in both the public and private sectors of the state.

The processes are generally very informal, with efforts directed toward compromise and/or collaboration in achieving settlements. The core functions of SMCS involve work that is performed at no charge to the parties, including:

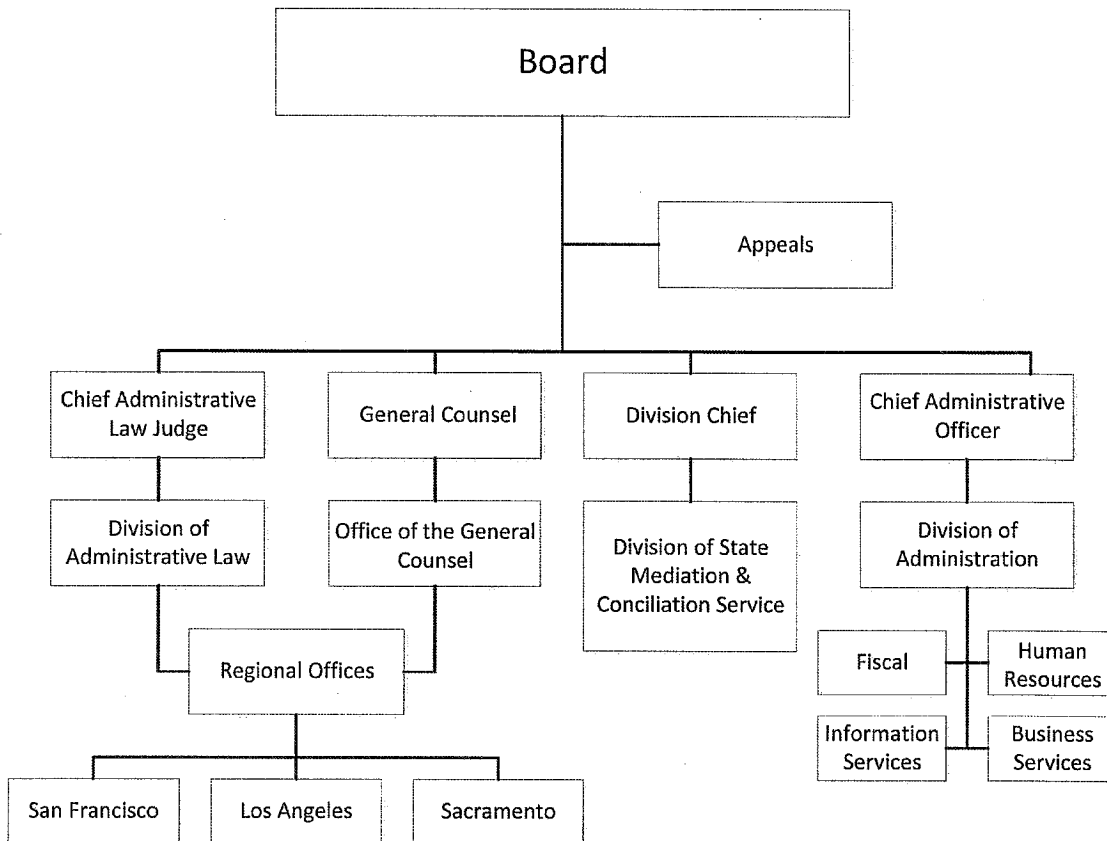
- Mediation to end strikes and other severe job actions;
- Mediation of initial and successor collective bargaining agreement disputes;
- Mediation of grievances arising from alleged violations of collective bargaining agreements and other local rules;
- Mediation of discipline appeals;
- Supervision of elections for decertification/certification of labor organizations, agency shop, and others; and
- Providing general education and information about the value of mediation in dispute resolution.

Chargeable services are also available. These include:

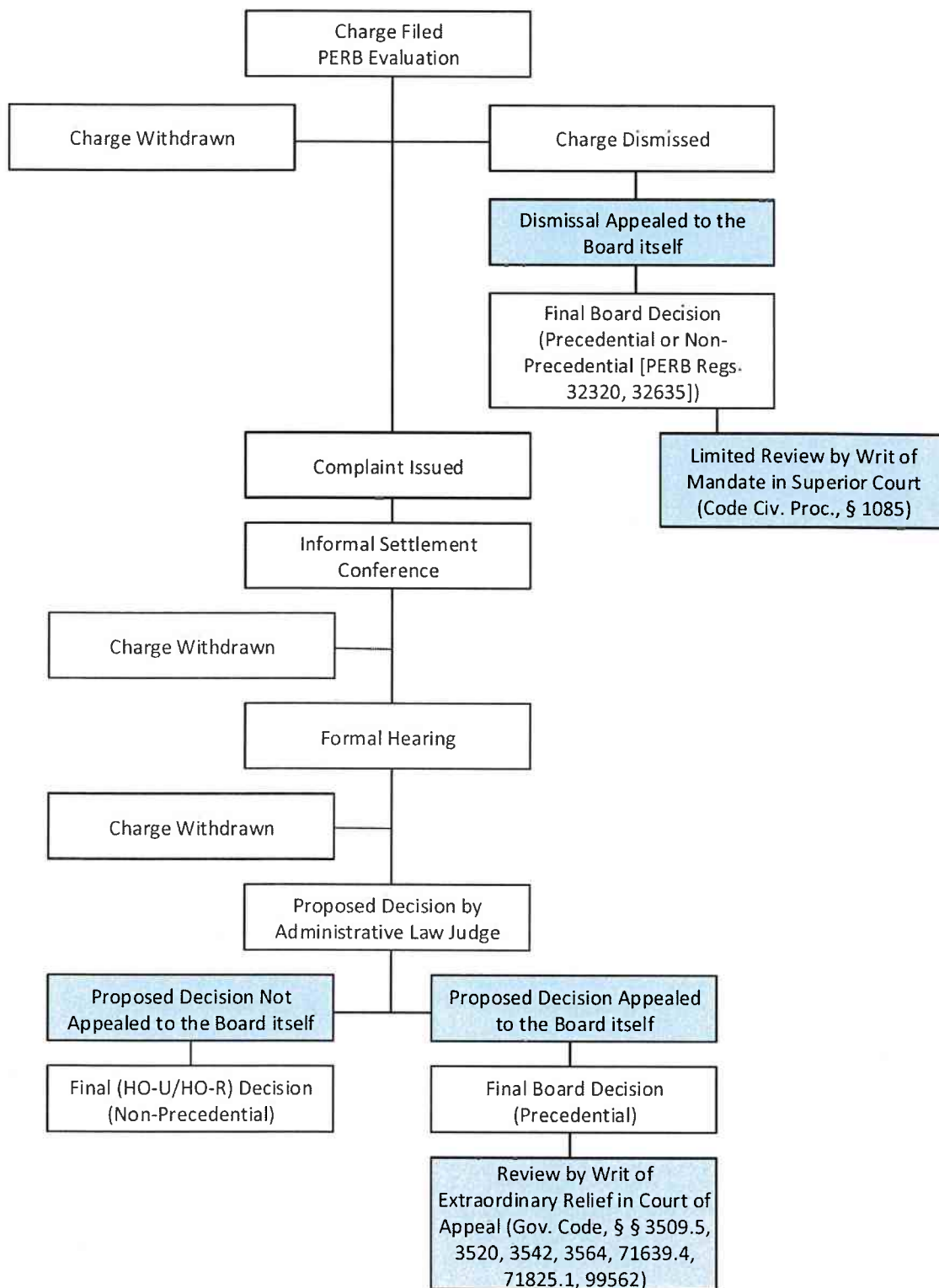
- Training and facilitation in interest-based bargaining, implementing effective joint labor-management committees, and resolving conflict in the workplace; and
- Assistance with internal union/employee organization elections or processes, or similar activities for labor or management that are not joint endeavors.

Public Employment Relations Board

Organizational Chart



Unfair Practice Charge Flow Chart



UNFAIR PRACTICE CHARGE (UPC) STATISTICS

I. 2015-2016 by Region

Region	Total
Sacramento	181
San Francisco	197
Los Angeles	274
Total	652

II. 2015-2016 by Act

Act	Total
Dills Act	53
EERA	236
HEERA	75
MMBA	260
TEERA	3
Trial Court Act	9
Court Interpreter Act	4
IHSSEERA	2
Non-Jurisdictional	10
Total	652

III. Prior Year Workload Comparison: Charges Filed

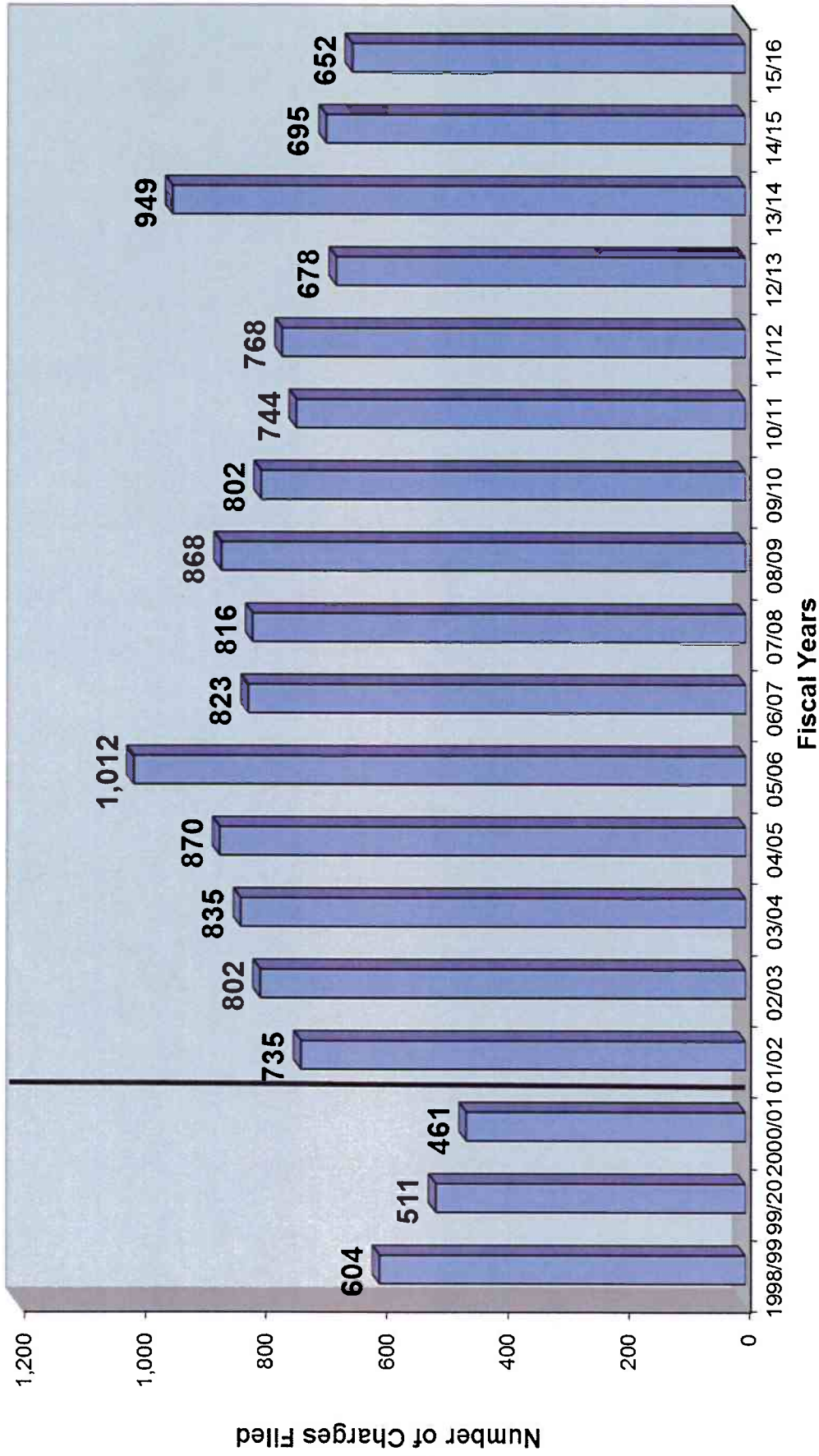
	2012/2013	2013/2014	2014/2015	2015/2016	4-Year Average
Total	678	949*	695	652	744

IV. Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	42	22	71	135
San Francisco	48	74	84	206
Los Angeles	76	64	127	267
Total	82	160	282	608

*173 Unfair Practice Charges were filed by the same individual on behalf of himself and/or other University of California employees regarding agency fee issues.

Unfair Practice Charge Filings



Notes: The vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001). In fiscal year 2001-2002, the total number (935) was reduced by 200 for a similar set of filings. In fiscal year 2004-2005, the total number of charges filed (1,126) was adjusted to discount 256 nearly identical charges filed by a single group of employees.

REQUESTS FOR INJUNCTIVE RELIEF (IR REQUESTS)

Workload Comparison: IR Requests Filed

	2011-12	2012-13	2013-14	2014-15	2015-16	5-Year Average
Total	21	17	25	19	18	20

2015-2016 REPRESENTATION CASE ACTIVITY

I. Case Filings

Case Type	Filed
Request for Recognition	41
Severance	6
Petition for Certification	1
Decertification	30
Amended Certification	8
Unit Modification	30
Organizational Security	0
Arbitration	0
Mediation Requests (EERA/HEERA/Dills)	129
Factfinding Requests (EERA/HEERA)	22
Factfinding Requests (MMBA)	54
Factfinding Approved (MMBA)	44
Compliance	27
Totals	392

II. Prior Year Workload Comparison: Cases Filed

	2012-2013	2013-2014	2014-2015	2015-2016	4-Year Average
Fiscal Year	347	350	361	392	363

III. Elections Conducted

Amendment of Certification	1
Decertification	9
Fair Share Fee Reinstatement	0
Fair Share Fee/Agency Fee Rescission	1
Representation	2
Severance	0
Unit Modification	0
Total	13

Elections Conducted: 7/1/2015 to 6/30/2016

Case No.	Employer	Unit Type	Winner	Unit Size
<i>Amendment of Certification</i>				
		<i>Subtotal:</i>		
LA-AC-00078-M	CAMBRIA COMM HEALTHCARE DIST.	EMTs & Paramedics	SEIU Local 620	9
<i>Decertification</i>				
		<i>Subtotal:</i>		
SF-DP-00314-E	FAIRFIELD-SUISUN USD	Classified Supervisors	No Representation	14
SF-DP-00316-C	SANTA CLARA COUNTY SUPERIOR COURT	General	Superior Court Professional Employees	422
LA-DP-00407-M	BUENA VISTA WATER STORAGE DIST.	General	UFCW 8 - Golden State	13
LA-DP-00406-E	IMAGINE SCHOOLS AT IMPERIAL VALLEY	Wall Certified	Imagine Schools at Imperial Valley	38
LA-DP-00415-E	POWAY USD	Operations, Support Services Les	Poway School Employees Association	482
SF-DP-00320-E	BRENTWOOD UNION SCHOOL DISTRICT	Operations, Support Services	California School Employees Association	72
SF-DP-00317-E	FOOTHILL-DE ANZA CCD	Security	Foothill-De Anza POA	7
LA-DP-00414-E	EL CAMINO REAL ALLIANCE	Wall Certified	UTLA	151
LA-DP-00421-E	LOST HILLS UnESD	Wall Classified		29
<i>Organizational Security - Approval</i>				
		<i>Subtotal:</i>		
LA-OS-00220-M	EAST VALLEY WATER DISTRICT	General	Yes to Rescind Agency Shop Provision	43
<i>Representation</i>				
		<i>Subtotal:</i>		
SF-RR-00965-H	UNIVERSITY OF CALIFORNIA	UC Davis Skilled Crafts	No Rep	314

Total Elections: 12

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2311a-M*	<i>Escondido City Employees Association v. City of Escondido</i>	Charging party alleged that the City violated the MMBA by interfering with the Association president's ability to communicate Association matters during the work day, by discriminating against the Association president by laying him off, and by unilaterally transferring bargaining unit work to non-bargaining unit employees without meeting and conferring over the decision.	Precedential Decision —* JUDICIAL APPEAL PENDING . The Board affirmed the proposed decision with the sole exception of the remedy. The proposed decision found that the City violated the MMBA by unilaterally transferring bargaining unit work and by interfering with the Association president's ability to communicate Association matters. The proposed decision dismissed the claim that the City discriminated against the Association president by laying him off. The Board revised the proposed remedy to award lost dues to the Association.
2442-M	<i>United Public Employees, Local 1 v. County of Sacramento</i>	The complaint alleged that the County violated the MMBA by unilaterally changing the union release time compensation policy when it denied union release time compensation to a member of the bargaining team during successor negotiations.	Precedential Decision . The ALJ concluded that the respondent had engaged in the unfair practice as alleged. After exceptions were filed, the parties settled their dispute and requested withdrawal. The Board granted the request and dismissed the unfair practice complaint and underlying charge with prejudice.
2443-M	<i>Milpitas Supervisors' Association v. City of Milpitas</i>	Exclusive representative of City employees excepted to proposed decision in which the ALJ had concluded that, by contract and by inaction, representative had waived its right to negotiate over the City's decision to outsource work based on labor costs. City filed cross-exception to ALJ's conclusion that decision to outsource was within scope of representation and subject to meet and confer obligation.	Precedential Decision . The Board affirmed in relevant part the ALJ's conclusions that the City's decision to outsource was negotiable because it was based primarily on labor costs and the ALJ's conclusion that the representative had contractually waived its right to meet and confer over the decision. Although not all outsourcing decisions are negotiable, where City acknowledged that its

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
			<p>budget deficit was the primary if not sole reason for deciding to outsource bargaining unit work, Board affirmed ALJ's conclusion that the City's decision to outsource was within the scope of representation. However, the Board found that the exclusive representative contractually waived its right to bargain over the decision to outsource bargaining unit work where its agreement provided that the City could implement layoffs and outsource bargaining unit work with 120 days' notice in the event the City lost redevelopment agency funding. Because there was no dispute that the City lost redevelopment agency funding, under the contractual language, it was entitled to layoff and outsource work following 120 days' notice.</p>
2444	<p><i>Pasadena City College Faculty Association v. Pasadena Area Community College District</i></p>	<p>A community college district excepted to a proposed decision which found that the District had violated its duty to meet and confer when its governing board unilaterally decided to change the academic year from a semester to trimester basis.</p>	<p>Precedential Decision. The Board affirmed the proposed decision's finding of liability. Because it is essential to fulfilling the District's educational mission, the decision to change the student or academic calendar is a managerial prerogative beyond the scope of bargaining. However, because the District could not change from a semester to trimester system without also affecting employee hours, it was not authorized to change the student calendar without first giving notice and completing negotiations with the employees' representative.</p>

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2445	<i>Santa Maria Joint Union High School District v. Santa Maria Joint Union High School District Faculty Association</i>	The charge alleged that the Association violated EERA by causing or attempting to cause the District to retaliate against an employee.	Precedential Decision. The Board affirmed the dismissal of the charge by the Office of the General Counsel for failure to state a prima facie case, holding that the filing of grievances and a PERB charge did not constitute an “attempt” by the Association to cause the District to commit an unfair practice.
2446	<i>Asad Abrahamian v. Coachella Valley Teachers Association</i>	Charging party alleged that the Association violated EERA by retaliating against him by denying him Group Legal Services benefits because he filed an unfair practice charge.	Precedential Decision. The Board affirmed the proposed decision because the appeal failed to comply with PERB regulations governing appeals.
2447	<i>Carmen Fritsch-Garcia v. Los Angeles Unified School District</i>	Charging party alleged that she was laid off from employment by the District in retaliation for her pursuit of an unfair practice charge against the District.	Precedential Decision. The Board affirmed the proposed decision because the appeal failed to comply with PERB regulations governing appeals.
2448	<i>Ramiro Tizcareno v. Hueneme Elementary School District</i>	The charge alleged that the District violated EERA and numerous other statutes and regulations by: (1) refusing to return Tizcareno to work after being placed on a 39-month re-employment list and after his physicians certified his ability to perform the work; (2) maintaining in his personnel file documents from the Superior Court, presumably relating to his divorce; and (3) declaring in September 2014, that he was no longer an employee of the District.	Non-Precedential Decision. The Board affirmed the dismissal of the charge for failure to state a prima facie case and failure to comply with PERB Regulation 32635(a) in Tizcareno’s appeal.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2449	<i>Lynette Lucas v. Rio School District</i>	Charging party alleged that the District issued Lucas a notice of non-reelection in retaliation for speech activity protected under EERA.	Precedential Decision. The Board affirmed the proposed decision. The appeal addressed only charging party's inability to present witnesses, the ALJ's failure to remove an individual from the hearing, and the ALJ's failure to provide a cautionary statement to District employees called as witnesses. The Board found no merit to any of charging party's exceptions.
2450	<i>Jefferey L. Norman v. Jurupa Unified School District</i>	The complaints allege respectively that the District violated EERA by discriminating and retaliating against Norman because of his protected activity when it denied him personal necessity leave (Case No. LA-CE-5593) and terminated his employment (Case No. LA-CE-5744).	Precedential Decision. The Board affirmed the dismissal of the charge because (in Case No. LA-CE-5593) he failed to establish a prima facie case of retaliation and (in Case No. LA-CE-5744) the District had proven its defense, i.e., that it both had and acted because of an alternative non-discriminatory reason in terminating Norman's employment, and because Norman's exceptions were rejected in their entirety for failure to comply with PERB Regulation 32300.
2450a	<i>Jefferey L. Norman v. Jurupa Unified School District</i>	Charging party requested reconsideration of PERB Decision No. 2450.	Precedential Decision. The Board denied request for reconsideration because it simply reiterates the same facts and arguments made on appeal of the original proposed decision, and failed to show any prejudicial error of fact in the Board's decision. Request also denied because it asserted various errors of law, which may not serve as grounds for reconsideration.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2451-M	<i>Sheehan Gillis v. City of Oakland (Oakland Fire Department)</i>	Charging party alleged that the City violated his <i>Weingarten</i> rights by denying his requests for union representation in several meetings with his supervisors.	Non-Precedential Decision. The Board upheld the dismissal of the unfair practice charge for lack of jurisdiction and as partly untimely. The Board further found that charging party's filings and exceptions did not comply with PERB regulations.
2452	<i>Eric Moberg v. Hartnell Community College</i>	The charge alleged that the a community college had discriminated against a former employee by terminating his employment and refusing or delaying payment for hours worked because of his protected conduct, including threatening to file a PERB charge. It also alleged that the employer's human resources official had interfered with protected rights by insisting that she, rather than the charging party, would choose his representative in an investigative meeting. The Office of the General Counsel dismissed the charge and charging party appealed the dismissal.	Precedential Decision. The Board reversed the dismissal of an unfair practice charge where the Office of the General Counsel had not analyzed an interference allegation involving coercive statements allegedly made by a high-ranking human resources official and where the charging party's allegations stated a prima facie case of discrimination.
2453	<i>Eric M. Moberg v. Cabrillo Community College District</i>	Charging party alleged that the District placed him on paid leave, directed him to refrain from attending his assigned classes or from performing additional work while he was on leave, and withdrew his tentative teaching assignment for a semester in retaliation for filing PERB charges.	Precedential Decision. The Board reversed the dismissal of an adjunct college faculty instructor's retaliation claim against the employer-community college district. PERB found that the District was aware of the faculty instructor's protected activity when it placed him on paid leave and withdrew his tentative teaching assignment and remanded the matter for issuance of a complaint.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2454-M*	<i>Orange County Water District Employees Association v. Orange County Water District</i>	The complaint alleged that the District violated the MMBA by refusing to participate in an agency shop election.	<p>Precedential Decision—*JUDICIAL APPEAL PENDING. The ALJ concluded that the District had engaged in the unfair practice as alleged.</p> <p>The Board affirmed, holding that a modified agency shop arrangement that applied only to future hires, not current employees, fell within the definition of agency shop; and that the District's refusal to participate in a properly petitioned-for agency shop election was unlawful.</p>
2455	<i>California School Employees Association & its Chapter 32 v. Bellflower Unified School District</i>	The complaint alleged that the District violated EERA by changing a policy regarding holiday leave without notice and opportunity to bargain and by failing and refusing to timely respond to requests for information.	<p>Precedential Decision. The ALJ concluded that the District had engaged in the unfair practices as alleged.</p> <p>The Board affirmed, holding that the contract language was clear and unambiguous and did not discriminate between employees who worked in an assignment classified as 12-month and those who did not; and that the District's failure to pay holiday leave to those who did not work in an assignment classified as 12-month constituted an unlawful unilateral change.</p>

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2456-S	<i>Anthony Frank Dorado v. State of California (Department of Forestry and Fire Protection)</i>	The charge alleged that the State violated the Dills Act when it rescinded a job offer.	Non-Precedential Decision. The Board affirmed the dismissal of the charge by the Office of the General Counsel for failure to state a prima facie case, holding that Dorado’s primary claim that the State violated constitutional merit system principles when it rescinded a job offer fell outside of PERB’s jurisdiction.
2457-H	<i>David Phoenix v. American Federation of State, County and Municipal Employees, Local 3299</i>	The charge alleged that AFSCME violated the duty of fair representation under HEERA by failing to advise Phoenix of the procedures for filing a whistleblower/retaliation complaint under the employer’s whistleblower protection policy.	Non-Precedential Decision. The Board affirmed the dismissal of the charge by the Office of the General Counsel, holding that as a threshold matter the charge was untimely and there was no “good faith” or “equitable” exception to the six month statute of limitations.
2458	<i>Pamela Jean Lukkarila v. Jurupa Unified School District</i>	The complaint in alleged that the District violated EERA by retaliating against Lukkarila because of her protected activity and interfering with her protected rights by issuing a written communication to employees that criticized employees for filing a group grievance with the District’s governing board.	Precedential Decision. The Board affirmed the proposed decision and held that the District violated EERA by threatening Lukkarila with insubordination, a negative observation report and final evaluation, and ordering a consecutive evaluation year in retaliation for seeking union representation and filing grievances. The District also violated EERA by sending an e-mail to all District employees that criticized employees’ collective protected activities, thereby interfering with the employees’ exercise of rights protected by EERA.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2459	<i>Dave Lukkarila v. Claremont Unified School District</i>	In three separate unfair practice charges later consolidated, Lukkarila alleged that the District violated EERA by retaliating against him for engaging in protected activity and interfering with his protected rights.	Precedential Decision. The Board affirmed the proposed decision. Two of the three exceptions failed to comply with PERB regulations governing appeals. The remaining exception did not challenge any factual findings or legal conclusions made by the ALJ, but introduced a new allegation. With respect to the new allegation, charging party failed to meet the requirements of an unalleged violation.
2460	<i>Jefferey L. Norman v. National Education Association Jurupa</i>	Charging Party alleged that the Association violated EERA by breaching its representational duty.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge because it was untimely filed, charging party lacked standing, and none of the allegations in the charge included any information demonstrating that the Association handled any contract negotiations, grievances, or contract administration in bad faith or in a way that was discriminatory or arbitrary. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2461-M	<i>Service Employees International Union, Local 521 v. County of Tulare</i>	The complaint alleged that the County violated the MMBA by failing to bargain in good faith by insisting upon its initial bargaining proposal throughout negotiations, improperly concluding that the parties were at impasse, and electing not to impose its last, best and final offer (LBFO).	Precedential Decision. The Board affirmed the proposed decision dismissing the complaint and re-affirmed that an employer is not required to impose its LBFO that has not been accepted by the union. The County's conduct did not demonstrate that it failed to bargain in good faith.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2461a-M	<i>Service Employees International Union, Local 521 v. County of Tulare</i>	Service Employees International Union, Local 521 (SEIU) requested reconsideration of the Board's decision in <i>County of Tulare</i> (2015) PERB Decision No. 2461-M, on the basis that a Board member should have recused himself.	Precedential Decision. The Board denied the request for reconsideration because a request for reconsideration is not the appropriate procedural vehicle to move for the recusal of a Board member. The Board also determined that the member was not required to recuse himself due to his past employment as a management consultant where there was no showing that the member had advised the County or had any prior involvement with this case.
2462-C	<i>Gail Natalie Oliver v. Service Employees International Union Local 721</i>	The charge alleged that her exclusive representation had violated its duty of fair representation by acting in a perfunctory fashion or in bad faith when processing a grievance challenging charging party's termination from employment. The Office of the General Counsel dismissed the charge for failure to state a prima facie case.	Precedential Decision. The Board held that it had jurisdiction over the dispute, despite the absence of language in the Trial Court Act providing for a duty of fair representation. Because the duty of fair representation is the quid pro quo for exclusive representation, the absence of duty of fair representation language in the Trial Court Act does not indicate legislative intent to deprive PERB of jurisdiction to consider duty of fair representation cases brought by Trial Court employees. However, the Board affirmed the dismissal because the charging party had failed to allege sufficient facts to demonstrate that her representative had acted arbitrarily, discriminatory or in bad faith in grievance arbitration proceedings.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2463	<p><i>Chico Unified Teachers Association v. Chico Unified School District</i></p>	<p>Charging party alleged that the District violated EERA when it took adverse action against a bargaining unit member because of his exercise of protected rights by assigning him to teach non-welding courses.</p>	<p>Precedential Decision. The Board affirmed the proposed decision dismissing the complaint and underlying unfair practice charge with the exception of finding that the Association failed to prove the requisite additional nexus factor for establishing a prima facie case of retaliation. The Association established that an e-mail message showed at least some animus toward the bargaining unit member. However, the District sufficiently demonstrated that it had a non-discriminatory reason for its actions.</p>
2464-M*	<p><i>San Diego Municipal Employees Association / Deputy City Attorneys Association of San Diego / American Federation of State, County and Municipal Employees, AFL-CIO, Local 127 / San Diego City Firefighters Local 145 v. City of San Diego</i></p>	<p>The proposed decision found the City had acted in derogation of its duty to meet and confer under the MMBA when its Mayor and other City officials proposed and supported a citizens initiative to alter employee pension benefits without meeting and conferring with the exclusive representatives of City employees. The City filed exceptions challenging, among other things, the finding that the Mayor had acted in his official capacity as an agent of the City when promoting the citizens' initiative.</p>	<p>Precedential Decision—*JUDICIAL APPEAL PENDING. The Board affirmed the proposed decision's findings and conclusions, including its finding that the Mayor and other City officials were acting as agents of the City when proposing and supporting a citizens' initiative aimed at altering employee pension benefits without meeting and conferring with the representatives of City employees. The Board modified the proposed remedy, holding that it lacked authority to overturn the results of a municipal election but awarded back pay and benefits and other compensatory damages to employees and their representatives.</p>

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2465-S	<i>Service Employees International Union Local 1000 v. State of California (California Correctional Health Care Services)</i>	The complaint alleged that the State violated the Dills Act when it interfered with the right of an employee to be represented by his exclusive representative at a meeting to present and discuss his performance evaluation and a counseling memorandum; and interfered with the corresponding right of the exclusive representative to represent its members.	Precedential Decision. The ALJ concluded that the State did not interfere with employee rights by failing to permit the attendance of a union representative at the performance evaluation meeting, but did interfere with employee rights by issuing an overbroad directive to cease sending e-mails to other employees. The Board affirmed, holding that the State's issuance of an overbroad directive was unlawful.
2466-M	<i>United Public Employees of California, Local 792 v. City of Milpitas</i>	Charging party alleged that the City discriminated against an employee by placing him on administrative leave and failing to move him into a lead position per a promise by a former supervisor.	Non-Precedential Decision. The Board upheld the dismissal of the unfair practice charge on the grounds that it was untimely filed.
2467-M	<i>Public Employees Union Local 1 v. County of Contra Costa</i>	The charge alleged that the County violated the MMBA by unilaterally changing a past practice concerning the calculation of overtime eligibility.	Non-Precedential Decision. The Board affirmed the dismissal of the charge because the alleged facts did not state a prima facie case for unilateral change.
2468-H	<i>David Caines v. AFSCME Local 3299</i>	The charge alleged that the union violated the duty of fair representation under HEERA by abandoning a grievance.	Non-Precedential Decision. The Board affirmed the dismissal of the charge by the Office of the General Counsel, holding that the union's decision not to process a grievance beyond the third step of the grievance procedure did not breach the union's duty of fair representation because the grievance arose at a time when the arbitration provision was not in force.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2469-M	<i>Ivette Rivera v. East Bay Municipal Utility District</i>	Charging party alleged that the Utility District violated the MMBA in numerous ways including depriving her of her rights, misrepresenting her due process rights, entering into a secret agreement, omitting her comments in the minutes of a meeting, declining to discuss her concerns, refusing to hear her grievance.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge because it failed to state a prima facie case and because charging party lacked standing. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2470-M	<i>Ivette Rivera v. American Federation of State, County and Municipal Employees, Local 444</i>	Charging party alleged that AFSCME violated the MMBA numerous ways including fraudulently claiming that AFSCME was the majority representative in a negotiated MOU, agreeing to eliminate an employee's right to file a grievance, obtaining exclusive recognition for its members through unlawful means, colluding with the employer, and violating charging party's right to petition the government and be free of discrimination in the workplace.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge for failure to state a prima facie case and untimeliness. Finding that the appeal raised no issues warranting further consideration, the Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2471-M	<i>Public Employees Union, Local One v. West County Wastewater District</i>	Charging party alleged that the District violated the MMBA by enforcing its local rule regarding unit modifications to determine that certain classifications should be relocated from one bargaining unit to another bargaining unit, and by unilaterally changing terms and conditions of employment without affording Local One notice and an opportunity to bargain over the impact on employees.	Precedential Decision. Pursuant to the parties' resolution of the underlying dispute, the Board dismissed the unfair practice charge.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2472-M	<i>Ivette Rivera v. American Federation of State, County and Municipal Employees, Local 444</i>	Charging party alleged that AFSCME violated the MMBA and charging party's statutory and constitutional right to free association, free speech, and due process by failing to provide fresh "Hudson" notices to Rivera (an agency fee payer) each time the agency fee rate changed, and by overcharging her the chargeable portion of her agency fees for at least seven years.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge for failure to state a prima facie case and untimeliness. Finding that the appeal raised no issues warranting further consideration, the Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2473-H	<i>California State University Employees Union v. Trustees of the California State University</i>	The Office of the General Counsel dismissed a charge alleging that a higher education employer had unilaterally changed collectively-bargained grievance procedures by allegedly insisting on conducting a grievance meeting without the grievant and the representative present.	Non-Precedential Decision. The Board reversed the dismissal and remanded to the Office of the General Counsel for issuance of a complaint and to determine whether the matter is appropriate for deferral to the parties' collectively-bargained grievance and arbitration procedures.
2474	<i>Dave Lukkarila v. Claremont Faculty Association</i>	Charging party alleged that the Association violated EERA by failing to comply with his multiple requests for detailed financial reports and that such failure interfered with his ability to campaign for an elected position with the Association.	Precedential Decision. The Board affirmed the proposed decision dismissing the allegations that the Association failed to provide financial reports for the years prior to 2012-2013 and that the Association's actions interfered with charging party's ability to campaign for an elected position. The Board reversed the ALJ's finding that, with respect to the financial records for the 2012-2013 fiscal year, the Association's belated compliance rendered charging party's claim as moot.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2475*	<i>Kennon B. Raines et al. v. United Teachers of Los Angeles</i>	The exclusive representative of certificated employees excepted to a proposed decision which found that the representative had violated its duty of fair representation by secretly entering into a side letter to modify the collectively-bargained seniority and priority calling order of substitute teachers without providing affected employees with notice or opportunity to comment before the agreement took effect.	Precedential Decision—*JUDICIAL APPEAL PENDING. The Board affirmed the proposed decision’s finding that the representative had violated its duty of fair representation by negotiating changes to substitute teachers’ seniority rights without any notice or opportunity to comment and by concealing the existence of the side letter from affected employees. The Board reversed the dismissal of five charging parties for defective service where the representative had actual notice of their charges and knew the substance of their allegations at the outset of the hearing.
2476-M	<i>Santa Clara Public Safety Non-Sworn Employees Association v. City of Santa Clara</i>	The exclusive representative of City employees alleged that the City had bargained in bad faith during successor negotiations and had retaliated against the representative and bargaining unit employees for refusing to agree to concessions demanded in a previous round of negotiations. The representative also alleged that City managers and officials had made coercive statements to employees preceding and during negotiations. By agreement with the ALJ, the case was tried on a stipulated record, as supplemented by declarations and rebuttal declarations concerning the allegations of coercive statements. The proposed decision dismissed all allegations and refused to consider the charging party’s declarations on hearsay, reliability and other grounds.	Precedential Decision. The Board reversed the dismissal and remanded for further proceedings on the allegations of coercive employer statements to employees. The Board reasoned that the charging party was blindsided by the agreement brokered by one ALJ to try the case on a stipulated record with declarations which contained disputed material facts and were more appropriately resolved through a formal evidentiary hearing.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2477-M	<i>Service Employees International Union, Local 521 v. County of Madera</i>	The complaint alleged that the County violated the MMBA when it unilaterally changed policy by implementing furloughs; and when it bypassed, derogated and undermined SEIU's authority by sending two memoranda regarding furloughs to bargaining unit employees.	<p>Precedential Decision. The ALJ concluded the County had engaged in some, but not all, of the unfair practices as alleged.</p> <p>After exceptions were filed, the parties settled their dispute and requested withdrawal. The Board granted the request and dismissed the unfair practice complaint and underlying charge with prejudice.</p>
2478-M	<i>Orange County Medical & Dental Association v. County of Orange; Orange County Employees Association</i>	The complaint alleged that the County violated the MMBA by denying OCMDA's petition to sever five classifications of professional health care employees from the Healthcare Professional Unit.	<p>Precedential Decision. The Board held that the County violated MMBA section 3507.3 by denying the severance petition, because the employees covered by the petition were all professionals and are entitled to be represented separately from non-professional employees.</p>
2479	<i>David C. Peters v. Los Angeles Unified School District</i>	The complaint alleged that the District violated EERA by retaliating against Peters because of his protected activity.	<p>Precedential Decision. The ALJ concluded that the District did not engage in the unfair practice as alleged.</p> <p>The Board affirmed, holding that even if Peters could establish a prima facie case, the District established its affirmative defense that it would have terminated Peters' employment even in the absence of protected activity.</p>
2480-M	<i>County of Trinity v. United Public Employees of California, Local 792</i>	The charge alleged that the union violated the MMBA by engaging in an unlawful strike.	<p>Precedential Decision. The Board affirmed the dismissal of the charge by the Office of the General Counsel, holding that bargaining impasse was not broken by the union's initial contact with the employer to set up a meeting and that therefore the strike was not unlawful.</p>

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2481-H	<i>Damjan Posedel v. Regents of the University of California (Los Angeles)</i>	A former higher education employee excepted to a proposed decision dismissing the complaint and his unfair practice charge which alleged that his employment had been terminated in retaliation for his protected conduct of litigating a previous PERB charge.	Precedential Decision. Where charging party failed to comply with even the most basic requirements of PERB's regulation governing exceptions, the Board declined to address charging party's exceptions or to overturn the ALJ's credibility determinations; charging party failed to cite to the applicable portion of the record, attempted to introduce evidence outside the record, and merely repeated arguments already adequately addressed by the proposed decision.
2482-M	<i>Sheeneeka Smith-Hazelitt v. Laborers International Union of North America, Local 777</i>	The Office of the General Counsel dismissed for untimeliness a charge alleging that an exclusive representative had violated its duty of fair representation under the MMBA and PERB regulations by failing to enforce its memorandum of understanding with the County of Riverside and/or by failing to assist the charging party in her efforts to obtain an accounting and to collect back pay owed from the County as the result of a previous decision by an arbitrator. The charging party appealed the dismissal.	Non-Precedential Decision. The Board affirmed the dismissal when the charging party's factual allegations demonstrated that she knew further assistance from the representative was unlikely more than six months before she filed the charge.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2483-S	<i>Earl Mykles v. Service Employees International Union, Local 1000</i>	Charging party appealed from dismissal of his unfair practice charge which alleged that an exclusive representative of a bargaining unit of State employees had violated charging party's right to fair representation under the Dills Act. According to the amended charge, the allegations that formed the basis of the alleged violation occurred more than 21 months before the charge was filed.	Non-Precedential Decision. The Board affirmed the dismissal in a non-precedential decision. The six-month statute of limitations runs from discovery of the conduct alleged to constitute an unfair practice, not from discovery of the legal significance of that conduct. The contents of the charge and the appeal demonstrate that the charging party was aware of all the relevant facts when they occurred, but that he filed no charge against his representative based on these facts until approximately 21 months later, well after the six-month limitations period had expired.
2484	<i>California Virtual Academies and California Teachers Association</i>	In this EERA representation matter, the petitioning union sought exclusive recognition of a single bargaining unit of approximately 700 certificated teachers employed by 11 charter schools.	Precedential Decision. The ALJ concluded that the 11 charter schools were a joint employer of the teachers and that a single, statewide bargaining unit was appropriate. The Board concluded that a single, statewide bargaining unit was appropriate under the single employer doctrine, not the joint employer doctrine.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2485	<i>Petaluma Federation of Teachers, Local 1881 v. Petaluma City Elementary School District/Joint Union High School District</i>	The Office of the General Counsel dismissed a charge alleging that a public school employer had violated EERA by: (1) providing the exclusive representative with inaccurate financial information; (2) failing to provide requested information that was necessary and relevant for contract negotiations; (3) conditioning negotiations on an agreement to prohibit bargaining unit employees from observing negotiations; (4) unilaterally changing a past practice of allowing bargaining unit employees to observe negotiations; (5) unilaterally changing employee work hours; (6) interfering with protected rights by prohibiting distribution of union leaflets during the 30 minutes before the start of the school day; and (7) engaging in surface bargaining.	Precedential Decision. The Board reversed the dismissal of allegations that the employer had unreasonably delayed providing necessary and relevant information and that its prohibition against distribution of union literature interfered with protected rights. It affirmed the dismissal of all other allegations.
2486-M	<i>Cindy Lacy v. Service Employees International Union United Healthcare Workers West</i>	A former public employee filed exceptions to a proposed decision which dismissed the complaint and her unfair practice charge which alleged that an exclusive representative had violated its duty of fair representation under the MMBA and PERB regulations by not timely filing and, once filed, not pursuing a grievance challenging the charging party's termination from employment.	Precedential Decision. The Board adopted the dismissal because the charging party had presented no evidence to show that the exclusive representative's interpretation of contract provisions governing probationary release was arbitrary, discriminatory or advanced in bad faith. Even if the representative's interpretation had been incorrect, charging party did not show that any reasonable alternative interpretation of the collective bargaining agreement would alter the representative's honest judgment that a grievance stood little to no chance of success.

2015-2016 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2487-M	<i>Ivette Rivera v. East Bay Municipal Utility District</i>	Charging party alleged that the District violated the MMBA numerous ways including posting a memorandum summarizing a section of the Government Code, informing her that the unions own the grievance process, and unlawfully extracting union dues.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge for failure to state a prima facie case, lack of standing and untimeliness. Finding that the appeal raised no issues warranting further consideration, the Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2488-S	<i>William Dean Diederich v. Service Employees International Union Local 1000</i>	Charging party alleged that SEIU violated the Dills Act by breaching its duty of fair representation by entering into a memorandum of understanding containing a geographic pay scale. Charging party further alleged violations of the California Constitution, California Labor Code, and additional Government Code sections.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge because it failed to state a prima facie case and because PERB had limited jurisdiction over charging party's allegations. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2489-H	<i>Debbie Polk v. Teamsters Clerical, Local 2010</i>	The complaint alleged that the union breached its duty of fair representation in handling grievances on behalf of Polk.	Precedential Decision. The Board upheld the dismissal for failure to prosecute. Charging party had not pursued this case with due diligence and her failures to appear for hearing dates and meet other deadlines were without good cause.

2015-2016 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2490-M	<p><i>Service Employees International Union Local 1021 v. County of San Joaquin</i></p>	<p>Exclusive representative of public employees excepted to a proposed decision which dismissed a complaint and unfair practice charge alleging that a public employer had unilaterally eliminated an established practice of permitting employees with childcare responsibilities to arrive late to work and make up the time during their lunch period.</p>	<p>Precedential Decision. The Board affirmed the dismissal where the charging party failed to prove its prima facie case that the public employer had unilaterally eliminated an established practice of providing flexible schedules for bargaining-unit employees with child care responsibilities, where evidence failed to show that practice was known and condoned by any manager besides a low-level supervisor who admittedly acted outside her authority when approving employee schedule changes.</p>
2491-M	<p><i>Montebello City Employees Association v. City of Montebello</i></p>	<p>The exclusive representative of a unit of City employees excepted to a proposed decision in which an administrative law judge had dismissed allegations that the City had unilaterally changed employee classifications by assigning out of class work to two employees.</p>	<p>Precedential Decision. The Board affirmed the proposed decision. Charging party failed to prove its prima facie case of a unilateral change in employee job duties where misclassification affected only two employees in separate departments with no common supervision or policy. Charging party did not establish that two apparently separate breaches of its memorandum of understanding had a generalized effect and continuing impact on terms and conditions of employment where the City denied a grievance on procedural grounds and did not argue that it was authorized by statute, contract or other legal authority to assign duties in contravention of established classifications and memorandum of understanding.</p>

2015-2016 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2492-M	<i>Butte County Employees Association Local 1 v. County of Butte</i>	The complaint alleged that the County violated the MMBA by (1) unreasonably enforcing its local rules regarding determinations of appropriate units; (2) unreasonably enforcing its local rule regarding unit modification petitions; (3) ceasing dues and agency fee deductions and remittance thereof to the Association for the employees in a proposed new bargaining unit; (4) withdrawing recognition of BCEA as the exclusive representative of the subject employees and refusing to bargain in good faith with BCEA; and (5) interfering with the rights of employees and the employee organizations when it failed to maintain strict neutrality during a decertification election.	Precedential Decision. The County excepted to the merits of the ALJ's proposed decision, but the County excepted only to the proposed order requiring it, as opposed to its employees, to pay back dues to BCEA. The Board affirmed the ALJ's remedy and held that ordering the County to restore to the union dues improperly withheld was appropriate.
2493-H	<i>Patient & Physician Safety Association v. Regents of the University of California (Irvine)</i>	Charging party alleged that the University violated HEERA by dismissing a physician from his residency program for organizing an employee organization, by dominating and/or interfering with an employee organization seeking to become the exclusive representative, and by consulting with an academic, professional, or staff advisory group on a matter within the scope of representation.	Precedential Decision. The Board affirmed the conclusions reached by the ALJ. The University properly placed the physician on administrative leave and subsequently dismissed him from his residency program because of the employee's unprofessional and threatening behavior as well as his subpar performance. The University did not unlawfully create a faculty or residents committee where those entities did not qualify as "employee organizations" under HEERA. The University also did not unlawfully consult with an academic or professional group where there was no record of any consultation actually taking place.

2015-2016 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2494-M	<i>Davis Professional Firefighters Association, Local 3494 v. City of Davis</i>	The complaint alleged that the City discriminated and retaliated against the Association's president, Robert Weist, and unilaterally changed terms and conditions of employment, by denying his same-day request for vacation leave and issuing him a performance improvement plan.	Precedential Decision. The Board reversed the ALJ's dismissal of the unilateral change of performance concerning the City's issuance of a PIP to Weist, but otherwise affirmed the dismissal of the discrimination and retaliation allegations.
2495	<i>Lisa Marcoe v. Walnut Valley Unified School District</i>	Charging party alleged that she was dismissed from her position as a music teacher in retaliation for her complaining about certain curricular issues.	Precedential Decision. The Board upheld the dismissal because the charge failed to establish employer knowledge of protected activity. But the Board held that charging party's individual complaints about curricular issues was both protected concerted activity and protected self-representation.

2015-2016 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-429-M	<i>City & County of San Francisco v. Operating Engineers, Local 3</i>	A City and County appealed from an administrative determination that a single-issue dispute involving matters arguably encompassed by a collective bargaining agreement were subject to factfinding under the MMBA.	The Board affirmed the administrative determination and the Board's holding in <i>County of Contra Costa (2014) PERB Order No. Ad-410-M</i> that the plain language of the MMBA and its legislative history indicate that the Legislature intended to make MMBA factfinding available for any "difference" over any matter within the scope of representation, including single-issue disputes, so long as the employee organization's request is timely and the dispute is not subject to one of the statutory exceptions.
Ad-430-M	<i>Morongo Basin Transit Authority v. Amalgamated Transit Union Local 1704</i>	Morongo Basin Transit Authority (MBTA) appealed from an administrative determination granting Amalgamated Transit Union Local 1704's (ATU) representation petition for recognition and certified it as the exclusive representative. The MBTA appealed, contending that the Board agent erred by ignoring evidence of revocation of authorization cards and purported evidence that the proof of support was tainted by misconduct. MBTA urges PERB to reverse the certification and either conduct an election or an investigation to determine the validity of ATU's proof of support filed with its petition.	PERB affirmed the Office of the General Counsel's certification of ATU as the exclusive representative of the petitioned-for unit, holding that the employer failed to comply with PERB regulations, that employee signatures on a petition saying they did not support the union was not tantamount to revocations of prior authorizations, and that absent an agreement between the employer and union, there is no provision in the MMBA for revocation of authorization signatures. Employer may not assert doubt of continued employee support as a basis for refusing to recognize union that has presented sufficient proof of support for recognition as exclusive representative.

2015-2016 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-431	<i>Imagine Schools at Imperial Valley and Group of Employees and Imagine Schools Teachers Association</i>	The employer appealed an administrative determination granting the request of Imagine Schools Teachers Association (Association) for a stay of further processing of a petition filed by a group of employees seeking to decertify the Association as exclusive representative of a unit of certificated employees of Imagine Schools.	The Board adopted the administrative determination's granting a stay of the petition as a result of alleged unlawful anti-union campaigning by the employer in connection with the petition.
Ad-432-H	<i>California State University Employees Union v. Trustees of the California State University</i>	A higher education employer appealed from an administrative determination rejecting as untimely filed the employer's opposition to an appeal in unfair practice proceedings.	The Board denied the appeal and request to accept the late-filed opposition papers, finding the employer had not provided sufficient factual detail to establish either a reasonable and credible explanation for its untimely filing or that it had made a conscientious effort to comply with the deadline by requesting an extension of time, as required by PERB Regulation 32136 and decisional law. The employer admitted that its designated representative was in possession of the opposing party's appeal almost two weeks before the deadline, but that the employer's representative neither requested an extension of time nor sought clarification of the deadline. Although the Board may grant extensions of time or excuse late filings for good cause, parties cannot take the filing deadlines into their own hands and attempt to extend them unilaterally.

2015-2016 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-433-M	<i>County of Fresno and Fresno County Public Safety Association and Service Employees International Union Local 521</i>	SEIU appealed from an administrative determination by PERB's Office of the General Counsel which set aside the results of a decertification election and ordered a re-run of that election after consideration of SEIU's objections to the conduct of the election.	PERB adopted the administrative determination that the decertification election results should be set aside because of a serious irregularity in the conduct of the election caused by the premature mailing of voters' packets, and denied SEIU's request that this matter be remanded to the Office of General Counsel for a hearing on the allegations of employer misconduct.
Ad-434-H	<i>Regents of the University of California and Teamsters Local 2010 and Stationary Engineers, Local 39</i>	An employee organization seeking to represent higher education employees appealed from an administrative determination to void and refuse to count an employee's homemade ballot which was mailed to PERB during an mail-ballot representation election.	The Board affirmed the administrative determination to void and refuse to count the ballot. PERB construes its regulations governing representation matters narrowly and declines to look to private-sector authority for guidance when PERB's own regulations expressly address the issue and any policy concerns underlying the practice and procedure specified in the regulations. Because PERB regulations, require that all representation elections affecting higher education units "be conducted by secret ballot under the supervision of the Board," and that the ballots for such elections also "shall be prepared under the supervision of the Board," PERB refused to accept and a count an employees' homemade ballot.

2015-2016 DECISIONS OF THE BOARD
ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-435-H	<i>Regents of the University of California and Teamsters Local 2010 and International Union of Operating Engineers, Local 501</i>	In this HEERA representation matter, the petitioner requested recognition to become the exclusive representative of the skilled trades bargaining unit; the intervenor sought some, but not all, of the classifications; and the petitioner filed a petition for Board investigation.	The Office of the General Counsel determined that the election bar applied and dismissed the case. The Board affirmed, holding that during the 12 months following certification after a valid election, no election may be held and no requests for recognition or intervention may be filed.
Ad-436-M	<i>Santa Cruz Central Fire Protection District and Professional Firefighters, IAFF Local 3605</i>	Charging party appealed the Office of the General Counsel's administrative determination that Local 3605's request for factfinding was untimely pursuant to the MMBA and PERB regulations.	The Board affirmed the administrative determination finding that Local 3605 failed to make its request for factfinding within 30-day window outlined in the MMBA and PERB regulations.
Ad-437-H	<i>Debbie Polk v. Regents of the University of California / Teamsters Clerical, Local 2010</i>	A higher education employee appealed from an administrative determination denying the employee's multiple requests for additional time in which to prepare and file appeals from dismissal in her four unfair practice cases against her employer and exclusive representative.	The Board denied charging party's appeal from the Appeals Assistant's administrative determination denying her a fifth extension of time. The indefinite and continuing nature of charging party's requests for extensions of time to appeal the dismissal of her unfair practice charges would fundamentally alter the nature of PERB's unfair practice proceedings.
Ad-438	<i>Pablo Felix Pintor v. Pomona Unified School District</i>	Charging party appealed an administrative determination by the PERB Appeals Assistant finding that his appeal of the dismissal by the Office of the General Counsel of his unfair practice charge was untimely.	The Board found the PERB Appeals Assistant's administrative determination was not in accordance with PERB regulations and that charging party timely submitted a perfected appeal. The matter was remanded for further processing.

2015-2016 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are Precedential Decisions.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-439-S	<i>Earl Mykles v. Service Employees International Union, Local 1000</i>	An exclusive representative appealed from an administrative determination that it had not complied with the time limits set forth in PERB regulations for filing its opposition to an appeal from dismissal of an unfair practice charge brought by an employee against the representative.	Because charging party's appeal from dismissal of his unfair practice charge was addressed in a non-precedential decision, the Board issued a separate, precedential decision summarily denying the representative's appeal from the administrative determination as moot.
Ad-440	<i>Pablo Felix Pintor v. California School Employees Association</i>	Charging party appealed an administrative determination by the PERB Appeals Assistant finding that his appeal of the dismissal by the Office of the General Counsel of his unfair practice charge was untimely.	The Board found charging party's appeal of the Office of the General Counsel's dismissal of his charge to have been properly dismissed because charging party failed to provide an adequate proof of service with his appeal of the dismissal as required by PERB regulations.

2014-2015 DECISIONS OF THE BOARD

REQUESTS FOR JUDICIAL REVIEW

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
		There were no Requests for Judicial Review considered by the Board this fiscal year.	

2015-2016 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
IR-59-C	<i>Sacramento County Superior Court v. United Public Employees, Local 1</i>	A Trial Court Act employer sought to enjoin an employee organization from striking, arguing the planned two-day strike would disrupt essential services of the Court.	PERB denied the employer's request to seek to enjoin the strike under the California Supreme Court's County Sanitation standard, which requires that it be "clearly demonstrated," on a case-by-case basis, that public employees' participation in a strike would create an imminent and substantial threat to public health and safety. The availability of replacement workers goes into the determination of whether an employee or a class of employees is "essential" to public health and safety and may be enjoined from striking. The employer's moving papers did not clearly demonstrate that, without employees in the seven positions at issue, essential functions could not or would not be performed. The employer also failed to demonstrate that it could not use managers or supervisors to perform the functions of some employees and it did not disclose how many supervisors or managers were qualified and available to perform the work of those employees the Court identified as "essential." It also failed to identify the specific level and nature of services that must be maintained to preserve public health and safety.

2015-2016 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 683	<i>California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation)</i>	Whether the State of California should be enjoined for violating the Dills Act by unilaterally implementing its "Ratio Relief Reductions (RRR)" prior to negotiating either the decision or its effects with the California Correctional Peace Officers Association.	Request denied.
I.R. 684	<i>Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara</i>	Whether the County of Santa Clara should be enjoined from taking specified actions against the President of the Santa Clara County Correctional Peace Officers' Association; arguing that the County violated the MMBA by issuing certain directives to the President in conjunction with his placement on administrative leave pending a disciplinary investigation.	Request denied.
I.R. 685	<i>County of Contra Costa v. California Nurses Association</i>	Whether certain CNA-represented employees should be enjoined from participating in a two-day, post-impasse strike at the County of Contra Costa's Regional Medical Center because their absence would create a substantial and imminent threat to public health and safety, and whether a preliminary injunction should issue in the event of additional strikes in the near future.	Request granted, in part.
I.R. 686	<i>United Teachers Los Angeles v. Alliance College-Ready Public Charter Schools</i>	Whether Alliance College-Ready Public Charter Schools should be enjoined from a number of unlawful activities and conduct that interfere with the protected activities of United Teachers Los Angeles.	Request granted.

2015-2016 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 687	<i>County of Solano v. Service Employees International Union, Local 1021</i>	Whether essential employees represented by Service Employees International Union, Local 1021, at the County of Solano should be enjoined from striking.	Request denied.
I.R. 688	<i>Public Employees Union Local 1 v. County of Contra Costa</i>	Whether to enjoin the County of Contra Costa to prevent it from unilaterally abolishing an entire class of employees and hiring a new classification to replace them without first giving Public Employees Union, Local 1, notice or an opportunity to bargain.	Request denied.
I.R. 689	<i>State Employees Trades Council-United v. Regents of the University of California (Merced)</i>	Whether to enjoin the University of California from contracting out bargaining unit work for deciding to proceed with a subcontracting plan, in which an outside contractor would eventually perform bargaining unit maintenance work at UC Merced, without notice and an opportunity to bargain.	Request denied.
I.R. 690	<i>County of Sonoma v. Service Employees International Union, Local 1021</i>	Whether essential employees represented by Service Employees International Union, Local 1021, at the County of Sonoma should be enjoined from striking.	Request granted.
I.R. 691	<i>County of Solano v. Service Employees International Union, Local 1021</i>	Whether essential employees represented by Service Employees International Union, Local 1021, at the County of Solano should be enjoined from striking.	Request granted.

2015-2016 DECISIONS OF THE BOARD
REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 692	<i>California Professional Public Employees Association v. State of California (Department of Human Resources)</i>	Whether CalHR should be enjoined from blocking attempts by the California Professional Public Employees Association to communicate with state employees it does not represent through their work e-mail addresses.	Request denied.
I.R. 693	<i>Sacramento County Superior Court v. United Public Employees Local 1</i>	Whether certain employees, which are represented by Public Employees Union, Local 1, should be enjoined from participating in a strike at the Sacramento County Superior Court.	Request denied.
I.R. 694	<i>Public Employees Local Union 1 v. County of Butte</i>	Whether to enjoin the County of Butte from conducting decertification elections based on allegations that the County violated its local rule in processing the decertification petitions.	Request denied.
I.R. 695	<i>Cornelius Oluseyi Ogunsalu v. San Diego Unified School District</i>	Whether the California Commission on Teacher Credentialing should be enjoined from allowing Cornelius Oluseyi Ogunsalu's Preliminary teaching credential from expiring before it processes his Clear credential application.	Request denied.

2015-2016 DECISIONS OF THE BOARD
REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 696	<i>California Attorneys in State Employment (CASE) v. California Unemployment Insurance Appeals Board</i>	Whether the California Unemployment Insurance Appeals Board should be enjoined from responding to a California Public Records Act request by the Association of California State Supervisors based on an allegation that the request seeks confidential e-mail messages protected by the Dills Act.	Request denied, without prejudice.
I.R. 697	<i>Public Employees Union, Local 1 v. County of Butte</i>	Whether the County of Butte should be enjoined from conducting decertification elections based on a claim that it violated its local rules, and therefore the MMBA, in the way it accepted and processed decertification petitions for units represented by Public Employees Union, Local 1.	Request granted, in part.
I.R. 698	<i>Santa Clara Correctional Peace Officers' Association v. County of Santa Clara</i>	Whether the County of Santa Clara should be enjoined from administering a written promotional examination for its Correctional Sergeants on the basis that it unilaterally changed the exam criteria without first giving the Santa Clara Correctional Peace Officers' Association notice and an opportunity to bargain.	Request denied.
I.R. 699	<i>International Association of Machinists and Aerospace Workers, District Lodge 947 v. City of Long Beach</i>	Whether to enjoin the City of Long Beach from certifying the results of a decertification election based on allegations that the City violated the MMBA through its activities in connection with the decertification petition campaign and ensuing election.	Request withdrawn.

2015-2016 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 700	<i>Association of Long Beach Employees v. City of Long Beach</i>	Whether the City of Long Beach be enjoined from: (1) nullifying the results of two decertification elections; (2) failing to process two representation petitions filed by the Association of Long Beach Employees for those units; and (3) conducting two new decertification elections for those units, based on allegations that the City's actions violate the MMBA.	Request denied.

2015-2016 LITIGATION CASE ACTIVITY

1. *PERB v. City of Fremont (SEIU Local 1021)*, April 22, 2013, Alameda Superior Court, Case No. RG 13677821 (PERB Case No. SF-CE-1028-M). Issue: Whether the City should be enjoined from withdrawing recognition and refusing to bargain with SEIU following a “disaffiliation” election based on claims that the City interfered with the representational rights of SEIU and its members in a bargaining unit known as the Fremont Association of City Employees (“FACE”) by processing and approving a defective decertification petition for which the City itself would run the election pursuant to local rules, and that the City subsequently advised the decertification petitioner how to proceed with the disaffiliation process. SEIU’s IR Request No. 633 was granted by the Board on April 15, 2013. A complaint for injunctive relief was filed in Alameda Superior Court on May 1, 2013. On May 3, 2013, PERB filed an Ex Parte Application for Temporary Restraining Order (TRO) and Order to Show Cause (OSC) re Preliminary Injunction. On May 7, 2013, the Court issued the TRO “Granting in Part and Denying in Part,” PERB’s requested relief. On May 10, 2013, SEIU filed a Motion to Intervene, which was granted by the Court. On May 29, 2013, the Superior Court issued an order granting preliminary injunction. On June 5, 2013, the City filed with the Superior Court a notice of appeal of the order granting preliminary injunction. On July 12, 2013, SEIU filed an Ex Parte Application for OSC re Contempt and Motion for Monetary Sanctions regarding the City’s refusal to negotiate a successor MOU. The City opposed SEIU’s application, asserting that the preliminary injunction was automatically stayed by the City’s appeal. On July 23, 2013, the Superior Court issued an order denying SEIU’s Ex Parte Application for OSC re Contempt and Motion for Monetary Sanctions. On August 26, 2013, PERB filed an Ex Parte Application for a 90-day extension of the preliminary injunction. The court summarily denied the application on August 30, 2013. On November 27, 2013, SEIU filed a memorandum of costs that it had incurred in helping prepare the record to support PERB’s petition for writ of supersedeas. The City thereafter filed a Motion to Tax SEIU’s Costs, which was heard on April 9, 2014, taken under submission, and granted in full on April 11, 2014 because only PERB, and not SEIU, was granted costs on appeal. PERB filed a Request for Dismissal on July 27, 2015. This case is now closed.
2. *PERB v. SEIU Local 1021 (City of Hayward)*, August 9, 2013, Alameda Superior Court, Case No. RG 13691249; IR Request No. 640 [UPC Nos. SF-CO-320-M, SF-CE-1075-M, SF-CE-1092-M, SF-CE-1098-M]. Issue: Whether SEIU should be enjoined from calling for and conducting a strike beginning on August 12, 2013, based on the City’s allegations that it would be an unlawful pre-impasse strike involving “essential” employees, whereas the Union has filed numerous UPCs and claims the strike would be a lawful UPC strike and that all statutory impasse procedures have been

exhausted. After extensive negotiations with the parties, including two informal conferences to discuss the issue of any “essential employees” not permitted to strike, the Board granted the City’s IR request in part, and directed the General Counsel’s office to proceed to court to obtain an injunction based on the parties’ stipulation as to the essentiality of certain classifications of City employees. On August 13, 2013, the Superior Court granted PERB’s ex parte application for a TRO against a strike by “essential” City employees, as designated in the parties’ stipulation. The parties participated in a CMC on January 21, 2014. The parties have not yet settled the MOU at issue in this case, and the City implemented its LBFO in February. Another CMC was conducted on May 22, 2014, and the Superior Court Judge issued a stay of proceedings. A further CMC occurred on November 21, 2014. The Judge set the case for trial on February 1, 2016 with a pre-trial conference set for January 22, 2016. In July 2015, the parties settled their contract dispute, seeking dismissal of the complaint. On November 23, 2015, PERB filed a Request for Dismissal which was final on November 24, 2015. The case is now closed.

3. *PERB v. City of Fremont (SEIU Local 1021)*, October 15, 2013, California Court of Appeal, First Appellate District, Division Four, Case No. A139991; Alameda Superior Court, Case No. RG 13677821; IR Request No. 633 [UPC No. SF-CE-1028-M]. Issue: Whether the trial court abused its discretion by refusing to renew the preliminary injunction it issued in May 2013, requiring the City of Fremont to maintain the status quo pending completion of PERB’s administrative proceedings. The ruling challenged on appeal was apparently based on a finding that the preliminary injunction was mandatory in nature and, thus, subject to the automatic stay of Code of Civil Procedure section 916, subdivision (a), upon the filing by the City of its appeal in Court of Appeal Case No. A138888, and the Superior Court’s refusal to lift the stay upon a showing by PERB that the preliminary injunction was clearly a prohibitory injunction, designed and intended to maintain the status quo that existed before the events alleged in the UPC began in November 2012. On October 15, 2013, PERB filed a notice of appeal from the August 30, 2013 Superior Court order refusing to extend the preliminary injunction. The Court of Appeal approved use of the Superior Court record prepared as a clerk’s transcript for the City’s appeal in Case No. A138888. Briefing was completed on May 28, 2014. On July 24, 2015, SEIU disclaimed interest in the bargaining unit. PERB then filed a Request for Dismissal on July 27, 2015, which the court granted on August 11, 2015. The case is now closed.
4. *County of Riverside v. PERB (SEIU Local 721) (Factfinding)*, November 15, 2013, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E060047; Riverside Superior Court, Case No. RIC 1305661 [UPC No. LA-IM-127-M]. Issue: Whether the trial court abused its discretion by issuing a permanent injunction and writ of mandate, with statewide effect, directing PERB to dismiss all pending

MMBA factfinding requests arising from any bargaining dispute involving less than a comprehensive MOU, and to deny all such requests in the future. In the County's cross-appeal, the issue is whether the trial court erred as a matter of law by rejecting the plaintiff's claim that AB 646 is unconstitutional. On November 15, 2013, PERB filed a notice appeal from a statewide writ and mandatory injunction. SEIU joined in with its own notice of appeal from these orders on January 2, 2014. On December 18, 2013, the County filed a notice of appeal from the Superior Court's order rejecting its claim that AB 646 is unconstitutional. PERB's form of final judgment was entered in the Superior Court on December 26, 2014, and additional notices of appeal from rulings adverse to PERB, including the denial of PERB's anti-SLAPP motion may be filed by January 14, 2014. The Court ordered a briefing schedule for the cross-appeals, not including any appeals that may arise after the hearing on the attorney fees/costs motions. Both PERB and the County appealed from the attorney fee and cost orders issued by the court. SEIU filed its opening brief on October 2, 2014, and PERB filed its opening brief and Request for Judicial Notice on October 6, 2014. The County filed its Opposition to PERB's Request for Judicial Notice on October 14, 2014. On October 27, 2014, the Court reserved its determination as to the request for judicial notice until briefing has been completed. The County's Opening/Opposition Brief was filed on January 28, 2015. SEIU filed its Appellant's Reply brief on April 28, 2015. PERB filed its Appellant's Reply Brief/Cross-Respondent's Brief; Appellant's Reply in Support of Its Request for Judicial Notice on May 20, 2015. The County filed its Reply Brief on August 6, 2015, along with a Request for Judicial Notice. PERB filed its Opposition to County's Request for Judicial Notice on August 21, 2015. On August 21, 2015, the amicus curiae, League of California Cities and California State Association of Counties, filed an Application to file Amicus Curiae Brief and Amicus Curiae Brief. On August 27, 2015, the presiding justice filed the Application. PERB filed an Answer to Amicus Curiae Brief on September 8, 2015. By Order of the Supreme Court on October 9, 2015, this case was transferred to Division One of the Fourth Appellate District and given a new case number. A Request for Oral Argument was sent to the parties to be filed by November 2, 2015. Both PERB and SDHC filed their respective Requests for Oral Argument. Oral Argument was held on March 14, 2016. The Court of Appeal issued its decision on March 30, 2016, and ruled in PERB's favor overturning the trial court's interpretation regarding the scope of issues that can be submitted to factfinding under the MMBA. The Court rejected the County's constitutional argument. The Court also found that the trial court erred in denying PERB's anti-SLAPP motion. The Court stated PERB was entitled to attorney's fees and reversed the trial courts award of \$15,000 in anti-SLAPP attorney's fees to the County. The Court refused to overturn the trial court's rejection of PERB's request for nominal sanctions against the County. The Decision was certified for publication.

5. *County of Riverside v. PERB (SEIU Local 721)*, May 6, 2016, Supreme Court, Case No. S234326; California Court of Appeal, Fourth Appellate District, Division One, Case No. D069065; Factfinding [PERB Case No. LA-IM-127-M]. Issues: (1) Whether MMBA factfinding is limited and only available when the impasse arises from negotiations for a new or successor comprehensive MOU; (2) Whether MMBA factfinding violates the constitutional rights provided in Art. XI, section 11, subd. (a) [and section 1, subd. (b)]; (3) Should the Court of Appeal's granting of the anti-SLAPP motion be reversed because it punishes the County for seeking judicial review, and did the Court of Appeal "distort anti-SLAPP law by willfully reviewing [the trial court's denial] de novo". The County filed a Petition for Review on May 6, 2016 with the Supreme Court of California. PERB filed its Answer to Petition for Review on May 27, 2016. The County's Reply to PERB's Answer to Petition for Review was filed on June 6, 2016. On July 13, 2016, the Supreme Court denied the County's petition for review. This case is now complete.

6. *San Diego Housing Commission v. PERB (SEIU Local 221)*, July 7, 2014, California Court of Appeal, Fourth Appellate District, Division One, Case No. D066237; San Diego County Superior Court, Case No. 37-2012-00087278-CU-MC-CTL; Factfinding [PERB Case No. LA-IM-116-M]. Issue: Whether the San Diego Superior Court erred by granting the Commission's motion for summary judgment and determining that PERB's factfinding determination as to a "single issue" was erroneous. PERB filed its appeal on July 7, 2014. SDHC filed a Notice of Appeal with respect to the denial of its Motion for Attorney Fees. PERB filed its Opening Brief on March 23, 2015. The parties stipulated to a 15-day extension of time for SDHC's Respondent's/Opening Brief to be filed on or before July 7, 2015. SDHC's Respondent's/Opening Brief was filed on July 7, 2015. PERB's filed its Respondent's Brief on September 8, 2015. SEIU did not file a brief. On or about October 16, 2015, PERB and SDHC filed their respective Request for Oral Argument. On October 29, 2015, SDHC filed its Cross-Appellant's Reply Brief. On November 12, 2015, League of California Cities and California State Association of Counties (LCC/CSAC) filed an Application to file an Amicus Curiae Brief. On November 30, 2015, PERB filed an Opposition to LCC/CSAC's Application of Amicus Curiae for Leave to File Amicus Brief. On December 1, the Court granted LCC/CSAC's application and filed its joint amicus brief. On December 29, 2015, PERB filed its Answer to Amicus Curiae Brief. Oral Argument was held on March 14, 2016. The Court of Appeal issued its decision on March 30, 2016, and ruled in PERB's favor overturning the trial court's interpretation regarding the scope of issues that can be submitted to factfinding under the MMBA. The Court dismissed SDHC's cross-appeal as moot. The Court certified the decision for publication, and PERB was awarded costs.

7. *San Diego Housing Commission v. PERB (SEIU Local 221)*, May 10, 2016, Supreme Court, Case No. S234414; California Court of Appeal, Fourth Appellate District, Division One, Case No. D066237; Factfinding [PERB Case No. LA-IM-116-M]. Issue: Whether MMBA factfinding is limited and only available when the impasse arises from negotiations for a new or successor comprehensive MOU. SDHC filed a Petition for Review on May 10, 2016 with the Supreme Court of California. PERB filed its Answer to Petition for Review on May 31, 2016. SDHC's Reply to PERB's Answer to Petition for Review was filed on June 10, 2016. On July 13, 2016, the Supreme Court denied SDHC's petition for review. This case is now complete.
8. *County of Fresno v. PERB (SEIU Local 521) (Factfinding)*, July 16, 2014, Fresno County Superior Court, Case No. 14 CE CG 02042, PERB Order No. Ad-414-M [PERB Case No. SA-IM-136-M]. Issues: Whether PERB erred by interpreting the new MMBA factfinding procedures created by AB 646 as applicable to an impasse in the parties' negotiations. The County's Petition for Writ of Mandate challenges the Board's decision in *County of Fresno* (2014) PERB Order No. Ad-414-M—which affirmed that factfinding under the MMBA is appropriate for single-issue disputes and is not limited to bargaining over an entire contract. On July 21, 2014, the petition was personally served on PERB. On July 23, 2014, the County sought ex parte relief from the Superior Court to stay further proceedings in the underlying factfinding matter for an indefinite period. PERB opposed this request for a stay; SEIU Local 521 offered a 30-day stay. The court granted the stay for 90 days, until October 21, 2014. PERB's Answer was filed on August 19, 2014. After SEIU Local 521 withdrew its fact finding request, the County filed a request for dismissal of the complaint. The court granted the County's request for dismissal on August 24, 2015. The case is now closed.
9. *City of Palo Alto v. PERB (International Association of Firefighters, Local 1319, AFL-CIO)*, September 5, 2014, California Court of Appeal, Sixth Appellate District, Case No. H041407; PERB Decision No. 2388-M [PERB Case No. SF-CE-869-M]. Issues: Whether the Board clearly erred in Decision No. 2388-M holding that the City violated the MMBA when it approved a ballot measure repealing binding interest arbitration for impasse disputes, without first noticing and then meeting and consulting with the IAFF. The City's Writ Petition was filed on September 5, 2014. The Administrative Record was filed on November 14, 2014. Petitioner's Opening Brief was filed on December 19, 2014. PERB and the IAFF were both granted a 45-day extension of time to file their respective Respondent's Brief. PERB and IAFF filed their respective Respondent's Brief on March 13, 2015. The City filed its Reply Brief on April 27, 2015. On May 13, 2015, the League of California Cities filed an Application to File an Amicus Brief along with the proposed brief. On March 24, 2016, the Court issued a Writ of Review requesting supplemental briefing addressing the remedial authority of PERB and the separation of powers doctrine. The Application for Leave to File Amicus Brief was granted.

Petitioner's filed its Supplemental Brief on April 8, 2016. PERB's filed its Answer to Amicus Curiae Brief on April 15, 2016. PERB filed its Supplemental Brief and Request for Judicial Notice on April 25, 2016. IAFF filed its Supplemental Brief and Answer to Amicus Curiae Brief on April 25, 2016. All parties have requested Oral Argument.

10. *CAL FIRE Local 2881 v. PERB (State of California [State Personnel Board])*, February 17, 2015, Sacramento Superior Court, Case No. 34-2015-80002020; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Board erred in Decision No. 2317a-S by affirming a Board Agent's dismissal of a charge filed by Local 2881 alleging that SPB violated the Dills Act by unilaterally amending the regulations under which SPB conducts disciplinary proceedings for employees represented by Local 2881, without meeting and conferring in good faith. In the prior/related case, on October 15, 2014, the Court granted Local 2881's Writ Petition and ordered that PERB Decision No. 2317-S be set aside and reissued. On December 5, 2014, the court issued a Judgment Granting Writ of Mandate in Part and Denying Writ in Part. On December 19, 2014, the Board set aside Decision No. 2317-S, and issued Decision No. 2317a-S. Local 2881 then filed a Verified Petition for Writ of Ordinary Mandate with the Sacramento Superior Court on February 17, 2015. PERB and SPB filed their respective Answers on or about March 24, 2015. CAL FIRE's Opening Brief was filed on March 22, 2016. PERB filed its Opposition Brief on April 11, 2016. Real Party in Interest State of California (SPB) filed their Opposition on April 11, 2016 along with a Request for Judicial Notice. On April 21, 2016, Petitioner filed its Reply in Support of Its Verified Petition for Writ of Ordinary Mandate. Oral Argument was held on May 6, 2016. The court adopted his tentative ruling as the court's final ruling. Therefore, Cal Fire's Petition for Writ of Mandate is denied. On May 18, 2016, the Judge signed the final Judgment. On June 2, 2016, PERB served the notice of entry of judgment. On July 19, 2016, Local 2881 filed with the Superior Court a Notice of Appeal and Appellant's Notice Designating Record on Appeal.

11. *CAL FIRE Local 2881 v. PERB; (State of California [State Personnel Board])*, July 19, 2016, California Court of Appeal, Third Appellate District, Case No. C082532; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Sacramento Superior Court erred in denying CAL FIRE's [Second] Petition for Writ of Mandate. CAL FIRE had argued before PERB that the SPB had a duty to bargain with the Union prior to revising its disciplinary regulations. The court denied SPB's writ and found that there is a reasonable basis on which PERB could find SPB does not have a duty to bargain with the Union - namely, if SPB was acting in its capacity as a "regulator" when it changed its disciplinary regulations; PERB's decision was not "clearly erroneous." Previously, CAL FIRE had filed its [First] Petition for Writ Mandate, and the court granted the petition and ordered PERB to set aside its decision and issue a new decision because PERB erred in finding no duty to bargain because, to violate the "meet and

confer” requirement of section 3519 of the Dills Act, the “state” must be acting in its role as an “employer” or “appointing authority.” Local 2881 filed with the trial court a Notice of Appeal and Appellant’s Notice Designating Record on Appeal on July 19, 2016. The Third DCA lodged the Notice of Appeal on July 25, 2016.

12. *Sonoma County Superior Court v. PERB*, March 5, 2015, Sacramento County Superior Court Case No. 34-2015-80002035; PERB Decision No. 2409-C [PERB Case No. SF-CE-39-C]. Issue: Whether the Board erred in Decision No. 2409-C by reversing a Board Agent’ dismissal of a charge filed by SEIU Local 1021 alleging that Sonoma County Superior Court violated the Trial Court Employment Protection and Governance Act (TCEPGA) when it denied an employee’s request for union representation at an ADA interactive process meeting with management. The Board held that public employees have a right to union representation when meeting with management to engage in the interactive process. This case was filed in the Sacramento County Superior Court on March 5, 2015. PERB filed a Demurrer before on April 2, 2015. Real Party in Interest filed a Demurrer on or about April 10, 2015. PERB filed its MPA on October 13, 2015. SEIU filed its MPA in support of PERB’s Demurrer on October 14, 2015. The Court’s opposition to PERB’s MPA was filed on October 26, 2015. PERB filed its Reply Brief on October 30, 2015. The Demurrer hearing is scheduled for November 6, 2015. The Demurrer hearing was held on November 13, 2015, at which time the Court granted PERB’s demurrer without leave to amend. The complaint has been dismissed and the matter is closed.
13. *County of Tulare v. PERB (SEIU Local 521)*, March 30, 2015, Fifth District Court of Appeal, Case No. F071240; PERB Decision No. 2414-M [PERB Case No. SA-CE-748-M]. Issue: Whether PERB erred in Decision No. 2414-M by reversing a proposed ALJ decision, and instead holding that: (1) in bargaining the 2009-2011 MOU, SEIU Local 521 and the County of Tulare intended to create a contractual right to merit-based promotions and salary increases effective after expiration of the MOU; (2) terms in the 2009-2011 MOU constitute a waiver of the County’s statutory right to implement the terms of its final offer at impasse of a successor MOU (which included suspension of the merit-based promotions and salary increases); and (3) SEIU-represented County employees have a constitutionally-vested right to future merit-based promotions and salary increases. This case was filed in the Fifth District Court of Appeal on March 30, 2015. On April 2, 2015, PERB filed an Extension of Time to File the Certified Administrative Record. The court granted the extension to May 11, 2015. The Administrative Record was filed on May 8, 2015. The County filed its Opening Brief, along with Request for Judicial Notice and Exhibits on June 12, 2015. PERB filed its respondent’s brief on August 14, 2015, and SEIU filed its brief on August 18, 2015. The County’s reply brief was filed on September 8, 2015. On September 18, 2015, the League of California Cities and California State Association of Counties filed an Amicus Curiae Application/Brief in support of the County. PERB and

SEIU each filed their Answer to the Amicus Curie Brief on or about October 23, 2015. Oral Argument was held on June 29, 2016. On July 11, 2016, the Court denied the County's petition for a writ of extraordinary relief. Both the County and SEIU sought publication of the decision, which the court denied. This litigation is now closed.

14. *Bellflower Unified School District v. PERB (CSEA Ch. 3)*, April 30, 2015, Supreme Court of California, Case No. S226096 California Court of Appeal, Second Appellate District, Division Two, Case No. B257852, PERB Decision No. 2385 [PERB Case No. LA-CE-5508]. Issues: This petition challenges the Second District Court of Appeals denial of the writ petition filed by Bellflower Unified School District, which challenged PERB Decision No. 2385. In the appellate case, the court determined whether the Board clearly erred in Decision No. 2385-E by holding that the Bellflower Unified School District violated EERA when it failed and refused to bargain in good faith over the impact and effects of its decision to close a school and abolish classified positions. On April 30, 2015, Petitioner filed a Petition for Writ of Review with the Supreme Court. PERB and CSEA filed their respective Answer to Petition for Review on or about May 19, 2015. The Court denied the petition for review on July 8, 2015. This case is now closed.
15. *Liu v. PERB (Trustees of the California State University)*, May 14, 2015, Court of Appeal, First Appellate District, Division Four, Case No. A145123; PERB Decision Nos. 2408-H and 2391a-H [PERB Case Nos. SF-CE-1009-H and SF-CE-995-H]. Issues: Whether Board Decisions Nos. 2408-H and 2391a-H be reversed based on alleged statements made by an ALJ and Board's error. On May 14, 2015, Petitioner filed a Petition for Review. On May 19, 2015, the Court requested the Administrative Record from PERB. Given the extraordinarily large file, PERB filed a Request for Extension of Time seeking a 90-day extension. The court approved 60 days without prejudice, making the record due on July 28, 2015. The record was filed on case SF-CE-995-H only, as the court denied the file request for case SF-CE-1009-H as moot since the Supreme Court denied review in Case No. S225383 on May 13, 2015. On June 22, 2015, PERB filed a Request for Second Extension of Time of the Administrative Record which was granted to August 27, 2015. PERB filed the Administrative Record on August 27, 2015. Liu filed his opening brief on November 6, 2015. PERB filed its Respondent's Brief on December 11, 2015. Liu's filed his Reply Brief and Motion to Augment the Record with 10 volumes of missing transcripts from the Administrative Record on January 5, 2016. On January 7, 2016, the Court granted the motion to augment the record. On January 8, 2016, Liu filed additional motions to augment the record with missing documents from the record. On January 14, 2016, PERB filed an Objection to Petitioner's Augmentation of the Record with Unrelated Transcripts. On January 21, 2016, the Court issued its Order denying the petition for writ of review. On January 29, 2016, Liu filed a letter with the presiding justice essentially requesting

reconsideration. On February 1, 2016, the court deemed his letter as a subsequent petition for writ of review and then denied the petition the same day. This case is complete.

16. *County of San Bernardino v. PERB (San Bernardino County Public Attorneys Association)*, June 10, 2015, Court of Appeal, Fourth Appellate District, Division 2, Case No. E063736, PERB Decision No. 2423-M [PERB Case Nos. LA-CE-431-M and LA-CE-554-M]. Issue: Whether the Board erred in Decision No. 2423-M, holding that the San Bernardino County Office of the Public Defender violated the MMBA by implementing a blanket policy that prohibits a Deputy District Attorney from representing a Deputy Public Defender in a disciplinary investigatory interview; and by requiring its Deputy Public Defenders to participate in investigatory interviews—without representation—under threat of discipline. The County of San Bernardino, Office of the Public Defender, filed its Petition for Writ of Extraordinary Relief on June 10, 2015. Under an extension of time, PERB filed the Administrative Record on August 8, 2015, and a supplemental record on August 19, 2015. The County’s opening brief was filed on September 24, 2015. PERB’s and the Union’s briefs were filed on October 29, 2015. The County’s Reply Brief was filed on December 21, 2015, along with a Request for Recusal, and Motion re Judicial Notice; Supporting Memorandum and Declaration; Order. On December 24, 2015, the California State Association of Counties and League of California Cities filed an application and proposed amicus curiae brief. The Court accepted and filed the amicus brief on December 31, 2015. On January 8, 2016, the Court granted Petitioner’s request for recusal. PERB and San Bernardino County Public Attorneys Association filed their Response to Amicus Curiae Brief on January 11, 2016. On January 25, 2016, the Court requested supplemental briefing in the above matter. The question focused on the reasonableness of the Public Defender’s blanket ban on cross-representation given its possible effect on the relationship between deputy public defenders and their clients. The County, PERB and San Bernardino County Public Attorneys Association each filed their individual supplemental letter brief on February 16, 2016. The Court denied the petition on March 23, 2016. A Petition for Review was filed with the Supreme Court on April 4, 2016, which was denied on May 11, 2016. This case is now complete.

17. *San Luis Obispo Deputy County Counsel Association and San Luis Obispo Government Attorneys’ Union v. PERB (County of San Luis Obispo)*, June 24, 2015, California Court of Appeal, Second Appellate District, Case No. B265012; PERB Decision 2427-M [PERB Case No. LA-CO-123-M & LA-CO-124-M]. Issue: Whether the Board erred in Decision No. 2427-M when it affirmed the ALJ’s conclusion that Petitioners violated the MMBA in refusing to bargain over the County’s pension cost-sharing proposal; holding that employee contribution levels and distribution under the County pension plan were not vested. In addition, the Board found no vested right to the absence of a prevailing

wage offset obtained through concessions. The Unions filed a Petition for Writ of Extraordinary Relief and Supporting Memorandum on July 24, 2015 with the Second Appellate District, Division 6. The Administrative Record was filed on September 4, 2015. The Unions filed its Opening Brief on October 30, 2015. PERB and the County filed their respective Briefs on or around December 21, 2015. The Unions filed its Reply Brief and Request for Judicial Notice on January 14, 2016. PERB and the County filed their respective Opposition to Request for Judicial Notice on January 26, 2016 and January 22, 2016. This case is fully briefed.

18. *Los Angeles Unified School District v. PERB (United Teachers Los Angeles)*, July 24, 2015, Court of Appeal, Second Appellate District, Division Four, Case No. B265626; PERB Decision No. 2438 [PERB Case No. LA-CE-5810]. Issue: Whether the Board erred in Decision No. 2438-E when it affirmed the ALJ's findings that since UTLA's interest in acquiring the names and work locations of all bargaining unit members reassigned to Educational Service Centers outweighed employees' privacy interests, Petitioner violated EERA by refusing to disclose this information to UTLA and by unilaterally implementing an opt-out option for bargaining unit members to deny disclosure of necessary and relevant information. LAUSD's Petition for Writ of Extraordinary Relief was filed in the Court of Appeal on July 24, 2015. PERB's Request for Extension of Time to File the Certified Administrative Record was granted. The Administrative Record was filed on September 17, 2015. LAUSD's Opening Brief was filed on October 22, 2015. PERB filed its Respondent's brief on January 14, 2016. LAUSD's Reply Brief was filed on March 24, 2016. On July 28, 2016, the Court issued its order denying the Petition for Writ of Extraordinary Relief on the ground that the petitioner has not sufficiently stated facts, evidence, or legal authorities.
19. *PERB v. Service Employees International Union, Local 521 (County of Santa Clara)*, June 29, 2015, Santa Clara County Superior Court, Case No. 115 CV 282467; IR Request No. 682 [PERB Case No. SF-CO-366-M]. Issue: Whether a pre-impasse strike by Service Employees International Union, Local 521, should be enjoined in its entirety or, alternatively, whether the court should enjoin only essential employees whose absence creates a substantial and imminent threat to the health or safety of the public. On Tuesday, June 23, 2015, the County of Santa Clara gave PERB its 24-hour notice it would seek injunctive relief against Service Employees International Union, Local 521, who announced its members were striking on June 30, 2015. On Wednesday, June 24, 2015, the County began a piecemeal filing of its IR Request. On Thursday, June 25, 2015, SEIU filed its response. On Monday, June 29, 2015, PERB appeared in court to oppose the County's effort to seek a broader injunction and, thereby, circumvent the Board's jurisdiction. In the ex parte hearing, the court recognized PERB's exclusive jurisdiction and granted a TRO using PERB's complaint and its Exhibit A (essential employee list). The court then set a hearing on June 30, 2015, for further proceedings.

The court, however, canceled that hearing after the parties reached a tentative agreement in their negotiations, effectively mooting the injunctive relief request. PERB dismissed the complaint on September 14, 2015.

20. *County of Santa Clara v. Service Employees International Union, Local 521*; (PERB), June 29, 2015, Santa Clara County Superior Court, Case No. 115-CV-282408; IR Request No. 682 [PERB Case No. SF-CO-366-M]. Issue: Whether the County of Santa Clara may bypass PERB by unilaterally seeking an injunction from the superior court to block a pre-impasse strike by Service Employees International Union, Local 521. On Friday, June 26, 2015, the County of Santa Clara informed PERB that it planned to petition the court on Monday, June 29, 2015, to enjoin a strike by SEIU if PERB did not agree to seek an injunction on that date. PERB informed the County that, subject to Board approval, it planned to seek the injunction on Tuesday, June 30, 2015. As a consequence, on Sunday, June 28, 2015, the County emailed 24-hour notice to the parties of ex parte appearance the next morning. On Monday, June 29, 2015, PERB appeared in court to oppose the County's effort to seek an injunction and, thereby, circumvent the Board's jurisdiction. In the ex parte hearing, the court recognized PERB's exclusive jurisdiction and granted a TRO using PERB's complaint and its Exhibit A (essential employee list). The court then set a hearing on June 30, 2015, for further proceedings. The court, however, canceled that hearing after the parties reached a tentative agreement in their negotiations, effectively mooting the injunctive relief request. This case was dismissed on 7/30/2015 by the County and is now complete.
21. *PERB v. California Nurses Association*; (County of Contra Costa), October 2, 2015, Contra Costa Superior Court, Case No. C15-01814; IR Request No. 685 [PERB Case No. SF-CO-370-M]. Issues: Whether certain CNA-represented employees should be enjoined from participating in a two-day, post-impasse strike from October 6-7 because their absence would create a substantial and imminent threat to public health and safety, and whether a preliminary injunction should issue in the event of additional strikes in the near future. On October 2, PERB filed a complaint and applied ex parte for a Temporary Restraining Order (TRO) and Order to Show Cause re Preliminary Injunction (OSC) from the Contra Costa County Superior Court. PERB sought an injunction covering the 37 registered nurses assigned to the County's detention facilities and locked psychiatric units. The same day, the County applied to intervene in the matter, and for an injunction applying to all 152 employees covered by its injunctive relief request to PERB. CNA stipulated to the 16 employees in the detention facilities, opposing the remainder. Following argument in chambers, the Court granted PERB's application and issued the TRO and OSC. The Court denied the County's application for an injunction covering the additional 115 employees the Board determined not to be essential, and deferred ruling on the County's application for intervention. On October 21, the Court issued tentative rulings: (1) granting the County's intervention; and (2) denying the preliminary

injunction as moot. Following oral argument on October 22, the Court confirmed its tentative ruling denying the preliminary injunction. (No party contested the tentative ruling on intervention.) On November 18, 2015, the parties notified PERB that they had settled their contract dispute and requested dismissal of the complaint. PERB requested dismissal of this matter on December 3, 2015. The case is now closed.

22. *Orange County Water District v. PERB (Orange County Water District Employees Association)*, October 22, 2015, Court of Appeal, Fourth Appellate District, Division Three, Case No. G052725; PERB Decision No. 2454-M [PERB Case No. LA-CE-856-M]. Issue: The issue is whether the Board erred in Decision No. 2454-M by holding that that the District violated the Meyer-Milias-Brown Act by refusing to participate in good faith in a properly petitioned-for agency fee election. On October 22, 2015, Petitioner filed a Petition for Extraordinary Relief in the Fourth Appellate District, Division Three. The Administrative Record was due on November 5, 2015. PERB, however, filed an application for a 32-day extension of time, which the court granted. The Admin Record was then filed on December 7, 2015. Petitioner's Opening Brief and Request for Judicial Notice was filed on March 8, 2016. On March 25, 2016, the Court filed an order stating that the motion for judicial notice would be decided in conjunction with the petition for writ of review. PERB's filed its Respondent's Brief on April 12, 2016. Real Party in Interest Orange County Water District Employees Association filed their Respondent's Brief on April 26, 2016. The District's Reply Brief was filed on June 6, 2016.
23. *PERB v. Alliance College-Ready Public Charter Schools, et al. (United Teachers Los Angeles)*, October 23, 2015, Los Angeles Sup. Ct. Case No. BC 598881; IR Request No. 686 [PERB Case Nos. LA-CE-6025, LA-CE-6027, LA-CE-6061, LA-CE-6073]. Issue: At the ex parte hearing, the court held that a temporary restraining order (TRO) and Order to Show Cause (OSC) should issue and place certain limitations on Alliance's conduct pending a decision on PERB's Complaint for Injunctive Relief. The court also required that Alliance provide notice of the Order to its certificated employees. On October 23, 2015, PERB filed its Complaint for Injunctive Relief and supporting papers against Alliance College-Ready Public Charter Schools, and its individual schools. On October 27, 2015, PERB filed its ex parte papers and served Alliance. Alliance filed papers opposing PERB's Ex Parte Application and UTLA's Motion to Intervene. During oral argument, the court granted UTLA's Request to Intervene over Alliance's objection. The court then granted PERB's Application for a TRO but on terms difficult from those in PERB's Proposed Order. The court also set a hearing date on the Complaint (Nov. 17) and deadlines for Alliance's Opposition (Nov. 9) and any Replies (Nov. 12). Following oral argument the court ruled verbally on each of items PERB requested and directed the parties to prepare a revised Proposed Order in accordance with his ruling. After counsel for the parties were unable to reach agreement on three provisions in the Proposed Order, they filed a joint Proposed Order with the court that contained alternative language

provisions. The court edited and signed the Proposed Order granting the TRO and issuing an OSC on October 29, 2015. On November 6, Alliance filed a notice of demurrer and demurrer on behalf of its parent organizations (Alliance College-Ready Public Schools and Alliance College-Ready Public Schools Facilities Corporation) and the individual schools named in PERB's injunction papers. In its demurrer, Alliance argued that PERB lacks jurisdiction because Alliance's parent organizations and the individual schools are subject to the NLRB's jurisdiction, not PERB's, and are also not "public school employers" under EERA. On November 16, Alliance filed its opposition papers to the PI, along with a request for judicial notice and evidentiary objections. Alliance filed a peremptory challenge under Code of Civil Procedure, section 170.6 as to Judge Gregory Keosian on November 17. On November 18, PERB and UTLA each filed opposition papers to Alliance's demurrer. On November 20, the case was reassigned to a new judge. On November 23, PERB and UTLA each filed replies to Alliance's opposition to the PI. On November 24, Alliance filed its Reply Brief in support of its demurrer and also withdrew its demurrer only as to its 27 schools. The PI was held on December 3 where the court issued a tentative decision granting in part PERB's Application for a Preliminary Injunction. During oral argument on PERB's Application, the court modified the tentative decision and directed the parties to prepare an order in accordance with his directives. The parties were able to agree on the language of a joint Proposed Order granting the preliminary injunction, and filed their stipulated order on December 9. On December 10, PERB agreed to a 15-day extension for Alliance to file their answers to PERB's complaint. On December 18, PERB granted a second extension making Alliance's answers due on January 19, 2016. On or about December 31, PERB and UTLA agreed to a 60-day extension for the Alliance to file their answers, in exchange for Alliance taking their January 28, 2016 Demurrer hearing off calendar. On January 21, 2016, the parties filed a Joint Status Conference Statement with the Court, in which PERB took the position that Alliance should answer the Complaint and it took the position that no answer should be required and the entire matter should be stayed. The Court subsequently vacated the Status Conference that was scheduled for January 28, 2016, and set a combined Trial Setting Conference and Status Conference for March 22, 2016. On March 21, 2016, counsel for Alliance served PERB with an Answer on behalf of all of Alliance's Charter Schools. Alliance did not serve or file an Answer on behalf of Alliance's non-school entities. At the combined Trial Setting Conference and Status Conference on March 22, 2016, the court issued a verbal order that stayed the case with one exception. The exception to the stay allows either party to file an application or motion to modify, enforce, or dissolve the preliminary injunction. The court also scheduled a Further Status Conference for June 22, 2016. On June 17, 2016, the Parties filed a Joint Status Conference Statement and Stipulated Request to Continue the June 22, 2016, Status Conference. The Status Conference was not removed from the calendar and

PERB attended the Status Conference on June 22, 2016. At the Status Conference, the court set a Further Status Conference for October 7, 2016.

24. *PERB v. Service Employees International Union Local 1021 (County of Sonoma)*, November 17, 2015, Sonoma Superior Court, Case No. SCV 258038; IR Request No. 690 [PERB Case No. SF-CO-375-M]. Issue: Whether the Court should enjoin essential employees working for the County of Sonoma from striking. On November 16, 2015, at 6:00 p.m., SEIU Local 1021 announced to its members that it was striking on the following morning. The County, believing that a strike of unknown duration was imminent as early as the prior week, had filed a request for injunctive relief on November 13. During a meeting hosted by PERB, SEIU and County had previously stipulated to 77 essential positions. Once SEIU announced the strike, the Board in an expedited process approved the IR request as to the 77 stipulated employees plus 32 employees requested by the OGC for a total 109 essential employees. That same evening, PERB gave notice to SEIU Local 1021 and the County that it would appear ex parte in Sonoma County Superior Court the following day to seek a TRO to enjoin the essential employees from striking. On November 17, PERB appeared ex parte in Sonoma County Superior Court. Along with PERB's IR papers, the County filed a motion to intervene. The Court enjoined the 77 stipulated employees and 15 other employees for a total of 92 essential employees. The Court also granted the County's motion for intervention. On November 18, the Court issued its TRO/OSC, and set the PI hearing date for December 3. On November 24, PERB filed its brief in support of the PI, which requested that the Court enjoin the 109 employees PERB originally sought. On November 24, the County filed its Reply Brief in support of the PI, which asks the court to adopt PERB's list of essential employees, plus approximately 23 additional positions (132). On December 1, SEIU filed its opposition to the PI. The PI hearing was held on December 8. PERB attorneys argued that the PI should enjoin all 109 employees the Board determined were essential. PERB prevailed, and the Court signed PERB's proposed order the same day. A Case Management Conference was scheduled for March 17, 2016. The parties, however, settled their contract dispute, and PERB dismissed the complaint on March 23, 2016.

25. *PERB v. Service Employees International Union Local 1021 (County of Solano)*, November 17, 2015, Solano Superior Court, Case No. FCS046244; IR Request No. 691 [PERB Case No. SF-CO-376-M]. Issue: Whether the Court should enjoin essential employees working for the County of Solano from striking. On November 17, at about 10:21 a.m., employees for the County of Solano represented by SEIU 1021 began a no-notice strike. County Counsel contacted PERB giving its 24-hour notice of its intent to seek injunctive relief. Because SEIU 1021 had already conducted a two-day strike in October, PERB's list of essential employees was nearly complete, and the County's IR papers were immediately submitted to PERB. On November 18, SEIU filed its

opposition to the County's IR request. In an expedited process, the Board granted, in part, the County's IR request as to the 50 essential employees listed on PERB's Exhibit A. The OGC notified the parties of the Board's decision, and that PERB will appear ex parte on November 18 in the Solano County Superior Court seeking an injunction that precludes essential employees from striking. The County filed its request for intervention along with PERB's IR papers. At the hearing, the judge adopted PERB's full recommendation, enjoining the 50 essential employees on PERB's Exhibit A, and granted the County's motion to intervene. The Court set the PI hearing for December 9. On November 19, SEIU and the County announced that the parties reached a tentative agreement on their successor MOU. The County Board of Supervisors approved the MOU on December 8. PERB filed a Request for Dismissal and this case was complete on December 8, 2015.

26. *City of San Diego v. PERB (San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, Catherine A. Boling, T.J. Zane, Stephen B. Williams)*, January 25, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D069630; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M]. Issue: Whether the Board erred in Decision No. 2464-M, when it affirmed the ALJ's findings that the City of San Diego's Mayor and other public officials acted as agents of the City—and not as private citizens—when they used the prestige and authority of their respective elected offices and its resources to pursue pension reform through a ballot initiative, without negotiating with the four exclusive representatives regarding the changes in such benefits. On January 25, 2015, the City of San Diego (City) filed its Petition for Writ of Extraordinary Relief. The Court ordered the Administrative Record to be filed by February 5, 2016. PERB requested a 60-day extension of time to file the Administrative Record, which was subsequently granted to April 5, 2016. On February 2, 2016, PERB filed a motion requesting the dismissal of Boling, Zane and Williams as real parties in interest. On February 4, 2016, the Deputy City Attorneys Association (DCAA) filed a motion to join the dismissal. On February 17, 2016, the City filed an opposition to PERB's motion to dismiss and Boling, Zane & Williams filed a joinder to the City's opposition. On February 19, 2016, PERB filed a reply in support of motion to dismiss. The Administrative Record was filed on April 4, 2015. The City's Opening Brief was filed on May 9, 2016. PERB requested a 45-day extension of time to file the Respondent's Brief and an Application for Leave to File an Oversized Brief. Ross. The City filed an Opposition to Application for Extension of Time to File PERB's Brief. The RPIs (Unions) filed an Application for Leave to File Oversize Brief on May 18, 2016, along with an Application for Extension of time to File Brief of RPIs (Unions). On May 23, 2016, the Court granted a 30-day extension of time to file responsive briefs for PERB and RPIs, making their respective briefs due on

July 13, 2016, and granted the applications to file oversized briefs. On June 13, 2016, Boling, Zane & Williams filed a Brief in Support of City of San Diego's Petition for Writ of Extraordinary Relief. PERB filed its Respondent's Brief on July 13, 2016, and SDMEA filed its Brief in Opposition to the City's Petition for Writ of Extraordinary Relief. On August 8, 2016, the City filed its Reply Brief.

27. *Catherine A. Boling, T.J. Zane, Stephen B. Williams v. PERB; (City of San Diego, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO)*, January 25, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D069626; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M]. Issue: Whether the Board erred in Decision No. 2464-M, when it affirmed the ALJ's findings that the City of San Diego's Mayor and other public officials acted as agents of the City—and not as private citizens—when they used the prestige and authority of their respective elected offices and its resources to pursue pension reform through a ballot initiative, without negotiating with the four exclusive representatives regarding the changes in such benefits. On January 25, 2015, Boling et al. filed a Petition for Writ of Extraordinary Relief and Exhibits in Support of Petition for Writ of Extraordinary Relief. The Court ordered the Administrative Record to be filed by February 5, 2016. PERB requested a 60-day extension of time to file the Administrative Record which was granted to April 5, 2016. On January 25, 2016, PERB filed a Motion to Dismiss Petition for Lack of Standing; Memorandum of Points and Authorities in Support Thereof; and Declaration of Wendi L. Ross. On February 4, 2016, DCAA filed a joinder to PERB's motion to dismiss. On February 16, 2016, Petitioners filed their opposition to motion to dismiss. On February 17, 2016, the City filed a joinder to petitioner's opposition. On February 17, 2016, PERB filed a reply in support of motion to dismiss. The Administrative Record was filed on April 4, 2015. Boling et al. filed their Opening Brief on May 9, 2016. Boling's Opening Brief was filed on May 9, 2016. On May 12, 2016, PERB requested a 45-day extension of time to file Respondent's Brief. Boling filed a Motion for Judicial Notice and for Leave to Produce Additional Evidence; Declaration of Alena Shamos; and Proposed Order in Support of Opposition to Application for Extension to File Respondent's Brief. On May 19, 2016, PERB filed a Reply in Support of Application for Extension of Time and Opposition to Motion for Judicial Notice and for Leave to Produce Additional Evidence. The RPIs (Unions) filed an Application for Extension of time to File Brief of RPIs (Unions). On May 20, 2016, Boling et al. filed an Opposition to the Application for Extension to File Brief by RPIs (Unions). On May 23, 2016, the Court granted a 30-day extension of time to file responsive briefs of PERB and RPIs, and denied Boling et al.'s request for judicial notice and for leave to produce additional evidence. On June 13, 2016, the City filed a Joinder to Boling's Opening Brief. On July 12, 2016, PERB filed its Respondent's Brief and

Request for Judicial Notice; Declaration of Joseph W. Eckhart, and a [Proposed] Order. SDMEA filed its Brief in Opposition to Petitioners' Petition for Writ of Extraordinary Relief. On August 8, 2016, Boling's Reply Brief was filed.

28. *United Teachers Los Angeles v. PERB (Kennon B. Raines, et al.)*, March 30, 2016, California Court of Appeal, Second Appellate District, Case No. B271267; PERB Decision No. 2475 [PERB Case No. LA-CO-1394]. Issue: Whether the Board erred in concluding that UTLA had breached its duty of fair representation by negotiating a side letter of agreement with terms unfavorable to certain employees, without giving those employees sufficient notice of, or participation in, the negotiations. Whether the Board erred in applying the "relation back" doctrine to allow additional charging parties to join the case. A Petition for Writ of Extraordinary Relief was filed in the Second District Court of Appeal on March 30, 2016. PERB filed 17 volumes of the administrative record on June 10, 2016. UTLA's Opening Brief was filed on July 15, 2016. PERB's Responsive Brief was filed on August 18, 2016.

29. *PERB v. County of Butte; (Public Employees Union Local 1 and Teamsters Local 137)*, April 29, 2016, Butte County Superior Court, Case No. 16CV00564; IR No. 697 [PERB Case No. SA-CE-939-M]. Issues: Whether the County of Butte violated its local rule section 10.6, and therefore the MMBA, by accepting and processing decertification petitions for its General Bargaining Unit and Social Services Bargaining Unit. This IR Request was granted in part on April 26, 2016. On April 29, 2016, PERB served the parties with ex parte documents that would be filed in the Butte County Superior Court on Monday, May 2, 2016. The ex parte hearing was held on Monday, May 2, 2016, at which time the Judge granted the TRO. On May 16, 2016, Teamsters Local 137 filed an Opposition to Application for Preliminary Injunction along with a Memorandum of Points and Authorities in Support of Opposition. On May 16, 2016, the County also filed its Opposition to Preliminary Injunction. On May 18, 2016, PERB filed its Reply to the County of Butte and Teamsters Local 137's Opposition to Request for Preliminary Injunction along with a Proposed Order Granting Preliminary Injunction. PEU Local 1 also filed a Reply to the County of Butte and Teamsters' Opposition to Preliminary Injunction. The Preliminary injunction Hearing was held on May 20, 2016, at which time the Judge granted the Preliminary Injunction. A Case Management Conference is scheduled for July 1, 2016. On May 31, 2016, the Teamsters Local 137 filed an Answer to Unverified Complaint. On June 7, 2016, Teamsters Local 137 filed an Opposition to UPEC Local 792's Motion to Intervene and Memorandum of Points and Authorities in Support of Opposition to Motion to Intervene. On June 10, 2016, UPEC Local 792 filed a Reply to Teamsters Local 137's Opposition to UPEC's Motion to Intervene and Memorandum of Points and Authorities in Support of Reply. On or about June 24, 2016, PERB, Teamsters Local 137, UPEC Local 792 and the County of Butte filed their respective Case Management Statements for the Case Management Conference of July 1,

2016. On July 12, 2016, PERB filed its Case Management Statement for the Case Management Conference scheduled for July 15, 2016.

30. *In re: Academy of Personalized Learning, Inc.*, April 20, 2016, US Bankruptcy Court, Eastern District of California, Sacramento Division, Case No. 15-28060-D11; [PERB Case Nos. SA-CE-2791, SA-CE-2792, SA-CE-2804, SA-CE-2816]. Issue: Whether proceedings before the Public Employment Relations Board constitute police and regulatory power actions that are exempt from the automatic stay normally applicable once a debtor files for bankruptcy. On February 25, 2016, the Academy of Personalized Learning (APL) filed a motion in the bankruptcy court for the Eastern District of California, seeking a contempt order against the Academy of Personalized Learning Educator's Association (APLEA) for its alleged violation of the automatic stay. On April 5, 2016, APLEA then filed a Motion for Relief from the Automatic Stay and to Annul the Automatic Stay. The court then ordered additional briefing from the parties on the competing briefs, and invited PERB to submit its own brief. On April 20, 2016, PERB filed the following documents: Supplemental Brief by PERB Regarding Application of the Automatic Stay and Declaration by J. Felix De La Torre in Support of Brief by PERB Regarding Application of the Automatic Stay to Its Proceedings along with Exhibits. APL filed an Opposition to APLEA's Motion for Relief from the Automatic Stay and to Annul the Automatic Stay on April 22, 2016. That same day, APLEA filed a Supplemental Opposition to Motion to Enforce Automatic Stay and for Contempt for Violation of Automatic Stay. On May 2, 2016, the Bankruptcy Court issued its tentative rulings on the APL's motion to enforce the automatic stay and for contempt and APLEA's competing motion for relief from and annulment of the automatic stay. The Court tentatively denied APL's motion and tentatively granted APLEA's motion. The court did not reach the issue of whether the PERB proceedings are exempt from the automatic stay under §364(b)(4). Instead he decided to grant stay relief and annulment due to APL's delay in seeking a Bankruptcy Court determination while continuing to litigate before the PERB ALJ. The court stated that APL's actions suggest "inappropriate gamesmanship" which has amounted to a waste of everyone's resources. The Court also found that the potential injunctive obligations that APL may have arising out of the PERB complaints are likely non-dischargeable and that the PERB may be better equipped to resolve disputes as to the amount of any monetary claims. On May 4, 2016, the court heard oral argument and the affirmed its tentative ruling as the final ruling. On May 12, 2016, the Judge granted APLEA and CTA's Motion for Relief from the Automatic Stay and to Annul the Automatic Stay. On July 27, 2016, the Court issued a Notice of Entry of Order of Dismissal after finding that APL inappropriately used the bankruptcy court to avoid a union campaign.

31. *PERB v. Bellflower Unified School District (CSEA Chapter 32)*, April 5, 2016, Los Angeles County Superior Court, Case No. BS161585; PERB Decision Nos. 2385 & 2455

[PERB Case Nos. LA-CE-5508 and LA-CE-5784]. Issue: PERB instituted court action to enforce orders issued by the Board in PERB Decision Nos. 2385 and 2455. On April 5, 2016, PERB served Bellflower USD with a Petition for Writ of Mandate and Summons. On April 7, 2016, the Court set a trial setting conference for July 12, 2016. On May 16, 2016, Bellflower USD filed a Notice of Demurrer and Demurrer to Verified Petition for Writ of Mandate and the Memorandum of Points and Authorities. The trial setting conference was moved to August 30, 2016. The opposition to the District's demurrer was filed on August 17, 2016, and the demurrer hearing will be held on August 30, 2016.

32. *CAL FIRE Local 2881 v. PERB (State of California [State Personnel Board])*, July 19, 2016, California Court of Appeal, Third Appellate District, Case No. C082532; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Sacramento Superior Court erred in denying CAL FIRE's [Second] Petition for Writ of Mandate. CAL FIRE had argued before PERB that the SPB had a duty to bargain with the Union prior to revising its disciplinary regulations. The court denied SPB's writ and found that there is a reasonable basis on which PERB could find SPB does not have a duty to bargain with the Union - namely, if SPB was acting in its capacity as a "regulator" when it changed its disciplinary regulations; PERB's decision was not "clearly erroneous." Previously, CAL FIRE had filed its [First] Petition for Writ of Mandate, and the court granted the petition and ordered PERB to set aside its decision and issue a new decision because PERB erred in finding no duty to bargain because, to violate the "meet and confer" requirement of section 3519 of the Dills Act, the "state" must be acting in its role as an "employer" or "appointing authority." Local 2881 filed with the trial court a Notice of Appeal and Appellant's Notice Designating Record on Appeal on July 19, 2016. The Third DCA lodged the Notice of Appeal on July 25, 2016.
33. *PERB v. Service Employees International Union Local 1021 (County of San Joaquin)* July 5, 2016, San Joaquin County Superior Court, Case No. STK-CV-UMC-2016-6497; IR Request No. 701 [PERB Case No. SA-CO-133-M]. Issue: Whether essential employees should be enjoined from striking. The IR was granted in part on July 4, 2016. On July 5, 2016, PERB served the parties with ex parte documents being filed in the San Joaquin County Superior Court that same day. The ex parte hearing was held on July 6, 2016, at which time the Judge granted the TRO. On July 12, 2016, there was a hearing on the County's motion to intervene, and the County was directed to file an amended complaint. On July 12, 2016, the County filed a request with the Court for a preliminary injunction seeking to include additional Juvenile Detention Officers (JDOs) in the injunction. On July 13, 2016, SEIU filed its Opposition to the County's ex parte application to file. On July 18, 2016, SEIU filed its opposition to the County's request for injunctive relief. On July 20, 2016, PERB filed its reply brief in support of the preliminary injunction. On the same date, the County filed its reply to SEIU's

Opposition to the County's request for preliminary injunction, as well as a notice of motion and motion to quash subpoenas, and memorandum of points and authorities in support. On July 22, 2016, a hearing was held on PERB's request for preliminary injunction. The Court granted the preliminary injunction with a duration of 90 days or until successor MOUs are ratified, and the order was signed by the Judge. A hearing is set for October 20, 2016, regarding the status of the preliminary injunction.

34. *Shahla Mazdeh & Asad Abrahamian v. Superior Court of CA, Riverside, et al.*, June 24, 2016, US District Court Case No. 15cv1475-MMA(BLM); [PERB Case Nos. LA-CE-5702, LA-CE-5780, LA-CO-1557, LA-CE-5635, LA-CE-5785, LA-CO-1559]. Issue: Whether PERB violated the Civil Rights Act of 1991, the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), and the Racketeer Influenced and Corrupt Organizations Act (RICO) in the way that its employees investigated and adjudicated unfair practice charges filed by Mazdeh and Abrahamian. In particular, plaintiff allege that PERB violated these federal laws when Board agent's conspired to dismiss their charges, an Administrative Law Judge (ALJ) denied a request for a continuance, and another ALJ issued an unfavorable decision. Mazdeh and Abrahamian filed an Amended Complaint and Summons in a Civil Action with the United States District Court, Southern District of California, on June 24, 2016. PERB was served on July 1, 2016. PERB filed a Notice of Motion and Motion to Dismiss Defendant Public Employment Relations Board and Memorandum of Points and Authorities on July 21, 2016. The court stated that it would rule on PERB's motion by September 19, 2016. On August 8, 2016, The Court issued its Order and Judgment dismissing Mazdeh and Abrahamian's First Amended Complaint with prejudice. The case is now closed.
35. *Earl Mykles v. PERB (Service Employees International Union Local 1000)*, June 27, 2016, California Court of Appeal, Third Appellate District, Case No. C082326; Dismissal [PERB Case No. SA-CO-480-S]. Issue: Did PERB err in *Service Employees International Union, Local 1000* (2016) PERB Decision No. 2483-S, when it determined that Earl Mykles' unfair practice charge had been untimely filed. Mykles filed a "Writ of Extraordinary Relief" with the California Court of Appeal, Third Appellate District, on June 27, 2016. On July 7, 2016, PERB filed a Motion to Dismiss the Writ of Extraordinary Relief and an Application for an Extension of Time to File the Certified Administrative Record. On July 7, 2016, the Court granted PERB's Application for an Extension of Time to File the Certified Administrative Record. On July 13, 2016, SEIU Local 1000 filed a Notice of Joinder to PERB's Motion to Dismiss. On July 22, 2016, Mykles filed an Opposition to PERB's Motion to Dismiss and SEIU's Joinder. On July 28, 2016, the Court granted PERB's Motion to Dismiss, and dismissed the Petition for Writ of Review. On September 1, 2016, Mykles filed a Petition for Review with the California Supreme Court. PERB will file its Answer to the Petition on or about September 21, 2016.

36. *Ivette Rivera v. PERB (EBMUD, AFSCME Local 444)*, June 22, 2016, Alameda County Superior Court, Case No. RG16813608; PERB Decision Nos. 2472-M, 2470-M [PERB Case Nos. SF-CO-349-M, SF-CO-338-M, SF-CE-1208-M]. Issue: Whether PERB erred in PERB Decision Nos. 1371-M and 2470-M when it dismissed three of Rivera's unfair practice charges. The issue is whether in dismissing these unfair practice charges, PERB violated a constitutional right, exceeded a specific grant of authority, or erroneously construed a statute. On April 28, 2016, Rivera filed a Verified Petition for Writ of Mandamus, Declaratory Relief and Violations of the California Constitution. PERB was not officially served until June 22, 2016. A Case Management Conference was held on June 23, 2016. On July 21, 2016, PERB filed a Demurrer, MPAs in support of the Demurrer, Notice of Hearing, Request for Judicial Notice, Declaration in support of the Request for Judicial Notice, and the [Proposed] Order. A hearing on the Demurrer was set for August 17, 2016, but the court continued the hearing to September 9, 2016. A Case Management Conference is also set for September 8, 2016.
37. *City of Escondido v. PERB (Escondido City Employees Association)*, June 10, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D070462; PERB Decision No. 2311a-M [PERB Case No. LA-CE-618-M]. Issue: Whether PERB erred in PERB Decision No. 2311a-M by finding that the City violated the MMBA by unilaterally transferring work performed by code enforcement officers to non-bargaining unit employees. The City filed a Petition for Writ of Review on June 10, 2016. PERB was granted a 30-day extension of time to July 20, 2016 to file the Administrative Record. The Administrative Record was filed with the Court on July 20, 2016. The City's Opening Brief is due August 24, 2016, and PERB's Responsive Brief is due September 28, 2016.



PUBLIC EMPLOYMENT RELATIONS BOARD

2016-2017 ANNUAL REPORT

October 15, 2017



EDMUND G. BROWN JR., GOVERNOR

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

2016-2017 ANNUAL REPORT

October 15, 2017



Board Members

MARK C. GREGERSEN
ERIC R. BANKS
PRISCILLA S. WINSLOW

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PUBLIC EMPLOYMENT RELATIONS BOARD

Board Office
1031 18th Street, Board Suite 204
Sacramento, CA 95811-4174
Telephone: (916) 323-8000
Fax: (916) 327-7960



October 15, 2017

Dear Members of the State Legislature and fellow Californians:

On behalf of the Public Employment Relations Board (PERB), we are pleased to submit our 2016-2017 Annual Report. PERB is committed to conducting all agency activities with transparency and accountability. This Report describes PERB's statutory authority, jurisdiction, purpose and duties. The Report further describes case dispositions and other achievements for the Board's divisions, including results of litigation.

The eight public sector collective bargaining statutes administered by PERB guarantee the right of public employee to organize, bargain collectively and to participate in the activities of employee organizations, and to refrain from such activities. The statutory schemes protect public employees, employee organizations and employers alike from unfair practices, with PERB providing the impartial forum for the settlement and resolution of their disputes.

Statistical highlights during the 2016-2017 fiscal year include:

- 672 unfair practice charged filed
- 116 representations petitions filed
- 182 mediation requests filed pursuant to the Educational Employment Relations Act (EERA), Higher Education Employer-Employee Relations Act (HEERA), and Ralph C. Dills Act
- 32 EERA/HEERA factfinding requests approved
- 41 Meyers-Milias-Brown Act factfinding requests filed and approved
- 132 unfair practice charges withdrawn/settled prior to formal hearing
- 237 days of unfair practice informal settlement conferences conducted by regional attorneys
- 63 formal hearings completed by administrative law judges
- 71 proposed decisions issued by administrative law judges
- 530 cases filed with State Mediation and Conciliation Service
- 55 decisions issued and 29 injunctive relief requests decided by the Board

October 15, 2017

Page Two

We invite you to explore the Report for more detailed information about PERB's 2016-2017 activities and case dispositions. Also enclosed is a summary of all Board decisions describing the myriad issues the Board addressed in the last fiscal year.

We hope you find this Report informative. Please visit our website at www.perb.ca.gov or contact PERB at (916) 323-8000 for any further information.

Respectfully submitted,

Mark C. Gregersen
Chair

I. OVERVIEW

Statutory Authority and Jurisdiction

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates labor relations disputes between the parties. PERB administers the following statutes under its jurisdiction:

- (1) Educational Employment Relations Act (EERA) (Government Code § 3540 et seq.)—California’s public schools (K-12) and community colleges;
- (2) State Employer-Employee Relations Act (Dills Act) (Government Code § 3512 et seq.)—State employees;
- (3) Higher Education Employer-Employee Relations Act (HEERA) (Government Code § 3560 et seq.)—California State University and University of California systems and Hastings College of Law;
- (4) Meyers-Milias-Brown Act (MMBA) (Government Code § 3500 et seq.)—California’s city, county, and local special district employers and employees (excludes specified peace officers, and the City and County of Los Angeles);
- (5) Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Public Utilities Code § 99560 et seq.);
- (6) Trial Court Employment Protection and Governance Act (Trial Court Act) (Government Code § 71600 et seq.);
- (7) Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Government Code § 71800 et seq.); and

In addition, the Board administers the Public Employee Communications Chapter (PECC) (Government Code § 3555 et seq.)—a law designed to provide effective and meaningful ways for exclusive representatives to communicate with their bargaining unit members.

The history of PERB’s statutory authority and jurisdiction is included in the Appendices, beginning at page 17.

PERB's Purpose and Duties

The Board

By statute, the Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to a term of up to five years, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the eight statutory schemes, the Board acts as an appellate body to decide challenges to decisions issued by Board agents. Decisions of the Board itself may be appealed, under certain circumstances, to the State appellate and superior courts. The Board, through its actions and those of its agents, is empowered to:

- Conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Remedy unfair practices, whether committed by employers or employee organizations;
- Investigate impasse requests that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register 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 statutory schemes;
- Bring legal actions 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; and
- Take such other action as the Board deems necessary to effectuate the purposes of the statutory schemes it administers.

A summary of the Board's 2016-2017 decisions is included in the Appendices, beginning at page 31.

Major PERB Functions

The major functions of PERB include: (1) the investigation and adjudication of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) adjudication of appeals of Board agent determinations to the Board itself; (4) the legal functions performed by the Office of the General Counsel; and (5) the mediation services provided to the public and some private constituents by the State Mediation and Conciliation Service (SMCS).

A detailed description of PERB's major functions is included in the Appendices, beginning at page 19.

Other PERB Functions and Activities

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.

Administrative Services

The Division of Administration provides services to support PERB operations and its employees. This includes strategic policy development, administration, and communication with the State's control agencies to ensure operations are compliant with State and Federal requirements. A full range of services are provided for both annual planning/reporting cycles and ongoing operations in fiscal, human resources, technology, facility, procurement, audits, security, and business services areas.

II. LEGISLATION AND RULEMAKING

Legislation

In the 2016-2017 fiscal year, the Legislature enacted two bills impacting PERB.

On June 27, 2017, Governor Brown signed Assembly Bill 119 (AB 119) (Chapter 21, Statutes of 2017), which established the Public Employee Communication Chapter (PECC). The PECC mandates that public employers: provide exclusive representatives with access to its new employee orientations; provide the exclusive representative with ten (10) days advance notice of a new employee orientation; and negotiate with the exclusive representative over the structure, time and manner of access to the new employee orientation which may conclude in compulsory interest arbitration. Additionally, the law requires that public employers provide exclusive representatives with the public and personal contact information of its newly-hired employees and all employees at designated intervals of time. The PECC gave PERB jurisdiction over violations of the PECC.

On June 27, 2017, Governor Brown signed Senate Bill 90 (SB 90) (Chapter 25, Statutes of 2017), which repealed the In Home Supportive Services Employer-Employee Relations Act (IHSSEERA). In-Home Supportive Service providers formerly under IHSSEERA's jurisdiction returned to the Meyers-Miliias-Brown Act. In addition, SB 90 created a revised mediation and factfinding procedure exclusively for IHSS bargaining units.

Rulemaking

The Board did not consider any rulemaking proposals in the 2016-2017 fiscal year.

III. CASE DISPOSITIONS

Unfair Practice Charge Processing

The number of unfair practice charges filed with PERB has remained high as a result of various statutory expansions to PERB's jurisdiction over the last two decades. In 2016-2017, 672 new charges were filed with PERB.

Dispute Resolutions and Settlements

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process—the investigation. During this step of the process in fiscal year 2016-2017, 132 cases (about 32 percent of 661 completed charge investigations) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 237 days of settlement conferences for cases in which a complaint was issued.

PERB's success rate in mediating voluntary settlements is attributable, in part, to the tremendous skill and efforts of its Regional Attorneys. It also requires commitment by the parties involved to look for solutions to problems. As the efforts of PERB staff demonstrate, voluntary settlements are the most efficient and timely way of resolving disputes, as well as an opportunity for the parties to improve their collective bargaining relationships. PERB looks forward to continuing this commitment to voluntary dispute resolution.

Administrative Adjudication

Complaints that are not resolved through mediation are sent to the Division of Administrative Law (Division) for an evidentiary hearing (formal hearing) before an Administrative Law Judge (ALJ).

In fiscal year 2016-2017, the Division had eight ALJs conducting formal hearings and writing proposed decisions. The ALJs' production of proposed decisions issued in fiscal year 2016-2017 (71 proposed decisions) was down from fiscal year 2015-2016 (76 proposed decisions), and was up from fiscal year 2014-2015 (70 proposed decisions).

The number of formal hearings completed for fiscal year 2016-2017 (63 completed hearings) was substantially down from fiscal year 2015-2016 (87 completed hearings) which was the second highest in recent history. The Division's highest number of formal hearings completed was in fiscal year 2013-2014 (89 completed hearings). However, this decrease in the number of formal hearings completed caused a decrease in the number of pending proposed decisions to write. In fiscal year 2016-2017, the division ended with 34 pending proposed decision to write as compared to fiscal year 2015-2016, where the division ended with 44 pending proposed decisions to write.

The total number of cases assigned in fiscal year 2016-2017 was 161 cases while the ALJ's closed a total of 163 cases. Last fiscal year, 2015-2016, the total number of cases assigned was 183 cases while the ALJs closed a total of 182 cases. The decrease in hearing assignments was probably due to the increased burden of litigation and the number of attorney vacancies in the Office of General Counsel.

Over the last four fiscal years, the regional distribution of the caseload has been focused primarily in the PERB Glendale office, which comprised of approximately 50 percent of all PERB unfair practice formal hearings. However in fiscal year 2016-2017, the Oakland Office's hearing activity increased in its percentage overall from the prior immediate years to 37 percent while the Glendale Office's hearing activity dipped to 40 percent. This change is probably due to a decrease in overall hearing assignments coming out of the Glendale Office more than anything else.

Board Decisions

Proposed decisions issued by Board agents may be appealed to the Board itself. During the 2016-2017 fiscal year, the Board issued 55 decisions as compared to 70 during the 2015-2016 fiscal year. The Board also considered 29 requests for injunctive relief as compared to 18 during the 2015-2016 fiscal year. A summary of injunctive relief requests filed compared to prior years is included in the Appendices at page 28.

Litigation

PERB's litigation projects¹ decreased slightly in fiscal year 2016-2017. Specifically, PERB attorneys completed 103 litigation-related assignments (compared to 121 litigation projects last fiscal year). In addition, the number of active litigation cases remained near a record high in fiscal year 2016-2017. A total of 36 litigation cases, including new and continuing matters, were handled during the 2016-2017 fiscal year (compared to 37 last year, and 32 the year before). A summary of these cases is included in the Appendices, beginning at page 70.

Representation Activity

For fiscal year 2016-2017, 116 new representation petitions were filed, which is the same number filed in the prior fiscal year. The fiscal year 2016-2017 total includes 40 recognition petitions, 5 severance requests, 23 decertification petitions, 8 requests for amendment of certification, and 44 unit modification petitions. In addition to the 237 days of informal conference in unfair practice charge cases, PERB attorneys held 13 days of informal conference and 4 days of formal hearing in representation matters.

¹ PERB's court litigation primarily involves: (1) injunctive relief requests to immediately stop unlawful actions at the superior court level; (2) defending decisions of the Board at the appellate level; and (3) defending the Board's jurisdiction in all courts, including the California and United States Supreme courts. Litigation consists of preparing legal memoranda, court motions, points and authorities, briefs, stipulations, judgments, orders, etc., as well as making court appearances.

Election activity decreased slightly, with 9 elections conducted in fiscal year 2016-2017, compared to 11 elections in the prior fiscal year. The 9 elections conducted by PERB were all decertification elections. More than 2,949 employees were eligible to participate in these elections, in bargaining units ranging in size from 17 to 1,856 employees.

Mediation/Factfinding/Arbitration

During the 2016-2017 fiscal year, PERB received 182 mediation requests under EERA/HEERA/Dills. The number of mediation requests under EERA/HEERA increased from the prior year (129 such requests were filed in 2015-2016). Subsequently, 32 of those mediation cases were approved for factfinding.

During this same period of time, 41 factfinding requests were filed under the MMBA. Of those requests, 41 were approved. The number of factfinding requests under the MMBA decreased from the prior year (54 such requests were filed in 2015-2016).

Compliance

PERB staff commenced compliance proceedings regarding 31 unfair practice cases, in which a final decision resulted in a finding of a violation of the applicable statute. This is a slight increase in activity over the prior year (27 compliance proceedings were initiated in 2015-2016).

State Mediation and Conciliation Service Division

SMCS had two vacant mediator positions in fiscal year 2016-2017. Additionally, the dedicated office support position was also vacant for six months, requiring the diversion of available mediation hours. The fiscal year caseload was slightly lower than the prior fiscal year, most likely due to the continuing improvement in the economy.

SMCS received a total of 530 new cases between July 1, 2016 and June 30, 2017, and closed 662. The closed cases include:

Contract Impasses

- 103 EERA/HEERA
- 2 State of California
- 75 MMBA
- 3 Transit
- 4 State Trial Courts
- 1 Los Angeles City/County
- 1 IHSSEERA

Grievances and Disciplinary Appeals

- 205 EERA/HEERA
- 1 State of California
- 97 MMBA
- 0 Transit
- 1 State Trial Courts
- 13 Los Angeles City/County
- 0 IHSSEERA
- 48 Private Sector (PUC, Other SMCS-specified)

Other

- 55 representation and election cases
- 46 workplace conflict or training/facilitation assignments
- 7 miscellaneous cases related to education, outreach, and internal mediation or program administration projects.

SMCS also processed 477 requests for lists of arbitrators from its panel of independent arbitrators.

IV. APPENDICES

Introduction of Board Members, Legal Advisors and Managers

Board Members

Mark C. Gregersen was appointed to the Board by Governor Edmund G. Brown on February 6, 2015 and was subsequently appointed Chair in March 2017. Mr. Gregersen's career in public sector labor relations spans over 35 years. Prior to his appointment, Mr. Gregersen was a principal consultant at Renne Sloan Holtzman Sakai LLP. He has also served as director of labor and work force strategy for the City of Sacramento and director of human resources for a number of California cities and counties. He has held similar positions for local government in the states of Nevada and Wisconsin. Mr. Gregersen has also served as an assistant county manager for the County of Washoe in Nevada.

Mr. Gregersen received a Bachelor's degree in business administration from the University of Wisconsin-Madison, and received a Master of Business Administration degree from the University of Wisconsin-Oshkosh.

His term expires December 2019.

Eric R. Banks was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, and reappointed in February 2015, and February 2017. Prior to his appointment, Mr. Banks worked at Ten Page Memo, LLC as a partner providing organizational consulting services. He served in multiple positions at the Service Employees International Union, Local 221 from 2001 to 2013, including President, Advisor to the President, Chief of Staff, and Director of Government and Community Relations, representing public employees in San Diego and Imperial Counties. Prior to his work at Local 221, Mr. Banks was Policy Associate for State Government Affairs at the New York AIDS Coalition, in Albany, New York, from 2000 to 2001. He worked in multiple positions at the Southern Tier AIDS Program, in Upstate New York from 1993 to 2000, including Director of Client Services, Assistant Director of Client Services, and Case Manager. Mr. Banks received his Bachelor's degree in 1993 from Binghamton University. Mr. Banks' term expires December 2021.

Priscilla S. Winslow was appointed to the Board by Governor Edmund G. Brown Jr. on February 1, 2013. She previously served as Legal Advisor to Board Member A. Eugene Huguenin beginning July 2012.

Prior to coming to PERB, Ms. Winslow was the Assistant Chief Counsel of the California Teachers Association where she worked from 1996 to 2012, representing and advising local chapters and CTA on a variety of labor and education law matters.

Prior to her employment at CTA, Ms. Winslow maintained a private law practice in Oakland and San Jose representing individuals and public sector unions in employment and labor law matters. In addition to practicing law, Ms. Winslow taught constitutional law at New College of California, School of Law as an adjunct professor from 1984 to 1993.

From 1979 to 1983 Ms. Winslow served as Legal Advisor to PERB Chairman Harry Gluck.

Ms. Winslow is a member of the Labor & Employment Law Section of the State Bar of California and served as Chair of that section in 2000-2001. She is also a member of the American Constitution Society. She received a Bachelor of Arts degree in History and Philosophy from the University of California, Santa Cruz, and a Juris Doctor degree from the University of California, Davis. Ms. Winslow's term expires December 2017.

Anita I. Martinez has been employed with PERB since 1976. In May 2011, Governor Edmund G. Brown Jr. appointed her to a three-year term as Board Member and Chair of the Board. Ms. Martinez was reappointed to a new five-year term in January 2014. Ms. Martinez retired effective July 5, 2016.

Prior to her Board Member and Chair appointment, Ms. Martinez served as the PERB San Francisco Regional Director since 1982. Her duties included supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of informal settlement conferences, representation hearings, representation elections, interest based bargaining training for PERB constituents and PERB staff training.

Before joining PERB, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, *California Public Sector Labor Relations*, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her BA in Political Science from the University of San Francisco.

Legal Advisors

Scott Miller was appointed as Legal Advisor to Board Member Eric R. Banks in May 2013. Mr. Miller is a 2007 graduate of the University of California, Los Angeles School of Law's Public Interest Law and Policy Program and, from 2008-2013, practiced labor and employment law as an associate attorney at Gilbert & Sackman. He holds a Bachelor of Arts in English literature and a Masters in history from Kansas State University.

Katharine M. Nyman was appointed as Legal Advisor to Member Mark C. Gregersen in June 2015. Previously, Ms. Nyman served as Regional Attorney in the Office of the General Counsel at PERB, where she worked from 2007 to 2015. Ms. Nyman received her Juris Doctor from the University of the Pacific (UOP), McGeorge School of Law, and received a Bachelor of Science degree in Environmental Design from the University of California, Davis.

Joseph Eckhart was appointed as Legal Advisor to Member Priscilla S. Winslow in April 2017. Prior to his appointment, Mr. Eckhart had served as a Regional Attorney in PERB's Office of the General Counsel since 2012, where he was responsible for investigating unfair practice charges and representation matters, conducting settlement conferences, and defending the Board's decisions in court.

Mr. Eckhart received a Bachelor of Arts in Political Science from the University of California, San Diego and a Juris Doctor from the University of California, Hastings College of the Law, from which he graduated Order of the Coif. While in law school, Mr. Eckhart served as a Senior Production Editor on the Hastings Law Journal and externed for the Honorable Claudia Wilken of the United States District Court for the Northern District of California.

Sarah L. Cohen served as Legal Advisor to Board Chair Anita I. Martinez from July 2011 through July 2016. Previously, Ms. Cohen served as Industrial Relations Counsel IV in the Office of the Director - Legal Unit at the Department of Industrial Relations, where she worked from 1994 to 2011. Prior to entering state service, Ms. Cohen was a legal services attorney in the Employment Law Office at the Legal Aid Foundation of Los Angeles from 1988 to 1994. Ms. Cohen received her Juris Doctor degree from the University of California, Hastings College of the Law. Ms. Cohen also holds a Bachelor of Arts degree from the University of California, Los Angeles.

Russell Naymark served as Legal Advisor to Board Member Priscilla S. Winslow from November 2013 through November 2016.

Prior to coming to PERB, Mr. Naymark was an associate at the law firm of Weinberg, Roger & Rosenfeld, where he worked in the Sacramento office from 2011 to 2013, representing and advising various public and private sector unions on a variety of labor law matters.

Prior to his employment at the Weinberg firm, Mr. Naymark served as Assistant General Counsel and Counsel for SAG-AFTRA (formerly Screen Actors Guild) in Los Angeles from 2005 to 2011, where he represented actors and other screen talent.

Prior to his employment with SAG, Mr. Naymark served as District Counsel for Communication Workers of America, AFL-CIO, District Nine in Sacramento from 2001-2005, where he represented employees predominately in the telecommunications and cable industries.

Mr. Naymark is a member of the Labor & Employment Law Section of the State Bar of California. He received a Bachelor of Arts degree in Political Economy from Princeton University, and a Juris Doctor degree from the University of California, Davis.

Administrators

J. Felix De La Torre was appointed General Counsel in February 2015. Prior to his appointment, Mr. De La Torre served as Chief Counsel for Service Employees International Union, Local 1000, where he worked from 2008 to 2015. From 2000 to 2008, Mr. De La Torre was a partner and shareholder at (Van Bourg), Weinberg, Roger and Rosenfeld, where he represented both public and private sector employees in a wide range of labor and employment matters, including federal and State court litigation, labor arbitrations, collective bargaining, union elections, unfair labor practices, and administrative hearings. Mr. De La Torre also served as a member of the Board of Directors for the AFL-CIO Lawyers Coordinating Committee and the Sacramento Center for Workers Rights. In addition, Mr. De La Torre was a Staff Attorney and Program Director at the California Rural Legal Assistance Foundation (CRLAF) and, before that, the State Policy Analyst for the Mexican American Legal Defense and Educational Fund (MALDEF). Mr. De La Torre is also an Instructor at the UC Davis Extension in the Labor Management Certificate Program. Mr. De La Torre is a 1999 graduate of UC Davis' King Hall School of Law.

Wendi L. Ross, Deputy General Counsel [Acting General Counsel (May 2014 – February 2015), Interim General Counsel (December 2010 – April 2011)], joined PERB in April 2007 and has more than 27 years of experience practicing labor and employment law. Ms. Ross was employed for over ten years by the State of California, Department of Human Resources as a Labor Relations Counsel. Prior to that position, she was employed as an Associate Attorney with the law firms of Pinnell & Kingsley and Thierman, Cook, Brown & Prager. Ms. Ross received her Bachelor of Arts degree in Political Science-Public Service from U.C. Davis and her law degree from UOP, McGeorge School of Law. She has served as the Chair of the Sacramento County Bar Association, Labor and Employment Law Section and previously taught an arbitration course through the U.C. Davis Extension.

Shawn P. Cloughesy is the Chief Administrative Law Judge for PERB. He has over 20 years' experience as an Administrative Law Judge with two state agencies (PERB and the State Personnel Board) conducting hundreds of hearings involving public sector labor and employment matters. Prior to being employed as an administrative law judge, Mr. Cloughesy was a Supervising Attorney for the California Correctional Peace Officers Association, practicing and supervising attorneys who practiced before PERB and other agencies.

Loretta van der Pol is the Chief of the State Mediation and Conciliation Service Division. She joined the agency in March 2010, after working for eight years as a Senior Employee Relations Manager for the Orange County Employees Association, an independent labor union. Prior to working for the union, Ms. van der Pol worked as an analyst, supervisor and mid-level manager for twenty years. Nearly half of those years were spent in the line organizations of electric and water utilities, and in facilities maintenance and operations. The amount of labor relations work involved in those positions lead to her full transition into human resources. She has several years of experience as chief negotiator in labor negotiations and advocacy on both sides of the table. Most of her professional working life has also involved providing workplace training in conflict management, interest-based bargaining, employee performance management, and statutory compliance requirements. She also facilitates interest-based contract negotiations and workplace interpersonal conflict intervention. Ms. van der Pol earned her undergraduate degree in Social Sciences from Chapman University, and has completed coursework in the Master of Public Administration degree program at California State University, Fullerton.

Mary Ann Aguayo joined PERB in January 2014 as its Chief Administrative Officer. Her primary responsibilities include providing leadership, under the direction of the Board itself, in areas of strategic planning, policy development and implementation, as well as communications with State's control agencies to ensure the Board's fiscal, technology, human resources, procurement, facilities, and security and safety programs remain compliant with current requirements.

Prior to assuming her current role, Ms. Aguayo spent over 20 years managing various administrative offices and programs within State agencies. Beginning her career at the State Personnel Board, she recently served as the Chief Administrative Officer for the Department of Water Resources' State Water Project Operations. This position included oversight of administrative services for over 1,100 employees and several multi-million dollar contracts.

Ms. Aguayo holds a Bachelor of Arts degree in Business Administration with a concentration in Human Resources Management from California State University, Sacramento. She is a graduate of the University of California, Davis' Executive Program, and in January 2014 obtained her certification as a Senior Professional in Human Resources.

History of PERB's Statutory Authority and Jurisdiction

Authored by State Senator Albert S. Rodda, EERA of 1976 establishes 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) establishes collective bargaining for State employees; and HEERA, authored by Assemblyman Howard Berman, extends the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the MMBA of 1968, which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes specified peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include TEERA, establishing collective bargaining for supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Act of 2000 and the Court Interpreter Act of 2002.

PERB's jurisdiction and responsibilities were changed in late June 2012 by the passage of Senate Bill 1036, which enacted the In-Home Supportive Service Employer-Employee Relations Act (IHSSEERA). The IHSSEERA was placed within the jurisdiction of PERB to administer and enforce, with respect to both unfair practices and representation matters. The IHSSEERA initially covered only eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, Santa Clara, San Diego, and San Mateo. On July 1, 2015, the County of San Bernardino, the County of Riverside, the County of San Diego, and the County of Los Angeles transitioned to the Statewide Authority under the IHSSEERA. The transition brought Los Angeles County under PERB's jurisdiction for the first time, while the other three counties were formerly subject to PERB's jurisdiction under the MMBA. On June 27, 2017, however, Senate Bill 90 repealed the IHSSEERA, returning the IHSS providers to the MMBA that were previously covered by the IHSSEERA.

Effective July 1, 2012, Senate Bill 1038 repealed and recast existing provisions of law establishing the State Mediation and Conciliation Service (SMCS) within the Department of Industrial Relations. The legislation placed SMCS within PERB, and vested PERB with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department of Industrial Relations, and exercised or carried out through SMCS.

Governor's Reorganization Plan 2, submitted to the Legislature on May 3, 2012, stated that PERB would be placed under the California Labor and Workforce Development Agency. Pursuant to Government Code section 12080.5, the change became effective on July 3, 2012.

On June 27, 2017, the passage of Assembly Bill 119 enacted the Public Employee Communication Chapter (PECC), a law designed to provide meaningful and effective communication between public employees and their exclusive representatives. The Legislature placed enforcement of the PECC under the Board's exclusive jurisdiction.

In fiscal year 2016-17, approximately 2.7 million² public sector employees and about 4,200 public employers fell under the jurisdiction of the collective bargaining statutory schemes administered by PERB. The approximate number of employees under these statutes is as follows: 825,000 work for California's public education system from pre-kindergarten through and including the community college level; 247,000 work for the State of California; 400,000 work for the University of California, California State University, and Hastings College of Law; 366,000 work under the auspices of the IHSSEERA statewide; and 848,000 work for California's cities, counties, special districts; with the remainder working in the trial courts, and the Los Angeles County Metropolitan Transportation Authority.

² Source: Office of the State Controller.

PERB's Major Functions—Detailed Description

Unfair Practice Charges

The investigation and resolution of unfair practice charges is the major function performed by PERB's Office of the General Counsel. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA. Unfair practice charges can be filed online, as well as by mail, facsimile, or personal delivery.

An unfair practice charge alleges an employer or employee organization engaged in conduct that is unlawful under one of the statutory schemes 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; and 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; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of an applicable statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the Dills Act, EERA, HEERA, MMBA, TEERA, Trial Court Act, Court Interpreter Act, or the PECC has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, the Board agent must dismiss it. The charging party may appeal the dismissal to the Board itself. Under regulations adopted effective July 1, 2013, the Board can designate whether or not its decision in these cases will be precedential or non-precedential.

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 may file an answer to the complaint.

Once a complaint is issued, usually another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 60 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB ALJ is scheduled. A hearing generally occurs within 90 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision.

Proposed decisions that are not appealed to the Board are binding upon the parties to the case, but may not be cited as precedent in other cases before the Board.

Final decisions of the Board are both binding on the parties to a particular case and precedential, except as otherwise designated by a majority of the Board members issuing dismissal decisions pursuant to PERB Regulation 32320, subdivision (d). Text and headnotes for all but non-precedential Board decisions are available on our website (www.perb.ca.gov) or by contacting PERB. On the PERB website, interested parties can also sign-up for electronic notification of new Board decisions.

Representation

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications that have an internal and occupational community of interest. In most situations, if only one petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If two or more employee organizations are competing for representational rights of an appropriate 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 may hold an informal 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 in some cases a hearing, and issues an administrative determination or a proposed decision. That determination or decision sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB may conduct a representation election, unless the applicable statute and the facts of the case require the employer to grant recognition to an employee organization as the exclusive representative. 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.

PERB staff also assists parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA, HEERA, and the MMBA.

If the parties are unable to reach an agreement during negotiations under EERA, HEERA, or the Dills Act, either party may declare an impasse and request the appointment of a mediator. A Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, a SMCS mediator assists the parties in reaching an agreement. If settlement is not reached during mediation under EERA or HEERA, either party may request the initiation of statutory factfinding procedures. PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

If the parties reach impasse during negotiations under the MMBA, and a settlement is not achieved through impasse dispute resolution procedures authorized by applicable local rules, only the employee organization may request the initiation of statutory factfinding procedures under the MMBA. If factfinding is requested, PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

A summary of PERB's 2016-2017 representation activity is on page 29.

Appeals Office

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. The office maintains case files, issues decisions rendered, and assists in the preparation of administrative records for litigation filed in California's appellate courts. The Appeals Office is the main contact with parties and their representatives while cases are pending before the Board itself.

Office of the General Counsel

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 the State appellate courts, as well as overseeing the preparation of the administrative record for litigation filed in California's appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order, or ruling, or to 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 superior court complaints seeking to enjoin PERB hearings or elections; and
- defending the jurisdiction of the Board, submitting motions, pleadings, and amicus curiae briefs, and appearing in cases in which the Board has a special interest.

A summary of PERB's 2016-2017 litigation activity begins at page 70.

State Mediation and Conciliation Service

SMCS was created in 1947, and mediates under the provisions of all of the California public and quasi-public sector employment statutes, as well as the National Labor Relations Act. While SMCS has the ability to mediate in the private sector, it now only does so under certain exceptional circumstances, including statutory provisions at the state or local level, collective bargaining and local rules' language, and representation processes not performed by the Federal Mediation and Conciliation Service (FMCS). SMCS and the FMCS have informally agreed to divide the work between the public and private sectors for more than two decades, as the work has become more complex, requiring specialization, and resources in both agencies have been an issue.

The mediation and elections (representation) services provided by the SMCS Division of PERB are not to be confused by those provided by PERB's Office of the General Counsel. SMCS's work is performed strictly on the basis of mutual consent, and is confidential. Mediation is non-adjudicatory, with emphases on compromise and collaboration toward settlement. SMCS welcomes opportunities to speak with labor and management organizations and communities to provide information about the benefits of harmony in labor/management relationships through the effective use of mediation in their disputes.

The core functions of SMCS involve work that is performed at no charge to the parties, including:

- Mediation to end strikes and other severe job actions;
- Mediation of initial and successor collective bargaining agreement disputes;
- Mediation of grievances arising from alleged violations of collective bargaining agreements and other local rules;
- Mediation of discipline appeals;
- Supervision of elections for decertification/certification of labor organizations, agency shop, and others; and
- Providing general education and information about the value of mediation in dispute resolution.

Chargeable services are also available. These include:

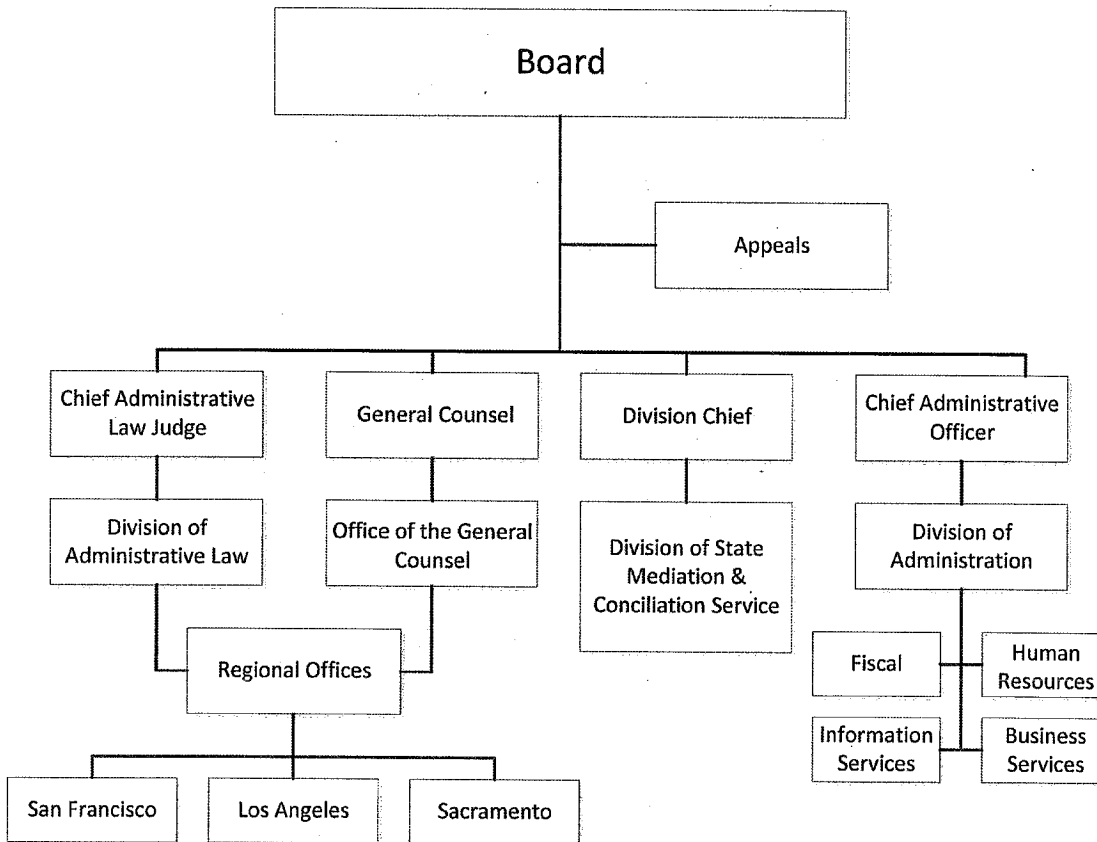
- Training and facilitation in interest-based bargaining, implementing effective joint labor-management committees, and resolving conflict in the workplace; and

- Assistance with internal union/employee organization elections or processes, or similar activities for labor or management that are not joint endeavors.

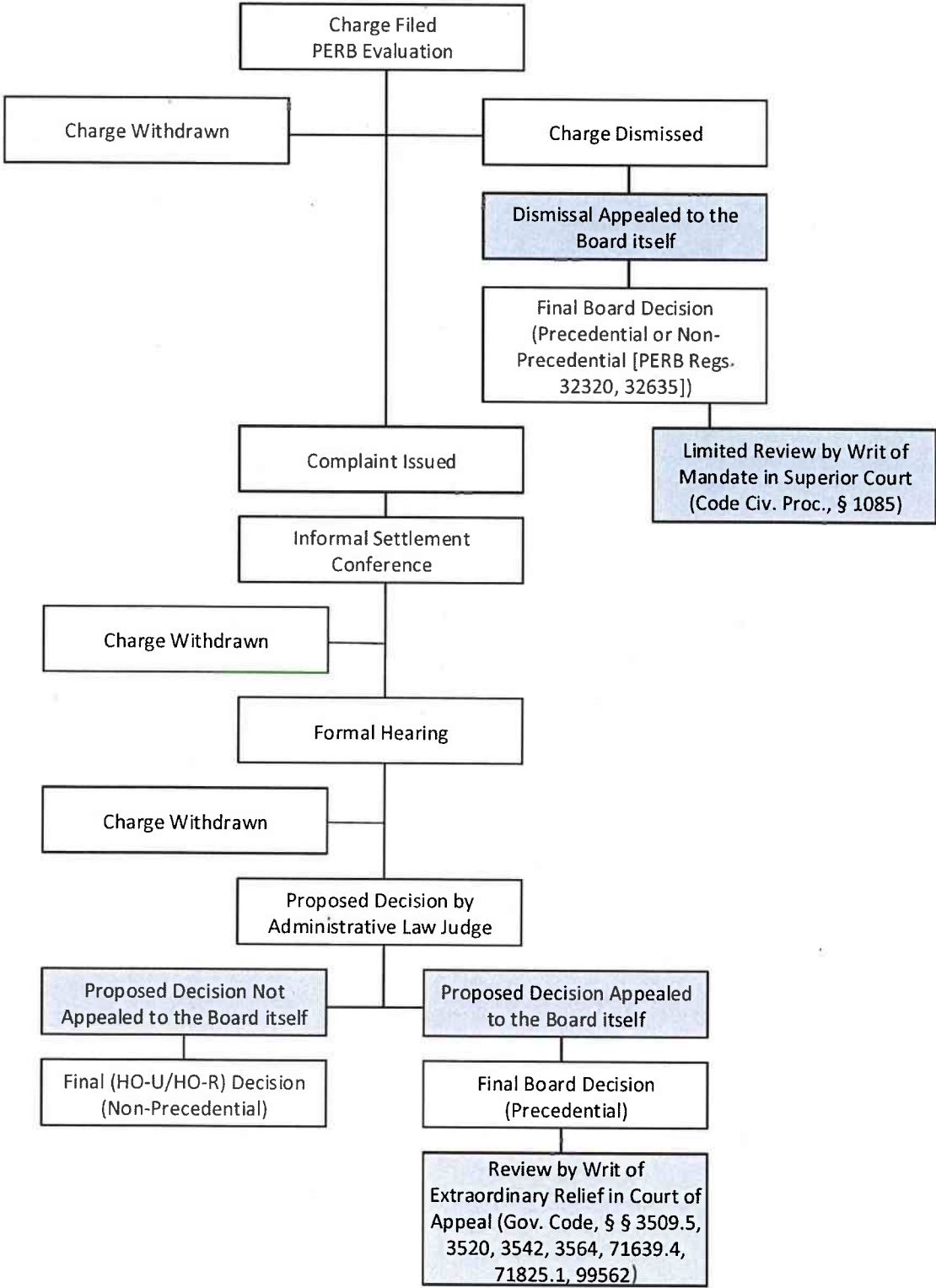
SMCS also administers a panel of independent arbitrators who are screened for qualifications and experience before being accepted to the panel. Lists of arbitrators can be provided for a fee, with no restrictions on whether or not the dispute is in the public or private sectors.

Public Employment Relations Board

Organizational Chart



Unfair Practice Charge Flow Chart



UNFAIR PRACTICE CHARGE (UPC) STATISTICS

I. 2016-2017 by Region

Region	Total
Sacramento	155
San Francisco	232
Los Angeles	285
Total	672

II. 2016-2017 by Act

Act	Total
Dills Act	60
EERA	240
HEERA	81
MMBA	261
TEERA	5
Trial Court Act	15
Court Interpreter Act	1
IHSSEERA	1
Non-Jurisdictional	8
Total	672

III. Prior Year Workload Comparison: Charges Filed

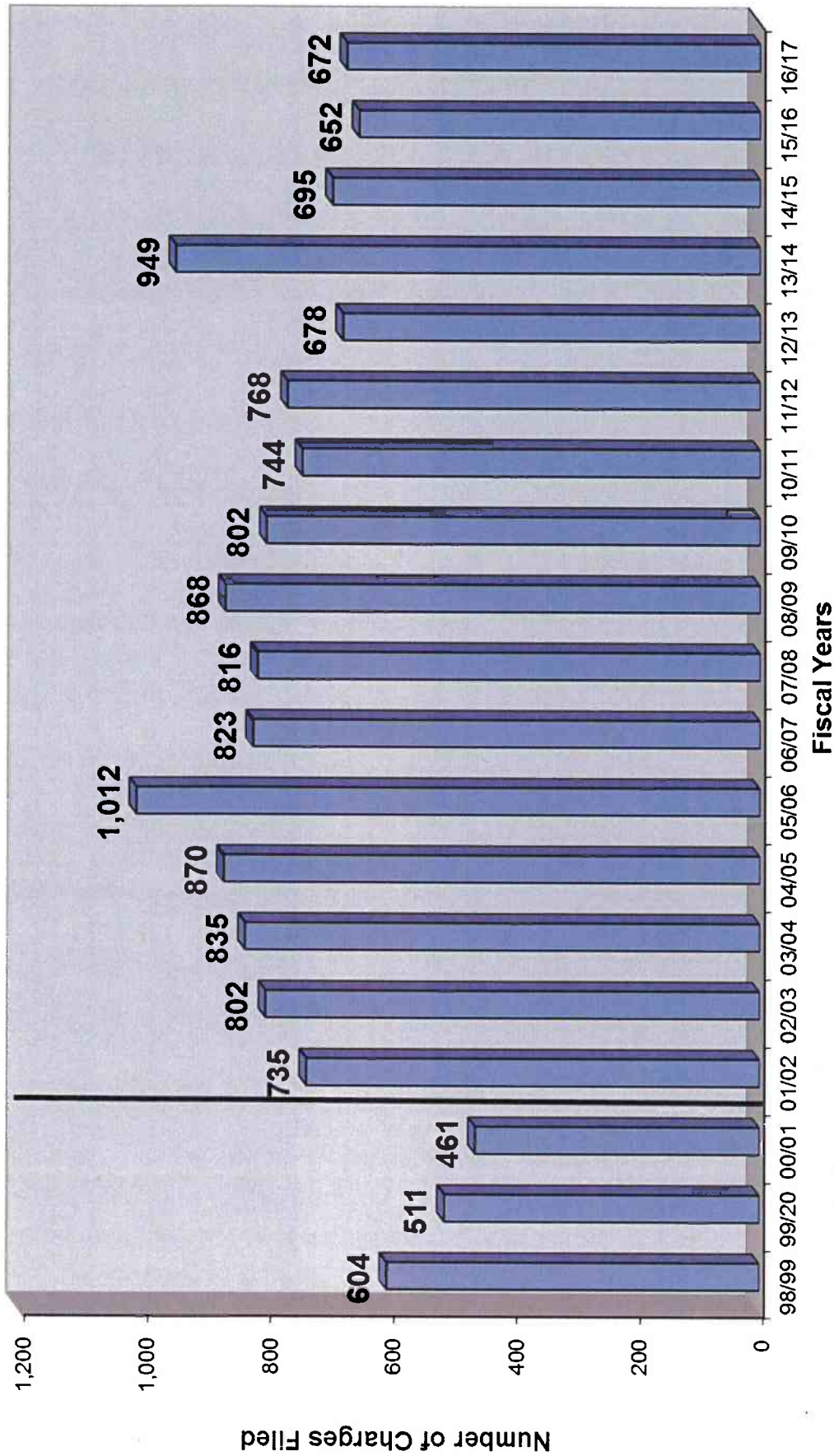
	2013/2014	2014/2015	2015/2016	2016/2017	4-Year Average
Total	949*	695	652	672	742

IV. Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	61	27	81	169
San Francisco	74	61	92	227
Los Angeles	75	64	137	276
Total	210	152	310	672

*173 Unfair Practice Charges were filed by the same individual on behalf of himself and/or other University of California employees regarding agency fee issues.

Unfair Practice Charge Filings



In fiscal year 2001-2002, the total number (935) was reduced by 200 for a similar set of filings. In fiscal year 2004-2005, the total number of charges filed (1,126) was adjusted to discount 256 nearly identical charges filed by a single group of employees.

REQUESTS FOR INJUNCTIVE RELIEF (IR REQUESTS)

Workload Comparison: IR Requests Filed

	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	6-Year Average
Total	21	17	25	19	18	29	22

2016-2017 REPRESENTATION CASE ACTIVITY

I. Case Filings

Case Type	Filed
Request for Recognition	40
Severance	5
Petition for Certification	0
Decertification	23
Amended Certification	8
Unit Modification	44
Organizational Security	0
Arbitration	0
Mediation Requests (EERA/HEERA/Dills)	182
Factfinding Requests (EERA/HEERA)	32
Factfinding Requests (MMBA)	41
Factfinding Approved (MMBA)	41
Compliance	31
Totals	447

II. Prior Year Workload Comparison: Cases Filed

	2013-2014	2014-2015	2015-2016	2016-2017	4-Year Average
Fiscal Year	350	361	392	447	388

III. Elections Conducted

Amendment of Certification	0
Decertification	9
Fair Share Fee Reinstatement	0
Fair Share Fee/Agency Fee Rescission	0
Representation	0
Severance	0
Unit Modification	0
Total	9

Elections Conducted: 7/1/2016 to 6/30/2017

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Winner</i>	<i>Unit Size</i>
<i>Decertification</i>				
LA-DP-00416-E	COMPTON USD	Operations, Support Services	Teamsters Local 911	321
LA-DP-00417-E	COMPTON USD	Office Technical/Business Services	Teamsters Local 911	223
LA-DP-00418-E	COMPTON USD	Security	Teamsters Local 911	50
LA-DP-00413-E	PORT OF LOS ANGELES HIGH SCHOOL	Wall Certificated	No Representation	
LA-DP-00422-E	COMPTON USD	Other Classified	Teamsters Local 911	95
SF-DP-00322-E	MORGAN HILL USD	Wall Classified	No Representation	312
SA-DP-00265-M	COUNTY OF SIERRA	Peace Officers		17
SF-DP-00327-M	SONOMA MARIN AREA RAIL TRANSIT DISTRICT	Operators	SECA	18
SF-DP-00325-E	WEST CONTRA COSTA USD	Wall Classified	Teamsters 856	1856

Subtotal:

9

Total Elections: 9

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2388a-M	<p><i>International Association of Firefighters, Local 1319, AFL-CIO v. City of Palo Alto</i></p>	<p>In <i>City of Palo Alto</i> (2014) PERB Decision No. 2388-M, the Board held that the City violated the MMBA by failing to consult in good faith before passing a resolution referring to the voters a ballot measure to repeal the City Charter’s interest arbitration provisions. As a remedy, it ordered the City to rescind the resolution.</p> <p>The Court of Appeal affirmed the Board’s conclusion that the City violated the MMBA, but found that the Board did not have the authority to compel the City to rescind the resolution. The Court of Appeal annulled the Board’s decision and remanded the matter to the Board.</p>	<p>Precedential Decision. The Board vacated <i>City of Palo Alto</i> (2014) PERB Decision No. 2388-M and replaced it with a new decision. The Board again found that the City’s actions violated the MMBA and issued an order declaring that the City’s resolution was void.</p>
2414a-M	<p><i>Service Employees International Union, Local 521 v. County of Tulare</i></p>	<p>Following an unpublished decision by the California Court of Appeal, Fifth Appellate District, in which the Court largely affirmed the Board’s decision in <i>County of Tulare</i> (2015) PERB Decision No. 2414-M, the Board reiterated its findings and conclusions of the previous decision, except its discussion of constitutionally vested rights appearing on pages 35-42.</p>	<p>Precedential Decision. On remand from the Court of Appeal, the Board vacated pages 35-42 of its decision in <i>County of Tulare</i> (2015) PERB Decision No. 2414-M, but otherwise reiterated its findings and conclusions of that decision.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2496-M	<i>United Professional Firefighters, Local 1230 v. City of Pinole</i>	The ALJ concluded that the City violated the MMBA by unilaterally closing one of its fire stations, but that the City did not violate the MMBA by unilaterally imposing a last, best and final offer requiring unit members to pay an increased pension contribution. Both parties filed exceptions.	Precedential Decision. After exceptions were filed, the parties settled their dispute and requested withdrawal. The Board granted the request and dismissed the unfair practice complaint and underlying charge with prejudice.
2497-M	<i>Service Employees International Union Local 1021 v. City of Fremont</i>	The ALJ dismissed a complaint alleging that the City: (1) improperly processed a decertification petition; (2) refused to utilize a third-party neutral to conduct the decertification election; (3) improperly provided legal advice to the decertification petitioner; (4) failed to recognize the charging party as the exclusive representative; and (5) demonstrated a preference for a competing employee organization. Both parties filed exceptions.	Precedential Decision. After exceptions were filed, the parties settled their dispute and requested withdrawal. The Board granted the request and dismissed the unfair practice complaint and underlying charge with prejudice.
2498	<i>Pablo Felix Pintor v. Pomona Unified School District</i>	The charge alleged that the District discriminated against charging party in violation of EERA by not properly crediting him with seniority credit or providing him proper compensation.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge because it failed to state a prima facie case. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2499-M	<i>Housing Authority of the County of Alameda v. Service Employees International Union, Local 1021</i>	The Alameda County Housing Authority (Authority) appealed the dismissal of its unfair practice charge alleging that on or about May 19, 2015 and continuing to March 14, 2016, Service Employees International Union, Local 1021 unilaterally changed an established practice regarding the number of bargaining unit employees who are entitled to paid release time to attend labor negotiations in violation of the MMBA and PERB Regulations. After reaching a settlement agreement while the appeal was pending before the Board, the Authority then requested that it be allowed to withdraw its appeal.	Non-Precedential Decision. In furtherance of the MMBA's purpose of promoting harmonious labor relations, the Board granted the Authority's request to withdraw its appeal and affirmed the dismissal of the Authority's unfair practice charge as final and binding on the parties to this case only.
2500-S	<i>Andrea Thomas v. State of California (Department of Social Services)</i>	A State employee filed an unfair practice charge alleging violations of her right to union representation and of the union's right to represent employees in an informal grievance meeting. The Office of the General Counsel dismissed the charge for failure to state a prima facie case and for lack of standing, after determining that the employee's supervisor had not conditioned a meeting on the absence of representation or seek to the representative but had required additional information about the issues to be discussed before agreeing to meet with the employee and her representative.	Non-Precedential Decision. On appeal, the employee attempted to present additional facts, which were previously known and available to her, but which she had not included in the unfair practice charge because she did not understand the legal requirements for stating a prima facie case. Finding that the circumstances did not involve newly-discovered evidence that was not previously available, the Board declined to consider the newly-presented information on appeal and affirmed the dismissal of the unfair practice charge on a non-precedential basis.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2501-M	<i>Ivette Rivera v. East Bay Municipal Utility District</i>	<p>Charging party alleged that the Utility District violated the MMBA in numerous ways including failing to provide her with the pay and privileges of a supervisor classification; failing to exclude her from the AFSCME bargaining unit; failing to investigate complaints made to the District's board of directors; telling her the grievance machinery was owned by the union after she voiced failing to accept or process her complaints about her classification; and by retaliating against her for voicing her complaints at District board meetings. Charging party also alleged that the District violated its Employer-Employee Relations Policy, as well as her due process rights and constitutional rights to free association, free speech, the right to petition her government, and the right to be free from government oppression. Lastly, charging party alleged that the District discriminated against her because of her gender.</p>	<p>Non-Precedential Decision. The Office of the General Counsel dismissed the charge for failure to state a prima facie case, lack of standing, lack of jurisdiction, and timeliness. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2502-M	<i>Ivette Rivera v. East Bay Municipal Utility District</i>	Charging party alleged that the Utility District violated the MMBA in numerous ways including implementing a quarterly sick leave review; issuing her a counseling memorandum; not asking for her signature on a hiring authorization form; denying her request to attend a conference; not selecting her for a working out of class assignment; and denying her request for a modified work schedule. Charging party also alleged that the District violated its Employer-Employee Relations Policy and other provisions of the Government Code. Lastly, charging party alleged that the District violated her constitutional rights.	Non-Precedential. The Office of the General Counsel issued a complaint based on the allegations that the District retaliated against charging party by issuing a counseling memorandum, denying her request to attend a conference, not selecting her for a working out of class assignment, and denying her request for a modified work schedule. The Office of the General Counsel dismissed all other allegations. The Board affirmed the partial dismissal of all but one of the allegations identified in the partial dismissal. The Board remanded the matter to the Office of the General Counsel for issuance of a complaint on the allegation that the District retaliated against charging party by implementing a quarterly sick leave review.
2503-M	<i>National Union of Healthcare Workers v. Salinas Valley Memorial Hospital District</i>	The Office of the General Counsel dismissed allegations in an unfair practice alleging that the District violated the MMBA by making unilateral changes to terms and conditions of employment and by dealing directly with employees.	Non-Precedential Decision. After the appeal was filed, the parties settled their dispute and requested withdrawal. The Board granted the request and dismissed the unfair practice charge with prejudice.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2504	<p><i>American Federation of State, County and Municipal Employees, Local 3112 v. Anaheim Union High School District</i></p>	<p>The charging party, an exclusive representative of public school classified employees, excepted to the proposed decision of a PERB ALJ which dismissed the complaint and underlying unfair practice charge. The complaint alleged that the respondent school district had engaged in surface bargaining and committed other unfair practices in the parties' negotiations for a successor agreement, including conditioning agreement and/or insisted to impasse on non-mandatory subjects of bargaining, conditioning reinstatement of laid off employees and restoration of employees' hours on agreement to relinquish a favorable arbitration award; and reneging on a promise made to employees to restore their hours if the representative would agree to proposed changes to employee health and welfare benefits.</p>	<p>Precedential Decision. After discussing layoffs as a sidebar to negotiations, the charging party failed to communicate any objection to further discussion of this or any other, ostensibly non-mandatory subject of bargaining, which, under PERB precedent, is a requisite to bringing an allegation that a party to negotiations has unlawfully insisted to impasse on a permissive subject of bargaining. The charging party's other exceptions challenged various factual findings in the proposed decision but failed to explain how correcting the asserted error would alter the analysis or result. The Board adopted the proposed decision dismissing the complaint and unfair practice charge.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2505-M	<p><i>International Brotherhood of Electrical Workers, Local 1245 v. City of Roseville</i></p>	<p>The charging party, an exclusive representative of municipal employees, excepted to a proposed decision dismissing the complaint and underlying unfair practice charge, alleging that the City had failed and refused to meet and confer in good faith during negotiations for a successor Memorandum of Understanding, unilaterally imposed terms and conditions less favorable than those offered in pre-impasse negotiations, and committed other unfair practices.</p>	<p>Precedential Decision. After considering various indicia of bad faith not specifically enumerated in the complaint but either closely related to matters alleged in the complaint or covered by the complaint’s catch-all “including but not limited” verbiage for surface bargaining allegations, the Board affirmed the dismissal of the bad faith bargaining allegation but concluded that the City had violated the MMBA and PERB Regulations by unilaterally imposing employee retirement contributions that were inconsistent with its own pre-impasse proposals.</p>
2506	<p><i>Madera Affiliated City Employees Association v. City of Madera</i></p>	<p>Charging party alleged that the City violated the MMBA when it denied the Association’s decertification petition as untimely.</p>	<p>Precedential Decision. The Board affirmed the conclusions reached by the ALJ. The City’s contract bar and the City’s rule limiting the filing of decertification petitions to a one-month period were consistent both with the MMBA and PERB Regulations, and therefore not unreasonable. Since the Association failed to file a decertification petition during the window period provided by the City’s rules, the complaint and charge were properly dismissed.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2507	<i>Mara Jasmine Cirujeda Mastache v. San Diego Unified School District</i>	The charging party, a public school, appealed the dismissal of her unfair practice charge which alleged that her termination by the District violated EERA. The charge was dismissed as untimely, because it had not been filed with PERB until approximately one and one-half year after the termination.	Non-Precedential Decision. Because the charge was not filed until well after the six-month statute of limitations for an unfair practice charge, and was not subject to tolling, the Board affirmed the dismissal on timeliness grounds. Additionally, the charging party's assertion that she did not know of her legal rights and remedies with PERB sooner did not toll the statute of limitations, as lack of knowledge of PERB and its procedures or remedies does not excuse a late filing.
2508	<i>Mara Jasmine Cirujeda Mastache v. California School Employees Association</i>	The charging party, a public school employee, appealed the dismissal of her unfair practice charge alleging that the exclusive representative had violated its duty of fair representation by failing to grieve the charging party's probationary release from employment.	Non-Precedential Decision. The Board adopted the dismissal of the charge as untimely because the charging party did not file her charge with PERB until approximately one and one-half years after her release and after her last contact with the representative who had advised charging party that it would not file a grievance on her behalf.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2509	<p><i>Oakland Unified School District and Service Employees International Union Local 1021 / Oakland Unified School District and American Federation of State, County and Municipal Employees Local 257</i></p>	<p>The District abolished four existing classifications, of which two were represented by AFSCME and two by SEIU, and decided to reclassify all of the employees into one of two new classifications. AFSCME and SEIU each filed competing unit modification petitions seeking to place both of the new classifications into their respective units.</p> <p>The hearing officer concluded, based on an analysis of the community of interest factors, that one classification should be placed in each unit. Specifically, one of the new classifications focused on classroom instruction and was more similar to the abolished classifications from the SEIU unit; the other new classification included the physical care of special education students and was more similar to the abolished classifications from the AFSCME unit.</p> <p>SEIU filed exceptions.</p>	<p>Precedential Decision. The Board affirmed the hearing officer's proposed decision. The Board agreed with the hearing officer that the community of interest was properly determined by comparing the job duties of the new and former classifications. The Board also agreed that the appropriate disposition was to remand for an investigation of whether proof of support was required, based on the size of the existing units and the numbers of employees to be added to each unit.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2510-M	<i>Joseph Sims v. City & County of San Francisco (Public Works)</i>	Charging party, a municipal employee, appealed the dismissal of his unfair practice charge alleging that his termination from employment violated the MMBA.	Non-Precedential Decision. The Board agreed with the Office of the General Counsel that the charge included no facts indicating that the charging party's termination was motivated by protected activity, or that charging party had presented facts to support any other cognizable theory of any unfair practice within PERB's jurisdiction. Accordingly, the Board rejected the appeal and adopted the dismissal of the charge.
2511	<i>Michael Robertson v. San Dieguito Union High School District</i>	The charging party appealed the dismissal of his unfair practice charge, which alleged various violations of the public notice or "sunshine" requirements for collective bargaining proposals under EERA.	Non-Precedential Decision. The Board adopted the dismissal, reasoning that allegations that the bargaining proposals were too vague to constitute public notice were untimely, as they had not been brought within six months of the date they were published, while allegations that previously-undisclosed topics had been included in a tentative agreement were dismissed for failure to state a prima facie violation of EERA's public notice provisions because the allegedly new subjects included in the tentative agreement were inextricably related to subjects previously disclosed in parties' initial bargaining proposals.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2512-M	<i>Ivette Rivera v. East Bay Municipal Utility District</i>	Charging party alleged that the Utility District violated the MMBA in numerous ways including issuing a warning memorandum, issuing a counseling memorandum, denying her request for a modified work schedule, and not asking for her signature on a hiring authorization form. Charging party also alleged that the District violated its Employer-Employee Relations Policy and other provisions of the Government Code. Lastly, charging party alleged that the District violated her constitutional rights, including her rights to due process and free speech, and retaliated against her for whistle-blowing.	Non-Precedential Decision. The Office of the General Counsel issued a complaint based on the allegation that the District retaliated against charging party by issuing a warning memorandum. The Office of the General Counsel dismissed all other allegations. The Board affirmed the partial dismissal of the charge and adopted the partial warning and partial dismissal letters of the Office of the General Counsel.
2513-S	<i>Sam Wyrick v. State of California (Department of Veterans Affairs)</i>	Charging party, a State employee, appealed the dismissal of his unfair practice charge which alleged that the State had terminated his employment in retaliation for protected activity.	Non-Precedential Decision. The Board refused to find good cause to consider newly-presented information on appeal because the information was readily available to the charging party before he filed his amended charge and before the charge was dismissed. The Board agreed with the Office of the General Counsel that the charging party had failed to allege sufficient facts to state a prima facie case, including information demonstrating the timeliness of the material allegations. Accordingly, it denied the appeal and adopted the dismissal of the charge.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2514	<i>Christine L. Felician v. Santa Ana Unified School District</i>	The charging party, a former public school employee, appealed the dismissal of her unfair practice charge on a pre-hearing motion to dismiss for failure to prosecute.	Precedential Decision. The Board reversed the dismissal and remanded the matter for further proceedings because the dismissal had relied on disputed material facts without the benefit of a hearing.
2515-M	<i>San Luis Obispo Police Officers Association v. City of San Luis Obispo</i>	The City filed exceptions to a proposed decision, which found violations of the MMBA and PERB Regulations for submitting to voters a ballot measure to repeal the interest arbitration procedures found in the City Charter without first meeting and consulting in good faith with the exclusive representative of the City's police department employees. While the matter was pending before the Board, the City and the Union reached a settlement agreement that would implement an advisory factfinding process, similar to that found in the MMBA, in place of the former interest arbitration procedure for unresolved bargaining disputes. The parties requested that the City's exceptions be withdrawn and the matter dismissed pursuant to the terms of the settlement agreement.	Precedential Decision. Consistent with the MMBA's purpose of promoting harmonious labor relations, the Board granted the parties' request to withdraw the City's exceptions and to dismiss the complaint and unfair practice charge.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2516	<i>Lolita D. Coleman v. Berkeley Unified School District</i>	Charging party, a public school employee, appealed the dismissal of her unfair practice charge which alleged her employer violated the EERA by: (1) removing certain accommodations from charging party's job duties, and (2) preparing and issuing an unsatisfactory performance evaluation of charging party, allegedly in retaliation for charging party's protected activity. The Office of the General Counsel dismissed all allegations as either untimely and/or for failure to state a prima facie case of an unfair practice. On appeal, charging party argued that the Office of the General Counsel's investigation had ignored certain material information.	Non-Precedential Decision. The Board adopted the dismissal. The information ostensibly neglected by the Office of the General Counsel was either untimely, if considered as its own adverse action, or, would not support an inference of unlawful motive as it occurred before the charging party had engaged in protected activity. Employer actions that predate an employee's protected activity cannot serve as either adverse actions or as evidence of unlawful motive in a discrimination case, because they could not have been motivated by protected activity which had not yet occurred.
2517-C	<i>Service Employees International Union Local 521 v. Fresno County Superior Court</i>	An employer under the Trial Court Act excepted to a proposed decision finding that its personnel rules unlawfully: (1) prohibited employees from wearing union regalia anywhere in the courthouse; (2) restricted employees and their representative from distributing literature during nonworking time in nonworking areas; and (3) banned the display of union writings and images in all work areas visible to the public. The exclusive representative filed cross-exceptions, arguing that the proposed remedy was inadequate in various respects.	Precedential Decision. The Board largely adopted the findings and conclusions of the proposed decision but based liability for the court's prohibition against distributing literature at any time for any purpose in working areas on the unalleged violations doctrine, after concluding that the ALJ had improperly amended the complaint to include this allegation after the close of the hearing. The Board ordered the employer to rescind the unlawful provisions of its rules, to cease and desist adopting, enforcing or maintaining unreasonable

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
			local rules and to post electronic and paper notice to employees of its readiness to comply with the law.
2518	<i>United Teachers Los Angeles v. Los Angeles Unified School District</i>	The ALJ concluded that the District violated EERA by unilaterally implementing a new teacher evaluation policy. The District filed exceptions.	Precedential Decision. The Board affirmed the ALJ. The primary issue in dispute was whether the policy was within the scope of representation under EERA. The Board agreed with the ALJ that it was, either because it was a specifically enumerated subject of bargaining as a procedure for the evaluation of employees (Gov. Code, § 3543.2, subd. (a)(1)), or because it was reasonably and logically related to that subject and negotiable under <i>Anaheim Union High School District</i> (1981) PERB Decision No. 177. The Board also rejected the District's arguments that UTLA waived its right to bargain and that the new policy was consistent with its past practice.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2519	<i>Maria Herdeliza L. Ciriaco v. Fremont Unified School District</i>	The Office of the General Counsel dismissed an unfair practice charge alleging that the District failed to meet and confer with the charging party's exclusive representative, violated the Education Code and the collective bargaining agreement, and terminated the charging party in retaliation for advocating on behalf of homeless students.	Non-Precedential Decision. The Board affirmed the dismissal, concluding that the charge failed to state a prima facie case and that the charging party's appeal did not comply with PERB Regulations. Although the Board determined that certain allegations were incorrectly dismissed as untimely, this was harmless error, because they did not otherwise state a prima facie case.
2520	<i>Rosie Mielo Kato v. California School Employees Association & its Chapter 36</i>	The Office of the General Counsel dismissed an unfair practice charge alleging that her exclusive representative by, among other things, failing to fairly represent her in various disputes with her employer, by being discourteous to her, and by delaying in providing requested e-mail messages to her.	Non-Precedential Decision. The Board affirmed the dismissal, concluding that the charge failed to state a prima facie case and that the charging party's appeal did not comply with PERB Regulations.
2521	<i>Maria Herdeliza L. Ciriaco v. Fremont Unified District Teachers Association</i>	The Office of the General Counsel dismissed an unfair practice charge alleging that the charging party's exclusive representative violated its duty of fair representation	Non-Precedential Decision. The Board affirmed the dismissal, concluding that the charge failed to state a prima facie case and that the charging party's appeal did not comply with PERB Regulations.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2522-H	<i>California State University Employees Union v. Trustees of the California State University</i>	<p>The charging party, the exclusive representative of higher education employees, appealed the dismissal of its unfair practice charge which had alleged that an employee had been terminated in retaliation for her protected activity of serving as a witness in support of a fellow employee's complaint against a supervisor. The charge also alleged that the higher education employer's acts and omissions constituted unlawful domination or interference with the formation or administration of an employee organization. The Office of the General Counsel dismissed the charge after concluding that it failed to allege sufficient facts to show that participation as a witness in the employer's non-collectively bargained complaint procedure on behalf of another employee was not protected activity. It did not consider the separate allegation of unlawful domination, or interference with the formation or administration of an employee organization.</p>	<p>Precedential Decision. The Board reversed the dismissal and remanded for further proceedings. After reviewing the charge allegations, the Board determined that the charge included sufficient facts to state a prima facie case of discrimination for protected activity. Because the Office of the General Counsel had not considered the domination or interference allegation, the Board remanded for investigation of this allegation.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2523-C	<i>Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO v. El Dorado County Superior Court</i>	Charging party, the exclusive representative of certain court employees, alleged that the employer had violated the Trial Court Act by refusing to bargain over increased health benefit rates for 2014, unless charging party could show changed circumstances, after the parties' negotiations for a successor agreement covering this and other subjects had previously resulted in impasse.	Precedential Decision. The Board adopted the findings and conclusions of the proposed decision. Although impasse is a "fragile" and "temporary" state of affairs that may be broken by a change in circumstances, usually through either a change of mind or the application of economic force, the charging party did not meet its burden of showing by substantial evidence that the impasse in negotiations had been broken by a change in either party's position.
2524-M	<i>National Union of Healthcare Workers v. Salinas Valley Memorial Healthcare System</i>	The ALJ dismissed an unfair practice complaint alleging that the respondent unilaterally changed its policies regarding the rebidding of schedules and shifts. The charging party filed exceptions.	Precedential Decision. The Board affirmed the dismissal of the complaint. Although the Board disagreed with the ALJ that there was a waiver of the right to bargain as a result of the failure by a predecessor exclusive representative to request bargaining, the Board concluded that the respondent's actions were consistent with its established rebidding policy.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2525-M	<i>Blaine Drewes v. City of Livermore</i>	A city excepted to a proposed decision finding that it had violated the MMBA and PERB Regulations by: (1) maintaining and enforcing an unreasonable local rule providing that no unit modification petition would be granted unless the proposed modification was supported by at least 60 percent of affected employees; and (2) unreasonably applying its local rules by failing to provide written findings before denying a unit modification petition filed by City employees.	Precedential Decision. The Board adopted the proposed decisions’ factual findings and legal conclusions, as modified. The super-majority requirement interfered with employee rights to freely choose their representative. Following <i>Topanga Assn. for a Scenic Community v. County of Los Angeles</i> (1974) 11 Cal.3d 506, the Board held that a public agency must make factual findings and offer some explanation when applying its local rules governing unit determinations and representation matters.
2526-H	<i>State Employees Trades Council United v. Regents of the University of California (Los Angeles)</i>	The charging party, a successor union, excepted to a proposed decision which dismissed the complaint and unfair practice charge. The complaint alleged that the higher education employer had unilaterally changed the terms of a negotiated “me too” policy and denied skilled trades employees a collectively-bargained salary increase for retaliatory reasons. While the matter was pending before the Board, the parties reached a settlement agreement and requested that the exceptions be withdrawn.	Precedential Decision. Consistent with the purposes of HEERA to promote harmonious and cooperative labor relations between the State’s public institutions of higher education and their employees, the Board granted the parties’ request to withdraw the charging party’s exceptions and to dismiss the complaint and unfair practice charge, consistent with the terms of their settlement agreement.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2527-S	<i>Danny Wilson v. State of California (Employment Department)</i>	Charging party alleged that the State violated the Dills Act in numerous ways when he was yelled at by a supervisor; his vehicle was vandalized; CHP failed to take a report of the vandalism; he had pay, vacation and benefit deficiencies; he endured treatment for refusing to sign a release form; CHP failed to render assistance to him the State ordered an air card device in his name; the State requested he share his Outlook calendar; he was unable to obtain an "employee position statement" from his manager; a manager refused to sign a timesheet; he was unable to join a leadership program; he was forced to take days off; he was demoted; and he experienced an issue applying for certain positions.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge for failure to state a prima facie case, lack of standing, lack of jurisdiction, and timeliness. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2528	<i>Poway School Employees Association v. Poway Unified School District</i>	Charging party alleged that the District violated EERA by unilaterally implementing a dress code for staff without providing the Association with notice or an opportunity to negotiate.	Non-Precedential Decision. The Office of the General Counsel dismissed the charge after determining that the Association had failed to show that the District had a regular and consistent past practice of having no dress code. Finding that the subject of a dress code to be within the scope of representation and that the Association established a prima facie case that the District promulgated a dress code without first providing the Association with notice and an

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2529	<i>Joseph Omwamba v. Berkeley Unified School District</i>	Charging party alleged that the District violated EERA by retaliating against him for engaging in protected activity; violating his <i>Weingarten</i> right to representation; violating the evaluation procedures provided for in the collective bargaining agreement; and violating various provisions of the Education Code.	opportunity to negotiate, the Board reversed the dismissal and remanded the matter to the Office of the General Counsel for issuance of a complaint Non-Precedential Decision. The Office of the General Counsel dismissed the charge for failure to state a prima facie case and lack of jurisdiction. The Board affirmed the dismissal of the charge and adopted the warning and dismissal letters of the Office of the General Counsel.
2530	<i>Eric M. Moberg v. Monterey Peninsula Unified School District</i>	The Office of the General Counsel dismissed an unfair practice charge alleging that the District retaliated against a former employee by conspiring with other employers or prospective employers to deny charging party future employment with other districts.	Precedential Decision. The Board affirmed the dismissal. The Board agreed with the Office of the General Counsel that an individual has standing to file a charge against a former employer for allegedly blacklisting him, but that the charge did not state a prima facie case that the respondent conspired with other employers.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2531-M	<i>Professional & Scientific Employee Clara Valley Water District</i>	The charging party, a non-exclusive representative, filed exceptions to a proposed decision dismissing the complaint and the charging party's unfair practice charge. The complaint alleged that a public agency had violated the MMBA and PERB Regulations by failing to follow its local rules when considering and denying a unit modification petition, through which the charging party sought to establish a separate bargaining unit consisting of certain classifications of professional employees. The charging party did not seek to become the exclusive representative of the proposed unit but rather sought only to make the incumbent organization represent both the newly-established unit and its general unit separately.	Precedential Decision. The Board affirmed the proposed decision, concluding that the charging party's unit modification petition did not comply with the local rules, as charging party did not seek to become the exclusive representative of the proposed unit and, absent a representation election or a unit modification by the employer, could not force the incumbent organization to represent professional employees separately from the currently constituted general unit.

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2532-C	<i>Service Employees International Union Local 1021 v. Sonoma County Superior Court</i>	The ALJ found that the Court violated the Trial Court Act by refusing to allow an employee to have a union representative present for a meeting held as part of the interactive process to accommodate her disability. As a result of the meeting, the employee was demoted to a lower-paying position. Both parties filed exceptions.	<p>Precedential Decision. The Board affirmed the ALJ and rejected both parties' exceptions. The Board rejected the respondent's exceptions that primarily disagreed with the Board's prior decision in <i>Sonoma County Superior Court (2015) PERB Decision No. 2409-C</i>. The Board also rejected the respondent's contention that it was prejudiced by the precedential effect of the prior decision.</p> <p>The Board also rejected the charging party's exceptions to the remedy, which argued that the employee should be awarded backpay to make her whole for the demotion. The Board did, however, order the respondent to, upon request by the employee, conduct a new interactive process meeting with a union representative.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2533-H	<i>California State University Employees Union v. Trustees of the California State University (Chico)</i>	Charging party alleged that the University violated HEERA by unilaterally changing the work shift of an employee without providing the Union with notice and an opportunity to negotiate.	<p>Non-Precedential Decision. The Office of the General Counsel dismissed the charge after determining the Union had failed to show that the change in work shift had a generalized effect or continuing impact on terms and conditions of employment.</p> <p>Finding that the University's actions had a generalized effect or continuing impact on the bargaining unit, the Board reversed the dismissal and remanded the matter to the Office of the General Counsel for issuance of a complaint.</p>
2534-M	<i>Ruben Casarez v. Imperial Irrigation District</i>	The charging party, a former employee of a public agency, appealed the dismissal of his unfair practice charge alleging various unfair practices, including that the charging party had been terminated in retaliation for his protected activity, and that the employer had enforced a previously undisclosed policy requiring charging party to forfeit his statutory and collectively-bargained rights to union representation.	<p>Non-Precedential Decision. The Board denied the appeal for failure to comply with PERB Regulations and adopted the dismissal of the charge.</p>

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2535-M	<i>Service Employees International Union Local 721 v. County of Riverside</i>	Charging party, the exclusive representative of municipal employees, appealed the dismissal of its unfair practice charge as untimely. The charge alleged that a public agency had unilaterally changed the grievance-arbitration procedures established the parties' Memorandum of Understanding and past practice.	Non-Precedential Decision. After determining that the charging party had notice of the employer's position and its firm decision to abrogate the established practice in question, but failed to file an unfair practice charge until more than six months later, the Board affirmed the dismissal of the charge as untimely.
2536-M	<i>Service Employees International Union Local 1021 v. City & County of San Francisco</i>	The ALJ concluded that the respondent violated the MMBA by threatening to enforce an unlawful local rule (contained in the City Charter) that prohibited employees from engaging in sympathy strikes. As a remedy, the ALJ ordered the respondent to remove the offending language from the City Charter. Both parties filed exceptions.	Precedential Decision. The Board affirmed the ALJ's conclusion that the respondent violated the MMBA. The Board reiterated that the MMBA gives employees a qualified right to strike, and concluded that this includes the right to engage in a sympathy strike. The Board rejected the respondent's argument that this prohibition was lawful as part of the respondent's procedures for binding interest arbitration of bargaining disputes. The Board also concluded that the exclusive representative did not waive the employees' rights to engage in a sympathy strike. The Board did modify the remedy ordered by the ALJ. The Board agreed with the respondent that the Board could not order the language removed from the City Charter, but instead declared that the

2016-2017 DECISIONS OF THE BOARD

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
			<p>language was void and unenforceable. The Board rejected the charging party's argument that the remedy should affect the entire City Charter provision at issue, not just the prohibition on sympathy strikes. The Board concluded that it was only the sympathy strike language that had been litigated in this case.</p>

2016-2017 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

* Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-437a-H	<i>Debbie Polk v. Regents of the University of California / Teamsters Clerical, Local 2010</i>	Charging party, a higher education employee, requested reconsideration of a prior Board decision in which the Board had affirmed an administrative determination that charging party was not entitled to any further extensions of time in which to appeal the dismissal of her four unfair practice cases. The Board has reviewed Polk's request for reconsideration in light of the relevant law. Based on this review, and for the reasons discussed below, the Board denies Polk's request for reconsideration.	The Board denied charging party's request for reconsideration. Because the Board's reconsideration process was intended to call to the Board's attention prejudicial errors of fact or newly discovered evidence that was previously unavailable and could not have been discovered with reasonable diligence, but not to re-litigate issues that have already been fully considered and decided. The Board reasoned that a dismissal/refusal to issue a complaint on an unfair practice charge is not a decision of the type that lends itself to the reconsideration process.
Ad-441-M	<i>San Diego Metropolitan Transit System and Public Transit Employees Association and International Brotherhood of Electrical Workers, Local Union 465</i>	A petitioning employee organization seeking to represent transit district employees excepted to a hearing officer's recommendations to dismiss without a hearing the organization's objections to a representation election conducted by the SMCS. PERB, in its capacity as the governing board for SMCS, considered the petitioning organization's exceptions.	The Board denied the petitioning organization's exceptions and affirmed the hearing officer's recommendation to forego a hearing, as the petitioning organization's objections raised no material factual disputes that would alter the outcome of the election.

2016-2017 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

* Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-442	<i>Los Rios Community College District and Service Employees International Union Local 1021</i>	Charging party appealed the Office of the General Counsel's dismissal of its unit modification petition seeking to divide the existing Maintenance/Operations and Campus Police Officers Unit and create a separate police officer unit at the District.	The Board affirmed the Office of the General Counsel's dismissal finding that because the existing unit was a presumptively appropriate unit under <i>Sweetwater</i> and because SEIU alleged no facts establishing that its proposed unit was more appropriate, the unit modification petition was properly dismissed.
Ad-443	<i>Morgan Hill Unified School District and Service Employees International Union Local 521</i>	The Office of the General Counsel placed in abeyance a unit modification petition filed by the exclusive representative, pending the resolution of a decertification petition involving the same unit. The exclusive representative appealed and requested a stay of activity in the decertification case.	The Board denied the appeal and the request for stay on the grounds that the Office of the General Counsel's action was an interlocutory order, and therefore only appealable if the Board agent joined the appeal. Because the Board agent did not join the appeal, the matter was not appealable.
Ad-443a	<i>Morgan Hill Unified School District and Service Employees International Union Local 521</i>	SEIU requested reconsideration of the Board's decision in <i>Morgan Hill Unified School District (2016) PERB Order No. Ad-443</i> on the grounds that SEIU filed a withdrawal of its appeal on the same day the Board issued its decision.	The Board denied the request for reconsideration. It concluded that the reconsideration process is not available following a decision on an administrative determination; that the matter was moot after SEIU lost the decertification election and did not file objections; and that SEIU had not stated grounds for reconsideration.

2016-2017 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-444-M	<i>San Luis Obispo Police Officers Association v. City of San Luis Obispo</i>	An employee organization representing municipal firefighters moved to intervene and applied for joinder to participate as a party in an unfair practice case brought by an employee organization representing police department employees of the same city. The complaint alleged that city's governing body had placed before voters two ballot measures, one affecting employee retirement benefits and another to repeal the city charter's interest arbitration provisions for resolving bargaining disputes with the police and firefighter units.	Although PERB's Regulation governing intervention and joinder does not include a statute of limitations, the Board denied the motion to intervene and application for joinder as untimely because the employee organization could have filed its own unfair practice charge but failed to do so and therefore could not use the joinder regulation as a way to circumvent the six-month limitations period.
Ad-445-M	<i>City of Watsonville and Watsonville Police Officers Association and Watsonville Public Safety Mid-Management Unit</i>	Charging party appealed the Office of the General Counsel's administrative decision that the request for factfinding was untimely pursuant to the MMBA and PERB Regulations.	The Board affirmed the administrative decision finding that the Association failed to make its request for factfinding within the 30-day window outlined in the MMBA and PERB Regulations. (Dissent—Member Banks.)

2016-2017 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-446	<i>Lori E. Edwards, et al. v. Lake Elsinore Unified School District</i>	A public school employer, the respondent in an unfair practice case, appealed from an administrative determination that its response to a charging party's exceptions to a proposed decision was rejected as untimely. The employer requested that the Board find good cause to excuse the late filing because the employer's attorney was confused by charging party's filing, which occurred on two separate dates, and had misunderstood the filing deadlines under PERB's Regulations.	Because "the Board has not found good cause in situations where the party's attorney was directly responsible for [a] late filing," the Board found no grounds to excuse the late filing and denied the employer's appeal.
Ad-447	<i>California School Employees Association and its Chapter 32 v. Bellflower Unified School District</i>	Charging party, an employee organization, appealed from an administrative determination which had rejected as untimely the organization's response to exceptions to a proposed decision in the underlying unfair practice case. The appeal acknowledged that the late filing was due to attorney error when applying PERB's Regulations governing filing deadlines.	Because "the Board has not found good cause in situations where the party's attorney was directly responsible for [a] late filing," the Board found no grounds to excuse the late filing and denied the organization's appeal.

2016-2017 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS*

* Administrative Determinations decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-448	<i>NEA Alameda Community Learning Center United v. Community Learning Center Schools, Inc.</i>	PERB ALJ requested that the Office of the General Counsel seek enforcement of NEA's subpoena duces tecum seeking disclosure of documents from the Community Learning Center Schools, Inc.'s legal counsel.	The Board declined to seek enforcement of the subpoena in its current state and remand this matter back to the ALJ for greater clarification on the scope of the subpoena and any potential waivers as well, as the proper time span of the subpoena as a whole.
Ad-449	<i>Lori E. Edwards, et al. v. Lake Elsinore Unified School District</i>	Charging parties, who were public school employees, appealed from an administrative determination, which had rejected as untimely their attempted amendment to a previously-filed statement of exceptions to a proposed decision in the underlying unfair practice case. The appeal asked the Board to find good cause to excuse the late filing because one of charging parties had a family emergency.	Even after applying a five-day extension of the deadline for service by mail and the weekend/holiday extension of time provided for by PERB Regulations, charging parties' administrative appeal was itself untimely by four days and, because charging parties had not shown good cause for the untimely administrative appeal, the Board declined to reach the merits of their argument that good cause existed to excuse the late filing of their proposed amendment to the statement of exceptions.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR JUDICIAL REVIEW*

*Requests for Judicial Review decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
JR-27	<i>California Virtual Academies v. California Teachers Association</i>	The employer requested that the Board join in seeking judicial review of the decision in <i>California Virtual Academies</i> (2016) PERB Decision No. 2484, which concluded that a network of 11 charter schools was a “single employer” and that a single unit of teachers at all 11 schools was appropriate.	The Board denied the request, concluding that the case was not one of “special importance.” (Gov. Code, § 3542, subd. (a)(1).) Applying the test of special importance from <i>Burlingame Elementary School District</i> (2007) PERB Order No. JR-24, the Board concluded that the single employer issue, that the case primarily involved factual questions, not statutory interpretation, and that the issue was unlikely to arise frequently.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF*

*Requests for Injunctive Relief decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
There were no Requests for Injunctive Relief decided by the Board this fiscal year.			

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 701	<i>County of San Joaquin v. Service Employees International Union, Local 1021</i>	Whether the union committed an unfair practice by engaging in a strike of an undisclosed duration that included essential employees.	Request granted, in part.
I.R. 702	<i>Dave Lukkarila v. Claremont Unified School District</i>	Whether the District violated EERA based on allegations that it: (1) removed charging party's work mailbox; (2) removed his e-mail address from the address book and website; (3) issued a directive that he not contact employees, students, or parents, and to refrain from using its electronic resources; (4) issued a directive that he not contact CFA members; (5) blocked access to his e-mail account; (6) issued a Letter of Reprimand; (7) issued a disciplinary suspension; (8) issued a directive prohibiting contact with employees, use of electronic resources, and visits to District property; and (9) terminated his employment.	Request denied.
I.R. 703	<i>Yuba City Unified School District v. Yuba City Teachers Association</i>	Whether PERB should enjoin employees from striking under <i>Compton Unified School District (1987) PERB Decision No. IR-50</i> . Also, whether PERB should seek injunctive relief to require the Association to provide notice of the duration of any impending strike, and to prohibit Association members from allegedly threatening other employees.	Request denied.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 704	<i>Victor Serrano, Jeff Walker and Association of Long Beach Employees v. City of Long Beach</i>	Whether the City: (1) interfered with the Association's rights by agreeing to re-run the election and recognize a competing organization; (2) violated its local rules related to conducting a new election; (3) showed preference for another employee organization; and (4) violated the "card check" rule by conducting an election under its local rules.	Request denied.
I.R. 705	<i>Santa Clara County District Attorney Investigators Association v. County of Santa Clara</i>	Whether the County violated the MMBA by unilaterally implementing a new policy with respect to the usage of police surveillance equipment.	Request denied.
I.R. 706	<i>Antelope Valley Hospital District v. California Nurses Association</i>	Whether CNA improperly or prematurely declare impasse and embarked on a 24-hour strike in violation of the MMBA?	Request denied.
I.R. 707	<i>Coachella Valley Unified School District v. Coachella Valley Teachers Association</i>	Whether the Coachella Valley Teachers Association: (1) engaged in unlawful work stoppages and slowdowns, and prepared for additional concerted activities prior to exhausting the statutory impasse procedures; and (2) employed an unlawful pressure tactic when it allegedly "organized, encouraged and/or condoned" students to walk-out of school in protest during instructional time.	Request denied.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 708	<i>El Camino Valley Hospital District v. IUOE Stationary Engineers Local 39</i>	The Hospital District alleged bad faith bargaining by the union and asked PERB to enjoin essential employees when the union threatened to strike.	Request withdrawn.
I.R. 709	<i>County of San Joaquin v. Service Employees International Union, Local 1021</i>	Whether the Board should enjoin SEIU Local 1021 members that work at the County Registrar of Voters from striking as a precaution on election day and 28-days post-election.	Request denied.
I.R. 710	<i>SEIU, United Long Term Care Workers Local 643 v. North Kern South Tulare Hospital District</i>	(1) Whether there was reasonable cause to believe that the employer violated the MMBA; and (2) whether it would have been just and proper for PERB to seek injunctive relief on behalf of the SEIU Local 2015 against the District. SEIU alleged that the District failed and refused to recognize SEIU as the exclusive representative of two bargaining units; interfered with SEIU's and employees' exercise of MMBA-protected rights; interfered with, intimidated, and coerced employees into supporting and signing a decertification petition; and retaliated and/or discriminated against union representatives and unit member supporters for engaging in protected conduct.	Request withdrawn.
I.R. 711	<i>Statewide University Police Association v. Trustees of the California State University</i>	The Court requested that PERB seek to enjoin 12 employees from participating in an indefinite strike on the basis that the employees were "essential."	Request granted.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 712	<i>Santa Cruz County Superior Court v. Service Employees International Union Local 521</i>	Whether to enjoin an investigatory interview of an employee/union steward accused of misconduct. The union alleged this interview was retaliatory and chilled employees' rights because the employer already knew the details of the employee/union steward's conduct.	Request denied.
I.R. 713	<i>State of California (Department of Human Resources) v. Service Employees International Union Local 1000</i>	Whether SEIU Local 1000's one-day strike of 95,000 State workers is unlawful and should be enjoined in its entirety, or only as to essential employees.	Request denied.
I.R. 714	<i>Regents of the University of California v. Teamsters Local 2010</i>	Whether a planned strike is illegal under HEERA and should be entirely enjoined or, failing that, be enjoined as to time, place, and manner.	Request denied.
I.R. 715	<i>Regents of the University of California v. Teamsters Local 2010</i>	Whether, under <i>County Sanitation</i> , Public Safety Dispatchers are essential employees as a matter of law.	Request granted, in part.
I.R. 716	<i>AFSCME Local 143 v. Housing Authority of the City of Los Angeles</i>	Whether injunctive relief is just and proper to remedy the employer's pre-factfinding implementation of its last, best and final offer to increase employee health care premium contributions.	Request denied.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 717	<i>Sonoma County Superior Court v. Service Employees International Union Local 1021</i>	Should certain employees of the Court, in the classifications of Court Reporter, Courtroom Clerk, and Legal Process Clerk, be enjoined from participating in a strike?	Request withdrawn.
I.R. 718	<i>County of Shasta v. United Public Employees of California, Local 792</i>	Whether UPEC's strike was unlawful as it included essential employees.	Request granted, in part.
I.R. 719	<i>Public Employees Union Local 1 v. County of Contra Costa</i>	Whether the County violated its local rules concerning a decertification petition and election.	Request denied.
I.R. 720	<i>Public Employees Union Local 1 v. County of Sutter</i>	Whether the County violated its local rules by processing decertification and representation petitions filed by the United Public Employees of California Local 792. Local 1 alleges that the petitions were untimely and filed by an unregistered employee organization.	Request denied.
I.R. 721	<i>Service Employees International Union, Local 721 v. City of San Buenaventura</i>	Whether the City ordered a representation election in contravention of its local rules.	Request denied.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 722	<i>Jeffery L. Norman, et al. v. Riverside County Office of Education</i>	Whether the Riverside County Office of Education violated EERA by failing to investigate a uniform complaint	Request denied.
I.R. 723	<i>Kouros (Ken) Hamidi v. Service Employees International Union Local 1000</i>	Hamidi alleged that SEIU had failed to provide him with financial disclosures from 2007 to 2016 and sought an order awarding him all the agency fees he had paid over that period of time.	Request denied.
I.R. 724	<i>Union of American Physicians & Dentists v. Alameda Health System</i>	UAPD alleged that the Health System had unilaterally contracted-out work when it issued requests for proposals (RFPs) seeking bids from outside contractors to provide psychiatric services. UAPD sought an injunction requiring the Health System to rescind the RFPs. It claimed this injunction was necessary because when the Health System previously had contracted-out similar psychiatric work, some unit members had been hired away by the contractor, which degraded the strength of the bargaining unit.	Request denied.
I.R. 725	<i>City of Sunnyvale v. Sunnyvale Employees Association</i>	The City asked PERB for injunctive relief to enjoin essential employees (29) from striking.	Request withdrawn.

2016-2017 DECISIONS OF THE BOARD

REQUESTS FOR INJUNCTIVE RELIEF

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 726	<i>Aptos/La Selva Firefighters Association, Local 3535; Aptos/La Selva Chief Officers' Association v. Aptos/La Selva Fire Protection District</i>	Whether PERB should seek to enjoin the Aptos/La Selva Fire Protection District from conducting interviews of four union officers about their alleged roles in a gender discrimination complaint filed at the Department of Fair Employment and Housing?	Request denied.
I.R. 727	<i>United Steel Workers TEMSA Local 12911 v. Oak Valley Hospital District</i>	Whether PERB should pursue an injunction in the superior court that requires Oak Valley Hospital District to recognize the United Steel Workers (USW) and resume collective bargaining?	Request granted.
I.R. 728	<i>Association of San Diego County Employees v. County of San Diego</i>	Whether the County of San Diego implemented an unlawful unilateral change by making wage adjustments to employees that do not have an employer retirement contribution to offset.	Request denied.
I.R. 729	<i>SEIU Local 1021 v. Metropolitan Transportation Commission</i>	Whether the Metropolitan Transportation Commission has maintained and applied unlawful local rules on representation matters, or whether MTC's application of those local rules was unlawful.	Request denied.

2016-2017 LITIGATION CASE ACTIVITY

1. *County of Riverside v. PERB (SEIU Local 721)*, May 6, 2016, Supreme Court, Case No. S234326; California Court of Appeal, Fourth Appellate District, Division One, Case No. D069065; Factfinding [PERB Case No. LA-IM-127-M]. Issues: (1) Whether MMBA factfinding is limited and only available when the impasse arises from negotiations for a new or successor comprehensive MOU; (2) Whether MMBA factfinding violates the constitutional rights provided in Art. XI, section 11, subd. (a) [and section 1, subd. (b)]; (3) Should the Court of Appeal's granting of the anti-SLAPP motion be reversed because it punishes the County for seeking judicial review, and did the Court of Appeal "distort anti-SLAPP law by willfully reviewing [the trial court's denial] de novo"? The County filed a Petition for Review on May 6, 2016 with the Supreme Court of California. PERB filed its Answer to Petition for Review on May 27, 2016. The County's Reply to PERB's Answer to Petition for Review was filed on June 6, 2016. On July 13, 2016, the Supreme Court denied the County's Petition for Review. This case is now complete.
2. *San Diego Housing Commission v. PERB (SEIU Local 221)*, July 7, 2014, California Court of Appeal, Fourth Appellate District, Division One, Case No. D066237; San Diego County Superior Court, Case No. 37-2012-00087278-CU-MC-CTL; Factfinding [PERB Case No. LA-IM-116-M]. Issue: Whether the San Diego Superior Court erred by granting the Commission's motion for summary judgment and determining that PERB's factfinding determination as to a "single issue" was erroneous. PERB filed its appeal on July 7, 2014. San Diego Housing Commission (SDHC) filed a Notice of Appeal with respect to the denial of its Motion for Attorney Fees. PERB filed its Opening Brief on March 23, 2015. The parties stipulated to a 15-day extension of time for SDHC's Respondent's/Opening Brief to be filed on or before July 7, 2015. SDHC's Respondent's/Opening Brief was filed on July 7, 2015. PERB's filed its Respondent's Brief on September 8, 2015. SEIU did not file a brief. On or about October 16, 2015, PERB and SDHC filed their respective Request for Oral Argument. On October 29, 2015, SDHC filed its Cross-Appellant's Reply Brief. On November 12, 2015, League of California Cities and California State Association of Counties (LCC/CSAC) filed an Application to file an Amicus Curiae Brief. On November 30, 2015, PERB filed an Opposition to LCC/CSAC's Application of Amicus Curiae for Leave to File Amicus Brief. On December 1, the Court granted LCC/CSAC's application and filed its joint amicus brief. On December 29, 2015, PERB filed its Answer to Amicus Curiae Brief. Oral Argument was held on March 14, 2016. The Court of Appeal issued its decision on March 30, 2016, and ruled in PERB's favor overturning the trial court's interpretation regarding the scope of issues that can be submitted to factfinding under the MMBA. The

Court dismissed SDHC's cross-appeal as moot. The Court certified the decision for publication, and awarded costs to PERB. PERB closed this matter on October 26, 2016.

3. *San Diego Housing Commission v. PERB (SEIU Local 221)*, May 10, 2016, Supreme Court, Case No. S234414; California Court of Appeal, Fourth Appellate District, Division One, Case No. D066237; Factfinding [PERB Case No. LA-IM-116-M]. Issue: Whether MMBA factfinding is limited and only available when the impasse arises from negotiations for a new or successor comprehensive MOU. SDHC filed a Petition for Review on May 10, 2016 with the Supreme Court of California. PERB filed its Answer to Petition for Review on May 31, 2016. SDHC's Reply to PERB's Answer to Petition for Review was filed on June 10, 2016. On July 13, 2016, the Supreme Court denied SDHC's Petition for Review. This case is now closed.
4. *City of Palo Alto v. PERB (International Association of Firefighters, Local 1319, AFL-CIO)*, September 5, 2014, California Court of Appeal, Sixth Appellate District, Case No. H041407; PERB Decision No. 2388-M [PERB Case No. SF-CE-869-M]. Issue: Whether the Board clearly erred in Decision No. 2388-M holding that the City violated the MMBA when it approved a ballot measure repealing binding interest arbitration for impasse disputes, without first noticing and then meeting and consulting with the IAFF. The City's Writ Petition was filed on September 5, 2014. The Administrative Record was filed on November 14, 2014. Petitioner's Opening Brief was filed on December 19, 2014. PERB and the International Association of Firefighters (IAFF) were both granted a 45-day extension of time to file their respective Respondent's Brief. PERB and IAFF filed their respective Respondent's Brief on March 13, 2015. The City filed its Reply Brief on April 27, 2015. On May 13, 2015, the League of California Cities filed an Application to File an Amicus Brief along with the proposed brief. On March 24, 2016, the Court issued a Writ of Review requesting supplemental briefing addressing the remedial authority of PERB and the separation of powers doctrine. The Application for Leave to File Amicus Brief was granted. Petitioner filed its Supplemental Brief on April 8, 2016. PERB filed its Answer to Amicus Curiae Brief on April 15, 2016. PERB filed its Supplemental Brief and Request for Judicial Notice on April 25, 2016. IAFF filed its Supplemental Brief and Answer to Amicus Curiae Brief on April 25, 2016. All parties requested Oral Argument. On November 23, 2016, the Court issued its decision, remanding the matter to the Board. The Decision became final on December 23, 2016. A Petition for Review was filed with the Supreme Court on January 4, 2017. On March 15, 2017, the Court denied the Petition for Review, and a Remittitur was issued. This case is now closed.
5. *CAL FIRE Local 2881 v. PERB (State of California [State Personnel Board])*, February 17, 2015, Sacramento Superior Court, Case No. 34-2015-80002020; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Board

erred in Decision No. 2317a-S by affirming a Board Agent's dismissal of a charge filed by Local 2881 alleging that SPB violated the Dills Act by unilaterally amending the regulations under which State Personnel Board (SPB) conducts disciplinary proceedings for employees represented by Local 2881, without meeting and conferring in good faith. In the prior/related case, on October 15, 2014, the Court granted CAL FIRE's Writ Petition and ordered that PERB Decision No. 2317-S be set aside and reissued. On December 5, 2014, the court issued a Judgment Granting Writ of Mandate in Part and Denying Writ in Part. On December 19, 2014, the Board set aside Decision No. 2317-S, and issued Decision No. 2317a-S. Local 2881 then filed a Verified Petition for Writ of Mandate with the Sacramento County Superior Court on February 17, 2015. PERB and SPB filed their respective Answers on or about March 24, 2015. CAL FIRE's Opening Brief was filed on March 22, 2016. PERB filed its Opposition Brief on April 11, 2016. Real Party in Interest State of California (SPB) filed their Opposition on April 11, 2016, along with a Request for Judicial Notice. On April 21, 2016, Petitioner filed its Reply in Support of its Verified Petition for Writ of Ordinary Mandate. Oral Argument was held on May 6, 2016. CAL FIRE's Petition for Writ of Mandate is denied. On May 18, 2016, the court signed the final Judgment. On June 2, 2016, PERB served the Notice of Entry of Judgment. On July 19, 2016, Local 2881 filed with the superior court a Notice of Appeal and Appellant's Notice Designating Record on Appeal.

6. *CAL FIRE Local 2881 v. PERB; (State of California [State Personnel Board])*, July 19, 2016, California Court of Appeal, Third Appellate District, Case No. C082532; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Sacramento Superior Court erred in denying CAL FIRE's [Second] Petition for Writ of Mandate. CAL FIRE argued before PERB that the SPB had a duty to bargain with the Union prior to revising its disciplinary regulations. The court denied CAL FIRE's writ and found that there is a reasonable basis on which PERB could find SPB does not have a duty to bargain with the Union - namely, if SPB was acting in its capacity as a "regulator" when it changed its disciplinary regulations; PERB's decision was not "clearly erroneous." Previously, CAL FIRE had filed its [First] Petition for Writ Mandate, and the court granted the petition and ordered PERB to set aside its decision and issue a new decision because PERB erred in finding no duty to bargain because, to violate the "meet and confer" requirement of section 3519 of the Dills Act, the "state" must be acting in its role as an "employer" or "appointing authority." CAL FIRE filed with the trial court a Notice of Appeal and Appellant's Notice Designating Record on Appeal on July 19, 2016. The Third DCA lodged the Notice of Appeal on July 25, 2016. After all parties submitted mediation statements, the Third DCA issued a letter on August 22 stating the appeal was not selected for mediation, all proceedings in the appeal are to recommence as if the notice of appeal had been filed on August 22, 2016, all parties are directed to proceed with procurement of the record and then upon timely filing of the record, file briefs in compliance with the CRC. The Administrative Record was deemed filed on January 10,

2017. The Appellant's Opening Brief was filed on April 21, 2017. PERB's Respondent's Brief was filed on May 18, 2017. CAL FIRE's Reply Brief was filed on June 8, 2017. This matter is now fully briefed.

7. *County of Tulare v. PERB (SEIU Local 521)*, March 30, 2015, Fifth District Court of Appeal, Case No. F071240; PERB Decision No. 2414-M [PERB Case No. SA-CE-748-M]. Issue: Whether PERB erred in Decision No. 2414-M by reversing a proposed ALJ decision, and instead holding that: (1) in bargaining the 2009-2011 MOU, SEIU Local 521 and the County of Tulare intended to create a contractual right to merit-based promotions and salary increases effective after expiration of the MOU; (2) terms in the 2009-2011 MOU constitute a waiver of the County's statutory right to implement the terms of its final offer at impasse of a successor MOU (which included suspension of the merit-based promotions and salary increases); and (3) SEIU-represented County employees have a constitutionally-vested right to future merit-based promotions and salary increases. This case was filed in the Fifth District Court of Appeal on March 30, 2015. On April 2, 2015, PERB filed an Extension of Time to File the Certified Administrative Record. The court granted the extension to May 11, 2015. The Administrative Record was filed on May 8, 2015. The County filed its Opening Brief, along with Request for Judicial Notice and Exhibits on June 12, 2015. PERB filed its Respondent's Brief on August 14, 2015, and SEIU filed its brief on August 18, 2015. The County's Reply Brief was filed on September 8, 2015. On September 18, 2015, the League of California Cities and California State Association of Counties filed an Amicus Curiae Application/Brief in support of the County. PERB and SEIU each filed their Answer to the Amicus Curie Brief on or about October 23, 2015. Oral Argument was held on June 29, 2016. On July 11, 2016, the Court denied the County's Petition for a Writ of Extraordinary Relief. Both the County and SEIU sought publication of the decision, which the court denied. This litigation is now closed.
8. *San Luis Obispo Deputy County Counsel Association and San Luis Obispo Government Attorneys' Union v. PERB (County of San Luis Obispo)*, June 24, 2015, California Court of Appeal, Second Appellate District, Case No. B265012; PERB Decision 2427-M [PERB Case No. LA-CO-123-M & LA-CO-124-M]. Issue: Whether the Board erred in Decision No. 2427-M when it affirmed the ALJ's conclusion that Petitioners violated the MMBA in refusing to bargain over the County's pension cost-sharing proposal; holding that employee contribution levels and distribution under the County pension plan were not vested. In addition, the Board found no vested right to the absence of a prevailing wage offset obtained through concessions. The Unions filed a Petition for Writ of Extraordinary Relief and Supporting Memorandum on July 24, 2015 with the Second Appellate District, Division 6. The Administrative Record was filed on September 4, 2015. The Unions filed their Opening Brief on October 30, 2015. PERB and the County filed their respective Respondent's Briefs on or around December 21, 2015. The Unions filed their Reply Brief and Request for Judicial Notice on January 14, 2016. PERB and

the County filed their respective Opposition to Request for Judicial Notice on January 26, 2016, and January 22, 2016. On October 28, 2016, the Court denied the petition, as well as the Request for Judicial Notice. On November 8, 2016, a Petition for Review was filed with the Supreme Court (See Item #9 below).

9. *San Luis Obispo Deputy County Counsel Association and San Luis Obispo Government Attorneys' Union v. PERB; (County of San Luis Obispo)* November 8, 2016, California Supreme Court, Case No. S238277, California Court of Appeal, Second Appellate District, Case No. B265012; PERB Decision No. 2427-M [PERB Case No. LA-CO-123-M & LA-CO-124-M]. Issue: Whether the appellate court erred in denying the unions' petition for writ of extraordinary relief, which claimed that the Board erred in Decision No. 2427-M when it affirmed the ALJ's conclusion that the unions violated the MMBA in refusing to bargain over the County's pension cost-sharing proposal; holding that employee contribution levels and distribution under the pension plan were not vested. In addition, the Board found no vested right to the absence of a prevailing wage offset obtained through concessions. On November 8, 2016, a Petition for Review was filed with the Supreme Court. PERB's Answer to Petition for Review was filed November 28, 2016. The Unions' Reply to the Answer was filed on December 8, 2016. On January 11, 2017, the Court denied the Petition for Review. This case is now closed.
10. *Los Angeles Unified School District v. PERB (United Teachers Los Angeles)*, July 24, 2015, Court of Appeal, Second Appellate District, Division Four, Case No. B265626; PERB Decision No. 2438 [PERB Case No. LA-CE-5810]. Issue: Whether the Board erred in Decision No. 2438 when it affirmed the ALJ's findings that UTLA's interest in acquiring the names and work locations of all bargaining unit members reassigned to Educational Service Centers outweighed employees' privacy interests, therefore, Petitioner violated EERA by refusing to disclose this information to UTLA and by unilaterally implementing an opt-out option for bargaining unit members to deny disclosure of necessary and relevant information. LAUSD's Petition for Writ of Extraordinary Relief was filed in the Court of Appeal on July 24, 2015. The Administrative Record was filed on September 17, 2015. LAUSD's Opening Brief was filed on October 22, 2015. PERB filed its Respondent's brief on January 14, 2016. LAUSD's Reply Brief was filed on March 24, 2016. On July 28, 2016, the Court issued its order denying the Petition for Writ of Extraordinary Relief. This case is now closed.
11. *Orange County Water District v. PERB (Orange County Water District Employees Association)*, October 22, 2015, Court of Appeal, Fourth Appellate District, Division Three, Case No. G052725; PERB Decision No. 2454-M [PERB Case No. LA-CE-856-M]. Issue: Whether the Board erred in Decision No. 2454-M by holding that that the District violated the MMBA by refusing to participate in good faith in a properly petitioned-for agency fee election. On October 22, 2015, Petitioner filed a Petition for Extraordinary

Relief in the Fourth Appellate District. The Administrative Record was filed on December 8, 2015. Petitioner's Opening Brief and Request for Judicial Notice was filed on March 8, 2016. On March 25, 2016, the Court filed an order stating that the motion for judicial notice would be decided in conjunction with the Petition for Writ of Review. PERB's filed its Respondent's Brief on April 12, 2016. Real Party in Interest Orange County Water District Employees Association filed their Respondent's Brief on April 26, 2016. The District filed its Reply Brief on July 7, 2016. On June 14, 2016, the Court issued a "writ of review". Oral Argument was held on November 18, 2016. On February 1, 2017, the Court denied the petition. This case is now closed.

12. *PERB v. Alliance College-Ready Public Charter Schools, et al. (United Teachers Los Angeles)*, October 23, 2015, Los Angeles Sup. Ct. Case No. BC 598881; IR Request No. 686 [PERB Case Nos. LA-CE-6025, LA-CE-6027, LA-CE-6061, LA-CE-6073]. Issue: At the ex parte hearing, the court held that a Temporary Restraining Order (TRO) and Order to Show Cause (OSC) should issue and place certain limitations on Alliance's conduct pending a decision on PERB's Complaint for Injunctive Relief. The court also required that Alliance provide notice of the Order to its certificated employees. On October 23, 2015, PERB filed its Complaint for Injunctive Relief and supporting papers against Alliance College-Ready Public Charter Schools, and its individual schools. On October 27, 2015, PERB filed its ex parte papers and served Alliance. Alliance filed papers opposing PERB's Ex Parte Application and UTLA's Motion to Intervene. During oral argument, the court granted UTLA's Request to Intervene over Alliance's objection. The court then granted PERB's Application for a TRO but on terms different from those in PERB's Proposed Order. The court also set a hearing date on the Complaint (Nov. 17) and deadlines for Alliance's Opposition (Nov. 9) and any Replies (Nov. 12). Following oral argument the court ruled verbally on each item and directed the parties to prepare a revised Proposed Order in accordance with the ruling. After counsel for the parties were unable to reach agreement on three provisions in the Proposed Order, they filed a joint Proposed Order with the court that contained alternative language provisions. The court edited and signed the Proposed Order granting the TRO and issuing an OSC on October 29, 2015. On November 6, Alliance filed a notice of demurrer and demurrer on behalf of its parent organizations (Alliance College-Ready Public Schools and Alliance College-Ready Public Schools Facilities Corporation) and the individual schools named in PERB's injunction papers. In its demurrer, Alliance argued that PERB lacks jurisdiction because Alliance's parent organizations and the individual schools are subject to the NLRB's jurisdiction, not PERB's, and are also not "public school employers" under EERA. On November 16, Alliance filed its opposition papers to the PI, along with a request for judicial notice and evidentiary objections. Alliance filed a peremptory challenge under Code of Civil Procedure, section 170.6 as to Judge Gregory Keosian on November 17. On November 18, PERB and UTLA each filed opposition papers to Alliance's demurrer. On November 20, the case was reassigned to a new judge. On

November 23, PERB and UTLA each filed replies to Alliance's opposition to the PI. On November 24, Alliance filed its Reply Brief in support of its demurrer and also withdrew its demurrer only as to its 27 schools. The PI was held on December 3 where the court issued a tentative decision granting in part PERB's Application for a Preliminary Injunction. During oral argument on PERB's Application, the court modified the tentative decision and directed the parties to prepare an order in accordance with his directives. The parties were able to agree on the language of a joint Proposed Order granting the preliminary injunction, and filed their stipulated order on December 9. On December 10, PERB agreed to a 15-day extension for Alliance to file their answers to PERB's complaint. On December 18, PERB granted a second extension making Alliance's answers due on January 19, 2016. On or about December 31, PERB and UTLA agreed to a 60-day extension for the Alliance to file their answers, in exchange for Alliance taking their January 28, 2016 Demurrer hearing off calendar. On January 21, 2016, the parties filed a Joint Status Conference Statement with the Court, in which PERB took the position that Alliance should answer the Complaint and it took the position that no answer should be required and the entire matter should be stayed. The Court subsequently vacated the Status Conference that was scheduled for January 28, 2016, and set a combined Trial Setting Conference and Status Conference for March 22, 2016. On March 21, 2016, counsel for Alliance served PERB with an Answer on behalf of all of Alliance's Charter Schools. Alliance did not serve or file an Answer on behalf of Alliance's non-school entities. At the combined Trial Setting Conference and Status Conference on March 22, 2016, the court issued a verbal order that stayed the case with one exception. The exception to the stay allows either party to file an application or motion to modify, enforce, or dissolve the preliminary injunction. The court also scheduled a Further Status Conference for June 22, 2016. On June 17, 2016, the Parties filed a Joint Status Conference Statement and Stipulated Request to Continue the June 22, 2016, Status Conference. The Status Conference was not removed from the calendar and PERB attended the Status Conference on June 22, 2016. At the Status Conference, Judge Feuer set a Further Status Conference for October 7, 2016. All three parties entered into a stipulation requesting that Hon. Judge Feuer continue the status conference, scheduled for October 7, to January 9, 2017. The order granting continuance of the status conference was signed on October 6, 2016. On December 28, 2016, Alliance filed a Joint Stipulation on behalf of all parties requesting that the status conference scheduled for January 9, 2017, be continued until April 10, 2017. On January 19, 2017, PERB received a Notice of Order re Continuance of Status Conference to April 10, 2017. On April 10, 2017, the parties attended a status conference. The Court set the next CMC for Tuesday August 22, 2017, at 8:30. On June 27, 2017, a PERB Administrative Law Judge issued a Proposed Decision in PERB Case Nos. LA-CE-6061-E and LA-CE-6073-E, UTLA v. Alliance College-Ready Public Charter Schools, et al.

13. *City of San Diego v. PERB (San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, Catherine A. Boling, T.J. Zane, Stephen B. Williams)*, January 25, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D069630; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M].
- Issue: Whether the Board erred in Decision No. 2464-M, when it affirmed the ALJ's findings that the City of San Diego's Mayor and other public officials acted as agents of the City—and not as private citizens—when they used the prestige and authority of their respective elected offices and its resources to pursue pension reform through a ballot initiative, without negotiating with the four exclusive representatives regarding the changes in such benefits. On January 25, 2016, the City of San Diego (City) filed its Petition for Writ of Extraordinary Relief. The Court ordered the Administrative Record to be filed by February 5, 2016. PERB requested a 60-day extension of time to file the Administrative Record, which was subsequently granted to April 5, 2016. On February 2, 2016, PERB filed a motion requesting the dismissal of Boling, Zane and Williams as real parties in interest. On February 4, 2016, the Deputy City Attorneys Association (DCAA) filed a motion to join the dismissal. On February 17, 2016, the City filed an opposition to PERB's motion to dismiss and Boling, Zane & Williams filed a joinder to the City's opposition. On February 19, 2016, PERB filed a reply in support of motion to dismiss. The Administrative Record was filed on April 4, 2016. The City's Opening Brief was filed on May 9, 2016. PERB requested a 45-day extension of time to file the Respondent's Brief and an Application for Leave to File an Oversized Brief. The City filed an Opposition to Application for Extension of Time to File PERB's Brief. Real Parties in Interest Unions (Unions) filed an Application for Leave to File Oversize Brief on May 18, 2016, along with an Application for Extension of time to File Brief of the Unions. On May 23, 2016, the Court granted a 30-day extension of time to file responsive briefs for PERB and the Unions, making their respective briefs due on July 13, 2016, and granted the applications to file oversized briefs. On June 13, 2016, Boling, Zane & Williams filed a Brief in Support of City of San Diego's Petition for Writ of Extraordinary Relief. PERB filed its Respondent's Brief on July 13, 2016, and SDMEA filed its Brief in Opposition to the City's Petition for Writ of Extraordinary Relief. On August 8, 2016, the City filed its Reply Brief. On August 17, 2016, the Court issued a Writ of Review and set a deadline of September 1, 2016, for the parties to request oral argument. On August 24, 2016, PERB and SDMEA filed Requests for Oral Argument. On August 22, 2016, applications to file amicus curiae briefs were filed by: Pacific Legal Foundation, Howard Jarvis Taxpayers Association and National Tax Limitation Committee (in support of the City); San Diego Taxpayers Educational Foundation (in support of the City); League of California Cities (in support of the City); and San Diego Police Officers Association (in support of SDMEA, Deputy City Attorneys Association, AFSCME, AFL-CIO, Local 127

and San Diego City Firefighters, Local 145, IAFF, AFL-CIO). On August 24, 2016, Requests for Oral Argument were filed by PERB and SDMEA, et al. On August 30, 2016, the City and RPI Boling filed Requests for Oral Argument. On October 18, 2016, the Court granted the applications to file amicus curiae briefs filed by San Diego Taxpayers Educational Foundation, the League of California Cities and Pacific Legal foundation, et al. The application to file an amicus curiae brief filed by San Diego Police Officers Association was denied. PERB's Answers to the amicus briefs were filed with the Court on November 7, 2016. Oral Argument was heard on March 17, 2017. On April 11, 2017, the Court issued an opinion annulling PERB's decision, remanding the matter back to PERB with directions to dismiss the complaints and to order any other appropriate relief. On April 25, 2017, PERB filed a Petition for Rehearing. On April 26, 2017, SDMEA filed a Petition for Rehearing. Both petitions for Rehearing were denied on May 1, 2017. On May 19, 2017, PERB and Real Parties in Interest filed their respective Petitions for Review with the California Supreme Court, which were granted on July 26, 2017. (See Item #15.)

14. *Catherine A. Boling, T.J. Zane, Stephen B. Williams v. PERB; (City of San Diego, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO)*, January 25, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D069626; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M]. Issue: Whether the Board erred in Decision No. 2464-M, when it affirmed the ALJ's findings that the City of San Diego's Mayor and other public officials acted as agents of the City—and not as private citizens—when they used the prestige and authority of their respective elected offices and its resources to pursue pension reform through a ballot initiative, without negotiating with the four exclusive representatives regarding the changes in such benefits. On January 25, 2016, Boling et al. filed a Petition for Writ of Extraordinary Relief and Exhibits in Support of Petition for Writ of Extraordinary Relief. The Court ordered the Administrative Record to be filed by February 5, 2016. PERB requested a 60-day extension of time to file the Administrative Record which was granted to April 5, 2016. On January 25, 2016, PERB filed a Motion to Dismiss Petition for Lack of Standing; Memorandum of Points and Authorities in Support Thereof; and Declaration of Wendi L. Ross. On February 4, 2016, DCAA filed a joinder to PERB's motion to dismiss. On February 16, 2016, Petitioners filed their opposition to motion to dismiss. On February 17, 2016, the City filed a joinder to petitioner's opposition. On February 17, 2016, PERB filed a reply in support of motion to dismiss. The Administrative Record was filed on April 4, 2016. Boling et al. filed their Opening Brief on May 9, 2016. Boling's Opening Brief was filed on May 9, 2016. On May 12, 2016, PERB requested a 45-day extension of time to file Respondent's Brief. Boling filed a Motion for Judicial Notice and for Leave to Produce Additional Evidence; Declaration

of Alena Shamos; and Proposed Order in Support of Opposition to Application for Extension to File Respondent's Brief. On May 19, 2016, PERB filed a Reply in Support of Application for Extension of Time and Opposition to Motion for Judicial Notice and for Leave to Produce Additional Evidence. The RPIs (Unions) filed an Application for Extension of time to File Brief of the Unions. On May 20, 2016, Boling et al. filed an Opposition to the Application for Extension to File Brief by the Unions. On May 23, 2016, the Court granted a 30-day extension of time to file responsive briefs of PERB and the Unions, and denied Boling et al.'s request for judicial notice and for leave to produce additional evidence. On June 13, 2016, the City filed a Joinder to Boling's Opening Brief. On July 12, 2016, PERB filed its Respondent's Brief and Request for Judicial Notice; Declaration of Joseph W. Eckhart, and a [Proposed] Order. SDMEA filed its Brief in Opposition to Petitioners' Petition for Writ of Extraordinary Relief. On August 8, 2016, Boling's Reply Brief was filed. On August 17, 2016, the Court issued an order issuing a Writ of Review. On August 24, 2016, both PERB and SDMEA filed Requests for Oral Argument. On August 31, 2016, the Petitioner filed its Request for Oral Argument. Oral Argument was heard on March 17, 2017. On April 11, 2017, the Court issued an opinion annulling PERB's decision, remanding the matter back to PERB with directions to dismiss the complaints and to order any other appropriate relief. On April 25, 2017, PERB filed a Petition for Rehearing. On April 26, 2017, SDMEA filed a Petition for Rehearing. Both petitions for Rehearing were denied on May 1, 2017. On May 19, 2017, PERB and Real Parties in Interest filed their respective Petitions for Review with the California Supreme Court, which were granted on July 26, 2017. (See Item #15.)

15. *City of San Diego v. PERB; San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, Catherine A. Boling, T.J. Zane, Stephen B. Williams, consolidated with Catherine A. Boling, T.J. Zane, Stephen B. Williams v. PERB; City of San Diego, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO*, May 19, 2017, Supreme Court Case No. S242034; California Court of Appeal, Fourth Appellate District, Division One, Case Nos. D069626/D069630; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M]. Issue: (1) When a final decision of PERB under the MMBA is challenged in the Court of Appeal, what standard of review applies to the Board's interpretation of the applicable statutes and its findings of fact? (2) Is a public agency's duty to "meet and confer" under the MMBA limited to situations in which the agency's governing body proposes to take formal action affecting employee wages, hours, or other terms and conditions of employment? On May 19, 2017, Boling et al. filed a Petition for Review to contest the Fourth Appellate District's denial of their request for attorneys' fees. On May 22, 2017, PERB and the Unions filed their respective Petitions for Review

asking the California Supreme Court to overturn the decision issued by the Fourth Appellate District. The Court assigned all three petitions the same case number. On June 8, 2017, PERB filed its Answer to the Boling Petition for Review. As to PERB's Petition for Review, the Boling Group filed their Answer on June 8, 2017, and the City filed its Answer on June 9, 2017. PERB and the Unions filed their respective Replies to Boling and the City's Answers on June 16, 2017. As to the Boling Group's Petition for Review, the Boling Group filed their Reply to PERB's Answer on June 16, 2017. On July 26, 2017, the Court granted PERB's Petition for Review, as well as the Petition for Review filed by the Unions. The Petition for Review by Boling was placed in abeyance pending the outcome of PERB and the Unions' petitions. PERB's Opening Brief was due on August 25, 2017, but filed a request for an extension of time to file its Opening Brief on September 8, 2017. The Court granted the request. On August 1, 2017, PERB filed a Certificate of Interested Parties or Persons.

16. *United Teachers Los Angeles v. PERB (Kennon B. Raines, et al.)*, March 30, 2016, California Court of Appeal, Second Appellate District, Case No. B271267; PERB Decision No. 2475 [PERB Case No. LA-CO-1394]. Issue: Whether the Board erred in concluding that UTLA had breached its duty of fair representation by negotiating a side letter of agreement with terms unfavorable to certain employees, without giving those employees sufficient notice of, or participation in, the negotiations. Whether the Board erred in applying the "relation back" doctrine to allow additional charging parties to join the case. A Petition for Writ of Extraordinary Relief was filed in the Second District Court of Appeal on March 30, 2016. PERB filed administrative record on June 10, 2016. UTLA's Opening Brief was filed on July 15, 2016. PERB's Responsive Brief was filed on August 18, 2016. On August 23, 2016, a Stipulation was filed with the Court to extend the time for thirty-six (36) days to file the Appellant's Reply Brief upon the filing of the final Respondent's Briefs. On September 23, 2016, Real Parties in Interest, Kennon B. Raines, et al., filed their Responsive Brief. The Appellant filed its Reply Brief on October 18, 2016. On February 2, 2017, the Court denied the Petition for Writ of Extraordinary Relief. The matter is now closed.
17. *PERB v. County of Butte; (Public Employees Union Local 1 and Teamsters Local 137)*, April 29, 2016, Butte County Superior Court, Case No. 16CV00564; IR No. 697 [PERB Case No. SA-CE-939-M]. Issues: Whether the County violated its local rule section 10.6, and therefore the MMBA, by accepting and processing decertification petitions for its General Bargaining Unit and Social Services Bargaining Unit. This IR Request was granted in part on April 26, 2016. On April 29, 2016, PERB served the parties with ex parte documents that were filed in the Butte County Superior Court on Monday, May 2, 2016. The ex parte hearing was held on Monday, May 2, 2016, at which time the Judge granted the TRO. On May 16, 2016, the Teamsters filed an Opposition to Application for Preliminary Injunction. On May 16, 2016, the County also filed its Opposition to

Preliminary Injunction. On May 18, 2016, PERB filed its Reply to the County and The Teamsters' Opposition to Request for Preliminary Injunction. PEU Local 1 also filed a Reply to the County and Teamsters' Opposition to Preliminary Injunction. The Preliminary injunction Hearing was held on May 20, 2016, at which time the Judge granted the Preliminary Injunction. On May 31, 2016, the Teamsters filed an Answer to Unverified Complaint. On June 7, 2016, Teamsters filed an Opposition to UPEC Local 792's Motion to Intervene and Memorandum of Points and Authorities in Support of Opposition to Motion to Intervene. On June 10, 2016, UPEC Local 792 filed a Reply to the Teamsters' Opposition to UPEC's Motion to Intervene and Memorandum of Points and Authorities in Support of Reply. At the September 2, 2016 Case Management Conference, PERB requested that the Preliminary Injunction be dissolved and the Complaint be dismissed in response to the Teamsters' withdrawal of its original decertification petition. The Court granted PERB's oral motion, with no objection from other parties. On September 21, 2016, PERB filed a Proposed Order signed by each party dissolving the preliminary injunction, dismissing the complaint, and taking the November 4, 2016 Case Management Conference off-calendar. On September 29, 2016, the Court signed the Order Dismissing Complaint and Dissolving Preliminary Injunction. The case is now closed.

18. *In re: Academy of Personalized Learning, Inc.*, April 20, 2016, US Bankruptcy Court, Eastern District of California, Sacramento Division, Case No. 15-28060-D11; [PERB Case Nos. SA-CE-2791, SA-CE-2792, SA-CE-2804, SA-CE-2816]. Issue: Whether proceedings before PERB constitute police and regulatory power actions that are exempt from the automatic stay normally applicable once a debtor files for bankruptcy. On February 25, 2016, the Academy of Personalized Learning (APL) filed a motion in the bankruptcy court for the Eastern District of California, seeking a contempt order against the Academy of Personalized Learning Educator's Association (APLEA) for its alleged violation of the automatic stay. On April 5, 2016, APLEA then filed a Motion for Relief from the Automatic Stay and to Annul the Automatic Stay. The court then ordered additional briefing from the parties on the competing briefs, and invited PERB to submit its own brief. On April 20, 2016, PERB filed the following documents: Supplemental Brief by PERB Regarding Application of the Automatic Stay and Declaration by J. Felix De La Torre in Support of Brief by PERB Regarding Application of the Automatic Stay to Its Proceedings along with Exhibits. APL filed an Opposition to APLEA's Motion for Relief from the Automatic Stay and to Annul the Automatic Stay on April 22, 2016. That same day, APLEA filed a Supplemental Opposition to Motion to Enforce Automatic Stay and for Contempt for Violation of Automatic Stay. On May 2, 2016, the Bankruptcy Court issued its tentative rulings on the APL's motion to enforce the automatic stay and for contempt and APLEA's competing motion for relief from and annulment of the automatic stay. The Court tentatively denied APL's motion and tentatively granted APLEA's motion. The court did not reach the issue of whether the PERB proceedings are

exempt from the automatic stay under §364(b)(4). Instead he decided to grant stay relief and annulment due to APL's delay in seeking a Bankruptcy Court determination while continuing to litigate before the PERB ALJ. The court stated that APL's actions suggest "inappropriate gamesmanship" which has amounted to a waste of everyone's resources. The Court also found that the potential injunctive obligations that APL may have arising out of the PERB complaints are likely non-dischargeable and that the PERB may be better equipped to resolve disputes as to the amount of any monetary claims. On May 4, 2016, the court heard oral argument and the affirmed its tentative ruling as the final ruling. On May 12, 2016, the Judge granted APLEA and CTA's Motion for Relief from the Automatic Stay and to Annul the Automatic Stay. On July 27, 2016, the Court issued a Notice of Entry of Order of Dismissal after finding that APL inappropriately used the bankruptcy court to avoid a union organizing campaign. This case is now closed.

19. *PERB v. Bellflower Unified School District (CSEA Chapter 32)*, April 5, 2016, Los Angeles County Superior Court, Case No. BS161585; PERB Decision Nos. 2385 & 2455 [PERB Case Nos. LA-CE-5508 and LA-CE-5784]. Issue: PERB instituted court action to enforce orders issued by the Board in PERB Decision Nos. 2385 and 2455. On April 5, 2016, PERB served Bellflower USD with a Petition for Writ of Mandate and Summons. On April 7, 2016, the Court set a trial setting conference for July 12, 2016. On May 16, 2016, Bellflower USD filed a Notice of Demurrer and Demurrer to Verified Petition for Writ of Mandate and the Memorandum of Points and Authorities. The trial setting conference was moved to August 30, 2016. The opposition to the District's demurrer is due August 17, 2016 and the demurrer hearing will be held on August 30, 2016. On August 17, 2016, PERB's Opposition to demurrer was filed with the Superior Court. The hearing on the District's demurrer, and a trial setting conference was held on August 30, 2016, where the Court denied the demurrer. At the trial setting conference, the Court set a briefing schedule on PERB's writ; set a status conference for October 27, 2016, to address any disputes by the parties regarding the certified record; and set an April 18, 2017 hearing on PERB's writ. On October 26, 2016, the parties filed a Joint Status Report and Joint Request to Vacate Status Conference; Order. On October 26, 2016, the Status conference scheduled for October 27, 2016, was removed from the Court's calendar. On November 7, 2016, PERB received Notices of Deposition for Yaron Partovi, Mirna Solis, Ellen Wu and "Person Most Knowledgeable." On December 21, 2016, Notices of and Motions to Quash and for a Protective Order were filed. On December 29, 2016, the parties filed a joint request to stay the trial date and briefing schedule pending the resolution of the motions. The joint request was granted on January 5, 2017, and the Court set a Trial Re-Setting Conference on March 28, 2017. On January 10, 2017, Respondent submitted to PERB a Request for Production of Documents, and Special Interrogatories. On January 12, 2017, Respondent submitted to PERB Notices of Taking Depositions of Ronald Pearson and J. Felix De La Torre, and Request to Produce Documents at Deposition. On February 9, 2017, the parties submitted a Joint Request to

Consolidate Law and Motion Hearings Scheduled for March 28, 2017, and April 20, 2017. The Order granting the request was signed on February 9, 2017. The Trial Re-Setting Conference and hearings on the motions are scheduled for April 20, 2017. On March 24, 2017, PERB filed its brief in support of its motion to quash and motions for protective order to prohibit the District's discovery requests. On April 20, 2017, the Court granted PERB's motion to quash deposition notices, and two motions for protective orders for depositions and written discovery that were propounded by the District. The court set the hearing on PERB's writ for enforcement of PERB's orders for December 7, 2017.

20. *PERB v. Service Employees International Union Local 1021 (County of San Joaquin)* July 5, 2016, San Joaquin County Superior Court, Case No. STK-CV-UMC-2016-6497; IR Request No. 701 [PERB Case No. SA-CO-133-M]. Issue: Whether essential employees should be enjoined from striking. The IR was granted in part on July 4, 2016. On July 5, 2016, PERB served the parties with ex parte documents being filed in the San Joaquin County Superior Court. The ex parte hearing was held on July 6, 2016, at which time the Judge granted the TRO. On July 12, 2016, there was a hearing on the County's motion to intervene, and the County was directed to file an amended complaint. On July 12, 2016, the County filed a request with the Court for a preliminary injunction seeking to include additional Juvenile Detention Officers (JDOs) in the injunction. On July 13, 2016, SEIU filed its Opposition to the County's ex parte application. On July 18, 2016, SEIU filed its opposition to the County's request for injunctive relief. On July 20, 2016, PERB filed its reply brief in support of the preliminary injunction. On the same date, the County filed its reply to SEIU's Opposition to the County's request for preliminary injunction, as well as a notice of motion and motion to quash subpoenas, and memorandum of points and authorities in support. On July 22, 2016, a hearing was held on PERB's request for preliminary injunction. The Court granted the preliminary injunction with a duration of 90 days or until successor MOUs were ratified. A hearing was set for October 20, 2016, regarding the status of the preliminary injunction. The parties signed a stipulation extending the injunction by 90 days, which the Court signed on September 19, 2016. Upon the settlement of their successor MOUs, the parties withdrew all charges. A Request for Dismissal was subsequently submitted to the Court on January 5, 2017. This matter is now closed.

21. *Shahla Mazdeh & Asad Abrahamian v. Superior Court of CA, Riverside, et al.*, June 24, 2016, US District Court Case No. 15cv1475-MMA(BLM) [PERB Case Nos. LA-CE-5702, LA-CE-5780, LA-CO-1557, LA-CE-5635, LA-CE-5785, LA-CO-1559]. Issue: Whether PERB violated the Civil Rights Act of 1991, the Fair Labor Standards Act (FLSA), the Age Discrimination in Employment Act (ADEA), and the Racketeer Influenced and Corrupt Organizations Act (RICO). In particular, plaintiffs allege that PERB violated these federal laws when Board agents conspired to dismiss their unfair practice charges, an Administrative Law Judge (ALJ) denied a request for a continuance, and another ALJ

issued an unfavorable decision. Mazdeh and Abrahamian filed an Amended Complaint and Summons with the United States District Court, Southern District of California, on June 24, 2016. PERB was served on July 1, 2016. PERB filed a Notice of Motion and Motion to Dismiss Defendant Public Employment Relations Board and its Memorandum of Points and Authorities on July 21, 2016. The court stated that it would rule on PERB's motion by September 19, 2016. On August 8, 2016, The Court issued its Order and Judgment dismissing Mazdeh and Abrahamian's First Amended Complaint with prejudice. The case is now closed.

22. *Earl Mykles v. PERB (Service Employees International Union Local 1000)*, June 27, 2016, California Court of Appeal, Third Appellate District, Case No. C082326 [PERB Case No. SA-CO-480-S]. Issue: Did PERB err in *Service Employees International Union, Local 1000* (2016) PERB Decision No. 2483-S, when it determined that Earl Mykles' unfair practice charge had been untimely filed. Mykles filed a "Writ of Extraordinary Relief" with the California Court of Appeal, Third Appellate District, on June 27, 2016. On July 7, 2016, PERB filed a Motion to Dismiss the Writ of Extraordinary Relief and an Application for an Extension of Time to File the Certified Administrative Record. On July 7, 2016, the Court granted PERB's Application for an Extension of Time to File the Certified Administrative Record. On July 13, 2016, SEIU Local 1000 filed a Notice of Joinder to PERB's Motion to Dismiss. On July 22, 2016, Mykles filed an Opposition to PERB's Motion to Dismiss and SEIU's Joinder. On July 28, 2016, the Court granted PERB's Motion to Dismiss, and dismissed the Petition for Writ of Review. On September 1, 2016, Mykles filed a Petition for Review with the California Supreme Court, which was subsequently denied.
23. *Earl Mykles v. PERB; Service Employees International Union Local 1000*, September 1, 2016, Supreme Court Case No. S236979; California Court of Appeal, Third Appellate District, Case No. C082326 [PERB Case No. SA-CO-480-S]. Issue: Did the Third District Court of Appeal err when it dismissed Mykles' Writ of Extraordinary Relief seeking to challenge PERB Decision No. 2483-S? On September 1, 2016, Mykles filed a Petition for Review with the Supreme Court. On September 21, 2016, both PERB and Real Party in Interest SEIU Local 1000 filed their Answers to the Petition for Review. Mykles' Reply to the Answer was filed on October 4, 2016. On October 19, 2016, the Supreme Court denied the Petition for Review. This matter is now closed.
24. *Ivette Rivera v. PERB (EBMUD, AFSCME Local 444)*, June 22, 2016, Alameda County Superior Court, Case No. RG16813608; PERB Decision Nos. 2472-M and 2470-M [PERB Case Nos. SF-CO-349-M, SF-CO-338-M, SF-CE-1208-M]. Issue: Plaintiff alleges that in dismissing the unfair practice charges, PERB violated a constitutional right, exceeded a specific grant of authority, or erroneously construed a statute. On April 28, 2016, Rivera filed a Verified Petition for Writ of Mandamus, Declaratory Relief and

Violations of the California Constitution. PERB was not officially served until June 22, 2016. A Case Management Conference was held on June 23, 2016. On July 21, 2016, PERB filed a Demurrer. A hearing on the Demurrer was set for August 17, 2016, but the court continued the hearing to September 9, 2016. A Case Management Conference is also set for September 8, 2016. On September 8, 2016, the Court continued the Case Management Conference to October 27, 2016. The Court overruled PERB's demurrer on September 14, 2016. On October 6, 2016, PERB filed with the Court its Answer to the Verified Petition for Writ of Mandamus. During the October 27th Case Management Conference, the court continued the Case Management Conference to February 9, 2017. On February 9, 2017, the court continued the Case Management Conference to March 30, 2017. On March 29, 2017, PERB, EBMUD, and Rivera filed a joint Stipulation of Parties Regarding Consolidation and Scheduling, and a Proposed Order regarding consolidation and scheduling. On April 3, 2017, the Court issued an order scheduling a hearing on the merits of the writ for January 18, 2018. PERB filed the Administrative Record on June 19, 2017. Rivera's opening brief is due by October 20, 2017. PERB and Real Party in Interest, AFSCME Local 444, must file their opposition briefs by December 4, 2017. Rivera's reply brief is due by January 3, 2018. Also on April 3, 2017, the Court ordered that this case be consolidated with *Ivette Rivera v. PERB*, Case No. RG16843374.

25. *Ivette Rivera v. PERB; East Bay MUD, AFSCME Local 444, December 22, 2016*, Alameda County Case No. RG16843374 [PERB Case No. SF-CE-1227-M]. Issue: Whether the Court should reverse the Board's decision in Case No. 2501-M dismissing Rivera's unfair practice charge for failure to state a prima facie case? Plaintiff's Petition for Writ of Mandate was filed with the Court on December 22, 2017, and served on PERB January 17, 2017. PERB filed its Answer to the petition on February 14, 2017. At the March 21, 2017, Case Management Conference, the court directed the parties to meet and confer on a briefing schedule. PERB, Rivera, and EBMUD reached a stipulation, which was filed with the Court on March 30, 2017. On the same day, the Court issued its Notice of Hearing to inform the parties that the case is set for hearing on January 18, 2018. Rivera's opening brief is due by October 20, 2017. PERB and Real Party in Interest, AFSCME Local 444, must file their opposition briefs by December 4, 2017. Rivera's reply brief is due by January 3, 2018. On April 3, 2017, the Court ordered that this case be consolidated with *Ivette Rivera v. PERB*, Case No. RG16813608. PERB filed the Administrative Record on June 19, 2017.

26. *City of Escondido v. PERB; Escondido City Employees Association*, June 10, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D070462; PERB Decision No. 2311a-M [PERB Case No. LA-CE-618-M]. Issue: Whether PERB erred in PERB Decision No. 2311a-M by finding that the City violated the MMBA by unilaterally transferring work performed by code enforcement officers to non-bargaining unit employees. The City filed a Petition for Writ of Review on June 10, 2016. PERB

was granted a 30-day extension of time to July 20, 2016, to file the Administrative Record. The Administrative Record was filed with the Court on July 20, 2016. The City's Opening Brief was filed August 24, 2016. On September 21, 2016, a Joint Stipulation and Agreement to an Extension of Time to File Briefs was submitted to the Court, and approved by the Court. On October 11, 2016, PERB filed the Respondent's Brief. On October 12, 2016, RPI Escondido City Employees Association filed their Responsive Brief. The City's Reply Brief was filed on October 31, 2016. On November 14, 2016, the Court issued an order finding that summary denial of the Petition for Writ of Extraordinary Relief is not warranted, and the Court gave a deadline of November 29, 2016, for requests for oral argument. Both PERB and the City of Escondido submitted their Requests for Oral Argument on November 17, 2016. RPI Escondido City Employees Association filed their Request for Oral Argument on November 22, 2016. Oral Argument was heard on February 14, 2017. On March 8, 2017, the Court of Appeal issued an unpublished decision reversing the Board's decision. The City then filed a request for publication on March 20, 2017, which was the Court denied on March 21, 2017. This matter is now closed.

27. *Los Angeles Unified School District v. PERB; United Teachers Los Angeles, August 8, 2016*, Supreme Court Case No. S236448, California Court of Appeal, Second Appellate District, Division Four, Case No. B265626; PERB Decision No. 2438 [PERB Case No. LA-CE-5810]. Issue: Whether the Board erred in Decision No. 2438 when it affirmed the ALJ's findings that since UTLA's interest in acquiring the names and work locations of all bargaining unit members reassigned to Educational Service Centers outweighed employees' privacy interests, LAUSD violated EERA by refusing to disclose this information to UTLA and by unilaterally implementing an opt-out option for bargaining unit members to deny disclosure of necessary and relevant information? On August 8, 2016, LAUSD filed its Petition for Review with the Supreme Court. On August 26, 2016, PERB filed its Answer to the Petition for Review. On August 30, 2016, RPI UTLA filed its Answer to the Petition for Review. On September 6, 2016, LAUSD filed its Reply to Answers to Petition for Review. On October 12, 2016, the California Supreme Court denied the Petition for Review. This case is now closed.
28. *Fresno County Superior Court v. PERB; SEIU Local 521, March 28, 2017*, California Court of Appeal, Fifth Appellate District, Case No. F075363; PERB Decision No. 2517-C [PERB Case No. SA-CE-14-C]. Issue: Whether the Board clearly erred in Decision No. 2517-C, holding that the Court violated the Trial Court Act by interfering with employee rights? Fresno County Superior Court (FCSC) filed a Petition [incorrectly named] for Extraordinary Relief on March 28, 2017. The Appellate Court issued its Notice to file the Administrative Record on March 28, 2017, due April 7, 2017. On March 29, 2017, an Application for Extension of Time to file the Administrative Record by 35 days was requested. The request was granted for 25 days. On May 2, 2017, PERB

filed the Administrative Record. FCSC's Opening Brief was filed on June 6, 2017. PERB's Respondent's Brief was filed on July 11, 2017. FCSC filed its Reply Brief on August 14, 2017. The court has not scheduled oral argument.

29. *Patricia Woods v. Public Employment Relations Board et al.*; April 14, 2017, US District Court, Eastern District of California, Case No. 2:17-cv-793; PERB Decision No. 2136 [PERB Case No. SA-CE-1640-S]. Issue: Whether PERB, Wendi Ross, Eileen Potter and the California Department of Corrections and Rehabilitation violated Ms. Woods' federal and state rights under: (1) 42 U.S.C. sections 1981 (Discrimination in contracting); (2) 42 U.S.C. § 1985 (conspiracy to violate civil rights, and § 1986 (failure to prevent conspiracy); (3) breach the contract; and (4) violation of the Dills Act, based on alleged undisclosed discriminatory conduct by PERB and its employees in adjudicating her unfair practice case that resulted in Board Decision No. 2136? PERB received a copy of the following documents on April 27, 2017: Civil Rights Complaint; Plaintiff's Motion for an Expedited Status Conference Hearing, Settlement Conference and Appointment of a Special Court Master. On May 5, 2017, PERB notified Ms. Woods that her service of process was defective, as she improperly mailed the complaint to PERB, and failed to serve a copy of the Summons. On July 5, 2017, PERB was properly served with the documents. On July 21, 2017, PERB filed a Notice of Motion and Motion to Dismiss. On July 31, 2017, PERB received Woods' first motion for an extension of time to file a response to the Motion to Dismiss. The court continued the hearing on Defendants' motions to dismiss to October 11, 2017.
30. *PERB v. Service Employees International Union, Local 1000; State of California (CalHR)*, November 29, 2016, Sacramento County Superior Court, Case No. 34-2016-00204088 [PERB Case No. SA-CO-495-S]. Issue: Whether SEIU 1000's one-day strike of 95,000 employees, scheduled for December 5, 2016, was unlawful as including 5,700 essential employees? PERB filed a Complaint for Injunctive Relief and ex parte papers requesting a Temporary Restraining Order (TRO) on December 1, 2016. The ex parte hearing for the TRO was conducted on December 2, but continued to December 13, 2016. On December 3, 2016, SEIU 1000 and CalHR reached a tentative agreement for a successor MOU. On December 5, 2016, the parties provided status updates which provided that SEIU 1000 had withdrawn its strike notice on December 2, 2016, that SEIU 1000 was informing its members that the strike was cancelled, and that CalHR had not received any reports of strike activity. On December 6, 2016, the Board rescinded its determination partially granting CalHR's request for injunctive relief, deeming CalHR's request moot, and denying it without prejudice. On December 6, 2016, the Office of General Counsel notified the parties of the Board's determination and took the ex parte hearing off calendar. The complaint was subsequently dismissed as moot. This case is now closed.

31. *PERB v. Service Employees International Union, Local 521; Superior Court of Santa Cruz County*, November 18, 2016, Santa Cruz County Superior Court, Case No. 16CV03056 [PERB Case No. SF-CO-5-C]. Issue: Injunctive relief regarding an “essential employee” strike by employees of the Santa Cruz County Superior Court. On November 21, 2016, PERB filed its Complaint for Injunctive Relief arising from IR Request No. 711. Later the same day, it appeared ex parte. Counsel for the Santa Cruz Court also appeared; counsel for SEIU did not. PERB sought a TRO and OSC regarding a preliminary injunction applying to seven employees covered by a stipulation between SEIU and the Santa Cruz Court. Judge Bean signed PERB’s proposed order for a TRO and OSC regarding a preliminary injunction, setting a hearing on the preliminary injunction for December 12, 2016. Prior to the hearing date, the parties settled their contract dispute. As a consequence, on December 5, 2016, PERB submitted a Request for Dismissal, which was signed the same day. This case is now closed.
32. *PERB v. Teamsters Local 2010; Regents of the University of California*, December 23, 2016, Los Angeles County Case No. BC644746 [PERB Case No. LA-CO-548-H]. Issue: Whether the Teamsters strike was unlawful, since it included some essential Public Safety Dispatchers? On December 23, 2016, PERB filed an Ex Parte Application for a TRO. On December 29, 2016, the Teamsters filed an Opposition. On January 5, 2017, the Regents filed an Ex Parte Application for Leave to Intervene, a Complaint in Intervention, Memorandum of Points and Authorities in Support of Complaint in Intervention, Declaration of T. Yeung in Support of Complaint in intervention, and a Request for Judicial Notice in Support of Complaint in Intervention. On January 5, 2017, the court signed the Order Granting TRO and OSC. On January 5, 2017, the Court signed the order granting the Regent’s application for leave to intervene. On January 20, 2017, the Regents filed a Partial Opposition to the Application for Preliminary Injunction, supporting documentation, and a Request to Present Oral Testimony. The Teamsters filed a Reply to the Partial Opposition, other supporting documentation, and an Opposition to Regents’ Request for Oral Testimony. On January 27, 2017, the parties attended a preliminary injunction hearing before Judge Hogue. Following oral argument, Judge Hogue issued an Order Granting Preliminary Injunction. On March 17, 2017, the Court scheduled a Case Management Conference and OSC Hearing for April 10, 2017. On March 28, 2017, the UC filed a Joint Case Management Statement apprising the Court of the recently reached CBA between UC – Teamsters that, upon ratification, would moot the instant case. The UC also filed a Joint Request to Continue the Case Management Conference and Extend for 90-days the Preliminary Injunction enjoining 21.5 essential employees from striking. Also on March 28, in response to the Court’s OSC, PERB re-filed with the Court the Proofs of Service of Summons and Complaint demonstrating personal service by PERB on UC and Teamsters. On March 30, 2017, the Court issued an Order continuing the Case Management Conference and OSC Hearing Regarding Proof of Service until July 10, 2017. In the same Order, the Court extended the Preliminary Injunction until July 26,

2017, or until the parties' contract dispute is finally resolved, whichever occurs first, or until further Order of the Court. In or about March or April of 2017, the UC and Teamsters reached a successor Memorandum of Understanding. On June 23, 2017, PERB filed a Request for Dismissal of the Complaint with the Court. On or about June 23, 2017, the UC also filed a Request for Dismissal with the Court. The Superior Court dismissed the case on July 6, 2017 and the case is now closed at the Superior Court. PERB filed a Notice of Entry of Dismissal with the Superior Court on August 2, 2017. This matter is now closed.

33. *California Department of Human Resources v. PERB; SEIU, Local 1000*, January 3, 2017, Sacramento County Sup. Ct. Case No. 34-2016-00204088; IR Request No. 713 [PERB Case No. SA-CO-495-S]. Issue: Whether the Board, after considering CalHR's request for injunctive relief relating to SEIU Local 1000's strike noticed for December 5, 2016, erred by deciding to seek an injunction applying only to those employees shown to be "essential," rather than applying to the entire strike. CalHR initiated this case as a cross-petition/cross-complaint in PERB's case against SEIU Local 1000, with causes of action for writ of mandate and declaratory relief. Both PERB and SEIU filed timely demurrers. On May 30, 2017, the court issued a minute order sustaining the demurrers to both causes of action. The court granted CalHR leave to amend the declaratory relief cause of action by June 30, 2017. CalHR filed its First Amended Cross-Complaint for Declaratory Relief on June 30, 2017. On July 15, 2017, all parties submitted Case Management Statements for a July 20, 2017 Case Management Conference. On July 18, 2017, the Court issued a tentative ruling referring the case to the Trial Setting Process. All counsel were to confer and agree upon trial and settlement conference dates. On July 28, 2017, PERB filed a demurrer to the June 30, 2017, Amended Cross-Complaint. On August 1, 2017, SEIU also filed a Notice of Demurrer and Demurrer, as well as a Memo of Points and Authorities in support of the Demurrer, and a Request for Judicial Notice. On August 21, 2017, CalHR sought to file a Second Amended Cross-Complaint in lieu of an Opposition to PERB and SEIU's recent demurrers. On August 22, the Court rejected this new amended complaint because CalHR had not been granted leave to amend. On August 24 and 25 respectively, PERB and SEIU filed information with the Court indicating their belief that it had properly rejected the Second Amended Cross-Complaint, and declaring their intention to appear for the demurrer hearing scheduled for September 1, 2017. On August 31, 2017, the Court agreed to grant CalHR leave to amend its complaint, taking the demurrer hearing off calendar.
34. *PERB v. United Public Employees of California, Local 792; County of Shasta*, January 30, 2017, Shasta County Sup. Ct. Case No. 186652; IR Request No. 718 [PERB Case No. SA-CO-135-M]. Issue: Whether UPEC Local, 792's strike of 1,088 employees beginning January 30 through February 3, 2017, is unlawful as including 40 essential employees? PERB filed Complaint for Injunctive Relief and ex parte papers requesting a

TRO on January 30, 2017. Also on January 30, UPEC notified PERB and the County that it would not oppose the TRO. Ex Parte Hearing for TRO was conducted on January 31 at Shasta Superior Court. At the hearing, the Court granted PERB's request for TRO to enjoin the 40 essential employees from striking, and then scheduled a hearing on the preliminary injunction for February 10, 2017. The parties subsequently stipulated to an order granting the preliminary injunction on the same terms as in the TRO. The Court signed the stipulated order on February 9, 2017. The preliminary injunction expired on May 10, 2017. On May 30, 2017, PERB submitted a Request for Dismissal to the Court in response to the parties' settling their Memorandum of Understanding. On May 30, 2017, the Clerk of the Court entered its dismissal of the complaint. On June 6, 2017, PERB filed its Notice of Entry of Dismissal. The case is now closed.

35. *Los Angeles Unified School District v. PERB; United Teachers Los Angeles*, April 5, 2017, California Court of Appeal, Second Appellate District, Division 8, Case No. B281714; PERB Decision No. 2518 [PERB Case No. LA-CE-5824]. Issue: Whether the Board erred in *Los Angeles Unified School District* (2017) PERB Decision No. 2518 when it affirmed a proposed decision holding that certain subjects are within the scope of representation under EERA? LAUSD filed its Petition for Writ of Extraordinary Relief on April 5, 2017. On April 10, 2017, PERB submitted a request for a 91-day extension of time to file the Administrative Record. On April 13, 2017, the Court granted a 60-day extension of time. The Administrative Record was filed on June 14, 2017, making LAUSD's Opening Brief due on July 19, 2017. On July 13, 2017, a stipulation was filed extending the due date for the Opening Brief to September 1, 2017. LAUSD filed its Opening Brief on September 1, 2017.

36. *PERB v. Oak Valley Hospital District; United Steel Workers, Local TEMSA 12911*, June 5, 2017, Stanislaus County Sup. Ct. Case No. 2025124; IR Request No. 727 [PERB Case No. SA-CE-1008-M]. Issue: Whether Oak Valley Hospital District (OVHD) is required to recognize the United Steel Workers and resume collective bargaining? On June 6, 2017, the Office of the General Counsel appeared ex parte seeking a TRO from the Stanislaus Superior Court. The Court, however, requested supplemental briefing from the parties. PERB and OVHD filed Supplemental Briefs on June 8, 2017. On June 9, 2017, Judge Freeland issued an Order allowing OVHD to submit supplemental opposition papers by June 15, 2017, with PERB's reply due June 21, 2017. OVHD chose not to submit supplemental opposition papers. PERB filed its Reply to Opposition and Proposed Order on June 20, 2017. The OSC hearing was held on June 28, 2017, at 8:30 a.m. in Department 23. The Court granted PERB's request for a preliminary injunction for 150 days.

Public Employment Relations Board



2017-18 ANNUAL REPORT



October 15, 2018

Edmund G. Brown, Jr., Governor
State of California

PUBLIC EMPLOYMENT RELATIONS BOARD

2017-2018 ANNUAL REPORT

October 15, 2018



Board Members

MARK C. GREGERSEN
ERIC R. BANKS
PRISCILLA S. WINSLOW
ERICH W. SHINERS
ARTHUR A. KRANTZ

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PUBLIC EMPLOYMENT RELATIONS BOARD

Board Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 323-8000
Fax: (916) 327-7960



October 15, 2018

Dear Members of the State Legislature and fellow Californians:

On behalf of the Public Employment Relations Board (PERB), we are pleased to submit our 2017-2018 Annual Report. PERB is committed to conducting all agency activities with transparency and accountability. This Report describes PERB's statutory authority, jurisdiction, purpose and duties. The Report further describes case dispositions and other achievements for the Board's divisions, including results of litigation.

The eight public sector collective bargaining statutes administered by PERB guarantee the right of public employees to organize, bargain collectively, and participate in the activities of employee organizations, or to refrain from such activities. The statutory schemes protect public employees, employee organizations and employers alike from unfair practices, with PERB providing the impartial forum for the settlement and resolution of their disputes.

Statistical highlights during the 2017-2018 fiscal year include:

- 690 unfair practice charges filed
- 110 representation petitions filed
- 152 mediation requests filed pursuant to the Educational Employment Relations Act (EERA), Higher Education Employer-Employee Relations Act (HEERA), and Ralph C. Dills Act
- 33 EERA/HEERA factfinding requests approved
- 37 Meyers-Milias-Brown Act factfinding requests approved
- 190 unfair practice charges withdrawn/settled prior to formal hearing
- 228 days of informal settlement conferences conducted by regional attorneys
- 72 formal hearings completed by administrative law judges
- 69 proposed decisions issued by administrative law judges
- 485 cases filed with State Mediation and Conciliation Service
- 61 decisions issued and 25 injunctive relief requests decided by the Board

This fiscal year brought changes to the composition of the Board. On February 27, 2018 Governor Brown appointed Erich W. Shiners and Arthur A. Krantz to the vacant positions on the Board. On that same day, the Governor reappointed Priscilla S. Winslow. Chair Mark Gregersen resigned from the Board on June 14, 2018 to pursue other opportunities. The remaining members of the Board are carrying out the responsibilities of the Chair until this vacancy is filled.

We relocated our Los Angeles Regional Office to a new building in Glendale, California. The move was necessary to be fully compliant with the Americans with Disabilities Act. Our new

October 15, 2018

Page Two

office is less than a mile from the prior location and has expanded hearing rooms and meeting space to accommodate the needs of PERB's busiest regional office.

Over the course of its existence, the Board has acquired jurisdiction over two million public sector workers and their associated caseloads. Over the years resources to hire the necessary staff have not kept pace with this growth and have resulted, in part, in a backlog in processing cases. In April 2017, under the leadership of Chair Gregersen, the Board approved a Case Processing Efficiency Initiative to generate ideas on improving and streamlining the processing of cases. We engaged constituents and our staff in our Los Angeles, San Francisco and Sacramento regional offices to discuss what changes the Board could consider to more efficiently process our workload. Preliminary results of these meetings were tabulated and presented for public comments in March 2018. On June 14, 2018, the Board met in open session to consider the final recommended report and vote on changes to enact. Implementation has begun on low or no-cost items with others to be implemented as resources become available. It is important to note that this initiative was established to supplement, not supplant, PERB's ongoing need for resources to effectively meet our statutory and regulatory obligations. We have also started the process to replace our outdated case tracking system with a more efficient platform that will provide a web-based portal for constituents to improve access to information.

We are pleased that the 2018-2019 budget signed by Governor Brown included an additional \$1.4 million in ongoing funding for an Executive Director and additional attorneys at the Board itself, the Division of Administrative Law, and the Office of the General Counsel. We are in the process of hiring for these positions to decrease the backlog and bring a more timely resolution to disputes at all levels of the agency. Currently, we are undergoing a voluntary mission-based review by the Department of Finance and look forward to the information we will receive.

We invite you to explore the Report for more detailed information about PERB's 2017 -2018 activities and case dispositions. Also enclosed is a summary of all Board decisions describing the myriad issues the Board addressed in the last fiscal year.

We hope you find this Report informative. Please visit our website at www.perb.ca.gov or contact PERB at (916) 323-8000 for any further information.

Respectfully submitted,

Eric R. Banks
Member

Priscilla S. Winslow
Member

Erich W. Shiners
Member

Arthur A. Krantz
Member

OVERVIEW

STATUTORY AUTHORITY AND JURISDICTION

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board administers eight collective bargaining statutes, ensures their consistent implementation and application, and adjudicates labor relations disputes between the parties. PERB administers the following statutes under its jurisdiction:

- (1) Educational Employment Relations Act (EERA) (Government Code § 3540 et seq.)—California’s public schools (K-12) and community colleges;
- (2) State Employer-Employee Relations Act (Dills Act) (Government Code § 3512 et seq.)—State employees;
- (3) Higher Education Employer-Employee Relations Act (HEERA) (Government Code § 3560 et seq.)—California State University and University of California systems and Hastings College of Law;
- (4) Meyers-Milias-Brown Act (MMBA) (Government Code § 3500 et seq.)—California’s city, county, and local special district employers and employees (excludes specified peace officers, and the City and County of Los Angeles);
- (5) Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Public Utilities Code § 99560 et seq.)—supervisory employees of the Los Angeles County Metropolitan Transportation Authority;
- (6) Trial Court Employment Protection and Governance Act (Trial Court Act) (Government Code § 71600 et seq.)—nonjudicial employees of California’s trial courts;
- (7) Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Government Code § 71800 et seq.)—court interpreters employed by California’s trial courts; and
- (8) Judicial Council Employer-Employee Relations Act (JCEERA) (Gov. Code, § 3524.50 et seq.)—nonjudicial employees of the Judicial Council.

In addition, the Board administers the Public Employee Communications Chapter (PECC) (Government Code § 3555 et seq.)—a law designed to provide effective and meaningful ways for exclusive representatives to communicate with their bargaining unit members.

The history of PERB’s statutory authority and jurisdiction is in the Appendices, beginning on page 26.

PURPOSE AND FUNCTIONS

THE BOARD

By statute, the Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to a term of up to five years, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the eight statutory schemes, the Board acts as an appellate body to decide challenges to decisions issued by Board agents. Decisions of the Board itself may be appealed, under certain circumstances, to the State appellate and superior courts. The Board, through its actions and those of its agents, is empowered to:

- Conduct elections to determine whether employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Remedy unfair practices, whether committed by employers or employee organizations;
- Investigate impasse requests that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register 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 statutory schemes;
- Bring legal actions 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; and
- Take such other action as the Board deems necessary to effectuate the purposes of the statutory schemes it administers.

A summary of the Board's Fiscal Year 2017-2018 decisions is provided in the Appendices, beginning on page 54.

Leadership within PERB is provided by the Board and key staff, including legal advisors and administrators. Biographies for the five Board members who served in Fiscal Year 2017-18 are included below. Biographies for legal advisors and administrators begin on page 28 of the Appendices, followed by an organization chart.

- **Mark C. Gregersen** was appointed to the Board by Governor Edmund G. Brown on February 6, 2015 and was subsequently appointed Chair in March 2017. Mr. Gregersen's career in public sector labor relations spans over 35 years. Prior to his appointment, Mr. Gregersen was a principal consultant at Renne Sloan Holtzman Sakai LLP. He has also served as director of labor and work force strategy for the City of Sacramento and director of human resources for a number of California cities and counties. He has held similar positions for local government in the states of Nevada and Wisconsin. Mr. Gregersen has also served as an assistant county manager for the County of Washoe in Nevada.

Mr. Gregersen received a Bachelor's degree in business administration from the University of Wisconsin-Madison, and received a Master of Business Administration degree from the University of Wisconsin-Oshkosh.

He resigned from the Board June 2018.

- **Eric R. Banks** was appointed to the Board by Governor Edmund G. Brown Jr. in February 2013, February 2015, and February 2017. Prior to his appointment, Mr. Banks worked at Ten Page Memo, LLC as a partner providing organizational consulting services. He served in multiple positions at the Service Employees International Union, Local 221 from 2001 to 2013, including President, Advisor to the President, Chief of Staff, and Director of Government and Community Relations, representing public employees in San Diego and Imperial Counties. Prior to his work at Local 221, Mr. Banks was Policy Associate for State Government Affairs at the New York AIDS Coalition, in Albany, New York, from 2000 to 2001. He worked in multiple positions at the Southern Tier AIDS Program, in Upstate New York from 1993 to 2000, including Director of Client Services, Assistant Director of Client Services, and Case Manager. Mr. Banks received his Bachelor's degree in 1993 from Binghamton University. Mr. Banks' term expires December 2021.
- **Priscilla S. Winslow** was appointed to the Board by Governor Edmund G. Brown Jr. on February 1, 2013. She previously served as Legal Advisor to Board Member A. Eugene Huguenin beginning July 2012.

Prior to coming to PERB, Ms. Winslow was the Assistant Chief Counsel of the California Teachers Association where she worked from 1996 to 2012, representing and advising local chapters and CTA on a variety of labor and education law matters.

Prior to her employment at CTA, Ms. Winslow maintained a private law practice in Oakland and San Jose representing individuals and public sector unions in employment and labor law matters. In addition to practicing law, Ms. Winslow taught constitutional law at New College of California, School of Law as an adjunct professor from 1984 to 1993.

From 1979 to 1983 Ms. Winslow served as Legal Advisor to PERB Chairman Harry Gluck.

Ms. Winslow is a member of the Labor & Employment Law Section of the State Bar of California and served as Chair of that section in 2000-2001. She is also a member of the American Constitution Society. She received a Bachelor of Arts degree in History and Philosophy from the University of California, Santa Cruz, and a Juris Doctor degree from the University of California, Davis. Ms. Winslow's term expires December 2018.

- **Erich W. Shiners** was appointed to the Board by Governor Edmund G. Brown Jr. on February 27, 2018. Prior to his appointment, Mr. Shiners represented and advised public agency and non-profit employers in labor and employment matters, including many cases before PERB. Most recently he was Senior Counsel at Liebert Cassidy Whitmore, and before that he was a partner at Renne Sloan Holtzman Sakai. Mr. Shiners served as Legal Advisor to PERB Chair Alice Dowdin Calvillo from 2008 to 2011. During law school he held internships at the National Labor Relations Board in Washington D.C. and the Agricultural Labor Relations Board in Sacramento, and served as a judicial extern for Justice M. Kathleen Butz of the California Court of Appeal, Third District.

Mr. Shiners is a member of the Executive Committee of the Labor and Employment Law Section of the California Lawyers Association, and, with fellow Board member Arthur Krantz, a co-editor-in-chief of the Section's publication, California Public Sector Labor Relations. He holds a Bachelor of Arts degree in History from Sacramento State University, and a Juris Doctor degree from University of the Pacific, McGeorge School of Law. Mr. Shiners' term expires December 2022.

- **Arthur A. Krantz** was appointed to the Board by Governor Edmund G. Brown Jr. on February 27, 2018. For more than 20 years prior to his appointment, Mr. Krantz represented unions, employees and nonprofits in litigation, arbitration and administrative cases, and he worked on law reform, organizing, negotiation, and strategic campaigns to effect social change. Mr. Krantz did this work as an associate and partner at Leonard Carder, LLP.

Mr. Krantz is a pro bono asylum attorney and an Executive Committee Member of the Labor & Employment Law Section of the California Lawyers Association (formerly the State Bar of California). He is a frequent presenter at conferences and has contributed to numerous publications. Mr. Krantz has mentored many public interest attorneys and stakeholders in labor-management relations. He also has served as a lecturer and practitioner-adviser at UC Berkeley School of Law.

Mr. Krantz received his B.A. from Yale University and his J.D. from NYU School of Law, where he was a Root Tilden Public Interest Scholar. As a student, Mr. Krantz worked in his college dining hall and was a shop steward for UNITE HERE Local 35, as well as a member of the union's contract negotiating committee. After law school, Mr. Krantz served as a judicial law clerk for the Honorable Ellen Bree Burns at the United States District Court, District of Connecticut. Mr. Krantz's term expires December 2020.

MAJOR FUNCTIONS

The major functions of PERB include: (1) the investigation and adjudication of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) adjudication of appeals of Board agent determinations to the Board itself; (4) the legal functions performed by the Office of the General Counsel; and (5) the mediation services provided to the public and some private constituents by the State Mediation and Conciliation Service (SMCS).

UNFAIR PRACTICE CHARGES

The investigation and resolution of unfair practice charges (UPC) is the major function performed by PERB's Office of the General Counsel. UPCs may be filed with PERB by an employer, employee organization, or employee. Members of the public may also file a charge, but only concerning alleged violations of public notice requirements under the Dills Act, EERA, HEERA, and TEERA. UPCs can be filed online, as well as by mail, facsimile, or personal delivery.

A UPC alleges an employer or employee organization engaged in conduct that is unlawful under one of the statutory schemes 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; and 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 a UPC against the union; and failing to represent bargaining unit members fairly in their employment relationship with the employer.

A UPC filed with PERB is reviewed by a Board agent to determine whether a prima facie violation of an applicable statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to establish that a violation of the Dills Act, EERA, HEERA, MMBA, TEERA, Trial Court Act, Court Interpreter Act, JCEERA or the PECC has occurred. If the charge fails to state a prima facie case, the Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw the charge. If the charge is not amended or withdrawn, the Board agent must dismiss it. The charging party may appeal the dismissal to the Board itself. Under regulations adopted effective July 1, 2013, the Board can designate whether or not its decision in these cases will be precedential or non-precedential.

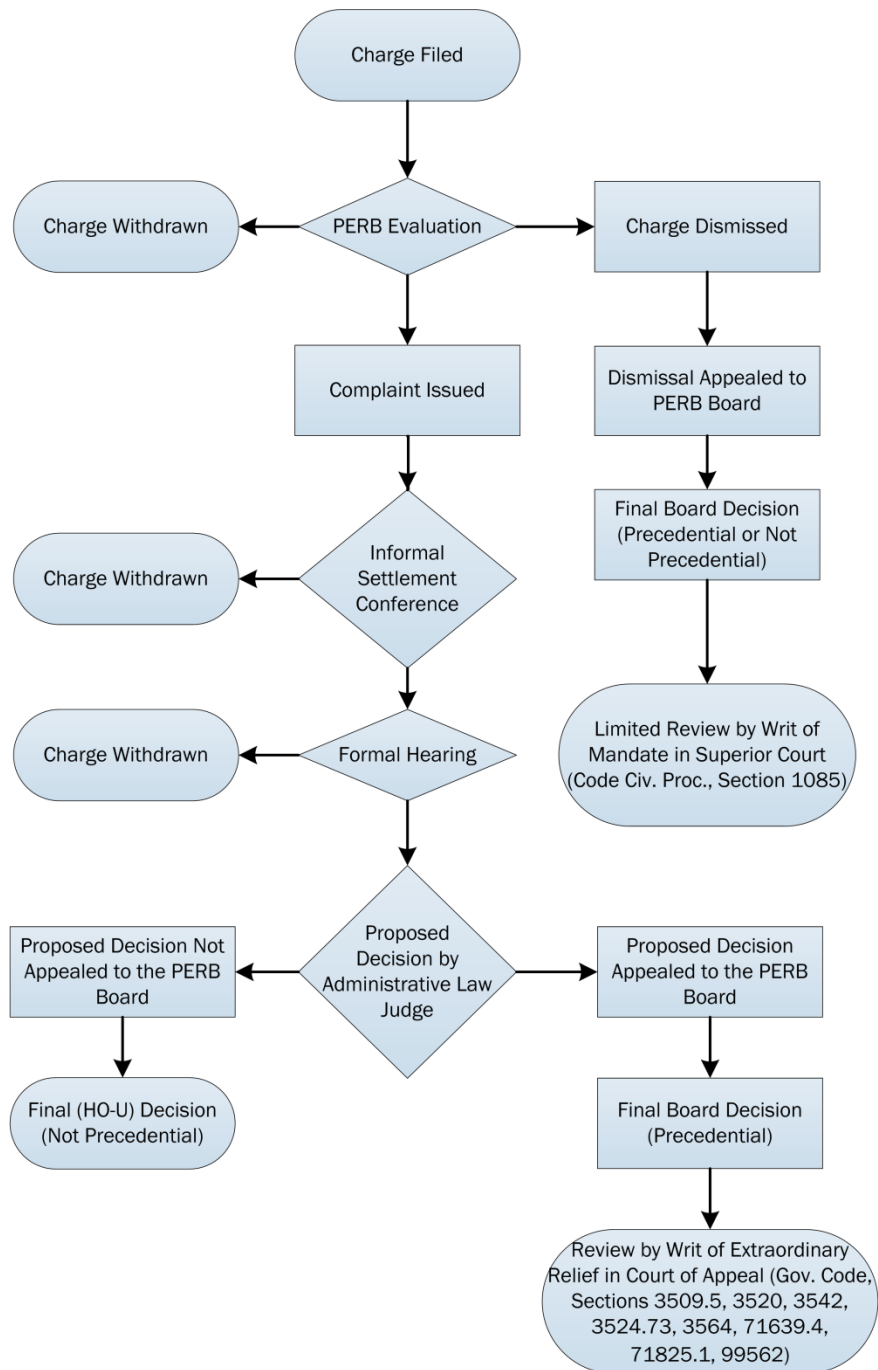
If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent may file an answer to the complaint.

Once a complaint is issued, usually another Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 60 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB Administrative Law Judge (ALJ) is scheduled. A hearing generally occurs within 90 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party may appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse, or remand the proposed decision.

Proposed decisions that are not appealed to the Board are binding upon the parties to the case, but may not be cited as precedent in other cases before the Board. Final decisions of the Board are both binding on the parties to a particular case and precedential, except as otherwise designated by a majority of the Board members issuing dismissal decisions pursuant to PERB Regulation 32320, subdivision (d). Text and headnotes for all but non-precedential Board decisions are available on our website (www.perb.ca.gov) or by contacting PERB. On the website, interested parties can also sign-up for electronic notification of new Board decisions.

The following provides a graphic overview of the UPC process.

UNFAIR PRACTICE CHARGE PROCESS



REPRESENTATION

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications that have an internal and occupational community of interest. In most situations, if only one petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If two or more employee organizations are competing for representational rights of an appropriate 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 may hold an informal 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 in some cases a hearing, and issues an administrative determination or a proposed decision. That determination or decision sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit-determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB may conduct a representation election, unless the applicable statute and the facts of the case require the employer to grant recognition to an employee organization as the exclusive representative. 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.

PERB staff also assists parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA, HEERA, and the MMBA. If the parties are unable to reach an agreement during negotiations under EERA, HEERA, or the Dills Act, either party may declare an impasse and request the appointment of a mediator. A Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined that impasse exists, a SMCS mediator assists the parties in reaching an agreement. If settlement is not reached during mediation under EERA or HEERA, either party may request the initiation of statutory factfinding procedures. PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

If the parties reach impasse during negotiations under the MMBA, and a settlement is not achieved through impasse dispute resolution procedures authorized by applicable local rules, only the employee organization may request the initiation of statutory factfinding procedures under the MMBA. If factfinding is requested, PERB appoints the factfinding chairperson who, with representatives of the employer and the employee organization, makes findings of fact and advisory recommendations to the parties concerning settlement terms.

APPEALS OFFICE

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. The office maintains case files, issues decisions rendered, and assists in the preparation of administrative records for litigation filed in California's appellate courts. The Appeals Office is the main contact with parties and their representatives while cases are pending before the Board itself.

OFFICE OF THE GENERAL COUNSEL

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 the State appellate courts, as well as overseeing the preparation of the administrative record for litigation filed in California's appellate courts;
- seeking enforcement when a party refuses to comply with a final Board decision, order, or ruling, or to 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 superior court complaints seeking to enjoin PERB hearings or elections; and
- defending the jurisdiction of the Board, submitting motions, pleadings, and amicus curiae briefs, and appearing in cases in which the Board has a special interest.

STATE MEDIATION AND CONCILIATION SERVICE

SMCS was created in 1947, and mediates under the provisions of all of the California public and quasi-public sector employment statutes, as well as the National Labor Relations Act. While SMCS has the ability to mediate in the private sector, it now only does so under certain exceptional circumstances, including statutory provisions at the state or local level, collective bargaining and local rules' language, and representation processes not performed by the Federal Mediation and Conciliation Service (FMCS).

SMCS and the FMCS have informally agreed to divide the work between the public and private sectors for more than two decades, as the work has become more complex, requiring specialization, and resources in both agencies have been an issue.

The mediation and representation services provided by the SMCS division of the Public Employment Relations Board (PERB) are not to be confused by those provided by PERB's Office of the General Counsel (OGC). SMCS' work is performed strictly on the basis of mutual consent, except as required by statute, such as the Public Utilities Code, and is confidential. Mediation is non-adjudicatory, with emphases on compromise and collaboration toward settlement. SMCS welcomes opportunities to speak with labor and management organizations and communities to provide information about the benefits of harmony in labor/management relationships through the effective use of mediation in their disputes.

The core functions of SMCS involve work that is performed at no charge to the parties, including:

- Mediation to end strikes and other severe job actions;
- Mediation of initial and successor collective bargaining agreement disputes;
- Mediation of grievances arising from alleged violations of collective bargaining agreements and other local rules;
- Mediation of discipline appeals;
- Supervision of elections for representation, whether for bargaining units that are unrepresented, or for the decertification/certification of labor organizations, and others; and
- Providing general education and information about the value of mediation in dispute resolution.

Chargeable services are also available. These include:

- Training and facilitation in interest-based bargaining, implementing effective joint labor-management committees, and resolving conflict in the workplace; and
- Assistance with internal union/employee organization elections or processes, or similar activities for labor or management that are not joint endeavors.

SMCS also administers a panel of independent arbitrators who are screened for qualifications and experience before being accepted to the panel. Lists of arbitrators can be provided for a fee, with no restrictions on whether or not the dispute is in the public or private sectors.

ADMINISTRATIVE ACTIVITIES

The Division of Administration provides services to support PERB operations and its employees. This includes strategic policy development, administration, and communication with the State's control agencies to ensure operations are compliant with State and Federal requirements. A full range of services are provided for both annual planning/reporting cycles and ongoing operations in fiscal, human resources, technology, facility, procurement, audits, security, and business services areas.

OTHER FUNCTIONS

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. Additionally, PERB continuously reviews proposed legislation and promulgates regulations to effectively adapt to changing statutory and environmental impacts. Information requests from the Legislature and the general public are also received and processed.

LEGISLATION AND RULEMAKING

LEGISLATION

In the 2017-2018 fiscal year, the Legislature enacted two bills that affect PERB.

On October 15, 2017, Governor Brown signed Assembly Bill 83 (AB 83) (Chapter 835, Statutes of 2017), which establishes the Judicial Council Employer-Employee Relations Act (JCEERA). JCEERA allows specified employees of the Judicial Council to form unions and collectively bargain with their employer. The Legislature's enactment of JCEERA increases to eight the number of labor relations statutes under PERB's jurisdiction.

On June 27, 2018, Governor Brown signed Senate Bill 866 (SB 866) (Chapter 53, Statutes of 2018), which enacted the following changes:

- Extends to job applicants the prohibition on public employers from deterring or discouraging union membership.
- Extends the prohibition of discouraging union membership to non-MMBA public transit agencies (i.e., to transit districts under the Public Utilities Code).
- Requires that public employers meet and confer with unions before sending a "mass communication" to public employees or applicants that concerns "public employees' rights to join or support an employee organization, or to refrain from joining or supporting an employee organization..."
- Requires that the date, time, and location of new employee orientations be kept confidential.
- Sets forth uniform procedures for employees, unions, and public employers to terminate union dues deductions from employee paychecks.

RULEMAKING

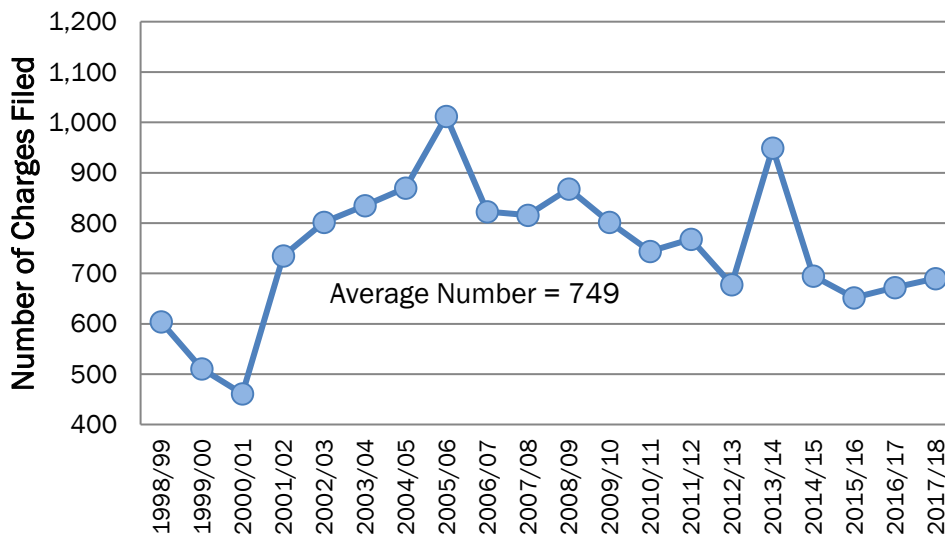
In response to the Legislature's repeal of the In Home Support Service Employer-Employee Relations Act (IHSSEERA), PERB repealed the regulations it had promulgated to administer IHSSEERA, and amended others to remove all references to the Act.

CASE DISPOSITIONS

UNFAIR PRACTICE CHARGE FILING

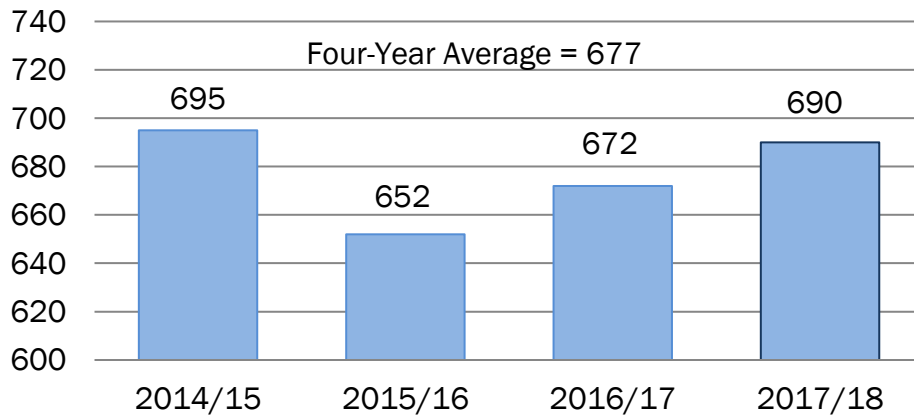
The number of unfair practice charges (UPC) filed with PERB has remained high as a result of various statutory expansions to PERB's jurisdiction over the last two decades. In Fiscal Year 2017-2018, 690 new charges were filed with PERB. UPC filings over the past 20 years are shown below, which includes the following adjustments: in Fiscal Year 2001-02, 935 UPC filing were reduced by 200 due to a similar set of filings; and, in Fiscal Year 2004-05, 1,126 filings were reduced by 256 due to similar charges filed by one group of employees. The spike in Fiscal Year 2013-14 was due to 173 filings by the same individual on behalf of himself and/or other employees.

Unfair Practice Charge Filings
Past 20 Fiscal Years



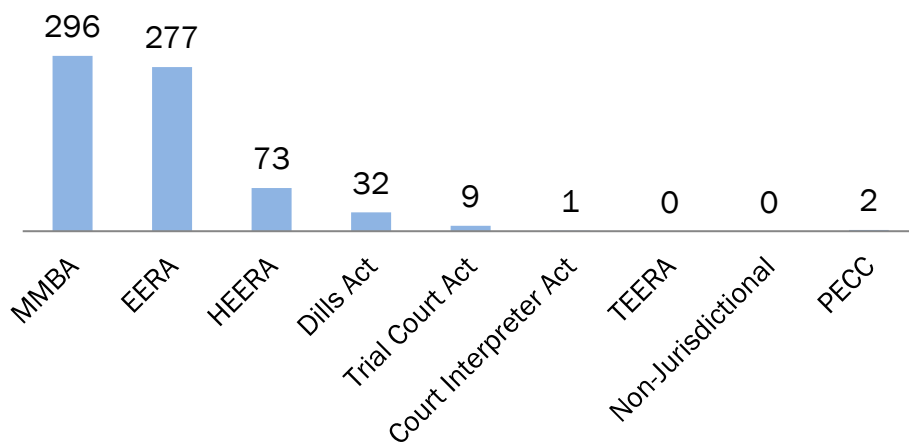
The following graph focuses on UPC filings for the past four years, which averaged 677 annually. This represents a drop of 72 from the 20-year annual average of 749.

Unfair Practice Charge Filings Past 4 Fiscal Years



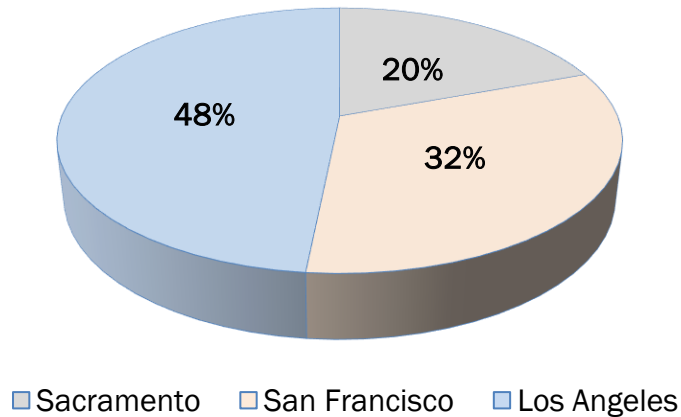
Of the 690 UPC filings in FY 2017-18, wide variation existed in the numbers filed under the various statutory acts and violations of the PECC.

Unfair Practice Charges by Statutory Authority Fiscal Year 2017-18



Regionally, of the 690 UPC filings for Fiscal Year 2017-18, the Los Angeles regional office accounted for almost half (334), the San Francisco regional office for nearly a third (222) and the Sacramento regional office for about one out of five (134).

Unfair Practice Charge Filings by Region Fiscal Year 2017-18



Additional UPC statistics are provided on page 32 of the Appendices.

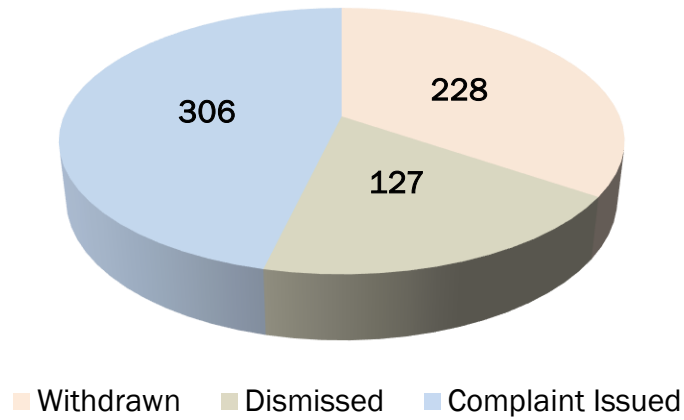
DISPUTE RESOLUTIONS AND SETTLEMENTS

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process—the investigation. During this step of the process in Fiscal Year 2017-2018, 228 cases (about 34 percent of 661 completed charge investigations) were withdrawn, many through informal resolution by the parties. PERB staff also conducted 228 days of settlement conferences for cases in which a complaint was issued.

PERB’s success rate in mediating voluntary settlements is attributable, in part, to the tremendous skill and efforts of its Regional Attorneys. It also requires commitment by the parties involved to look for solutions to problems. As the efforts of PERB staff demonstrate, voluntary settlements are the most efficient and timely way of resolving disputes, as well as an opportunity for the parties to improve their collective bargaining relationships. PERB looks forward to continuing this commitment to voluntary dispute resolution.

Overall, of the 661 charge dispositions in Fiscal Year 2017-18, 306 (46 percent) had complaints issued, 228 had charges withdrawn and 127 were dismissed.

Charge Dispositions Fiscal Year 2017-18



The following table provides regional detail for the 661 UPC dispositions. Half of the dispositions were from Los Angeles, 29 percent from San Francisco and 21 percent from Sacramento.

Dispositions of UPC Filings by Region				
Fiscal Year 2017-18	Withdrawn	Dismissed	Complaint Issued	Total
Sacramento	45	25	68	138
San Francisco	73	33	87	193
Los Angeles	110	69	151	330
TOTAL	228	127	306	661

ADMINISTRATIVE ADJUDICATION

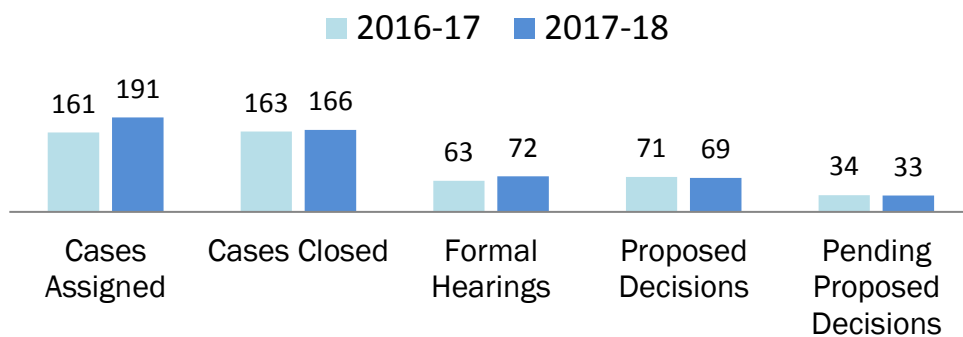
Complaints that are not resolved through mediation are sent to the Division of Administrative Law (Division) for an evidentiary hearing (formal hearing) before an Administrative Law Judge (ALJ).

In Fiscal Year 2017-2018, the Division had eight ALJs conducting formal hearings and writing proposed decisions. The ALJs' production of proposed decisions issued in Fiscal Year 2017-2018 (69 proposed decisions) was slightly down from Fiscal Year 2016-2017 (71 proposed decisions). The average time it took to issue a proposed decision in Fiscal Year 2017-2018 was 133 days.

The number of formal hearings completed for Fiscal Year 2017-2018 (72 completed hearings) increased from Fiscal Year 2016-2017 (63 completed hearings). The Division's highest number of formal hearings completed was in Fiscal Year 2013-2014 (89 completed hearings). In Fiscal Year 2017-2018, the division ended with 33 pending proposed decisions to write. In Fiscal Year 2016-2017, the division ended with 34 pending proposed decisions to write.

The total number of cases assigned in Fiscal Year 2017-2018 was 191 cases, while the ALJs closed 166 cases. During Fiscal Year 2016-2017, the total number of cases assigned was 161 cases, while the ALJs closed a total of 163 cases. The increase in the number of hearing assignments can be attributed to the Office of General Counsel being able to fill its vacant attorney positions during Fiscal Year 2017-2018.

Administrative Adjudication Activity



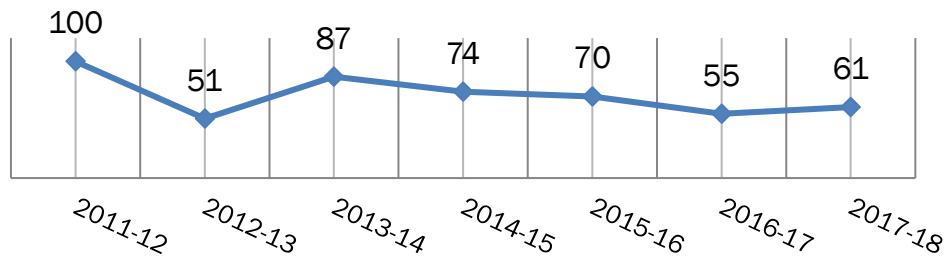
Over the last prior four fiscal years, the regional distribution of the caseload has been focused primarily in the PERB Los Angeles regional office, which comprised approximately 50 percent of all PERB unfair practice formal hearings. However, in Fiscal Year 2017-2018, the Sacramento Office's hearing activity increased in its percentage of hearing activity from the prior immediate fiscal year (23 percent) to approximately 34 percent.

BOARD DECISIONS

Proposed decisions issued by Board agents may be appealed to the Board itself. During Fiscal Year 2017-2018, the Board issued 61 decisions as compared to 55 during the 2016-2017 fiscal year and an average of 71 over the past seven years.

Board Decisions Issued

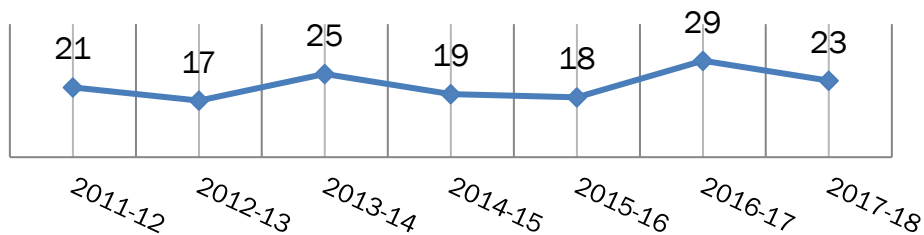
Fiscal Years 2011-12 to 2017-18



The Board also considered 25 requests for injunctive relief in Fiscal Year 2017-18, compared to 29 in Fiscal Year 2016-2017. Injunctive relief requests filed over the past seven fiscal years and investigated by the General Counsel are shown below and averaged 22 over the seven-year period.

Injunctive Relief Requests Filed

Fiscal Years 2011-12 to 2017-18

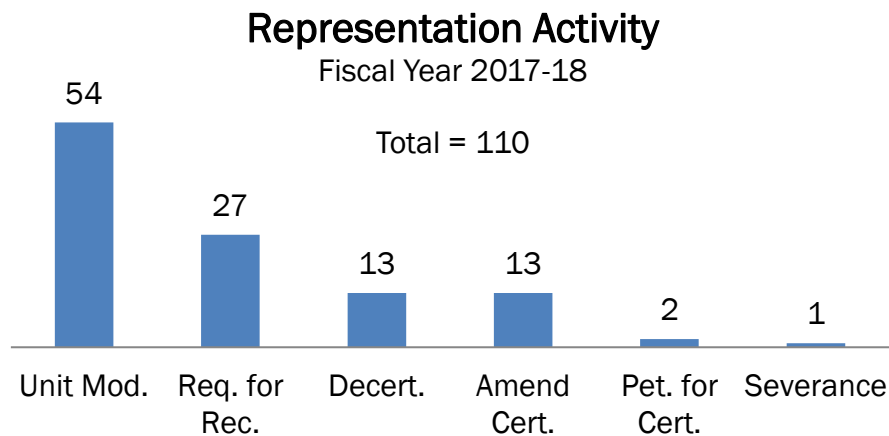


LITIGATION

PERB's litigation projects¹ decreased in Fiscal Year 2017-2018. Specifically, PERB attorneys completed 74 litigation-related assignments (compared to 103 litigation projects last fiscal year). In addition, the number of active litigation cases in Fiscal Year 2017-18 remained high. A total of 25 litigation cases, including new and continuing matters, were handled during the 2017-2018 fiscal year (compared to 36 last year, and 37 the year before). A summary of these cases is included in the Appendices, beginning on page 35.

REPRESENTATION ACTIVITY

For Fiscal Year 2017-2018, 110 new representation petitions were filed, compared to 120 in the prior fiscal year. As shown below, the Fiscal Year 2017-2018 total includes 54 unit modification petitions, 27 recognition petitions, 13 decertification petitions, 13 requests for amendment of certification, 2 petitions for certification, and 1 severance request.



¹ PERB's court litigation primarily involves: (1) injunctive relief requests to immediately stop unlawful actions at the superior court level; (2) defending decisions of the Board at the appellate level; and (3) defending the Board's jurisdiction in all courts, including the California and United States Supreme courts. Litigation consists of preparing legal memoranda, court motions, points and authorities, briefs, stipulations, judgments, orders, etc., as well as making court appearances.

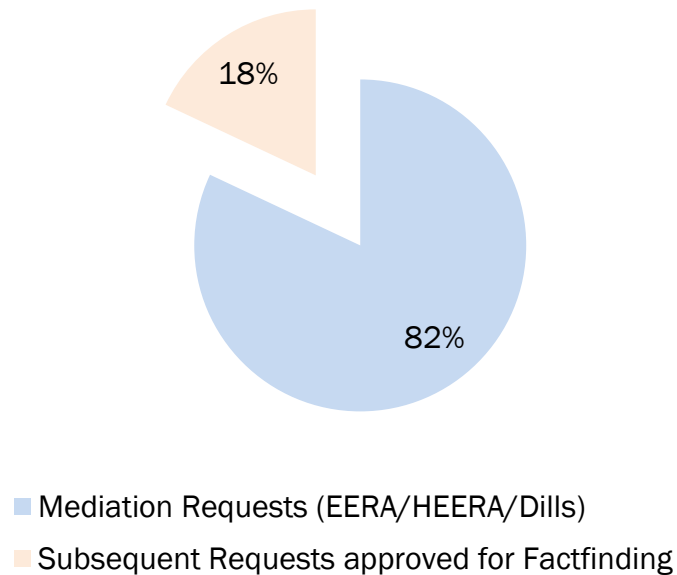
Election activity decreased slightly, with 6 elections conducted by PERB in Fiscal Year 2017-2018, compared to 9 elections in the prior fiscal year. Of the 6 elections conducted, 5 were for decertification elections and 1 for Fair Share Fee Rescission. More than 200 employees were eligible to participate in these elections, in bargaining units ranging in size from 16 to 51 employees.

Statistics on representation activity are provided on page 33 of the Appendices. Additional information on elections conducted during Fiscal Year 2017-18 is available on page 34 of the Appendices.

MEDIATION/FACTFINDING/ARBITRATION

During Fiscal Year 2017-2018, PERB received 152 mediation requests under EERA/HEERA/Dills. The number of mediation requests under EERA/HEERA decreased from the prior year (182 such requests were filed in Fiscal Year 2016-2017). Subsequently, 33 of those impasse cases (18 percent) were approved for factfinding.

**EERA/HEERA/Dills Act
Mediation and Factfinding
Fiscal Year 2017-18**



During this same period of time, 42 factfinding requests were filed under the MMBA. Of those requests, 37 were approved. The number of factfinding requests under the MMBA increased from the prior year (41 such requests were filed in Fiscal Year 2016-2017).

COMPLIANCE

PERB staff commenced compliance proceedings regarding 23 unfair practice cases, in which a final decision resulted in a finding of a violation of the applicable statute. This is a decrease in activity over the prior year (31 compliance proceedings were initiated in 2016-2017).

STATE MEDIATION AND CONCILIATION SERVICE DIVISION

SMCS had two vacant mediator positions for the full Fiscal Year 2017-2018. Additionally, one full-time staff converted to half-time, and one transferred-out at the end of May, effectively leaving 3.5 vacancies. The recruitment for Conciliators (mediators) was converted to be “open continuous” in an effort to improve the ability to conduct the examination more expeditiously. The office support position was upgraded on a limited-term basis from Office Technician to Staff Services Analyst, to upgrade the level of support being provided to the division, and aid in recruitment and retention. The fiscal year mediation caseload continued to be relatively low due to the strong economy, but did not transfer to workload improvements due to the vacancies.

SMCS received a total of 485 new cases between July 1, 2017 and June 30, 2018, and closed 626. The tables below provide information on those closed cases:

CONTRACT IMPASSES	
EERA/HEERA	113
MMBA	70
TRANSIT	4
STATE TRIAL COURTS	6
STATE OF CALIFORNIA	2
LOS ANGELES CITY/COUNTY	3

GRIEVANCES AND DISCIPLINARY APPEALS	
EERA/HEERA	184
MMBA	89
TRANSIT	1
STATE TRIAL COURTS	2
LOS ANGELES CITY/COUNTY	10
PRIVATE SECTOR (PUC, OTHER SMCS-SPECIFIED)	73

OTHER	
REPRESENTATION AND ELECTION CASES	34
WORKPLACE CONFLICT OR TRAINING/FACILITATION ASSIGNMENTS	26
MISCELLANEOUS CASES RELATED TO EDUCATION, OUTREACH, AND INTERNAL MEDIATION OR PROGRAM ADMINISTRATION PROJECTS.	9

SMCS also processed 339 requests for lists of arbitrators from its panel of independent arbitrators.

APPENDICES

HISTORY OF PERB'S STATUTORY AUTHORITY AND JURISDICTION

Authored by State Senator Albert S. Rodda, EERA of 1976 establishes 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) establishes collective bargaining for State employees; and HEERA, authored by Assemblyman Howard Berman, extends the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the MMBA of 1968, which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes specified peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include TEERA, establishing collective bargaining for supervisory employees of the Los Angeles County Metropolitan Transportation Authority.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Act of 2000 and the Court Interpreter Act of 2002.

PERB's jurisdiction and responsibilities were changed in late June 2012 by the passage of Senate Bill 1036, which enacted the In-Home Supportive Service Employer-Employee Relations Act (IHSSEERA). The IHSSEERA was placed within the jurisdiction of PERB to administer and enforce, with respect to both unfair practices and representation matters. The IHSSEERA initially covered only eight counties: Alameda, Los Angeles, Orange, Riverside, San Bernardino, Santa Clara, San Diego, and San Mateo. On July 1, 2015, the County of San Bernardino, the County of Riverside, the County of San Diego, and the County of Los Angeles transitioned to the Statewide Authority under the IHSSEERA. The transition brought Los Angeles County under PERB's jurisdiction for the first time, while the other three counties were formerly subject to PERB's jurisdiction under the MMBA. On June 27, 2017, however, Senate Bill 90 repealed the IHSSEERA, returning the IHSS providers to the MMBA that were previously covered by the IHSSEERA.

Effective July 1, 2012, Senate Bill 1038 repealed and recast existing provisions of law establishing the State Mediation and Conciliation Service (SMCS) within the Department of Industrial Relations. The legislation placed SMCS within PERB, and vested PERB with all of the powers, duties, purposes, responsibilities, and jurisdiction vested in the Department of Industrial Relations, and exercised or carried out through SMCS.

Governor's Reorganization Plan 2, submitted to the Legislature on May 3, 2012, stated that PERB would be placed under the California Labor and Workforce Development Agency. Pursuant to Government Code section 12080.5, the change became effective on July 3, 2012.

On June 27, 2017, the passage of Assembly Bill 119 enacted the Public Employee Communication Chapter (PECC), a law designed to provide meaningful and effective communication between public employees and their exclusive representatives. The Legislature placed enforcement of the PECC under the Board's exclusive jurisdiction.

Effective January 1, 2018, pursuant to Assembly Bill 83 (Stats. 2017, Ch. 835), the Judicial Council Employer-Employee Relations Act (JCEERA) established collective bargaining for employees of the Judicial Council. This new labor relations act added approximately 500 employees to PERB's jurisdiction.

In fiscal year 2017-18, over two million² public sector employees and about 4782, public employers fell under the jurisdiction of the collective bargaining statutory schemes administered by PERB. The approximate number of employees under these statutes is as follows: 820,000 work for California's public education system from pre-kindergarten through and including the community college level; 248,000 work for the State of California; 415,000 work for the University of California, California State University, and Hastings College of Law; and 1,200,000 work for California's cities, counties, special districts, and In-Home Support Service agencies, with the remainder working in the trial courts, Judicial Council, and the Los Angeles County Metropolitan Transportation Authority.

² Source: Office of the State Controller.

KEY STAFF

LEGAL ADVISORS

- **Scott Miller** was appointed as Legal Advisor to Board Member Eric R. Banks in May 2013. Mr. Miller is a 2007 graduate of the University of California, Los Angeles School of Law's Public Interest Law and Policy Program and, from 2008-2013, practiced labor and employment law as an associate attorney at Gilbert & Sackman. He holds a Bachelor of Arts in English literature and a Masters in history from Kansas State University.
- **Katharine M. Nyman** was appointed as Legal Advisor to Member Mark C. Gregersen in June 2015. Previously, Ms. Nyman served as Regional Attorney in the Office of the General Counsel at PERB, where she worked from 2007 to 2015. Ms. Nyman received her Juris Doctor from the University of the Pacific (UOP), McGeorge School of Law, and received a Bachelor of Science degree in Environmental Design from the University of California, Davis.
- **Joseph Eckhart** was appointed as Legal Advisor to Member Priscilla S. Winslow in April 2017. Prior to his appointment, Mr. Eckhart had served as a Regional Attorney in PERB's Office of the General Counsel since 2012, where he was responsible for investigating unfair practice charges and representation matters, conducting settlement conferences, and defending the Board's decisions in court.

Mr. Eckhart received a Bachelor of Arts in Political Science from the University of California, San Diego and a Juris Doctor from the University of California, Hastings College of the Law, from which he graduated Order of the Coif. While in law school, Mr. Eckhart served as a Senior Production Editor on the Hastings Law Journal and externed for the Honorable Claudia Wilken of the United States District Court for the Northern District of California.

- **Erik M. Cuadros** was appointed as Legal Advisor to Board Member Erich W. Shiners in May 2018. Prior to his appointment, Mr. Cuadros practiced labor and employment law as an associate attorney at Liebert Cassidy Whitmore, where, from 2013 to 2018, he represented public sector and non-profit employers in litigation, arbitration, and negotiations. During law school, he held an internship at the UC Davis Civil Rights Clinic and served as a judicial extern for the Honorable Sheila K. Oberto of the United States District Court for the Eastern District of California. Mr. Cuadros holds a Bachelor of Arts in Political Science and Philosophy from California State University, Fresno, where he graduated Magna Cum Laude, and a Juris Doctor degree from University of California, Davis School of Law.

ADMINISTRATIVE LEADERSHIP

- **J. Felix De La Torre** was appointed General Counsel in February 2015. Prior to his appointment, Mr. De La Torre served as Chief Counsel for Service Employees International Union, Local 1000, where he worked from 2008 to 2015. From 2000 to 2008, Mr. De La Torre was a partner and shareholder at [Van Bourg], Weinberg, Roger and Rosenfeld, where he represented both public and private sector employees in a wide range of labor and employment matters, including federal and State court litigation, labor arbitrations, collective bargaining, union elections, unfair labor practices, and administrative hearings. Mr. De La Torre also served as a member of the Board of Directors for the AFL-CIO Lawyers Coordinating Committee and the Sacramento Center for Workers Rights. In addition, Mr. De La Torre was a Staff Attorney and Program Director at the California Rural Legal Assistance Foundation (CRLAF) and, before that, the State Policy Analyst for the Mexican American Legal Defense and Educational Fund (MALDEF). Mr. De La Torre is also an Instructor at the UC Davis Extension in the Labor Management Certificate Program. Mr. De La Torre is a 1999 graduate of UC Davis' King Hall School of Law.
- **Wendi L. Ross**, Deputy General Counsel [Acting General Counsel (May 2014 – February 2015); Interim General Counsel (December 2010 – April 2011)], joined PERB in April 2007 and has more than 29 years of experience practicing labor and employment law. Ms. Ross was previously employed by the State of California, Department of Human Resources as a Labor Relations Counsel. Prior to that position, she was employed as an Associate Attorney with the law firms of Pinnell & Kingsley and Thierman, Cook, Brown & Prager. Ms. Ross received her Bachelor of Arts degree in Political Science-Public Service from U.C. Davis and her law degree from UOP, McGeorge School of Law. She has served as the Chair of the Sacramento County Bar Association, Labor and Employment Law Section and previously taught an arbitration course through the U.C. Davis Extension.
- **Shawn P. Cloughesy** is the Chief Administrative Law Judge for PERB. He has over 20 years' experience as an Administrative Law Judge with two state agencies (PERB and the State Personnel Board) conducting hundreds of hearings involving public sector labor and employment matters. Prior to being employed as an administrative law judge, Mr. Cloughesy was a Supervising Attorney for the California Correctional Peace Officers Association, practicing and supervising attorneys who practiced before PERB and other agencies.
- **Loretta van der Pol** is the Chief of the State Mediation and Conciliation Service Division. She joined the agency in March 2010, after working for eight years as a Senior Employee Relations Manager for the Orange County Employees Association, an independent labor union. Prior to working for the union, Ms. van der Pol worked as an analyst, supervisor and mid-level manager for twenty years. Nearly half of those years were spent in the line organizations of electric and water utilities, and in facilities maintenance and operations. The amount of labor relations work involved in those positions lead to her full transition into human resources. She has several years of experience as chief negotiator in labor negotiations and advocacy on both sides of the

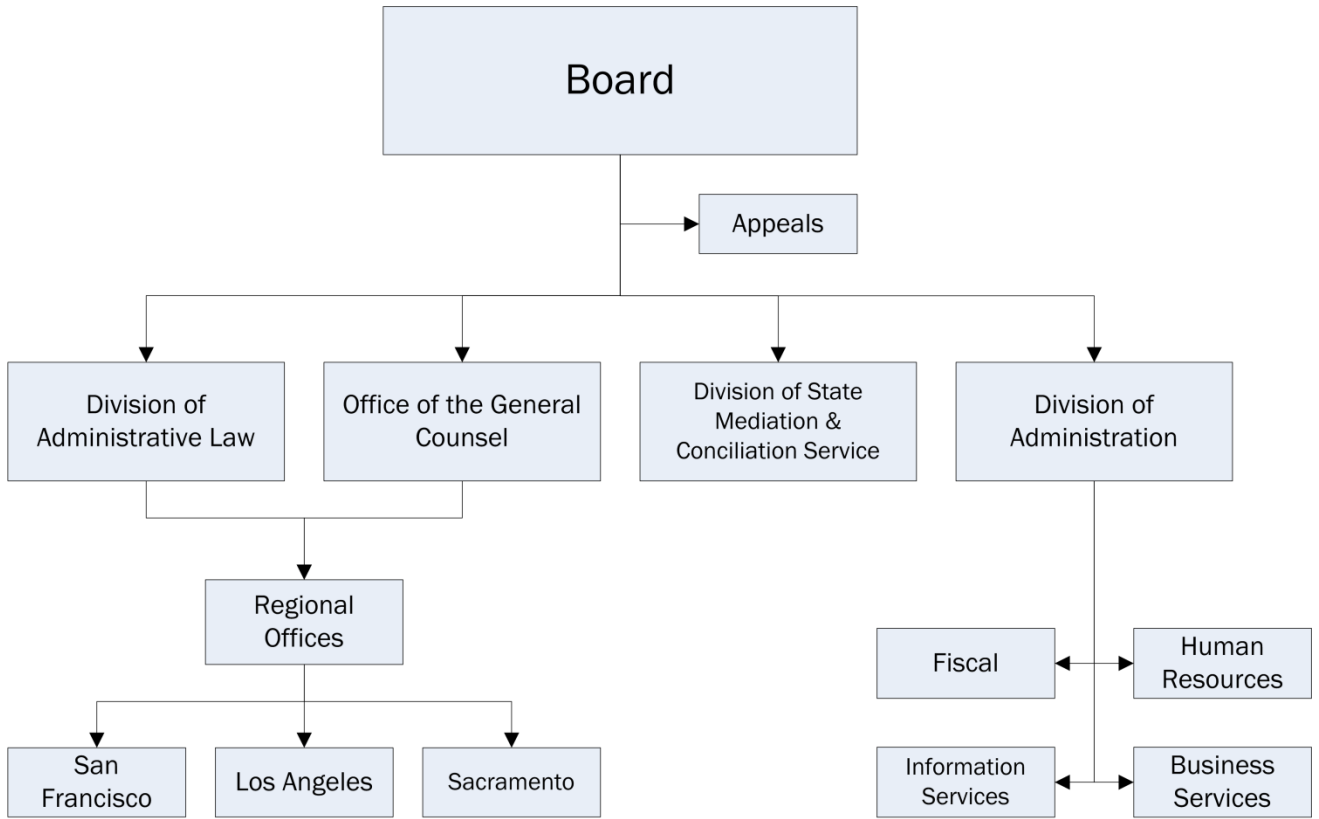
table. Most of her professional working life has also involved providing workplace training in conflict management, interest-based bargaining (including the “hybrid” version), employee performance management, the basics of collective bargaining and statutory compliance requirements. She also facilitates interest-based contract negotiations and workplace interpersonal conflict intervention. Ms. van der Pol earned her undergraduate degree in Social Sciences from Chapman University, hold certificates in Employment Law and Advanced Employment Law, and has completed coursework in the Master of Public Administration degree program at California State University, Fullerton.

- **Mary Ann Aguayo** joined PERB in January 2014 as its Chief Administrative Officer. Her primary responsibilities include providing leadership, under the direction of the Board itself, in areas of strategic planning, policy development and implementation, as well as communications with State’s control agencies to ensure the Board’s fiscal, technology, human resources, procurement, facilities, and security and safety programs remain compliant with current requirements.

Prior to assuming her current role, Ms. Aguayo spent over 20 years managing various administrative offices and programs within State agencies. Beginning her career at the State Personnel Board, she recently served as the Chief Administrative Officer for the Department of Water Resources’ State Water Project Operations. This position included oversight of administrative services for over 1,100 employees and several multi-million dollar contracts.

Ms. Aguayo holds a Bachelor of Arts degree in Business Administration with a concentration in Human Resources Management from California State University, Sacramento. She is a graduate of the University of California, Davis’ Executive Program, and in January 2014 obtained her certification as a Senior Professional in Human Resources.

PERB'S ORGANIZATION



July 2018

UNFAIR PRACTICE CHARGE (UPC) STATISTICS

FISCAL YEAR 2017-18

I. 2017-2018 by Region

Region	Total
Sacramento	134
San Francisco	222
Los Angeles	334
Total	690

II. 2017-2018 by Act

Act	Total
Dills Act	32
EERA	277
HEERA	73
MMBA	296
TEERA	0
Trial Court Act	9
Court Interpreter Act	1
PECC	2
Non-Jurisdictional	0
Total	690

III. Prior Year Workload Comparison: Charges Filed

	2014/2015	2015/2016	2016/2017	2017/2018	4-Year Average
Total	695	652	672	690	677

IV. Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	45	25	68	138
San Francisco	73	33	87	193
Los Angeles	110	69	151	330
Total	228	127	306	661

REPRESENTATION CASE ACTIVITY

FISCAL YEAR 2017-2018

I. Case Filings

Case Type	Filed
Request for Recognition	27
Severance	1
Petition for Certification	2
Decertification	13
Amended Certification	13
Unit Modification	54
Organizational Security	1
Arbitration	0
Mediation Requests (EERA/HEERA/Dills)	152
Factfinding Requests (EERA/HEERA)	33
Factfinding Requests (MMBA)	42
Factfinding Approved (MMBA)	37
Compliance	25
Totals	400

II. Prior Year Workload Comparison: Cases Filed

	2014-2015	2015-2016	2016-2017	2017-2018	4-Year Average
Fiscal Year	361	392	447	400	400

III. Elections Conducted

Amendment of Certification	0
Decertification	5
Fair Share Fee Reinstatement	0
Fair Share Fee/Agency Fee Rescission	1
Representation	0
Severance	0
Unit Modification	0
Total	6

ELECTIONS CONDUCTED

FISCAL YEAR 2017-18

CASE #	EMPLOYER	UNIT TYPE	WINNER	UNIT SIZE
DECERTIFICATION				
1	YUCAIPA VALLEY WATER	General	IBEW, Local 1436	42
2	LONG BEACH TRANSIT	General Supervisory	AFSCME	51
3	COMPTON USD	School Police Officers/Corporals	American Federation of Teachers	16
4	IMAGINE SCHOOLS AT IMPERIAL VALLEY	All Certificated Less Other Group	No Representation	35
5	PLANDADA ESD	School Police Officers	American Federation of Teachers	30
FAIR SHARE FEE RESCISSION				
1	CITY OF SAN PABLO			31
TOTAL = 6				

LITIGATION CASE ACTIVITY

FISCAL YEAR 2017-2018

1. *City of San Diego v. PERB; San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, Catherine A. Boling, T.J. Zane, Stephen B. Williams; and*

Catherine A. Boling, T.J. Zane, Stephen B. Williams v. PERB; City of San Diego, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, May 19, 2017, California Supreme Court Case No. S242034; California Court of Appeal, Fourth Appellate District, Division One, Case Nos. D069626/D069630; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M] Issues: (1) When a PERB final decision of is challenged in the Court of Appeal pursuant to MMBA section 3509.5, subdivision (b), are the Board's interpretation of the statutes it administers and its findings of fact subject to de novo review? (2) Is a public agency's duty to "meet and confer" under section 3505 of the MMBA limited only to those situations when its governing body proposes to take formal action affecting wages, hours, or other terms and conditions of employment pursuant to section 3504.5? On May 19, 2017, the Boling Group filed a Petition for Review to contest the Fourth Appellate District's denial of their request for attorneys' fees. On May 22, 2017, PERB and the Unions filed their Petitions for Review asking that the California Supreme Court to overturn the decision issued by the Fourth Appellate District. The Court assigned all three petitions the same case number. On June 8, 2017, PERB filed its Answer to the Boling Petition for Review. As to PERB's Petition for Review, the Boling Group filed their Answer on June 8, 2017, and the City filed its Answer on June 9, 2017. PERB and the RPI Unions filed their respective Replies to Boling and the City's Answers on June 16, 2017. As to the Boling Group's Petition for Review, the Boling Group filed their Reply to PERB's Answer on June 16, 2017. On July 26, 2017, the Court granted PERB's Petition for Review, as well as the Petition for Review filed by the Unions. PERB's Opening Brief was originally due on August 25, 2017. On July 31, 2017, however, PERB filed a request for an extension of time to file its Opening Brief by September 8, 2017. The Court granted PERB's EOT request. On August 1, 2017, PERB filed a Certificate of Interested Parties or Persons. On August 23, 2017, the Unions filed their Opening Brief. PERB filed its Opening Brief on September 7, 2017. On September 15, 2017, both the Boling Group and the City filed applications for extension of time to file their respective Answers. On September 21, 2017, the Court granted the applications, and the Answers are due on October 10, 2017. The Boling Group and the City, on September 15, 2017, also filed applications to file combined and oversized Answers. On October 11, 2017, the Boling Group and the City filed their respective Answer Briefs on the Merits. On October 30, 2017, PERB and the Unions filed their respective Reply Briefs on the Merits. On November 20, 2017, an amicus brief was received from Pacific Legal Foundation, Howard Jarvis Taxpayers Association, and National Tax Limitation Committee. On November 27, 2017, an amicus brief was received from the Orange

LITIGATION CASE ACTIVITY

FISCAL YEAR 2017-2018

County Attorneys Association. On November 28, 2017, the Supreme Court granted the application of Pacific Legal Foundation, Howard Jarvis Taxpayers Association and National Tax Limitation Committee and filed their Amicus Brief. On November 30, 2017, an amicus brief was received from SEIU, California State Council. On December 1, 2017, amicus briefs were received from: San Diego Police Officers Association; IBEW, Local 1245, IFPTE, Local 21, Operating Engineers, Local 3 and Marin Association of Public Employees; and International Association of Fire Fighters. On December 4, 2017, an amicus brief was received from San Diego Taxpayers Educational Foundation. On December 15, 2017, RPI Union filed a Joint Answer to the Amicus Brief filed by Pacific Legal Foundation, Howard Jarvis Taxpayers Association, and National Tax Limitation Committee in Support of City of San Diego. On December 29, 2017, amicus briefs were filed by the following: Orange County Attorneys Association; Service Employees International Union, California State Council; International Federation of Professional and Technical Employees Local 21, Operating Engineers Local Union No. 3, Marin Association of Public Employees, and International Brotherhood of Electrical Workers Local 1245; San Diego Police Officers Association; International Association of Fire Fighters; San Diego Taxpayers Educational Foundation; League of California Cities, California State Association of Counties, and International Municipal Lawyers Association. PERB filed its Combined Answer to the Amicus Briefs on January 25, 2018, and between December 2017 and January 2018, Amicus Answers were also filed by RPI Unions, City of San Diego and Boling Group. Oral argument was heard by the Supreme Court on May 29, 2018. On August 2, 2018, the Supreme Court reversed the Fourth Appellate District by holding that the City of San Diego had violated the MMBA by refusing to meet and confer with the City's exclusive representatives prior to supporting a 2012 citizens' initiative to abolish its employees' pension system. In the Opinion, the Court reaffirmed that California courts must give deference to PERB's interpretations of the labor relations statutes under the Board's jurisdiction, such as Government Code section 3505. Similarly, the Court reiterated that "findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as whole, shall be conclusive."

2. *CAL FIRE Local 2881 v. PERB; (State of California [State Personnel Board])*, July 19, 2016, California Court of Appeal, Third Appellate District, Case No. C082532; PERB Decision No. 2317a-S [PERB Case No. SA-CE-1896-S]. Issue: Whether the Sacramento Superior Court erred in denying CAL FIRE's [Second] Petition for Writ of Mandate. CAL FIRE argued before PERB that the SPB had a duty to bargain with the Union prior to revising its disciplinary regulations. The court denied CAL FIRE's writ and found that there is a reasonable basis on which PERB could find SPB does not have a duty to bargain with the Union - namely, if SPB was acting in its capacity as a "regulator" when it changed its disciplinary regulations; PERB's decision was not "clearly erroneous." Previously, CAL FIRE had filed its [First] Petition for Writ Mandate, and the court granted the petition and

LITIGATION CASE ACTIVITY

FISCAL YEAR 2017-2018

ordered PERB to set aside its decision and issue a new decision because PERB erred in finding no duty to bargain because, to violate the “meet and confer” requirement of section 3519 of the Dills Act, the “state” must be acting in its role as an “employer” or “appointing authority.” Local 2881 filed with the trial court a Notice of Appeal and Appellant’s Notice Designating Record on Appeal on July 19, 2016. The Third DCA lodged the Notice of Appeal on July 25, 2016. After all parties submitted mediation statements, the Third DCA issued a letter on August 22, 2016, stating the appeal was not selected for mediation, all proceedings in the appeal are to recommence as if the notice of appeal had been filed on August 22, 2016, all parties are directed to proceed with procurement of the record and then upon timely filing of the record, file briefs in compliance with the CRC. The Administrative Record was deemed filed on January 10, 2017. The Appellant’s Opening Brief was filed on April 21, 2017. PERB’s Respondent’s Brief was filed on May 18, 2017. CAL FIRE filed its Reply Brief on June 8, 2017. On August 24, 2017, the Court issued a letter inviting requests for oral argument. All parties requested oral argument, which occurred on December 12, 2017. On January 26, 2018, the Court affirmed the judgment in an unpublished opinion. On February 26, 2018, the Court of Appeal issued an order certifying its opinion for partial publication. This case is now closed.

3. *PERB v. Alliance College-Ready Public Charter Schools, et al. (United Teachers Los Angeles)*, October 23, 2015, Los Angeles Sup. Ct. Case No. BC 598881; IR Request No. 686 [PERB Case Nos. LA-CE-6025, LA-CE-6027, LA-CE-6061, LA-CE-6073]. Issue: At the ex parte hearing, the court held that a temporary restraining order (TRO) and Order to Show Cause (OSC) should issue and place certain limitations on Alliance’s conduct pending a decision on PERB’s Complaint for Injunctive Relief. The court also required that Alliance provide notice of the Order to its certificated employees. On October 23, 2015, PERB filed its Complaint for Injunctive Relief and supporting papers against Alliance College-Ready Public Charter Schools, and its individual schools. On October 27, 2015, PERB filed its ex parte papers and served Alliance. Alliance filed papers opposing PERB’s Ex Parte Application and UTLA’s Motion to Intervene. During oral argument, the court granted UTLA’s Request to Intervene over Alliance’s objection. The court then granted PERB’s Application for a TRO but on terms difficult from those in PERB’s Proposed Order. The court also set a hearing date on the Complaint (Nov. 17) and deadlines for Alliance’s Opposition (Nov. 9) and any Replies (Nov. 12). Following oral argument the court ruled verbally on each item and directed the parties to prepare a revised Proposed Order in accordance with the ruling. After counsel for the parties were unable to reach agreement on three provisions in the Proposed Order, they filed a joint Proposed Order with the court that contained alternative language provisions. The court edited and signed the Proposed Order granting the TRO and issuing an OSC on October 29, 2015. On November 6, Alliance filed a notice of demurrer and demurrer on behalf of its parent organizations (Alliance College-Ready Public Schools and Alliance College-Ready Public Schools Facilities Corporation) and the individual schools named in PERB’s injunction papers. In its

LITIGATION CASE ACTIVITY

FISCAL YEAR 2017-2018

demurrer, Alliance argued that PERB lacks jurisdiction because Alliance's parent organizations and the individual schools are subject to the NLRB's jurisdiction, not PERB's, and are also not "public school employers" under EERA. On November 16, Alliance filed its opposition papers to the PI, along with a request for judicial notice and evidentiary objections. Alliance filed a peremptory challenge under Code of Civil Procedure, section 170.6 as to Judge Gregory Keosian on November 17. On November 18, PERB and UTLA each filed opposition papers to Alliance's demurrer. On November 20, the case was reassigned to a new judge. On November 23, PERB and UTLA each filed replies to Alliance's opposition to the PI. On November 24, Alliance filed its Reply Brief in support of its demurrer and also withdrew its demurrer only as to its 27 schools. The PI was held on December 3 where the court issued a tentative decision granting in part PERB's Application for a Preliminary Injunction. During oral argument on PERB's Application, the court modified the tentative decision and directed the parties to prepare an order in accordance with his directives. The parties were able to agree on the language of a joint Proposed Order granting the preliminary injunction, and filed their stipulated order on December 9. On December 10, PERB agreed to a 15-day extension for Alliance to file their answers to PERB's complaint. On December 18, PERB granted a second extension making Alliance's answers due on January 19, 2016. On or about December 31, PERB and UTLA agreed to a 60-day extension for the Alliance to file their answers, in exchange for Alliance taking their January 28, 2016 Demurrer hearing off calendar. On January 21, 2016, the parties filed a Joint Status Conference Statement with the Court, in which PERB took the position that Alliance should answer the Complaint and it took the position that no answer should be required and the entire matter should be stayed. The Court subsequently vacated the Status Conference that was scheduled for January 28, 2016, and set a combined Trial Setting Conference and Status Conference for March 22, 2016. On March 21, 2016, counsel for Alliance served PERB with an Answer on behalf of all of Alliance's Charter Schools. Alliance did not serve or file an Answer on behalf of Alliance's non-school entities. At the combined Trial Setting Conference and Status Conference on March 22, 2016, the court issued a verbal order that stayed the case with one exception. The exception to the stay allows either party to file an application or motion to modify, enforce, or dissolve the preliminary injunction. The court also scheduled a Further Status Conference for June 22, 2016. On June 17, 2016, the Parties filed a Joint Status Conference Statement and Stipulated Request to Continue the June 22, 2016, Status Conference. The Status Conference was not removed from the calendar and PERB attended the Status Conference on June 22, 2016. The court set a Further Status Conference for October 7, 2016. At the Status Conference, Judge Feuer set a Further Status Conference for October 7, 2016. All three parties entered into a stipulation requesting that Hon. Judge Feuer continue the status conference, scheduled for October 7, to January 9, 2017. The order granting continuance of the status conference was signed on October 6, 2016. On December 28, 2016, Alliance filed a Joint Stipulation on behalf of all parties requesting that the status conference scheduled for January 9, 2017,

LITIGATION CASE ACTIVITY

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be continued until April 10, 2017. On January 19, 2017, PERB received a Notice of Order re Continuance of Status Conference to April 10, 2017. On April 10, 2017, the parties attended a status conference. On June 27, 2017, a PERB Administrative Law Judge issued a Proposed Decision in PERB Case Nos. LA-CE-6061-E and LA-CE-6073-E, UTLA v Alliance College-Ready Public Charter Schools, et al. UTLA filed exceptions to that Proposed Decision on August 9, 2017. On August 14, 2017, Alliance filed an Amended Answer. On or about August 16, 2017, the parties filed a Joint Stipulation and Order stipulating that the status conference scheduled for August 22, 2017, should be continued to February 22, 2018. Judge Feuer issued a Minute Order on August 16, 2017, continuing the status conference to February 22, 2018. On October 26, 2017, Alliance provided ex parte notice to PERB and UTLA that it would be filing an ex parte application the next day for clarification of the terms of the Preliminary Injunction. On October 27, 2017, Alliance filed its ex parte application and PERB filed an Opposition. After reviewing the parties' papers in chambers, Judge Feuer denied Alliance's application without hearing. A further Status Conference was calendared for February 22, 2018. On February 15, 2018, the parties filed a Joint Stipulation to continue the February 22, 2018, Status Conference to April 5, 2018. Judge Feuer issued an Order continuing the Status Conference to April 5, 2018. On March 13, 2018, Alliance filed a Motion to Modify the Preliminary Injunction (Motion to Modify) seeking to exclude from the Preliminary Injunction all entities no longer listed as Respondents in the underlying unfair practice charges and to permit enforcement of "generally applicable visitor policies." On March 21, 2018, PERB filed its Opposition to the Motion to Modify. On March 22, 2018, UTLA filed its Opposition to the Motion to Modify. On March 27, 2018, Alliance filed its Reply. On April 5, 2018, the Court issued a tentative decision denying Alliance's motion in its entirety. PERB filed a Notice of Ruling on April 16, 2018. A further status conference took place and the matter was set for a further status conference for September 12, 2018. On July 3, 2018, the Court informed the parties that Judge Robert S. Draper was now assigned to this matter, replacing Judge Gail Feuer.

4. *City of San Diego v. PERB (San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, Catherine A. Boling, T.J. Zane, Stephen B. Williams)*, January 25, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D069630; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M]. Issue: Whether the Board erred in Decision No. 2464-M, when it affirmed the ALJ's findings that the City of San Diego's Mayor and other public officials acted as agents of the City—and not as private citizens—when they used the prestige and authority of their respective elected offices and its resources to pursue pension reform through a ballot initiative, without negotiating with the four exclusive representatives regarding the changes in such benefits. On January 25, 2015, the City of San Diego (City) filed its Petition for Writ of

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Extraordinary Relief. The Court ordered the Administrative Record to be filed by February 5, 2016. PERB requested a 60-day extension of time to file the Administrative Record, which was subsequently granted to April 5, 2016. On February 2, 2016, PERB filed a motion requesting the dismissal of Boling, Zane and Williams as real parties in interest. On February 4, 2016, the Deputy City Attorneys Association (DCAA) filed a motion to join the dismissal. On February 17, 2016, the City filed an opposition to PERB's motion to dismiss and Boling, Zane & Williams filed a joinder to the City's opposition. On February 19, 2016, PERB filed a reply in support of motion to dismiss. The Administrative Record was filed on April 4, 2015. The City's Opening Brief was filed on May 9, 2016. PERB requested a 45-day extension of time to file the Respondent's Brief and an Application for Leave to File an Oversized Brief. The City filed an Opposition to Application for Extension of Time to File PERB's Brief. Real Parties in Interest Unions (Unions) filed an Application for Leave to File Oversize Brief on May 18, 2016, along with an Application for Extension of time to File Brief of the Unions. On May 23, 2016, the Court granted a 30-day extension of time to file responsive briefs for PERB and the Unions, making their respective briefs due on July 13, 2016, and granted the applications to file oversized briefs. On June 13, 2016, Boling, Zane & Williams filed a Brief in Support of City of San Diego's Petition for Writ of Extraordinary Relief. PERB filed its Respondent's Brief on July 13, 2016, and SDMEA filed its Brief in Opposition to the City's Petition for Writ of Extraordinary Relief. On August 8, 2016, the City filed its Reply Brief. On August 17, 2016, the Court issued a Writ of Review and set a deadline of September 1, 2016, for the parties to request oral argument. On August 24, 2016, PERB and SDMEA filed Requests for Oral Argument. On August 22, 2016, applications to file amicus curiae briefs were filed by: Pacific Legal Foundation, Howard Jarvis Taxpayers Association and National Tax Limitation Committee (in support of the City); San Diego Taxpayers Educational Foundation (in support of the City); League of California Cities (in support of the City); and San Diego Police Officers Association (in support of SDMEA, Deputy City Attorneys Association, AFSCME, AFL-CIO, Local 127 and San Diego City Firefighters, Local 145, IAFF, AFL-CIO). On August 24, 2016, Requests for Oral Argument were filed by PERB and SDMEA, et al. On August 30, 2016, the City and RPI Boling filed Requests for Oral Argument. On October 18, 2016, the Court granted the applications to file amicus curiae briefs filed by San Diego Taxpayers Educational Foundation, the League of California Cities and Pacific Legal foundation, et al. The application to file an amicus curiae brief filed by San Diego Police Officers Association was denied. PERB's Answers to the amicus briefs were filed with the Court on November 7, 2016. Oral Argument was heard on March 17, 2017. On April 11, 2017, the Court issued an opinion annulling PERB's decision, remanding the matter back to PERB with directions to dismiss the complaints and to order any other appropriate relief. On April 25, 2017, PERB filed a Petition for Rehearing. On April 26, 2017, SDMEA filed a Petition for Rehearing. Both petitions for Rehearing were denied on May 1, 2017. On May 19, 2017, PERB and Real Parties in Interest filed their respective Petitions for Review with the California Supreme Court, which were granted on July 26, 2017.

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5. *Catherine A. Boling, T.J. Zane, Stephen B. Williams v. PERB; (City of San Diego, San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO)*, January 25, 2016, California Court of Appeal, Fourth Appellate District, Division One, Case No. D069626; PERB Decision No. 2464-M [PERB Case No. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M]. Issue: Whether the Board erred in Decision No. 2464-M, when it affirmed the ALJ's findings that the City of San Diego's Mayor and other public officials acted as agents of the City—and not as private citizens—when they used the prestige and authority of their respective elected offices and its resources to pursue pension reform through a ballot initiative, without negotiating with the four exclusive representatives regarding the changes in such benefits. On January 25, 2015, Boling et al. filed a Petition for Writ of Extraordinary Relief and Exhibits in Support of Petition for Writ of Extraordinary Relief. The Court ordered the Administrative Record to be filed by February 5, 2016. PERB requested a 60-day extension of time to file the Administrative Record which was granted to April 5, 2016. On January 25, 2016, PERB filed a Motion to Dismiss Petition for Lack of Standing; Memorandum of Points and Authorities in Support Thereof; and Declaration of Wendi L. Ross. On February 4, 2016, DCAA filed a joinder to PERB's motion to dismiss. On February 16, 2016, Petitioners filed their opposition to motion to dismiss. On February 17, 2016, the City filed a joinder to petitioner's opposition. On February 17, 2016, PERB filed a reply in support of motion to dismiss. The Administrative Record was filed on April 4, 2015. Boling et al. filed their Opening Brief on May 9, 2016. Boling's Opening Brief was filed on May 9, 2016. On May 12, 2016, PERB requested a 45-day extension of time to file Respondent's Brief. Boling filed a Motion for Judicial Notice and for Leave to Produce Additional Evidence; Declaration of Alena Shamos; and Proposed Order in Support of Opposition to Application for Extension to File Respondent's Brief. On May 19, 2016, PERB filed a Reply in Support of Application for Extension of Time and Opposition to Motion for Judicial Notice and for Leave to Produce Additional Evidence. The RPIs (Unions) filed an Application for Extension of time to File Brief of the Unions. On May 20, 2016, Boling et al. filed an Opposition to the Application for Extension to File Brief by the Unions. On May 23, 2016, the Court granted a 30-day extension of time to file responsive briefs of PERB and the Unions, and denied Boling et al.'s request for judicial notice and for leave to produce additional evidence. On June 13, 2016, the City filed a Joinder to Boling's Opening Brief. On July 12, 2016, PERB filed its Respondent's Brief and Request for Judicial Notice; Declaration of Joseph W. Eckhart, and a [Proposed] Order. SDMEA filed its Brief in Opposition to Petitioners' Petition for Writ of Extraordinary Relief. On August 8, 2016, Boling's Reply Brief was filed. On August 17, 2016, the Court issued an order issuing a Writ of Review. On August 24, 2016, both PERB and SDMEA filed Requests for Oral Argument. On August 31, 2016, the Petitioner filed its Request for Oral Argument. Oral Argument was heard on March 17, 2017. On April 11, 2017, the Court issued an opinion annulling PERB's decision, remanding the matter back to PERB with directions to

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dismiss the complaints and to order any other appropriate relief. On April 25, 2017, PERB filed a Petition for Rehearing. On April 26, 2017, SDMEA filed a Petition for Rehearing. Both petitions for Rehearing were denied on May 1, 2017. On May 19, 2017, PERB and Real Parties in Interest filed their respective Petitions for Review with the California Supreme Court, which were granted on July 26, 2017.

6. *PERB v. Bellflower Unified School District (CSEA Chapter 32)*, April 5, 2016, Los Angeles County Superior Court, Case No. BS161585; PERB Decision Nos. 2385 & 2455 [PERB Case Nos. LA-CE-5508 and LA-CE-5784]. Issue: This is a PERB-initiated court action to enforce Board orders in PERB Decision Nos. 2385 and 2455. On April 5, 2016, PERB served Bellflower USD with a Petition for Writ of Mandate and Summons. On April 7, 2016, the Court set a trial setting conference for July 12, 2016. On May 16, 2016, Bellflower USD filed a Notice of Demurrer and Demurrer to Verified Petition for Writ of Mandate and the Memorandum of Points and Authorities. The trial setting conference was moved to August 30, 2016. On August 17, 2016, PERB's Opposition to demurrer was filed with the Superior Court. The hearing on the District's demurrer, and a trial setting conference was held on August 30, 2016, where the Court denied the demurrer. At the trial setting conference, the Court set a briefing schedule on PERB's writ; set a status conference for October 27, 2016, to address any disputes by the parties regarding the certified record; and set an April 18, 2017 hearing on PERB's writ. On October 26, 2016, the parties filed a Joint Status Report and Joint Request to Vacate Status Conference; Order. On October 26, 2016, the Status conference scheduled for October 27, 2016, was removed from the Court's calendar. On November 7, 2016, PERB received Notices of Deposition for Yaron Partovi, Mirna Solis, Ellen Wu and "Person Most Knowledgeable." On December 21, 2016, Notices of and Motions to Quash and for a Protective Order were filed. On December 29, 2016, the parties filed a joint request to stay the trial date and briefing schedule pending the resolution of the motions. The joint request was granted on January 5, 2017, and the Court set a Trial Re-Setting Conference on March 28, 2017. On January 10, 2017, Respondent submitted to PERB a Request for Production of Documents, and Special Interrogatories. On January 12, 2017, Respondent submitted to PERB Notices of Taking Depositions of Ronald Pearson and J. Felix De La Torre, and Request to Produce Documents at Deposition. On February 9, 2017, the parties submitted a Joint Request to Consolidate Law and Motion Hearings Scheduled for March 28, 2017, and April 20, 2017. The Order granting the request was signed on February 9, 2017. The Trial Re-Setting Conference and hearings on the motions were scheduled for April 20, 2017. On March 24, 2017, PERB filed its brief in support of its motion to quash and motions for protective order to prohibit the District's discovery requests. On April 20, 2017, the Court granted PERB's motion to quash deposition notices, and two motions for protective orders for depositions and written discovery that were propounded by the District. The court set the hearing on PERB's writ for enforcement of PERB's orders for December 7, 2017. PERB filed a Memorandum of Points and Authorities In Support of

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Petition for Writ of Mandate on October 5, 2017. On November 6, 2017, Respondent filed their Opposition to PERB's Memorandum of Points and Authorities. On November 20, 2017, PERB lodged the Administrative Record and Joint Appendix with the Court, and also filed the Reply to Respondent's Opposition. On December 7, 2017, the Court granted PERB's writ of mandate to enforce two of the Board's orders. On December 14, 2017, PERB lodged with the Court a proposed judgment and a proposed writ of mandate. On January 3, 2018, judgement was entered against BUSD and the writ was executed. On January 18, 2018, PERB served and filed a Notice of Entry of Judgment.

7. *Ivette Rivera v. PERB (EBMUD, AFSCME Local 444)*, June 22, 2016, Alameda County Superior Court, Case No. RG16813608; PERB Decision Nos. 2472-M and 2470-M [PERB Case Nos. SF-CO-349-M, SF-CO-338-M, SF-CE-1208-M]. Issue: Plaintiff alleges that in dismissing the unfair practice charges, PERB violated a constitutional right, exceeded a specific grant of authority, or erroneously construed a statute. On April 28, 2016, Rivera filed a Verified Petition for Writ of Mandamus, Declaratory Relief and Violations of the California Constitution. PERB was not officially served until June 22, 2016. A Case Management Conference was held on June 23, 2016. On July 21, 2016, PERB filed a Demurrer. A hearing on the Demurrer was set for August 17, 2016, but the court continued the hearing to September 9, 2016. A Case Management Conference is also set for September 8, 2016. On September 8, 2016, the Court continued the Case Management Conference to October 27, 2016. The Court overruled PERB's demurrer on September 14, 2016. On October 6, 2016, PERB filed with the Court its Answer to the Verified Petition for Writ of Mandamus. During the October 27th Case Management Conference, the court continued the Case Management Conference to February 9, 2017. On February 9, 2017, the court continued the Case Management Conference to March 30, 2017. On March 29, 2017, PERB, EBMUD, and Rivera filed a joint Stipulation of Parties Regarding Consolidation and Scheduling, and a Proposed Order regarding consolidation and scheduling. On April 3, 2017, the Court issued an order scheduling a hearing on the merits of the writ for January 18, 2018. PERB filed the Administrative Record on June 19, 2017. Also on April 3, 2017, the Court ordered that this case be consolidated with *Ivette Rivera v. PERB*, Case No. RG16843374. PERB filed the Administrative Record on June 19, 2017. According to the Court's scheduling order, Rivera's opening brief was due on October 20, 2017; however she failed to file a brief by that date. PERB filed an opposition brief according to the scheduling order by December 4, 2017. Rivera did not file a reply. Prior to the hearing on January 18, 2018, the parties agreed to stipulate to a request for a continuance of the Case Management Conference (CMC) and the hearing on the merits. On January 18, 2018, the Court rescheduled the CMC and the hearing on the merits to April 25, 2018. Prior to the hearing on April 25, 2018, the parties stipulated to a further continuance of the matter to June. The Court rescheduled the hearing on the merits to June 7, 2018. On June 7, 2018, the Alameda Superior Court issued an order

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denying Rivera's writ petitions on the merits. On June 19, 2018, the Court filed PERB's proposed order entering judgment for PERB.

8. *Ivette Rivera v. PERB; East Bay MUD, AFSCME Local 444, December 22, 2016, Alameda County Case No. RG16843374; [PERB Case No. SF-CE-1227-M].* Issue: Whether the Court should reverse the Board's decision in Case No. 2501-M dismissing Rivera's unfair practice charge for failure to state a prima facie case? Plaintiff's Petition for Writ of Mandate was filed with the Court on December 22, 2017, and served on PERB January 17, 2017. PERB filed its Answer to the petition on February 14, 2017. At the March 21, 2017, Case Management Conference, the court directed the parties to meet and confer on a briefing schedule. PERB, Rivera, and EBMUD reached a stipulation, which was filed with the Court on March 30, 2017. On the same day, the Court issued its Notice of Hearing to inform the parties that the case is set for hearing on January 18, 2018. On April 3, 2017, the Court ordered that this case be consolidated with *Ivette Rivera v. PERB*, Case No. RG16813608. PERB filed the Administrative Record on June 19, 2017. According to the Court's scheduling order, Rivera's opening brief was due on October 20, 2017; however she failed to file a brief by that date. PERB filed an opposition brief according to the scheduling order by December 4, 2017. Rivera did not file a reply. Prior to the hearing on January 18, 2018, the parties agreed to stipulate to a request for a continuance of the Case Management Conference (CMC) and the hearing on the merits. On January 18, 2018, the Court rescheduled the CMC and the hearing on the merits to April 25, 2018. Prior to the hearing on April 25, 2018, the parties stipulated to a further continuance of the matter to June. The Court rescheduled the hearing on the merits to June 7, 2018. On June 7, 2018, the Alameda Superior Court issued an order denying Rivera's writ petitions on the merits. On June 19, 2018, the Court filed PERB's proposed order entering judgment for PERB.
9. *Fresno County Superior Court v. PERB; SEIU Local 521, March 28, 2017, California Court of Appeal, Fifth Appellate District, Case No. F075363; PERB Decision No. 2517-C [PERB Case No. SA-CE-14-C].* Issue: Whether the Board clearly erred in Decision No. 2517-C, holding that the Court violated the Trial Court Act by interfering with employee rights to wear and display union regalia, solicit employees and distribute materials? Fresno County Superior Court (FCSC) filed a Petition for Extraordinary Relief on March 28, 2017. The Appellate Court issued its Notice to file the administrative record on March 28, 2017, due April 7, 2017. On March 29, 2017, an application for extension of time to file the administrative record by 35 days was requested. The request was granted for 25 days. On May 2, 2017, PERB filed the administrative record. Petitioner's Opening Brief was filed on June 6, 2017. PERB's Respondent's Brief was filed on July 11, 2017. Petitioner filed its Reply Brief on August 14, 2017. The court has scheduled oral argument for September 18, 2018.

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10. *Patricia Woods v. Public Employment Relations Board et al.*; April 14, 2017, United States District Court, Eastern District of California, Case No. 2:17-cv-793; PERB Decision No. 2136 [PERB Case No. SA-CE-1640-S]. Issue: Whether the Public Employment Relations Board, Wendi Ross, Eileen Potter and CDCR violated Ms. Woods' federal and state rights under: (1) 42 U.S.C. sections 1981 (Discrimination in contracting); (2) 42 U.S.C. § 1985 (conspiracy to violate civil rights, and § 1986 (failure to prevent conspiracy); (3) breach the contract; and (4) violation of the Ralph C. Dills Act (Dills Act, codified at § 3512 et seq.), based on alleged undisclosed discriminatory conduct by PERB and its employees in adjudicating her unfair practice case that resulted in Board Decision No. 2136? PERB received a copy of the following documents on April 27, 2017: Civil Rights Complaint; Plaintiff's Motion for an Expedited Status Conference Hearing, Settlement Conference and Appointment of a Special Court Master. On May 5, 2017, PERB notified Ms. Woods that her service of process was defective, as she improperly mailed the complaint to PERB, and failed to serve a copy of the Summons. On July 5, 2017, PERB was properly served with the documents. On July 21, 2017, PERB filed a Notice of Motion and Motion to Dismiss. On July 31, 2017, PERB received Woods' first motion for an extension of time to file a response to the Motion to Dismiss. The court continued the hearing on Defendants' motions to dismiss to October 11, 2017. On September 1, 2017, Woods filed a Request for Telephonic Status Conference and Motion Hearings for the October 11, 2017 motion hearing, and the February 21, 2018 status hearing. On September 11, 2017, Woods filed a Motion to Disqualify. A Motion Hearing was set for September 27, 2017, and then continued to October 11, 2017. On September 20, 2017, PERB filed an Opposition to the Motion to Disqualify. On October 11, 2017, PERB orally argued its Motion to Dismiss and responded to Woods' motion to Disqualify and Assessment of sanctions. The Magistrate took both motions under submission. On February 27, 2018, PERB received the Magistrate's "Order and Findings and Recommendations" where the Magistrate recommended that Woods' motion to disqualify be denied, and that PERB's motion to dismiss be granted with prejudice as untimely. On March 3, 2018, Woods filed a motion for an extension of time (EOT) to object to the Magistrate's findings and recommendations. On March 12, 2018, the Court granted Woods' request for an EOT, which provides her until April 19, 2018, to file objections. On April 18, 2018, Woods filed Objections to Findings and Recommendations. PERB filed a Response to the Objections on May 3, 2018.
11. *PERB v. Teamsters Local 2010; Regents of the University of California*, December 23, 2016, Los Angeles County Case No. BC644746; [PERB Case No. LA-CO-548-H]. Issue: Whether the Teamsters strike was unlawful, since it included some essential Public Safety Dispatchers? On December 23, 2016, PERB filed an Ex Parte Application for a TRO. On December 29, 2016, the Teamsters filed an Opposition. On January 5, 2017, the Regents filed an Ex Parte Application for Leave to Intervene, a Complaint in Intervention, Memorandum of Points and Authorities in Support of Complaint in Intervention,

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Declaration of T. Yeung in Support of Complaint in intervention, and a Request for Judicial Notice in Support of Complaint in Intervention. On January 5, 2017, the court signed the Order Granting TRO and OSC. On January 5, 2017, the Court signed the order granting the Regent's application for leave to intervene. On January 20, 2017, the Regents filed a Partial Opposition to the Application for Preliminary Injunction, supporting documentation, and a Request to Present Oral Testimony. The Teamsters filed a Reply to the Partial Opposition, other supporting documentation, and an Opposition to Regents' Request for Oral Testimony. On January 27, 2017, the parties attended a preliminary injunction hearing before Judge Hogue. Following oral argument, Judge Hogue issued an Order Granting Preliminary Injunction. On March 17, 2017, the Court scheduled a Case Management Conference and Order to Show Cause Hearing for April 10, 2017. On March 28, 2017, the UC filed a Joint Case Management Statement apprising the Court of the recently reached CBA between UC – Teamsters that, upon ratification, would moot the instant case. The UC also filed a Joint Request to Continue the Case Management Conference and Extend for 90-days the Preliminary Injunction enjoining 21.5 essential employees from striking. Also on March 28, in response to the Court's OSC, PERB re-filed with the Court the Proofs of Service of Summons and Complaint demonstrating personal service by PERB on UC and Teamsters. On March 30, 2017, the Court issued an Order continuing the Case Management Conference and Order to Show Cause Hearing Regarding Proof of Service until July 10, 2017. In the same Order, the Court extended the Preliminary Injunction until July 26, 2017, or until the parties' contract dispute is finally resolved, whichever occurs first, or until further Order of the Court. In or about March or April of 2017, the UC and Teamsters reached a successor memorandum of understanding. On June 23, 2017, PERB filed a Request for Dismissal of the Complaint with the Court. On or about June 23, 2017, the UC also filed a Request for Dismissal with the Court. The Superior Court dismissed the case on July 6, 2017 and the case is now closed at the Superior Court. PERB filed a Notice of Entry of Dismissal with the Superior Court on August 2, 2017. This matter is now closed.

12. *California Department of Human Resources v. PERB; SEIU, Local 1000*, January 3, 2017, Sacramento County Sup. Ct. Case No. 34-2016-00204088; IR Request No. 713 [PERB Case No. SA-CO-495-S]. Issue: Whether the Board, after considering CalHR's request for injunctive relief relating to SEIU Local 1000's strike noticed for December 5, 2016, erred by deciding to seek an injunction applying only to those employees shown to be "essential," rather than applying to the entire strike. CalHR initiated this case as a cross-petition/cross-complaint in PERB's case against SEIU Local 1000, with causes of action for writ of mandate and declaratory relief. Both PERB and SEIU filed timely demurrers. On May 30, 2017, the court issued a minute order sustaining the demurrers to both causes of action. The court granted CalHR leave to amend the declaratory relief cause of action by June 30, 2017. CalHR filed its First Amended Cross-Complaint for Declaratory Relief on June 30, 2017. On July 15, 2017, all parties submitted Case Management Statements for

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a July 20, 2017 Case Management Conference. On July 18, 2017, the Court issued a tentative ruling referring the case to the Trial Setting Process. All counsel were to confer and agree upon trial and settlement conference dates. On July 28, 2017, PERB filed a demurrer to the June 30, 2017, Amended Cross-Complaint. On August 1, 2017, SEIU also filed a Notice of Demurrer and Demurrer, as well as a Memo of Points and Authorities in support of the Demurrer, and a Request for Judicial Notice. On August 21, 2017, CalHR sought to file a Second Amended Cross-Complaint in lieu of an Opposition to PERB and SEIU's recent demurrers. On August 22, the Court rejected this new amended complaint because CalHR had not been granted leave to amend. On August 24 and 25 respectively, PERB and SEIU filed information with the Court indicating their belief that it had properly rejected the Second Amended Cross-Complaint, and declaring their intention to appear for the demurrer hearing scheduled for September 1, 2017. On August 31, 2017, the Court agreed to grant CalHR leave to amend its complaint, taking the demurrer hearing off calendar. On September 15, 2017, CalHR filed a Second Amended Cross-Complaint. PERB and SEIU demurred a third time. On January 16, 2018, the Court sustained both demurrers without leave to amend. On January 24, 2018, the Court entered judgment dismissing the cross-complaint with prejudice.

13. *Los Angeles Unified School District v. PERB; United Teachers Los Angeles*, April 5, 2017, California Court of Appeal, Second Appellate District, Division 8, Case No. B281714; PERB Decision No. 2518-E [PERB Case No. LA-CE-5824-E]. Issue: Whether the Board erred in PERB Decision No. 2518 when it affirmed a proposed decision holding that certain subjects are within the scope of representation under EERA? LAUSD filed its Petition for Writ of Extraordinary Relief on April 5, 2017. On April 10, 2017, PERB submitted a request for a 91-day extension of time to file the administrative record. On April 13, 2017, the Court granted a 60-day extension of time. The Administrative Record was filed on June 14, 2017, making LAUSD's Opening Brief due on July 19, 2017. On July 13, 2017, a stipulation was filed extending the due date for the Opening Brief to September 1, 2017. LAUSD filed its opening Brief on September 1, 2017. PERB's Respondent's Brief was filed on October 5, 2017. The RPI Union's Respondent's Brief was filed on October 5, 2017. On October 16, 2017, a stipulation of extension of time was filed, extending the due date for the LAUSD's Reply Brief to November 29, 2017. On November 28, 2017, PERB received LAUSD's Reply Brief. On April 11, 2018, the Court of Appeal issued an order summarily denying LAUSD's Petition. LAUSD filed a Petition for Review with the California Supreme Court on April 23, 2018.
14. *PERB v. Oak Valley Hospital District; United Steel Workers, Local TEMSA 12911*, June 5, 2017, Stanislaus County Sup. Ct. Case No. 2025124; IR Request No. 727; [PERB Case No. SA-CE-1008-M]. Issue: Whether Oak Valley Hospital District is required to recognize the United Steel Workers (USW) and resume collective bargaining? On June 6, 2017, the GC Office appeared ex parte seeking a TRO from the Stanislaus Superior Court. The Court, however, requested supplemental briefing from the parties. PERB and OVHD filed

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Supplemental Briefs on June 8, 2017. On June 9, 2017, Judge Freeland issued an Order allowing OVHD to submit supplemental opposition papers by June 15, 2017, with PERB's reply due June 21, 2017. OVHD chose not to submit supplemental opposition papers. PERB filed its Reply to Opposition and Proposed Order on June 20, 2017. The OSC hearing was held on June 28, 2017. The Court granted PERB's request for a preliminary injunction for 150 days. A case management conference set for October 2, 2017, was continued to January 29, 2018. A Stipulation to Extend Preliminary Injunction was submitted to the Court, and the Order was signed by the judge on November 3, 2017. On November 14, 2017, the signed Order was served on the parties. Another stipulation to extend the preliminary injunction to January 29, 2018, was submitted to the Court, and the Order was signed on December 13, 2017. On January 25, 2018, the parties filed a stipulation to extend the PI until the Board issues its final decision in this matter. On January 30, 2018, the Court signed the parties' stipulation and rescheduled the CMC for May 21, 2018. On May 21, 2018, the Court set a Motion to Dismiss for March 8, 2019.

15. *McLeod Larsen v. Public Employment Relations Board; Fairfield-Suisun USD and Fairfield-Suisun*, September 14, 2017, California Court of Appeal, Third Appellate District, Case No. C085516; PERB Decision No. Ad-452 [PERB Case No. SF-SV-129-E] Issue: Whether to sever a unit of Speech-Language Pathologists from the existing certificated bargaining unit that includes classroom teachers and other pupil support services employees. The petition was filed on September 14, 2017. PERB requested and was granted an extension of time to October 16, 2017 to file the administrative record. On October 5, 2017, PERB submitted a Motion to Dismiss the petition, based on the court's lack of subject matter jurisdiction, petitioner's lack of standing, and the Third District being the improper venue. On October 18, 2017, the petitioner submitted an Opposition to PERB's Motion to Dismiss. The administrative record was deemed filed by the Court on October 20, 2017. On October 23, 2017, PERB filed an application to file a Reply to the Opposition to Motion to Dismiss, as well as the Reply. On November 2, 2017, PERB's Motion to Dismiss was granted. This matter is now closed.
16. *Public Employment Relations Board v. Service Employees International Union, Local 721; County of Riverside*, September 1, 2017, Riverside Sup. Ct. Case No. RIC1716450; IR Request No. 733 [PERB Case No. LA-CO-222-M] Issue: Whether SEIU's strike was unlawful since it included essential employees. On September 5, 2017, PERB appeared in the Riverside Superior Court for a hearing on the TRO. The Court granted a TRO enjoining essential employees, based upon PERB's Exhibit A but with some modifications. By stipulation approved on September 18, 2017, the parties agreed to a briefing schedule and continued date for the hearing on Preliminary Injunction to October 23, 2017. On October 10, 2017, SEIU filed its Opposition to PERB's Application for a Preliminary Injunction. On October 10, 2017, SEIU filed a Motion for Sanctions against the County and scheduled a hearing on its motion for November 14, 2017. On October 12, 2017, SEIU filed an ex parte Motion to Shorten Time in an attempt to move up the hearing on its

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Motion for Sanctions to October 23, 2017 (the date of the Preliminary Injunction hearing). The Court held an ex parte hearing on October 13, 2017. SEIU's Motion to Shorten Time was granted in part and the Preliminary Injunction hearing was continued to November 14, 2017. On October 31, 2017, the County filed its Opposition to SEIU's Motion for Sanctions. SEIU filed a Motion for a Protective Order on October 31, 2017, and the Court set a hearing on that Motion for February 7, 2018. PERB's Statement of Non-Opposition to SEIU's Motion for Sanctions was filed November 1, 2017. PERB's Reply to SEIU's Opposition to PERB's Application for a Preliminary Injunction was filed on November 6, 2017. On November 14, 2017, the Court held a hearing for a Preliminary Injunction, and denied PERB's Application. That same day, the Court heard oral argument on SEIU's Motion for Sanctions and took the matter under submission. On November 16, 2017, the County filed an "Amendment of Inadvertent Omission from Oral Argument." On November 17, 2017, the Court denied SEIU's Motion for Sanctions. On December 19, 2017, the case was reassigned to the Honorable Judge Randall S. Stamen in Department 7 for law and motion purposes only. Effective January 2, 2018, the case was assigned to Judge Vineyard in Department 1 for all case management hearings and for trial assignment purposes. On January 31, 2018, PERB filed a Request for Dismissal and the clerk entered the dismissal that same day. All scheduled hearings and conferences have been vacated. This matter is now closed.

17. *Public Employment Relations Board v. Service Employees International Union, Local 221; County of San Diego*, September 1, 2017, San Diego County Sup. Ct. Case No. 37-2017-00032446-CU-MC-CTL; IR Request No. 732 [PERB Case No. LA-CO-221-M] Issue: Whether SEIU's strike was unlawful since it included essential employees? On September 6, 2017, the GC Office appeared ex parte seeking a TRO from the San Diego Superior Court. Judge Strauss granted the TRO and approved a stipulated list of essential employees. The deadline for the Union's Answer to PERB's Complaint and the County's Complaint-in-Intervention was extended by stipulation of the parties from October 6, 2017 to October 20, 2017, in contemplation of dismissal pending the approval of a successor MOA by the County Board of Supervisors. An Order to Show Cause was scheduled for December 1, 2017. The San Diego County Board of Supervisors approved a tentative successor MOA on October 10, 2017. SEIU conducted a ratification vote of the Tentative Agreement that was passed. On October 20, 2017, PERB filed a Request for Dismissal with the court. The complaint was dismissed without prejudice on October 31, 2017. A Notice of Entry of Dismissal was served on the parties, and filed with the Court on November 2, 2017. This matter is now closed.
18. *City and County of San Francisco v. Public Employment Relations Board; Transport Workers Union of America Local 250, et al.*, November 17, 2017, California Court of Appeal, First Appellate District, Division One, Case No. A152913; PERB Decision No. 2540-M [PERB Case No. SF-CE-827-M] Issue: Whether the Board clearly erred in Decision No. 2540-M, when it held that certain provisions of the City charter were inconsistent with

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the MMBA. Petitioner filed the Petition for Writ of Extraordinary Relief on November 17, 2017. PERB submitted a Request for Extension of Time to file the Administrative Record by 45 days on November 21, 2017. On November 22, 2017, the Court granted PERB's request. On January 10, 2018, PERB filed the Administrative Record. On February 6, 2018, Petitioner filed a request for extension of time to file the Opening Brief. On February 14, 2018, a 45-day extension of time was granted. On March 21, 2018, the Court granted a further extension of time to file the Opening Brief. The City and County filed its Opening Brief on May 1, 2018. PERB's Respondent's Brief was originally due on June 5, 2018. On May 15, 2018, the Court granted PERB's request for an extension of time to file that brief on July 30, 2018. On July 16, 2017, the Unions moved for an additional extension of time for all respondents to file their briefs. On July 19, 2018, the Court granted this request, and PERB's Response Brief is now due on August 31, 2018.

19. *Bellflower Unified School District v. Public Employment Relations Board; California School Employees Association*, January 12, 2018, California Court of Appeal, Second Appellate District, Division 3, Case No. B287462; PERB Decision No. 2544-E [PERB Case No. LA-CE-5955-E] Issue: Whether the Board correctly concluded that the District violated its duty to meet and negotiate in good faith by laying off bus drivers and contracting out bargaining unit work historically performed by the District's bus drivers, and by failing to respond to requests for necessary and relevant information. On January 17, 2018, PERB filed an application for extension of time to file a certified copy of the record. On January 19, 2018, the Court granted PERB's request and issued an Order directing PERB to file a certified copy of the records, and to serve and file an index of the record, on or before February 21, 2018. On February 16, 2018, PERB filed the Administrative Record. Bellflower's Opening Brief was filed on March 22, 2018. PERB's Respondent's Brief was filed on April 26, 2018. The Petitioner's Reply Brief was filed on May 21, 2018. This matter is fully briefed, awaiting either oral argument or summary denial.
20. *PERB v. Bellflower Unified School District; CSEA Chapter 32*, March 6, 2018, California Court of Appeal, Second Appellate District, Division 3, Los Angeles County Superior Court Case No. B288594 PERB Decision Nos. 2385 & 2455 [PERB Case Nos. LA-CE-5508-E and LA-CE-5784-E] Issue: PERB instituted a superior court action to enforce orders issued by the Board in PERB Decision Nos. 2385 and 2455. On December 7, 2017, the Los Angeles County Superior Court granted PERB's writ of mandate to enforce two of the Board's orders. On December 14, 2017, PERB lodged with the superior court a proposed judgment and a proposed writ of mandate. On January 3, 2018, judgement was entered against BUSD and the writ was executed. On January 18, 2018, PERB served and filed a Notice of Entry of Judgment. Bellflower USD then filed its Notice of Appeal on March 6, 2018, its Notice Designating Record on Appeal on March 19, 2018, and Civil Case Information Statement on March 23, 2018. On May 15, 2018, PERB filed the parties' stipulation designating the contents of the Joint Appendix. Bellflower's Opening Brief was initially due on May 24, 2018. On May 22, 2018, Bellflower filed the parties' stipulation to

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a 60-day extension of time for Bellflower to file its Opening Brief. Bellflower's Opening Brief was filed on July 19, 2018, as was the Joint Appendix. PERB's Respondent's Brief is due on August 20, 2018. PERB must also lodge the Administrative Record from the Superior Court action with the Court of Appeal on August 20, 2018.

21. *Julie Barrett v. PERB; UAW Local 2865*, March 13, 2018, California Court of Appeal, First Appellate District, Division 3, Case No. A153828; PERB Decision No. 2550-H [PERB Case No. SF-CO-212-H] Issue: Barrett is challenging the Board's decision sustaining the Regional Attorney's refusal to issue a complaint in her underlying breach of the duty of fair representation charge against the UAW. Barrett filed a Petition for Writ of Review on March 12, 2018. On March 14, 2018, PERB requested an extension of time to file the administrative record, which was granted on March 22, 2018. The administrative record is now due April 12, 2018. On March 28, 2018, PERB filed a Motion to Dismiss. An Application for Leave to File Exhibits in Excess of 10-pages was contemporaneously filed with the Motion to Dismiss. On April 19, 2018, citing to the absence of jurisdiction that PERB raised in its then pending motion to dismiss, the First Appellate District issued an order summarily denying Barrett's Petition for Writ of Extraordinary Relief. Accordingly, further law and motion was rendered moot. Contemporaneously with the summary denial, the Clerk of the Court closed the case.
22. *Sharon Curcio v. Public Employment Relations Board; Fontana Teachers Association*, March 14, 2018, San Bernardino County Superior Court, Case No. CIVDS1806317; PERB Decision No. 2551-E [PERB Case No. LA-CO-1700-E] Issue: Whether the Board's Decision to affirm the dismissal of unfair practice charge Case No. LA-CO-1700-E violated a constitutional right, exceeded a specific grant of authority, or erroneously construed a statute. Curcio filed a "Petition for Writ of Appeal" (Petition) with the San Bernardino County Superior Court on March 14, 2018. The Petition sought an order from the Court directing the Board to vacate its non-precedential decision in *Fontana Teachers Association* (2018) PERB Decision No. 2551 and to issue a complaint in Unfair Practice Charge Case No. LA-CO-1700-E. The Petition was assigned to the Honorable Keith D. Davis. On April 19, 2018, Curcio filed a "Verified and Amended Writ of Mandamus" (Amended Petition), which names Curcio and the "AnonymousKnowNothings" as Plaintiffs, and the Fontana Teachers Association and the California Teachers Association as Real Parties in Interest. On May 14, 2018, PERB appeared at a Status Hearing on the Petition. On May 17, 2018, PERB filed a Request for Judicial Notice (RJN) and a demurrer to the Amended Petition (Demurrer). On May 31, 2018, Curcio filed an Opposition to the Demurrer. PERB's Reply to the Opposition to Demurrer was filed on June 7, 2018. On June 14, 2018, the Court continued the hearing on PERB's Demurrer and the RJN to July 10, 2018. At the hearing on July 10, 2018, Judge Davis issued an oral tentative decision granting PERB's Demurrer and PERB's Request for Judicial Notice and denying Curcio's Request for Judicial Notice. Judge Davis adopted his tentative decision. The Court ordered that the Status Conference Hearing scheduled for August

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16, 2018, be continued to September 10, 2018. The Court also set an Order to Show Cause Hearing directed at Curcio regarding service of the Summons and Complaint on the Fontana Teachers Association for the same date. PERB lodged a Proposed Order and filed supporting documents on July 19, 2018, and is awaiting a signed order. On July 23, 2018, PERB filed a Notice of Hearing regarding the Status Conference Hearing and the Order to Show Cause Hearing.

23. *PERB v. AFSCME Local 3299, UPTC_CWA Local 9119 and California Nurses Association; Regents of the University of California*, May 2, 2018, Sacramento County Sup. Ct. Case No. 34-2018-00232166-CU-MC-GD; IR Request Nos. 746, 747, 748 [PERB Case Nos. SF-CO-222, 223, 224-H] Issue: Whether striking employees are “essential” pursuant to County Sanitation. On May 4, 2018, PERB appeared ex parte before the Sacramento County Superior Court seeking a Temporary Restraining Order (TRO) against AFSCME Local 3299, UPTC CWA Local 9119, and California Nurses Association. PERB sought an order to enjoin essential employees represented by the three unions from striking from May 7 to May 10. During the hearing the Court rejected UC’s attempt to seek a broader potential injunction of essential employees, ruling that it would only consider PERB’s request. The Court further found that in order to intervene in this matter UC needed to file a formal noticed motion. The Court then granted a TRO covering the employees identified in PERB’s Exhibit A, and set a hearing on the Preliminary Injunction for May 25, 2018. On May 25, 2018, the Court granted PERB a preliminary injunction to prevent the employees identified by the agency as “essential” from striking. The injunction is to remain effective for 120 day or until the parties reach a new collective bargaining agreement. At this same hearing the Court also permitted UC to intervene in this case, but reaffirmed that UC would not be able to request different injunctive relief than that which PERB had sought.

24. *PERB v. County of Riverside; SEIU Local 721*, May 18, 2018, Riverside County Sup. Ct. Case No. RIC1809250; IR Request No. 749 [PERB Case No. LA-CE-1306-M] Issue: Whether the County should be enjoined from implementing its last, best and final offer, and directed to reinstate three registered nurses fired for their strike activities. On May 2, 2018, the Service Employees International Union, Local 721 (SEIU) filed Unfair Practice Charge Case No. LA-CE-1306-M and a request for injunctive relief (IR Request) with PERB against the County of Riverside (County). SEIU has previously filed numerous charges against the County regarding a variety of alleged unfair practices. The County filed its Opposition to the IR Request on May 4, 2018. PERB issued a Complaint in Case No. LA-CE-1306-M on May 7, 2018. The Board granted SEIU’s IR Request on May 10, 2018. On May 18, 2018, PERB filed a complaint, application for a Temporary Restraining Order and Order to Show Cause Regarding a Preliminary Injunction (TRO and OSC Re Preliminary Injunction), and other supporting papers in Riverside Superior Court. The matter was assigned for law and motion purposes to the Honorable Randall S. Stamen in Department 7 and for case management purposes to the Honorable John W. Vineyard in

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Department 1. On May 21, 2018, the County filed an Opposition, evidentiary objections, and supporting declarations. On May 22, 2018, Judge Stamen recused himself. The case was reassigned to Judge Sharon J. Waters in Department 10, who set the TRO hearing for May 24, 2018. Following joint stipulation by the parties, the TRO hearing was continued to May 29, 2018. On May 29, 2018, Judge Waters heard oral argument on PERB's application for a TRO and OSC Re Preliminary Injunction. Judge Waters stated orally at the hearing the Court was granting PERB's Request for a TRO and OSC Re Preliminary Injunction in part. Judge Waters stated during the hearing that she was issuing a TRO prohibiting the County from imposing its Last, Best, and Final Offer and also issuing an Order to Show Cause. On May 29, 2018, Judge Waters signed a stipulated order to allow SEIU to intervene. The County filed a Notice of Ruling on May 31, 2018. PERB lodged a Proposed Order with the Court on June 1, 2018. The County filed its Supplemental Opposition to Motion for Preliminary Injunction on June 13, 2018. PERB filed its Reply is on June 20, 2018. On June 15, 2018, the Court issued its Order Granting TRO and OSC re: Preliminary Injunction. On June 18, 2018, SEIU filed its Opposition to Certain Evidentiary Objections of County of Riverside. On June 20, 2018, PERB filed a Notice of Order Granting TRO & OSC. Also on June 20, 2018, the County filed its Reply to Opposition. On June 29, 2018, the Court held the Hearing on Preliminary Injunction. The preliminary injunction was granted. A case management conference has been calendared for November 14, 2018, in Department 1 before Judge Vineyard.

25. *Georgia Babb, et al. v. Public Employment Relations Board, et al.*, June 27, 2018, US District Court, Central District of California, Case No. 8:18-cv-00994-JVS-DFM Issue: Whether the Court should declare unconstitutional those PERB statutes and regulations that administer the fair share fee rules previously authorized by *Abood v. Detroit Board of Education*, a case recently overturned by *Janus v. AFSCME*; and whether PERB should be enjoined from enforcing those statutes and rules. On June 28, 2018, Plaintiffs served PERB with the First Amended Complaint.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2537	<i>Albert Saenz v. Victory Valley Community College District</i>	Charging Party requested that PERB reopen his case to allow the late filing of an amended charge based on an extended vacation, medical procedures and limited means of communication.	Non-Precedential decision. The Board affirmed the Office of the General Counsel's dismissal of Charging Party's unfair practice charge and denied the request for an extension of time on the basis that Charging Party failed to show good cause pursuant to PERB Regulation 32136.
2538	<i>Emma Yvonne Zink v. San Diego Unified School District</i>	The Office of the General Counsel dismissed the charge, which alleged that the District retaliated against the charging party for engaging in protected activity. The charging party appealed.	Precedential decision. The Board affirmed in part and reversed in part. The Board affirmed the dismissal of several of the allegations as untimely. The Board reversed as to an allegation regarding the initiation of an involuntary transfer process, which it concluded was an adverse action. That allegation was remanded for further investigation.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2539-M	<i>Santa Clara County Correctional Police Officers Association v. County of Santa Clara</i>	Charging Party alleged that the County violated the MMBA retaliating against the Association President by prohibiting his ability to trade shifts and failing or refusing to provide information to the Association regarding a proposed background evaluation process for incumbent officers.	Precedential decision. The ALJ found that the Association president engaged in protected activities, the County had knowledge of the protected activity, the County took adverse action against him by imposing a blanket ban on his ability to trade shifts and that the County took action against him because of his protected activity. However, the ALJ found the County did not violate the MMBA because it would have imposed the adverse action even if he had not engaged in protected activity. The Board reversed the proposed decision finding that the record failed to support the County's claim that it would have acted regardless of the Association president's protected activity. The Board further found that, as an unalleged violation and by the same conduct, the County interfered with the Association's ability to communicate with its members.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2540-M	<i>Transport Workers Union of America Local 250 et al. v. City & County of San Francisco</i>	An administrative law judge found that the employer violated the Meyers-Milias-Brown Act by adopting amendments to its interest arbitration procedure for resolving collective bargaining impasses. The employer filed exceptions.	Precedential decision. The Board affirmed. It agreed that the amendments were not a reasonable local rule under Government Code section 3507, because they created evidentiary presumptions making it less likely unions could make a case to the arbitrator in support of their proposals, abrogated certain past practices, and restricted evidence that PERB and arbitrators could consider in resolving disputes.
2541-M	<i>Service Employees International Union, Local 221 v. City of Calexico</i>	An administrative law judge found that the employer made unilateral changes to its time keeping system. The employer filed exceptions.	Precedential decision. The Board adopted the proposed decision. It found that the arguments raised in the employer's exceptions were adequately addressed in the proposed decision.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2542	<i>Angela Marie Porter et al. v. Lynwood Teachers Association</i>	An administrative law judge found that the exclusive representative breached its duty of fair representation by failing to advance a grievance to arbitration. After exceptions were filed, the parties subsequently resolved their dispute and requested to withdraw the complaint and exceptions	Precedential decision. The Board granted the request and dismissed the complaint and unfair practice charge with prejudice.
2543-E	<i>Turlock Teachers Association v. Turlock Unified School District</i>	Charging Party alleged that the District violated the EERA when it unilaterally changed its professional growth policy and unreasonably delayed providing information.	Precedential decision. The ALJ concluded that the District violated its duty to bargain in good faith by unilaterally changing the professional growth policy and by unreasonably delaying in providing requested relevant information. The Board affirmed the conclusions reached by the ALJ. Because the District admitted to the scope of the District's professional growth policy in its answer, absent an amendment to the District's answer, the ALJ was forbidden from finding that the terms of the parties' collective bargaining agreement established a different policy.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2544	<i>California School Employees Association, Chapter 32 v. Bellflower Unified School District</i>	A public school employer excepted to a proposed decision finding that it had violated its duty to meet and negotiate under EERA by unilaterally subcontracting bus services and failing/refusing to provide information.	Precedential decision. The Board denied the employer’s exceptions and adopted the proposed decision.
2545	<i>United Teachers Los Angeles v. Alliance College-Ready Public Charter Schools, Alliance Susan & Eric Smidt Technology High School, and Alliance Renee & Meyer Luskin Academy High School</i>	An administrative law judge (ALJ) found that a charter management organization (CMO) and two charter schools were a single employer, and that they committed unfair practices by denying union organizers access to the schools, filtering a union-related e-mail message to employees’ spam folders, and threatening an employee for supporting the union. The ALJ dismissed allegations that the CMO interfered with employee rights by sending written communications and removing a teacher from a professional development meeting. Both parties filed exceptions.	Precedential decision. The Board affirmed in part and reversed in part. The Board concluded that it could not assert jurisdiction over the CMO based on a single employer finding, because the CMO is not an entity subject to the Board’s jurisdiction under the Educational Employment Relations Act, and dismissed all allegations against the CMO. The Board declined to consider whether the schools could be liable for the CMO’s conduct under an agency theory, concluding that the Board’s unalleged violation test was not satisfied. For the allegations against the schools only, which were not the subject of exceptions, the Board denied the charging party’s request for additional extraordinary remedies.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2545a	<i>United Teachers Los Angeles v. Alliance College-Ready Public Charter Schools, Alliance Susan & Eric Smidt Technology High School, and Alliance Renee & Meyer Luskin Academy High School</i>	The charging party requested reconsideration of the Board's conclusion in PERB Decision No. 2545 that the unalleged violation test was not satisfied concerning the theory that a charter management organization was the agent of two charter schools.	Precedential decision. The Board denied the request for reconsideration, finding that there was no showing of a prejudicial error of fact or newly discovered evidence.
2546-S	<i>Cal Fire Local 2881 v. State of California (Department of Forestry and Fire Protection)</i>	An administrative law judge dismissed a complaint alleging a unilateral change to a policy of giving pre-disciplinary hearing officers the authority to amend, modify, or revoke a proposed disciplinary action. The charging party filed exceptions.	Precedential decision. The Board affirmed the proposed decision. It agreed with the ALJ that the charging party failed to prove that the employer's established policy was to allow the hearing officer to amend, modify, or revoke the proposed action.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2547	<i>Marie Ferguson v. Berkeley Unified School District</i>	The Office of the General Counsel dismissed the charge, which alleged that the District retaliated against an employee for engaging in protected activity, and failed to provide a reasonable accommodation of the employee's disability.	Non-precedential decision. The Board affirmed the dismissal. It concluded that the employee did not adequately allege that she engaged in protected activity, and confirmed that the Board does not have jurisdiction over claims of disability discrimination.
2548	<i>Lori E. Edwards v. Lake Elsinore Unified School District</i>	A public school employee appealed from the dismissal of her unfair practice charge, which alleged that her employer had discriminated against her by reporting inaccurate retirement service credit information to the California State Teachers' Retirement System because of the employee's protected activity.	Precedential decision. Because the charge allegations stated a viable theory of liability in an unsettled area of retirement law outside PERB's jurisdiction and special expertise, the Board vacated the dismissal and remanded for further proceedings to determine if the charge allegations were timely.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2549-H	<i>California State University Employees Union v. Trustees of the California State University (San Marcos)</i>	Charging Party alleged that the Respondent violated the HEERA when it took adverse action against a bargaining unit member by investigating an allegation that he had demanded money from bargaining unit members in retaliation for his engagement in protected activity. On appeal, the sole exception was whether the ALJ erred in applying PERB's criteria for finding an unalleged interference violation.	Precedential decision. The ALJ issued a proposed decision dismissing the retaliation allegation, but found an unalleged violation that the Respondent had interfered with the protected rights of bargaining unit members. The Board reversed the proposed decision finding that the record failed to show that the conduct alleged in the unalleged violation was intimately related to the subject matter of the complaint and that the Respondent had adequate notice that the unalleged interference violation was being litigated.
2550-H	<i>Julie Barrett v. United Auto Workers Local 2865</i>	The Office of the General Counsel dismissed the charge, which alleged that an exclusive representative violated its duty of fair representation by failing to file a grievance and by settling an unfair practice charge filed on behalf of the employee.	Non-precedential decision. The Board denied the appeal for failure to comply with PERB Regulations and adopted the dismissal of the charge.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2551	<i>Sharon Curcio v. Fontana Teachers Association</i>	Charging Party alleged that her Association and/or CTA violated the duty of fair representation by refusing to represent her in the grievance process and by refusing to provide her with an access to an attorney.	Non-precedential decision. The Office of the General Counsel dismissed the charge on the grounds that Charging Party's allegations on the bases of untimeliness and being outside PERB's jurisdiction. The Board affirmed the dismissal and adopted the Warning and Dismissal Letters. The Board further reasoned that even if the allegations were timely, Charging Party had failed to state a prima facie case because the Respondent had no duty to represent employees in enforcing rights not secured by a collective bargaining agreement and therefore beyond the exclusive reach of the union.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2552	<i>Anthony Wong v. Long Beach Unified School District</i>	A public school employee alleged that his employer had violated EERA by denying his right to union representation in several meetings with his supervisors between April 14, 2014 and January 9, 2017. PERB's Office of the General Counsel dismissed most of the charge allegations as untimely and dismissed the remaining allegation for including insufficient information to state a prima facie case of an unfair practice. The employee appealed, reasserting the essential allegations of the charge,	Non-Precedential decision. The Board summarily rejected the appeal for non-compliance with the requirements of PERB's regulations and adopted the dismissal. The appeal failed to identify any particular error of fact, law, procedure or rationale, to reference the portion of the warning or dismissal letter appealed from, or to state the grounds for appeal, as required by PERB Regulation 32635.
2553	<i>Lucinda Daly v. Berkeley Unified School District</i>	A public school employee alleged that her employer had engaged in various unfair practices constituting interference and discrimination because of protected activity. PERB's Office of the General Counsel dismissed all allegations in the charge, and the employee appealed, asserting that some charge allegations were subject to statutory or equitable tolling and had therefore been improperly dismissed as untimely, and that that the Office of the General Counsel had ignored certain evidence in support of the charge's discrimination allegation.	Non-Precedential decision. The Board affirmed in part and reversed in part and directed the Office of the General Counsel to issue a complaint alleging that the employer had discriminated on the basis of protected activity when it issued the employee a disciplinary document shortly after she filed the original version of her charge.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2554-M	<i>Rueben Garcia, et al. v. County of Santa Clara</i>	Charging parties alleged that the County violated the MMBA by complying with an arbitrator’s opinion and award to distribute \$3.2 million to approximately 1,100 employees in equal shares, rather than to fully compensate Charging Parties for their unpaid overtime hours, as determined in the liability phase of a grievance brought by Charging Parties’ exclusive representative. The Office of the General Counsel dismissed the charge for lack of jurisdiction over the arbitrator and failure to state a prima facie case and Charging Parties appealed. It also dismissed Charging Parties’ unilateral change allegation for lack of standing because Charging Parties were not representatives of the recognized employee organization.	Non-Precedential decision. Because the appeal raised no issues which had not already been adequately addressed in the Office of the General Counsel’s warning and dismissal letters, the Board summarily denied the appeal and adopted the dismissal.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2555-H	<i>David Caines v. American Federation of State, County & Municipal Employees Local 3299</i>	<p>A former higher education employee filed an unfair practice charge alleging that the exclusive representative of certain employees at the University of California had breached its duty of fair representation by failing to challenge a reclassification of employees in 2010.</p> <p>PERB's Office of the General Counsel dismissed the charge as untimely and for failure to state a prima facie case, and the charging party appealed, asserting various case processing errors during the investigation of the charge.</p>	<p>Non-Precedential decision. The Board adopted the dismissal, as all of the acts or omissions allegedly constituting unfair practices were alleged to have occurred before June 3, 2015, which was more than six months before December 3, 2015, when the charge was filed.</p>
2556-M	<i>Service Employees International Union Local 721 v. County of San Bernardino</i>	<p>An administrative law judge found that the employer committed unfair practices by: (1) denying an employee organization access to employee work locations because it was not a recognized employee organization, and (2) taking a photograph of employees engaged in protected activity. The employer filed exceptions.</p>	<p>Precedential decision. The Board affirmed and adopted the proposed decision. It concluded that unrecognized employee organizations have certain statutory access rights. It also rejected the County's arguments that there was no interference with employee rights because the photograph was quickly deleted.</p>

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2557	<i>Erika Yanez v. United Teachers of Santa Clara</i>	A former school psychologist alleged that an employee organization had violated its duty to represent her in various disciplinary matters which led to her non-re-election for employment by a public school employer. PERB's Office of the General Counsel dismissed the charge as untimely and for failure to state a prima facie case and the former employee appealed, asserting various errors in the dismissal of her charge, including that the charge was timely because she was not an attorney and was unaware of the law governing that six-month statute of limitations.	Non-Precedential decision. The Board adopted the dismissal, as the material allegations were alleged to have occurred more than six months before the charge was filed and no tolling or other exception to the statute of limitations was applicable.
2558	<i>Inglewood Teachers Association v. Children of Promise Preparatory Academy</i>	On separate unfair practice complaints, two administrative law judges concluded that the employer engaged in surface bargaining and refused to provide necessary and relevant information. The employer filed exceptions.	Precedential decision. In a consolidated decision, the Board affirmed both ALJ decisions. The Board found multiple indicia of surface bargaining and agreed that the employer refused to provide information. The Board also rejected the employer's argument that one of the ALJs should have recused himself due to his prior employment.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2559-E	<i>Lance Howard v. East Side Teachers Association</i>	Charging Party, a public school employee, appealed the dismissal of his unfair practice charge alleging that the exclusive representative violated its duty of fair representation.	Non-Precedential decision. The Board affirmed the dismissal of the charge as untimely because the charging party did not file his charge until approximately one to three years after he first discovered respondent's alleged misconduct. The Board supplemented the dismissal, concluding that the doctrines of equitable tolling and equitable estoppel did not apply in this case, and that the charging party's appeal did not comply with PERB Regulations.
2560-M	<i>California Teamsters Public Professional & Medical Employees Local 911 v. South Coast Air Quality Management District</i>	Charging Party alleged that the Respondent violated the MMBA and PERB Regulations when it failed to complete negotiations prior to the creation of and/or revision of certain classifications. After the matter was appealed to the Board, the parties filed a Joint Request to withdraw the appeal, vacate the proposed decision, and withdraw the unfair practice charge.	Precedential decision. The Board granted the parties' request as it was in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2561	<i>Lori E. Edwards v. Lake Elsinore Unified School District</i>	A public school employee excepted to a proposed decision which dismissed the complaint and underlying unfair practice charge alleging that her employer had discriminated against her by involuntarily reassigning her from first grade to kindergarten, and by placing a number of students in her kindergarten class that exceeded the limit set forth in the applicable collective bargaining agreement.	Precedential decision. Vacated. The Board denied the exceptions and adopted the proposed decision, after determining that the exceptions had not been timely filed.
2561a	<i>Lori E. Edwards v. Lake Elsinore Unified School District</i>	A public school employee excepted to a proposed decision which dismissed the complaint and underlying unfair practice charge alleging that her employer had discriminated against her by involuntarily reassigning her from first grade to kindergarten, and by placing a number of students in her kindergarten class that exceeded the limit set forth in the applicable collective bargaining agreement.	Precedential decision. The Board vacated its prior decision to deny Charging Party's exceptions as untimely. Due to a clerical error, the Board was not previously aware that Charging Party had timely e-filed her exceptions.

DECISIONS OF THE BOARD

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2562	<i>Kimberly Rosales, et al. v. Lake Elsinore Teachers Association</i>	The Office of the General Counsel dismissed the charge, which alleged that the exclusive representative violated its duty of fair representation and retaliated against the charging parties. The charging parties appealed.	Non-precedential decision. The Board denied the appeal for failure to comply with PERB Regulations and adopted the dismissal of the charge.
2563	<i>Eric M. Moberg v. Napa Valley Community College District</i>	The Office of the General Counsel dismissed the charge, which alleged that the employer retaliated against the charging party by withdrawing an offer of employment and terminating his e-mail access. The charging party appealed.	Precedential decision. The Board affirmed the dismissal because the charging party had not adequately alleged unlawful motive. However, the Board determined that employees who have access to an employer's email system have the right to use that system during non-work time for EERA-protected communications. The employer may rebut this presumptive right of access by showing special circumstances.

DECISIONS OF THE BOARD

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2564-M	<i>San Joaquin County Correctional Officers Association v. County of San Joaquin</i>	While Charging Party's exceptions to a proposed decision were pending before the Board, the parties to the dispute reached a settlement agreement and asked the Board to withdrawal the exceptions and dismiss the complaint and underlying unfair practice charge.	Precedential decision. Under its broad powers to investigate unfair practice charges or alleged violations of the MMBA, the Board found the parties' requests for withdrawal and dismissal to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.
2565	<i>Jefferey L. Norman, et al. v. Riverside County Office of Education, et al.</i>	T he Office of the General Counsel dismissed the charge, which alleged that a school district, a county office of education, and a state agency committed various unfair practices.	Non-precedential decision. The Board agreed with the Office of the General Counsel that the charge failed to state a prima facie case, and affirmed the dismissal.

DECISIONS OF THE BOARD

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2566-C	<i>Karen A. Garris, et al. v. Los Angeles County Superior Court</i>	An administrative law judge dismissed the complaint, which alleged that the employer: (1) laid off a group of unrepresented employees in retaliation for their protected activity; (2) interfered with their protected rights by entering into a side letter agreement with the exclusive representative of another group of employees; and (3) laid off the charging parties for reasons other than operational necessity.	Precedential decision. The Board affirmed and adopted the proposed decision. It explained that when an employer’s act is facially or inherently discriminatory, its unlawful motive can be inferred without specific evidence, but the Board found no such discrimination in this case because the laid off employees were not similarly situated to those who were retained. The Board agreed with the ALJ that the employer proved it would have laid off the charging parties regardless of their protected activity, that the side letter did not interfere with their rights, and that the Board lacked jurisdiction over the statutory provision allowing the employer to lay off employees only for operational necessity.

DECISIONS OF THE BOARD

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2567	<i>Eric Moberg v. Hartnell Community College District</i>	A former community college district employee excepted to a proposed decision which dismissed the complaint and underlying unfair practice charge for failure to prove interference with protected rights and failure to demonstrate employer knowledge in support of the complaint's discrimination allegation.	Precedential decision. The Board adopted the proposed decision, as Charging Party's exceptions failed to cite to admissible evidence and/or applicable law to support his exceptions to the interference and employer knowledge issues. The Board found it unnecessary to consider most of Charging Party's exceptions, as they concerned issues that were not material to the outcome of the case.
2568-S	<i>California Association of Psychiatric Technicians v. State of California (Department of State Hospitals)</i>	The State employer excepted to a proposed decision finding that it violated the Dills Act by refusing to provide the exclusive representative with information relevant and necessary to the representation of a bargaining unit member in a potential appeal of a formal corrective action.	Precedential decision. The Board affirmed the proposed decision, holding: (1) affirmative defenses, including those of contractual waiver, must be pled in the responding party's answer to the complaint or they are waived; and (2) a party asserting that requested information is confidential or burdensome to produce should timely raise its concerns with the requesting party.

DECISIONS OF THE BOARD

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2569-M	<i>International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. City of San Jose</i>	An administrative law judge found that the employer failed to bargain in good faith before placing a charter amendment on the ballot that would change the employer's pension system. After the employer filed exceptions, the case was placed in abeyance pending settlement discussions. The parties did not respond to a letter from PERB's General Counsel stating his understanding that the matter had been resolved and the exceptions would be deemed withdrawn.	Precedential decision. The Board deemed the exceptions withdrawn and dismissed the complaint and underlying unfair practice charge with prejudice.
2570-M	<i>International Association of Firefighters, Local 230 v. City of San Jose</i>	An administrative law judge found that the employer failed to bargain in good faith before placing a charter amendment on the ballot that would change the employer's pension system. After the employer filed exceptions, the case was placed in abeyance pending settlement discussions. The parties did not respond to a letter from PERB's General Counsel stating his understanding that the matter had been resolved and the exceptions would be deemed withdrawn.	Precedential decision. The Board deemed the exceptions withdrawn and dismissed the complaint and underlying unfair practice charge with prejudice.

DECISIONS OF THE BOARD

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2571-M	<i>Service Employees International Union Local 1021 v. City of San Ramon</i>	Respondent, an employer, excepted from a proposed decision finding that employer violated the MMBA's duty to bargain in good faith.	Precedential. The Board adopted and supplemented the proposed decision, finding that the employer (1) bargained in bad faith by adopting a take-it-or-leave-it-attitude and rushing to impasse; (2) implemented its last, best and final offer without bargaining in good faith to a bona fide impasse; (3) unlawfully implemented terms for a set duration; and (4) failed and refused to bargain in good faith after impasse was broken.
2572-M	<i>Richard C. White, et al. v. San Bernardino Public Employees Association</i>	An administrative law judge found that an exclusive representative committed an unfair practice by agreeing to an organizational security provision that did not adequately inform employees of their right not to become members of the organization. The ALJ also dismissed allegations that the exclusive representative retaliated against one of the charging parties and failed to provide financial reports. The charging parties filed exceptions.	Precedential decision. The Board affirmed in part and reversed in part. The Board affirmed the dismissal of the financial report and retaliation allegations. The Board reversed the finding that the organizational security provision was unlawful, holding that the law does not require the clause to spell out employees' rights not to be members.

DECISIONS OF THE BOARD

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2573-M	<i>Service Employees International Union Local 721 v. County of Riverside</i>	An administrative law (ALJ) judge found that the employer committed unfair practices by: (1) unilaterally changing a past practice of paying employees the shift differentials they would have earned if they had not been released for union activities; and (2) failed to provide released time for collective bargaining without loss of compensation. The employer filed exceptions to these findings. The charging party filed an exception to the ALJ's refusal to find an additional violation.	Precedential decision. The Board affirmed and adopted the proposed decision. It rejected the employer's arguments that there was no past practice and that the Board should overturn a prior decision regarding the statutory right to released time. It also rejected the union's exception, concluding that the allegation it sought to litigate was untimely.

DECISIONS OF THE BOARD

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2574-H	<i>Dennis Pineda Ruiz v. Regents of the University of California</i>	A former higher education employee alleged that the Regents of the University of California violated HEERA by terminating his employment in retaliation for protected activity, and by implementing unilateral changes to working conditions. PERB's Office of the General Counsel dismissed the charge as untimely, and the employee appealed the dismissal, arguing that the six-month limitations period should be subject to equitable tolling until the time when the employee discovered that the exclusive representative would not take his grievance to arbitration.	Non-Precedential decision. The Board denied the appeal and adopted the dismissal. Under the facts alleged in the charge, the employee knew or reasonably should have known that his grievance would not advance to arbitration well over six months before he filed his charge. Unlike the federal case relied on by the appeal, the charge also alleged no facts demonstrating that the exclusive representative had done anything to lull him into inaction during the several months between his termination and the filing of his charge.

DECISIONS OF THE BOARD

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DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2575-M	<i>Ruben Garcia, et al. v. Service Employees International Union Local 521</i>	Charging Parties alleged that their exclusive representative had breached its duty of fair representation by: (1) inducing Charging Parties to continue working misclassified overtime hours with false assurances that they would be fully compensated for all overtime hours worked if the organization prevailed in its grievance against the employer; (2) urging an arbitrator to award all employees an equal lump sum payment to remedy the grievance and capping the employer's total liability, rather than awarding back pay only to those employees who actually worked the misclassified hours; and, (3) failing to provide notice and opportunity for input and/or misleading Charging Parties regarding the status of settlement negotiations and the terms of an arbitrator's opinion and award, despite requests by Charging Parties for such information. The Office of the General Counsel dismissed the charge for lack of jurisdiction over the arbitrator, lack of ripeness for review, and/or failure to state a prima facie case of an unfair practice.	Precedential decision. The Board denied the appeal and adopted the dismissal. An arbitrator is not a proper respondent in an unfair practice and therefore PERB had no authority to review the arbitrator's opinion and award. Additionally, the facts, as alleged in the charge, demonstrated that Charging Parties had notice and opportunity for input before their representative entered into a tentative agreement to settle the dispute.

DECISIONS OF THE BOARD

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
2576-M	<i>Riverside Sheriff's Association v. County of Riverside</i>	An administrative law judge found that the employer committed an unfair practice by implementing an automatic vehicle location system without bargaining over negotiable effects. After exceptions were filed, the charging party requested that its complaint and unfair practice charge be dismissed pursuant to a settlement agreement between the parties.	Precedential decision. The Board dismissed the complaint and underlying unfair practice charge and dismissed the employer's exceptions as moot.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-446a	<i>Lori .E Edwards, et al. v. Lake Elsinore Unified School District</i>	A public school employer requested reconsideration of the Board’s prior decision denying the district’s appeal from an administrative determination, which had rejected a filing as untimely. The opposing parties requested sanctions against the district for filing a frivolous request in bad faith.	The Board denied the district’s request for reconsideration and denied Charging Parties’ request for sanctions. Prior board precedent had determined that reconsideration is not available for decisions arising from administrative appeals. The motion for sanctions demonstrated that the district’s reconsideration request was without even arguable merit but failed to demonstrate that it had been brought in bad faith.
Ad-450	<i>Planada Elementary School District & Group of Employees & American Federation of State, County and Municipal Employees, Local 2703</i>	A group of classified employees appealed the Office of the General Counsel’s dismissal of its decertification petition on the ground that it was untimely filed.	The Board reversed the Office of the General Counsel’s administrative determination on the basis that in calculating the window period for filing the petition, the Office of the General Counsel failed to take into account the “holiday rule” outlined in PERB Regulation 32130(b).

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-451	<i>Marie Ferguson v. Berkeley Unified School District</i>	The Board's appeals office rejected the appeal of the dismissal of an unfair practice charge. The charging party appealed.	The Board reversed. It concluded that although the appeals office correctly applied PERB regulations, defective service of the appeal should be excused due to the absence of prejudice to the respondent.
Ad-452	<i>Fairfield-Suisun Unified School District and Fairfield-Suisun Association of Speech-Language Pathologists and Fairfield-Suisun Unified Teachers Association</i>	An employee organization appealed from an administrative determination denying a severance petition that sought to sever speech-language pathologists from a school district's other certificated employees. The appeal asserted that, based on societal changes that have occurred in special education and speech-pathology, the distinction between certificated and classified personnel in public education is no longer useful in the field of speech pathology.	The Board denied the appeal. The community of interest among certificated employees is implicit in the statutory guidelines used for evaluating all certificated personnel, as set forth in the Stull Act, Education Code Article 5.5, sections 13485 through 13490, which are not used for evaluating classified personnel. Additionally, PERB is not free to disregard the statutory provisions of EERA mandating separate bargaining units for certificated and classified personnel.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-453-H	<i>Regents of the University of California and University Professional and Technical Employees, CWA Local 9119</i>	A higher education employer appealed from an administrative determination to grant a proposed unit modification to add employees in a newly-created classification to an existing unit without showing proof of majority support, where the additional employees would constitute less than ten percent of the existing unit. The appeal invited the Board to overrule PERB precedent holding that the language of PERB Regulation 32781 eliminates the Board's discretion to require proof of majority support when a unit modification petition seeks to add classifications which would increase the size of the existing unit by less than ten percent.	The Board denied the appeal and adopted the administrative determination for reasons explained in prior Board precedent holding that the applicable regulation removes discretion to require proof of support under the circumstances of this case. PERB cannot change its regulations through decisional law.
Ad-454-M	<i>City of Salinas and Service Employees International Union Local 521</i>	The Office of the General Counsel denied a request for factfinding under the Meyers-Milias-Brown Act. The exclusive representative requested a stay of activity pending appeal.	The Board denied the stay request, concluding that after the denial of the factfinding request, there was no further action by PERB that could be stayed.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-455-M	<i>County of Solano and Service Employees International Union Local 1021</i>	An employee organization appealed from an administrative determination denying its request for factfinding. Concurrent with the appeal, the employee organization requested the Board stay implementation of the administrative determination, pending resolution of the appeal.	The Board denied the request for a stay of activity. Although PERB Regulations provide that parties seeking a stay of a Board order may file a request for a stay with the administrative appeal, in this case, because the administrative determination had denied the request for factfinding, there was no ruling or order, and consequently, nothing to stay.
Ad-456	<i>Carmen Fritsch-Garcia v. Los Angeles Unified School District</i>	The Board's appeals office rejected as untimely a request for an extension of time to appeal the dismissal of an unfair practice charge. The charging party appealed.	The Board agreed that the request for extension was untimely, and denied the appeal.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-457-M	<i>City of Salinas and Service Employees International Union Local 521</i>	The Office of the General Counsel denied a request for factfinding under the Meyers-Milias-Brown Act, finding no written notice of a declaration of impasse by either party. The exclusive representative appealed.	The Board reversed. It concluded that the employer provided sufficient written notice of a declaration of impasse by announcing that it had fulfilled its obligation to meet and confer, even though it did not use the word "impasse."

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-458-M	<i>County of Solano and Service Employees International Union Local 1021</i>	An employee organization appealed from an administrative determination denying its request for factfinding as untimely, based on the Office of the General Counsel's interpretation of the public agency's local rules which set forth various options for requesting factfinding, including one option for selecting the factfinder by mutual agreement. The appeal asserted that, because it had not had an opportunity to participate in the mutual selection of the factfinder, its request for factfinding remained timely.	The Board denied the appeal. Generally, where the exclusive representative has made a request for factfinding that is timely under any plausible interpretation of the public agency's local rules and that is accompanied by a statement that the parties have been unable to effect a settlement to their dispute, PERB must accept the request as timely and allow the parties to proceed to factfinding. Here, however, while the local rules appear to contemplate selection of a mediator by mutual agreement of the parties as one option, the employee organization's conduct was inconsistent with that option, regardless of whether it was the default option or simply one option among others.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-459-H	<i>Regents of the University of California and San Diego House Staff Association</i>	The Office of the General Counsel dismissed a unit modification petition filed with copies of proof of support signed electronically. The petitioner appealed.	The Board affirmed. It concluded that PERB Regulations require that proof of support consist of original documents signed by the employees.
Ad-460-M	<i>San Diego Metropolitan Transit System and Transit Electromechanics Union</i>	The Board's appeals office rejected an appeal of a decision by the State Mediation and Conciliation Service dismissing a representation petition. The petitioner appealed.	The Board reversed. It concluded that the SMCS decision was appealable.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-461-M	<i>County of Ventura and Ventura County Professional Peace Officers Association</i>	The County appealed an administrative determination by the Office of the General Counsel granting the Union's request for factfinding on the basis that the dispute involved a matter not within the scope of representation, and requested that PERB stay the administrative determination pending the Board's review of the matter.	The Board denied the County's appeal and request for stay. In doing so, the Board held that while factfinding is only required for disputes over matters within the scope of representation, PERB is not required to make a definite determination to that effect prior to approving a factfinding request. While some matters are expressly included within the scope of representation, other matters are more legally and factually complex. Requiring a preliminary determination as to scope prior to approving a factfinding request would encourage delay and gamesmanship and thus defeats the principal purpose of factfinding.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-462-M	<i>City of Oakland and Service Employees International Union Local 1021</i>	During an open-ended strike by SEIU-represented employees, SEIU filed a request for factfinding on the basis that SEIU and the City employer were unable to agree on which employees were “essential” under <i>County Sanitation District No. 2 v. Los Angeles County Employees Assn.</i> (1985) 38 Cal.3d 564. The employer appealed the Office of the General Counsel’s administrative determination approving SEIU’s factfinding request, arguing that the subject of which public employees are essential under <i>County Sanitation</i> is outside the scope of representation and, therefore, beyond the scope of the MMBA’s factfinding provision.	The Board affirmed the approval of the factfinding request. The Office of the General Counsel is not required to determine whether the subject of the parties’ dispute is within the scope of representation when deciding the sufficiency of a factfinding request. PERB’s review of a factfinding request is limited to determining whether the request satisfies the statutory and regulatory prerequisites.
Ad-463-M	<i>Service Employees International Union Local 221 v. County of San Diego</i>	The charging party requested that the Board expedite an unfair practice charge alleging violations of the employer’s local rules for representation matters.	The Board granted the request to expedite.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-464-M	<i>San Diego Metropolitan Transit System and Transit Electromechanics Union</i>	The State Mediation and Conciliation Service dismissed a representation petition that sought to sever a smaller bargaining unit from an existing unit. The petitioner appealed.	The Board reversed. It concluded, contrary to the administrative determination, that a severance petition was permitted by the statute and regulations.
Ad-465-M	<i>San Diego Metropolitan Transit System and Transit Electromechanics Union and Public Transit Employees Association</i>	Incumbent union appealed from SMCS administrative determination to proceed with another union's attempt to decertify and replace the incumbent union.	The Board adopted the SMCS administrative determination, finding that SMCS correctly applied federal law in determining that (1) a one-month CBA extension is not long enough to create a contract bar; and (2) the contract bars applies only if both the contract ratification date and the contract's effective date precede the filing date of a petition to decertify and/or replace the incumbent union.

DECISIONS OF THE BOARD: ADMINISTRATIVE DETERMINATIONS *

FISCAL YEAR 2017-18

*Administrative Determinations decided by the Board itself are **Precedential Decisions**.

*DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
Ad-466	<i>Grossmont Union High School District and American Federation of Teachers Guild, Local 1931</i>	The Office of the General Counsel dismissed the petitioning employee organization's request for recognition. The employee organization filed a written request with the Office of Administrative Appeals, seeking an extension of time to appeal the administrative determination. The Appeals Office denied the request on the ground that PERB Regulation 32305, subdivision (c) prohibits extensions of time in representation cases.	The Board reversed the Appeals Office's denial of an extension. PERB Regulation 32305(c) does not apply to an appeal of an administrative decision in a representation matter, as it would to exceptions from a proposed decision after an evidentiary hearing.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 730	<i>Kourosh Hamidi v. Service Employees International Union, Local 1000</i>	(1) Whether it is appropriate for the Board to seek injunctive relief on behalf of Kourosh against Local 1000 for its alleged failure to comply with the Dill's Act's financial disclosure requirements, (2) whether it is appropriate to expedite unfair practice charge No. LA-CO-143-S, and (3) whether it is appropriate to issue an order compelling Local 1000 to comply with the financial disclosure requirements of the Dills Act.	Request denied.
I.R. 731	<i>County of San Diego v. Service Employees International Union, Local 221</i>	Should PERB pursue injunctive relief on behalf of the County of San Diego to prevent approximately 3,700 employees from participating in a potential strike and to require SEIU Local 221 to provide the County with advance notice of a strike?	Request withdrawn.
I.R. 732	<i>County of San Diego v. Service Employees International Union, Local 221</i>	Should essential employees be enjoined from participating in a strike called by SEIU Local 221, occurring on September 12 and 13, 2017?	Request granted, in part.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
I.R. 733	<i>County of Riverside v. Service Employees International Union, Local 721</i>	Should essential employees be enjoined from participating in a strike called by SEIU Local 721, occurring on September 6, 2017?	Request granted, in part.
I.R. 734	<i>El Segundo City Employees Association v. City of El Segundo</i>	Whether impasse was broken, such that the City's change in employees' schedules constituted a unilateral change; whether the Board can later remedy harm resulting from the employees' schedule change.	Request denied.
I.R. 735	<i>City of Pomona v. Teamsters Local 1932, Pomona City Employees Association</i>	Whether the union planned or authorized a one-day sickout by union members; whether the Board can remedy harm from any future sickout; whether a future sickout involving essential employees would cause imminent and substantial harm.	Request denied.
I.R. 736	<i>Santa Clara County Correctional Peace Officers Association v. County of Santa Clara</i>	Whether several unilateral changes implemented by the County should be reversed because those changes place public	Request denied.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
		safety employees at risk of harm.	
I.R. 737	<i>Criminal Justice Attorneys Association of Ventura County v. County of Ventura</i>	Whether the County made an unlawful unilateral change to the employee leave policy by imposing taxes on the leave time when it accrued, rather than when it was cashed out or used as paid time off.	Request denied.
I.R. 738	<i>City of Oakland v. Service Employees International Union, Local 1021</i>	Whether the City of Oakland established reasonable cause to believe that SEIU Local 1021 committed an unfair practice by calling a strike of employees whose absence posed an imminent threat to the health or safety of the public, within the meaning of <i>County Sanitation Dist. No. 2 of Los Angeles v. Los Angeles City Employees Assn.</i> (1985) 38 Cal.3d 564, and whether those employees should be enjoined from participating in further work stoppages	Request denied.
I.R. 739	<i>Teamsters Local 1932 v. City of</i>	Should the City of Fontana be enjoined from allowing City employees from using work time,	Request withdrawn.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
	<i>Fontana</i>	city resources, and city meeting facilities to organize a decertification effort.	
I.R. 740	<i>Union of American Physicians & Dentists v. Alameda Health Systems</i>	Should Alameda Health Systems be enjoined from contracting-out bargaining unit work without notice to the union and an opportunity to meet and confer.	Request withdrawn.
I.R. 741	<i>AFSCME Local 2620 v. State of California (CDCR, Correctional Healthcare Services)</i>	Is there reasonable cause to believe CCHCS implemented an unlawful unilateral change to employees' alternate work schedules, and is injunctive relief just and proper?	Request denied.
I.R. 742	<i>Tahoe Forest Hospital Employees Association v. Tahoe Forest Hospital District</i>	Should the District be enjoined from activities that seek to deter and/or discourage employees from voting to affiliate with AFSCME.	Request withdrawn.
I.R. 743	<i>Tahoe Forest Hospital Employees Association of Professionals v.</i>	Should the District be enjoined from activities that seek to deter and/or discourage	Request withdrawn.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
	<i>Tahoe Forest Hospital District</i>	employees from voting to affiliate with AFSCME.	
I.R. 744	<i>San Diego City Firefighters Association, IAFF Local 145 v. City of San Diego</i>	Should the Board enjoin the City from applying a number of unilateral changes to the City's personnel policies/rules.	Request withdrawn.
I.R. 745	<i>Teamsters Local 1932 v. City of Fontana</i>	Whether the City breached its duty of strict neutrality by allowing an employees and rival employee organizations to use City facilities and resources to campaign in an attempt to decertify Local 1932 as the exclusive representative.	Request denied.
I.R. 746	<i>Regents of the University of California v. AFSCME, Local 3299</i>	Whether essential employees should be enjoined from participating in a strike at various UC medical facilities?	Request granted, in part.
I.R. 747	<i>Regents of the University of California v. University Professional</i>	Whether essential employees should be enjoined from participating in a sympathy	Request granted, in part.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
	<i>& Technical Employees, Local 9119</i>	strike at various UC medical facilities?	
I.R. 748	<i>Regents of the University of California v. California Nurses Association</i>	Whether essential employees represented by CNA should be enjoined from participating in a sympathy strike at various UC medical facilities?	Request granted, in part.
I.R. 749	<i>Service Employees International Union, Local 721 v. County of Riverside</i>	Whether the County should be enjoined from implementing its last, best and final offer, and directed to reinstate three nurses discharged for their strike activities.	Request granted.
I.R. 750	<i>Hastings College of Law v. AFSCME Local 3299</i>	Whether a strike by employees of the Hastings Law School was unprotected and not a sympathy strike, and whether employees could be enjoined from striking.	Request denied.
I.R. 751	<i>Santa Clara PSNSEA, Unit #10 v. City of Santa Clara</i>	Whether PERB should seek injunctive relief regarding the City's alleged unilateral decision to reassign a sworn police officer from the	Request denied.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
		front desk of its Police Department Headquarters.	
I.R. 752	<i>Los Angeles Unified School District v. SEIU Local 99</i>	Whether PERB should seek to enjoin a strike of classified school employees on the grounds the work stoppage interfered with students' education among other things.	Request withdrawn.
I.R. 753	<i>City of Berkeley v. Service Employees International Union, Local 1021</i>	Whether City employees performing duties "essential" to the public health and safety should be enjoined.	Request withdrawn.
I.R. 754	<i>County of Marin v. Service Employees International Union, Local 1021</i>	Whether County employees performing duties "essential" to the public health and safety and should be enjoined.	Request withdrawn.

DECISIONS OF THE BOARD: REQUESTS FOR INJUNCTIVE RELIEF

FISCAL YEAR 2017-18

Requests for Injunctive Relief decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
There were no Decisions written pertaining to Requests for Injunctive Relief by the Board this fiscal year.			

DECISIONS OF THE BOARD: REQUESTS FOR JUDICIAL REVIEW*

FISCAL YEAR 2017-18

*Requests for Judicial Review decided by the Board itself are **Precedential Decisions**.

DECISION NO.	CASE NAME	DESCRIPTION	DISPOSITION
JR-28-H	<i>Regents of the University of California and University Professional and Technical Employees, CWA Local 9119</i>	<p>A higher education employer requested that PERB join in its effort to seek judicial review of PERB's prior decision in this matter, which turned on PERB's application of PERB Regulation 32781.</p> <p>HEERA section 3564, subdivision (a), makes PERB unit determinations immune from judicial review except when, in response to a petition for judicial review from an employer or employee organization, the Board agrees that the case is one of "special importance" and joins in the request for review; or when the issue is raised as a defense to an unfair practice complaint. (PERB Reg. 32500.)</p>	<p>The Board denied the request to seek judicial review. The central issue on appeal was PERB's application of the ten percent rule for proof of majority support in unit modifications, which was neither "novel" nor one of "special importance" unique to HEERA. The Board applies the standard for joining in a request for judicial review strictly because the fundamental rights of employees to form, join and participate in the activities of employee organizations could be jeopardized if PERB's unit determinations were routinely subject to legal challenges.</p>