

Labor and Employment Intelligence for the Public Sector

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*Institute of Industrial Relations  
University of California Berkeley*



# 2003 CPER INDEX

*An index to the 2003 issues of  
CALIFORNIA PUBLIC EMPLOYEE RELATIONS (CPER)  
Issues 158-163*

A service of the California Public Employee Relations Program

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## TABLE OF CONTENTS

*How to Use the CPER Annual Index* i

<b>Part I: General Index</b>	<b>1</b>
<b>Part II: Table of Cases</b>	<b>19</b>
<b>Part III: Table of PERB Orders and Decisions</b>	<b>26</b>
Section A: Annotated Table of PERB Orders and Decisions	26
Dills Act Cases	26
EERA Cases	26
HEERA Cases	28
MMBA Cases	28
Section B: Key to Orders and Decisions by PERB Decision Number	30
<b>Part IV: Index of Arbitration</b>	<b>32</b>
Grievance Actions	32
Neutrals	34

## HOW TO USE THE CPER ANNUAL INDEX

The 2003 issues of the *CPER* bimonthly periodical — No. 158 (February) through No. 163 (December) — are indexed in this edition of the annual *CPER Index*.

The *Index* is arranged in four parts to provide convenient access to information. The first part is a topical index, the second is a table of all court decisions reported in *CPER* periodicals, the third is a table of decisions of the Public Employment Relations Board, and the fourth is an index of arbitration awards abstracted in the periodical. Each part is described below.

### Key to *CPER* References

References to material in *CPER* consist of issue and page number, appearing at the end of each entry. For example, page 22 in *CPER* No. 162 is printed as **162:22**. References are only to the first page of an article.

### Part I: General Index

This part is the basic topical index to *CPER*. Under each main topic appear: (1) cross references to related topics (or if it is not a main topic, reference to the main topic under which material on that subject is indexed); (2) feature articles by title, with authors noted; (3) annotations of “recent development” news stories; and (4) annotations of Public Employment Relations Board cases reported in these issues.

Cases in the General Index under each topic serve as a subject key to cases that appear in the separate tables of court cases (Part II) and PERB rulings (Part III). (Parts II and III provide complete case titles, official citations, and case annotations, but no subject indexing. See full explanation below.) The PERB cases under each topic include all final board decisions, whether they were reported in a news story or abstracted in the *CPER* log of PERB rulings.

To accommodate the specialized use of the Index for research of arbitration issues, arbitration awards are indexed separately in Part IV. In the General Index, they appear with the entry “arbitration log.” (See description of Part IV, below.)

*Unions and associations* are listed in the General Index under the topic **Employee Organizations**. *Employers* are under **Employers, California Public**. Most news stories are indexed by employer and employee organization, as well as by topic. All material regarding any one employer (news story, arbitration case, or court or PERB ruling) is indexed by name of the employer.

Major *statutes* appear as General Index topics (such as **Dills Act**). New legislation is indexed under the topic, **Legislation**, as well as under subject headings.

## **Part II: Table of Cases**

This table includes all court cases reported in the 2004 issues of *CPER*. The official title of each case is followed by a brief statement of the court's holding, the official court citations, and the citation to *CPER* analysis of the decision.

## **Part III: Table of PERB Orders and Decisions**

This table contains two sections.

**Section A** is an annotated table of all final rulings of the Public Employment Relations Board, whether abstracted in the *CPER* log of PERB rulings or featured in a news story. The table is presented in subdivisions reflecting the four statutes under PERB's jurisdiction: the Dills Act, the Educational Employment Relations Act (EERA), the Higher Education Employer-Employee Relations Act (HEERA), and the Meyers-Milias-Brown Act (MMBA). Each case title is followed by the PERB decision number, year, and reference to the case synopsis appearing in the log of PERB decisions in each issue of *CPER*.

**Section B** is a key to case titles by PERB decision number.

Decisions are indexed by topic and by employer in the General Index (Part I).

## **Part IV: Index of Arbitration**

This part is a separate index of arbitration awards that were abstracted in the "Arbitration Log" in each periodical. Entries are arranged by the issue in dispute (based on the headnotes used in the Log). In addition, a list of neutrals' names and *CPER* citations to their awards is provided. Awards also are indexed by name of employer in the General Index (Part I).

## PART I

## GENERAL INDEX

## A

**ACADEMIC FREEDOM**

New U.C. Academic Freedom Policy/163:53

**ADMINISTRATIVE REMEDIES — EXHAUSTION REQUIREMENTS**

City Employee Must Exhaust City and FEHA Administrative Procedures Before Filing a Discrimination Suit/154:83

U.C. Employee Must Exhaust Internal Grievance Procedure Prior to Filing Whistleblower Claim/160:54

**AFFIRMATIVE ACTION**

Affirmative Action in California: What Is Permissible, What Is Not – Part II (Liebert)(Poturica)(Blacher)/162:5

**AGE DISCRIMINATION IN EMPLOYMENT ACT**

*see* Discrimination — Age

**AGENCY FEES**

Agency Fee Notice Requirement Clarified; Remedy to Non-Objectors Was Overbroad/158:56

Settlement of Agency Fee Case Affirms Bargaining Rights of Home Care Workers/158:49

Supervisors, Confidential Employees Now Subject to MMBA Agency Fee Provisions/162:32

**AGENCY SHOP, OTHER ORGANIZATIONAL SECURITY, AND DUES DEDUCTION**

Agency Fee Notice Requirement Clarified; Remedy to Non-Objectors Was Overbroad/158:56

Court Clarifies Type of Verification Required by Small Unions to Support Agency Fee/160:34

**AMERICANS WITH DISABILITIES ACT (ADA)**

California Supreme Court Clarifies State's Broad Protections for Disabled Workers/159:52

Discriminatory Policy Does Not Extend Statute of Limitations/161:69

Ninth Circuit Clarifies Burden of Proof for Interference Claim Under ADA/162:62

**ARBITRATION**

Arbitration of Disciplinary Action Robs SPB of Constitutional Authority Over State Employees/161:58

Binding Interest Arbitration Deemed Unconstitutional (Vendrilla)/160:19

Chief Not Required to Promote Reinstated Officer/160:61  
Disputes Between CSU and CFA to Be Decided by Panels/158:71

Effort to Shore Up Arbitration Law Wins Governor's Approval/163:33

Rehearing in *SPB v. DPA* Reaches Same Result/162:51

San Francisco Transgender Training Scrutinized in Termination Case/162:67

Worker Takes Employer's Computer Security Into His Own Hands/163:72

## B

**BARGAINING UNIT WORK**

arbitration log/162:73

**BROWN ACT**

West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41

**BUDGET**

Battle of the Budget: Impact on Public Schools/162:23

Budget Blues Play 'Round the State/158:42

CalSTRS Asks Supreme Court to Order State to Make Contribution/161:46

CFA Monitors CSU Layoffs While SETC and SUPA Enjoy Good Will/162:55  
 Class-Size Reduction Modification and Teacher Retirement Bonus Linked/160:30  
 CTA Initiative to Fund Schools/Preschools Takes on Prop. 13 Supporters/163:45  
 Davis' Proposed Budget Cuts Would Hit Schools Hard/158:29  
 Exploring the Myths of Enhanced Retirements: A Labor Perspective (Brennan)/159:5  
 Local Governments Navigate the State Budget Crisis (Keil)(Hurst)/158:11  
 Mid-Year Layoffs Possible at U.C. But Not CSU/158:66  
 Oakland Public School District Overspends Itself Into State Takeover/158:38  
 Rich School Districts Howl Over Davis Budget Proposal/158:30  
 State Employees Receive Retroactive Pay Increases Blocked by Impasse/162:46  
 Teachers' Early Retirement Bill Becomes Law/162:27  
 Teachers Hit Hard by Budget Cuts/Tax Change/159:29  
 West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41  
 What Can the Public Schools Expect From Governor Schwarzenegger?/163:42

## C

### CALIFORNIA PUBLIC RECORDS ACT

*Contra Costa Times* Wins Access to 200 Disciplinary Files/158:60  
 Individual Employee Salary Data Not Available as 'Public Record'/163:34

### CERTIFICATION OF BARGAINING UNIT

*see also* Representation Elections, Recognition, and Decertification Procedures  
 Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:40

### CHARTER SCHOOLS

Charter Schools: Legislation, Studies, Litigation, and Grants (McKee)/161:27  
 New Charter School Law Requires Accountability/163:48  
 Sac High to Reopen as Sacramento Charter High School/160:29  
 Teachers Oppose Closure of Sacramento High/158:40

### CITIES

*see* Employers, California Public — Cities (for entries regarding each city by name)

### CIVIL RIGHTS ACT OF 1964, TITLE VII

*see* Title VII

### CIVIL SERVICE

Reasonable Accommodation Does Not Include Transfer to Different Classification Before Civil Service Exam/162:49

### COLLECTIVE BARGAINING

An Update of the Vested Benefits Doctrine and Its Effects on Collective Bargaining (Hartinger)(Lyman)/162:12  
 DPA Reels in Unions With Benefits Bait/162:42  
 Governor Warns: 'Give-Backs or Layoffs'/158:55  
 State Readies Its Sword/160:44  
 U.C. Agrees to Continuing Appointments for Long-Term Lecturers/161:47  
 U.C. Clerical Workers Accept Mediator's Proposal/160:48  
 U.C. Healthcare Professionals' Contract Moves Employees to Salary Zones/163:49  
 U.C. Sent Back to the Table With CUE/158:69  
 Unionization in Higher Ed.: The Case of Academic Employees in Large Public Systems (Julius)/161:16  
 UPTE's 'Streamlined' Bargaining With U.C. Lasts Only One Year/161:50

### COMPUTERS

Worker Takes Employer's Computer Security Into His Own Hands/163:72

### CONFIDENTIAL EMPLOYEES

Supervisors, Confidential Employees Now Subject to MMBA Agency Fee Provisions/162:32

### CONSTITUTIONALITY

Binding Interest Arbitration Deemed Unconstitutional (Vendrilla)/160:19

### CONTRACT BAN

Board Asserts Jurisdiction, Reverses City's Application of Local Rule/162:38

### CONTRACT INTERPRETATION

arbitration log/158:74  
 arbitration log/158:75  
 arbitration log/158:76  
 arbitration log/159:67  
 arbitration log/159:69  
 arbitration log/159:70  
 arbitration log/160:67  
 arbitration log/160:68  
 arbitration log/161:83  
 arbitration log/162:70



arbitration log/162:71  
 arbitration log/162:72  
 arbitration log/163:74  
 arbitration log/163:77  
 arbitration log/163:78  
 Constitutional Concerns Inform Interpretation of Parties' Agreement/159:64

**CONTRACTING OUT; PRESERVATION OF UNIT WORK**

arbitration log/162:73  
 Contracting Out Work in Hard Economic Times (Hersch)/163:6  
 State Employee Unions Fight Layoffs and Salary Cuts/159:46

**COUNTY EMPLOYEES RETIREMENT ACT (CERA)**

So How Did This Happen? The Fantasy World of Retirement Benefits (Branan)/158:5

**COURT EMPLOYEES**

Move to Have PERB Adjudicate Trial Court Employees' Unfairs/160:36

**D**

**DECERTIFICATION OF EXCLUSIVE BARGAINING REPRESENTATIVE**

Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:40

**DEFAMATION**

Peace Officers Can Bring Defamation Suits Against Citizen Complainants/161:37

**DILLS ACT, Gov. Code Secs. 3512-3524**

A Report From the Excluded and Exempt Employees' Salary-Setting Task Force (Booth)(Svetich)/162:19

**DISABILITY**

California Supreme Court Clarifies State's Broad Protections for Disabled Workers/159:52  
 Disability Applicant Must Show Incapacity to Work Anywhere in State/158:50  
 Injured Worker Not Entitled to FLSA Premium Pay While on Disability Leave/160:37  
 Reasonable Accommodation Does Not Include Transfer to Different Classification Before Civil Service Exam/162:49

**DISCIPLINE AND DISCHARGE (JUST CAUSE FOR)**

arbitration log/158:73  
 arbitration log/158:76  
 arbitration log/159:66  
 arbitration log/159:67  
 arbitration log/160:65  
 arbitration log/160:66  
 arbitration log/160:69  
 arbitration log/161:80  
 arbitration log/161:81  
 arbitration log/161:82  
 arbitration log/162:74  
 arbitration log/163:75  
 arbitration log/163:76  
 Personnel Records Are Confidential in Context of Disciplinary Appeals/158:46  
 Supreme Court Clarifies Burden of Proof in Mixed-Motive Cases/161:67  
 Suspected Misuse of Family Medical Leave Can Form Basis for Discharge/161:75  
 Teacher Not Entitled to Identifying Information of Witnesses Named in Investigative Report/162:28  
 Whistleblower's PERS Disability Retirement Does Not Preclude Finding of Constructive Discharge/159:37

**DISCRIMINATION — AGE**

Huge Settlement in Age Discrimination Case/159:58

**DISCRIMINATION — IN GENERAL**

*see also* Americans With Disabilities Act  
 Retaliation  
 Title VII  
 Affirmative Action in California: What Is Permissible, What Is Not – Part II (Liebert)(Poturica)(Blacher)/162:5  
 California Supreme Court Clarifies State's Broad Protections for Disabled Workers/159:52  
 Employee Terminated After Reporting Sexual Harassment May Sue/162:64  
 Employer Vicariously Liable for Supervisor's Coercion of Sexual Favors by Threat of Discharge/162:58  
 Muslim Substitute Teacher May Take Discrimination Claims to Trial/160:58  
 Ninth Circuit Clarifies Burden of Proof for Interference Claim Under ADA/162:62  
 Unions Support Continuing U.C. Management of Labs Despite Criticisms/159:40  
 'What if My Harasser Is the Dean of the Law School?'/158:62

**DISCRIMINATION — SEX**

Favoring Lover(s) Over Others Not Sex Discrimination Under FEHA/159:55  
 School Administrators May Be Personally Liable for Failure to Protect Gay Students/160:27  
 ‘What if My Harasser Is the Dean of the Law School?’/158:62

**DOWNSIZING**

Contracting Out Restrictions in the Public Sector (Weinberg)/160:5  
 Teachers Hit Hard by Budget Cuts/Tax Changes/159:29

**DUE PROCESS**

arbitration log/159:67  
 CSU Employees Benefit Modestly From New Laws/163:56  
 No Action for Damages Is Available Under California’s Due Process Clause/158:64

**DUES DEDUCTION**

Court Clarifies Type of Verification Required by Small Unions to Support Agency Fee/160:34

**DUTY TO BARGAIN (MEET AND CONFER) IN GOOD FAITH**

Public School Employers Prohibited From Giving Inaccurate Information/163:47  
 State Rescinds Expected Increases for Excluded Employees; Unions Sue/161:56

**E**

**EDUCATION**

Davis’ Proposed Budget Cuts Would Hit Schools Hard/158:29  
 New U.C. Academic Freedom Policy/163:53  
 Rich School Districts Howl Over Davis Budget Proposal/158:30  
 State Sued Over Definition of ‘Highly Qualified Teacher’/158:32

**EDUCATIONAL EMPLOYMENT RELATIONS ACT (EERA)**

Appeals Court Overturns PERB: Teachers Can’t Wear Buttons (McKee)/163:24  
*Arcata* Overruled as PERB Clarifies Scope Rule Regarding Hours of Employment/161:43  
 Community College District Cannot Influence Employees to Join One Union Over Another/158:33

New Certificated Teachers Entitled to Written Notice of Employment Status On or Before First Day of Work/159:31  
 School Principals Can Be Reassigned to Lower Paying Positions/160:32

**EMPLOYEE ORGANIZATIONS**

Legislature Eases Unionization by Public School Employees/163:47  
 Public School Employers Prohibited From Giving Inaccurate Information/163:47  
 SEIU Bill Tinkers With MMBA/162:40

**EMPLOYEE ORGANIZATIONS — COURT EMPLOYEES**

**California Court Reporters Assn.**  
 More Bad News for State Courts/160:39

**EMPLOYEE ORGANIZATIONS — FIREFIGHTERS**

**California Department of Forestry Firefighters**  
 DPA Reels in Unions With Benefits Bait/162:42

**EMPLOYEE ORGANIZATIONS — HIGHER EDUCATION**

**American Federation of State, County and Municipal Employees, Loc. 3299**  
 arbitration log/159:66  
**Association of Graduate Student Employees-United Auto Workers**  
 U.C. Academic Student Employees Strike During Negotiations/163:52  
**California Faculty Association**  
 CFA Monitors CSU Layoffs While SETC and SUPA Enjoy Good Will/162:55  
 Disputes Between CSU and CFA to Be Decided by Panels/158:71  
 Unions Enlist State Auditor in Battle for CSU Money and Jobs/160:50  
**Coalition of University Employees**  
 arbitration log/163:74  
 U.C. Clerical Workers Accept Mediator’s Proposal/160:48  
 U.C. Sent Back to the Table With CUE/158:69  
**State Employees Trades Council**  
 CFA Monitors CSU Layoffs While SETC and SUPA Enjoy Good Will/162:55  
**Statewide University Police Association**  
 CFA Monitors CSU Layoffs While SETC and SUPA Enjoy Good Will/162:55

**University Council of the American Federation of Teachers**

U.C. Agrees to Continuing Appointments for Long-Term Lecturers/161:47

**University Professional and Technical Employees**

U.C. Healthcare Professionals' Contract Moves Employees to Salary Zones/163:49

Unions Support Continuing U.C. Management of Labs Despite Criticisms/159:40

UPTE's 'Streamlined' Bargaining With U.C. Lasts Only One Year/161:50

**EMPLOYEE ORGANIZATIONS — LAW ENFORCEMENT****California Association of Highway Patrolmen**

DPA Reels in Unions With Benefits Bait/162:42

**Claremont Police Officers Association**

City Must Meet and Confer With POA Over Vehicle Stop Policy/163:36

**Coronado Police Officers Association**

No Right to Confront Witnesses in Challenge to Personnel Memos/159:24

**Riverside Sheriffs Association**

Binding Interest Arbitration Deemed Unconstitutional (Vendrillo)/160:19

Denial of Step Increase Did Not Prompt Meet and Confer Obligation/159:22

**Sacramento County Deputy Sheriffs Association**

arbitration log/159:70

**San Diego Police Officers Association**

Personnel Records Are Confidential in Context of Disciplinary Appeals/158:46

Report of Citizens' Review Board Barred From Release to Public/159:26

**Stockton Police Officers Association**

Chief Not Required to Promote Reinstated Officer/160:61

**Upland Police Officers Association**

Officers' Choice of Representative Limited by 'Reasonableness and Common Sense'/162:30

**EMPLOYEE ORGANIZATIONS — LOCAL GOVERNMENTS****American Federation of State, County and Municipal Employees**

Board Asserts Jurisdiction, Reverses City's Application of Local Rule/162:38

**American Federation of State, County and Municipal Employees, Loc. 829**

Individual Employee Salary Data Not Available as 'Public Record'/163:34

**American Federation of State, County and Municipal Employees, Loc. 2190**

Individual Employee Salary Data Not Available as 'Public Record'/163:34

**International Union of Operating Engineers, Stationary, Loc. 39**

arbitration log/160:65

arbitration log/163:76

**International Union of Operating Engineers, Loc. 501**

arbitration log/161:82

**Los Angeles County Employees Retirement Association**

Retirement Board Lacks Power to Classify D.A.s as Safety Members/163:40

**Operating Engineers, Loc. 3**

arbitration log/158:73

Workers' Compensation Is Not Exclusive Remedy for Employee's Claimed Privacy Breach/161:35

**Public Defenders Association**

Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:40

**Public Employees Union, Loc. 1**

arbitration log/158:76

**Professional Organization of the City of Carson**

Board Asserts Jurisdiction, Reverses City's Application of Local Rule/162:38

**San Joaquin Housing Authority Employees Association**

arbitration log/162:72

**Service Employees International Union**

SEIU Bill Tinkers With MMBA/162:40

Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:40

**Service Employees International Union, Loc. 434B**

Settlement of Agency Fee Case Affirms Bargaining Rights of Home Care Workers/158:49

**Service Employees International Union, Loc. 715**

Individual Employee Salary Data Not Available as 'Public Record'/163:34

Santa Clara County, SEIU Local 715 Defer Wage Increase to Save Jobs/161:32

**Service Employees International Union, Loc. 790**

arbitration log/161:80

**Service Employees International Union, Loc. 1877**

arbitration log/160:66

**Stanislaus Emergency Dispatchers Association**

arbitration log/162:74

**Stationary Engineers, Loc. 39**

PERB Defends Its Jurisdiction in MMBA Charter County Case/158:4

**United Public Employees, Loc. 1**

arbitration log/163:75

## **EMPLOYEE ORGANIZATIONS — PUBLIC SCHOOLS AND COMMUNITY COLLEGES**

### **American Federation of Teachers**

Community College District Cannot Influence Employees to Join One Union Over Another/158:33

### **Association Employees Union**

arbitration log/161:83

### **California Federation of Teachers**

What Can the Public Schools Expect From Governor Schwarzenegger?/163:42

### **California School Employees Association**

arbitration log/159:69

arbitration log/161:83

Instructive PERB Decision Enlightens Us on 'Picketing' (Vendrillo)/158:24

### **California School Employees Association, Chap. 305**

arbitration log/163:78

### **California Teachers Association**

CTA Initiative to Fund Schools/Preschools Takes on Prop. 13 Supporters/163:45

Sac High to Reopen as Sacramento Charter High School/160:29

Teacher Not Entitled to Identifying Information of Witnesses Named in Investigative Report/162:28

What Can the Public Schools Expect From Governor Schwarzenegger?/163:42

### **Corcoran Faculty Association**

arbitration log/162:70

### **Franklin-McKinley Education Association**

arbitration log: 158:75

### **Orange Unified Education Association**

arbitration log/161:82

### **Sacramento City Teachers Association**

Sac High to Reopen as Sacramento Charter High School/160:29

Teachers Oppose Closure of Sacramento High/158:40

### **School Supervisors Association**

West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41

### **Shasta Secondary Education Association**

arbitration log/163:77

### **Turlock Teachers Association**

Appeals Court Overturns PERB: Teachers Can't Wear Buttons (McKee)/163:24

### **United Administrators of San Francisco**

arbitration log/159:67

### **United Teachers-Los Angeles**

Los Angeles Teachers Union Claims Victory in Board of Education Vote/159:33

### **United Teachers of Richmond**

West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41

### **West Contra Costa Administrators Association**

West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41

## **EMPLOYEE ORGANIZATIONS — STATE**

### **American Federation of State, County and Municipal Employees**

DPA Reels in Unions With Benefits Bait/162:42

More Bad News for State Courts/160:39

### **Association of California State Supervisors**

State Rescinds Expected Increases for Excluded Employees; Unions Sue/161:56

### **California Association of Highway Patrolmen**

State Readies Its Sword/160:44

### **California Association of Professional Scientists**

DPA Reels in Unions With Benefits Bait/162:42

### **California Attorneys in State Employment**

State Readies Its Sword/160:44

Surplus Employees Lose Options as State Abolishes All Vacancies/161:62

### **California Correctional Peace Officers Association**

State Readies Its Sword/160:44

### **California State Employees Association**

Agency Fee Notice Requirement Clarified; Remedy to Non-Objectors Was Overbroad/158:56

arbitration log/160:67

arbitration log/162:71

Civil Service Division Wins Charter, Welcomes New CSEA Officers/163:61

CSEA Fights Prison Educator Cuts With Unfair Practice Charge/161:64

DFEH to Close Southern California Offices/160:46

DPA Reels in Unions With Benefits Bait/162:42

Surplus Employees Lose Options as State Abolishes All Vacancies/161:62

Unions Enlist State Auditor in Battle for CSU Money and Jobs/160:50

### **California Union of Safety Employees**

DPA Reels in Unions With Benefits Bait/162:42

### **International Federation of Professional and Technical Engineers, Loc. 30**

arbitration log/160:68

### **International Union of Operating Engineers**

arbitration log/158:72

### **Professional Engineers in California Government**

DPA Reels in Unions With Benefits Bait/162:42

State Readies Its Sword/160:44

State Rescinds Expected Increases for Excluded Employees; Unions Sue/161:56

**Service Employees International Union**

More Bad News for State Courts/160:39

**Union of American Physicians and Dentists**

DPA Reels in Unions With Benefits Bait/162:42

**EMPLOYEE ORGANIZATIONS — TRANSIT****Amalgamated Transit Union**

arbitration log/159:67

**Amalgamated Transit Union, Loc. 265**

arbitration log/158:74

**Amalgamated Transit Union, Loc. 1027**

arbitration log/160:69

**Amalgamated Transit Union, Loc. 1277**

arbitration log/162:73

Court Orders Arbitration of Employee's Claim She Was 'Available' to Return to Work/160:63

**Amalgamated Transit Union, Loc. 1555**

Constitutional Concerns Inform Interpretation of Parties' Agreement/159:64

**American Federation of State, County and Municipal Employees**

BART Study on Track (Leichleiter)/159:11

**Service Employees International Union, Loc. 790**

BART Study on Track (Leichleiter)/159:11

**EMPLOYERS, CALIFORNIA PUBLIC**

*Note: Employers are listed under subheadings indicating the type of agency.*

**California, State of****California Youth Authority**

Reviewing Court Not Required to Give Weight to SPB ALJ's Unsupported Credibility Determinations/158:58

**Department of Corrections**

arbitration log/158:72

CSEA Fights Prison Educator Cuts With Unfair Practice Charge/161:64

**Department of Fair Employment and Housing**

DFEH to Close Southern California Offices/160:46

**Department of Personnel Administration**

Arbitration of Disciplinary Action Robs SPB of Constitutional Authority Over State Employees/161:58

DPA Reels in Unions With Benefits Bait/162:42

State Readies Its Sword/160:44

State Rescinds Expected Increases for Excluded Employees; Unions Sue/161:56

Surplus Employees Lose Options as State Abolishes All Vacancies/161:62

**Office of Criminal Justice Planning**

arbitration log/162:71

**California, University of (U.C.)**

arbitration log/159:66

arbitration log/163:74

Exhaustion of Administrative Appeal Process Excused as a Futile Exercise/163:70

Mid-Year Layoffs Possible at U.C. But Not CSU/158:66

New U.C. Academic Freedom Policy/163:53

No Action for Damages Is Available Under California's Due Process Clause/158:64

Report Reveals Lack of Diversity in U.C. Senior Staff/159:44

U.C. Academic Student Employees Strike During Negotiations/163:52

U.C. Agrees to Continuing Appointments for Long-Term Lecturers/161:47

U.C. Clerical Workers Accept Mediator's Proposal/160:48

U.C. Employee Must Exhaust Internal Grievance Procedure Prior to Filing Whistleblower Claim/160:54

U.C. Healthcare Professionals' Contract Moves Employees to Salary Zones/163:49

U.C. Profs Restrict Faculty-Student Dating/162:53

U.C. Sent Back to the Table With CUE/158:69

Unions Support Continuing U.C. Management of Labs Despite Criticisms/159:40

University Announces Voluntary Time-Reduction Program/160:49

UPTE's 'Streamlined' Bargaining With U.C. Lasts Only One Year/161:50

'What if My Harasser Is the Dean of the Law School?'/158:62

**California State University (CSU)**

arbitration log/160:67

CFA Monitors CSU Layoffs While SETC and SUPA Enjoy Good Will/162:55

CSU Employees Benefit Modestly From New Laws/163:56

CSU Tenure-Track Faculty Better Paid and More Diverse Than in 1985/161:54

Disputes Between CSU and CFA to Be Decided by Panels/158:71

Mid-Year Layoffs Possible at U.C. But Not CSU/158:66

Unions Enlist State Auditor in Battle for CSU Money and Jobs/160:50

Whistleblower's PERS Disability Retirement Does Not Preclude Finding of Constructive Discharge/159:37

**Cities****Anaheim**

Disability Applicant Must Show Incapacity to Work Anywhere in State/158:50

Injured Worker Not Entitled to FLSA Premium Pay While on Disability Leave/160:37

**Berkeley**

arbitration log/161:80

**Carson**

Board Asserts Jurisdiction, Reverses City's Application of Local Rule/162:38

**Claremont**

City Must Meet and Confer With POA Over Vehicle Stop Policy/163:36

**Coronado**

No Right to Confront Witnesses in Challenge to Personnel Memos/159:24

**Fremont**

arbitration log/158:73

**Lincoln**

arbitration log/163:76

**Los Angeles**

Bill of Rights Limitations Period Trumps Local Charter Rule/162:33

More Bad News for State Courts/160:39

Retirement Board Lacks Power to Classify D.A.s as Safety Members/163:40

**Sacramento**

arbitration log/159:70

arbitration log/160:65

**San Diego**

Personnel Records Are Confidential in Context of Disciplinary Appeals/158:46

Report of Citizens' Review Board Barred From Release to Public/159:26

**San Francisco**

arbitration log/160:66

Accrued Vacation, Sick Leave Not Part of Retirement Calculations/162:36

San Francisco Transgender Training Scrutinized in Termination Case/162:67

**Stockton**

Chief Not Required to Promote Reinstated Officer/160:61

**Upland**

Officers' Choice of Representative Limited by 'Reasonableness and Common Sense'/162:30

**Counties****Contra Costa**

arbitration log/158:76

**Placer**

PERB Defends Its Jurisdiction in MMBA Charter County Case/158:45

**Riverside**

Binding Interest Arbitration Deemed Unconstitutional (Vendrillo)/160:19

Denial of Step Increase Did Not Prompt Meet and Confer Obligation/159:22

Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:40

**Sacramento**

arbitration log/163:75

**San Francisco**

Accrued Vacation, Sick Leave Not Part of Retirement Calculations/162:36

San Francisco Transgender Training Scrutinized in Termination Case/162:67

**San Joaquin**

arbitration log/161:81

arbitration log/162:72

**Santa Clara**

Santa Clara County, SEIU Local 715 Defer Wage Increase to Save Jobs/161:32

**Stanislaus**

arbitration log/162:74

**Ventura**

arbitration log/161:82

**School and Community College Districts****Alum Rock Union ESD**

arbitration log/163:78

**Anaheim Union HSD**

School District Not Liable to Parents of Student Who Had Affair With Teacher/163:43

**Bassett USD**

arbitration log/159:69

**Corcoran USD**

arbitration log/162:70

**Franklin-McKinley SD**

arbitration log/158:74

**Los Angeles USD**

Los Angeles Teachers Union Claims Victory in Board of Education Vote/159:33

**Oakland USD**

Oakland Public School District Overspends Itself Into State Takeover/158:38

Oakland School Bailout/160:35

**Orange USD**

arbitration log/161:83

**Sacramento City USD**

Sac High to Reopen as Sacramento Charter High School/160:29

Teachers Oppose Closure of Sacramento High/158:40

**San Diego USD**

School Principals Can Be Reassigned to Lower Paying Positions/160:32

**San Francisco USD**

arbitration log/159:67

**San Marcos USD**

Instructive PERB Decision Enlightens Us on 'Picketing' (Vendrillo)/158:24

**Santa Clarita CCD**

Community College District Cannot Influence Employees to Join One Union Over Another/158:33

**Shasta Union HSD**

arbitration log/163:77

**Turlock JESD**

Appeals Court Overturns PERB: Teachers Can't Wear Buttons (McKee)/163:24

**West Contra Costa County USD**

West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41

**West Fresno ESD**

West Fresno Elementary Taken Over by State/159:34

**Transit Districts and Public Transit Agencies****Bay Area Rapid Transit**

BART Study on Track (Leichleiter)/159:11

Constitutional Concerns Inform Interpretation of Parties' Agreement/159:64

**Los Angeles County Metropolitan Transit Authority**

arbitration log/162:73

Court Orders Arbitration of Employee's Claim She Was 'Available' to Return to Work/160:63

MTA Supervisors Get Their Own Bargaining Law/163:38

Transit Strike in L.A. Ends With Agreement to Arbitrate/163:29

**Santa Clara Valley Transportation Authority**

arbitration log/158:74

arbitration log/159:67

**EVALUATIONS**

Arbitration log:/161:83

**EXCLUDED EMPLOYEES BILL OF RIGHTS**

A Report From the Excluded and Exempt Employees' Salary-Setting Task Force (Booth)(Svetich)/162:19

**EXCLUSIVE REPRESENTATIVE**

Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:40

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

Exhaustion of Administrative Appeal Process Excused as a Futile Exercise/163:70

**F****FAIR EMPLOYMENT AND HOUSING ACT (FEHA)**

Bill Targets *Salazar* Decision/159:58

California Supreme Court Clarifies State's Broad Protections for Disabled Workers/159:52

Employers Liable for Harassment by Clients, Customers/163:65

Favoring Lover(s) Over Others Not Sex Discrimination Under FEHA/159:55

Veterans Hospital Not Liable for Harassment by Patient/161:71

**FAIR EMPLOYMENT AND HOUSING COMMISSION (FEHC) (Precedential decisions)**

Employer engaged in discrimination by failing to provide requested reasonable accommodation (DFEH v. California Department of Corrections) No. 03-06-P/161:107

Nightclub employees' work relationship turns sour (DFEH v. Nulton) No. 03-10-P/163:90

**FAIR LABOR STANDARDS ACT (FLSA)**

Court Sets Pay Rules of Budget Impasse Game (Thomson)/160:14

Injured Worker Not Entitled to FLSA Premium Pay While on Disability Leave/160:37

**FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Employer's Denial and Discouragement of Leave Could Violate FMLA and CFRA/163:66

Under the FMLA, State Immunity Is No Bar to Lawsuits by State Employees (Giese)(O'Sullivan)/161:5

**FAMILY AND MEDICAL LEAVE**

California's New Paid Family Leave Law: Family Temporary Disability Insurance (FTDI)/161:10

Suspected Misuse of Family Medical Leave Can Form Basis for Discharge/161:75

**FAMILY RIGHTS ACT**

Employer's Denial and Discouragement of Leave Could Violate FMLA and CFRA/163:66

Ninth Circuit Limits Reach of Family Rights Act/159:59

**FAMILY TEMPORARY DISABILITY INSURANCE**

California's New Paid Family Leave Law: Family Temporary Disability Insurance (FTDI)/161:10

**FEDERAL EDUCATION ACT**

*see* 'No Child Left Behind'

**FIRST AMENDMENT**

Knowingly False Accusations of Police Misconduct Not Protected Speech/158:52

**FOURTEENTH AMENDMENT**

*see* Due Process

**G**

**GAY RIGHTS**

*see* Discrimination — Sex

**GOOD FAITH**

*see* Duty to Bargain (Meet and Confer) in Good Faith

**GRADUATE STUDENTS**

U.C. Academic Student Employees Strike During Negotiations/163:52

**GRIEVANCE PROCEDURES**

*see* Arbitration

**H**

**HARASSMENT**

*see also* Discrimination, Sexual Harassment  
California Supreme Court to Review *Mackey v. Department of Corrections*/160:60  
School Administrators May Be Personally Liable for Failure to Protect Gay Students/160:27

**HEALTH CARE WORKERS**

Few Health Care Workers Roll Up Their Sleeves for Small-pox Vaccine/159:21

**HIGHER EDUCATION**

*see* Employers, California Public:  
— California, University of  
— California State University  
Higher Education Employer-Employee Relations Act (HEERA)

**HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT (HEERA), Gov. Code Secs. 3560-3599**

*see also* Employers, California Public:  
— California, University of  
— California State University  
Table of PERB Orders and Decisions (Part III of Index) for PERB rulings listed under 'HEERA'  
HEERA Card Check Provisions Strengthened/163:58  
Unionization in Higher Ed.: The Case of Academic Employees in Large Public Systems (Julius)/161:16

**HIRING**

CSU Tenure-Track Faculty Better Paid and More Diverse Than in 1985/161:54  
Report Reveals Lack of Diversity in U.C. Senior Staff/159:44

**HOME CARE WORKERS**

Settlement of Agency Fee Case Affirms Bargaining Rights of Home Care Workers/158:49

**HOURS OF WORK, OVERTIME, SHIFT AND DUTY ASSIGNMENTS**

*see also* Fair Labor Standards Act  
*Arcata* Overruled as PERB Clarifies Scope Rule Regarding Hours of Employment/161:43  
University Announces Voluntary Time-Reduction Program/160:49

**I-K**

**IMMUNITY OF PUBLIC EMPLOYEES/EMPLOYERS**

School Administrators May Be Personally Liable for Failure to Protect Gay Students/160:27  
Under the FMLA, State Immunity Is No Bar to Lawsuits by State Employees (Giese)(O'Sullivan)/161:5

**IMPASSE**

*see also* Arbitration  
Strikes and Job Actions  
Effort to Shore Up Arbitration Law Wins Governor's Approval/163:33  
State Employees Receive Retroactive Pay Increases Blocked by Impasse/162:46  
U.C. Sent Back to the Table With CUE/158:69

**INJUNCTIONS**

*see* Strikes and Job Actions



**INTERNET**

Civil Service Division Wins Charter, Welcomes New CSEA Officers/163:61

**L****LAW ENFORCEMENT**

*see also* Employee Organizations — Law Enforcement  
Public Safety Officers Procedural Bill of Rights Act  
Effort to Shore Up Arbitration Law Wins Governor's Approval/163:33

**LAYOFFS**

CFA Monitors CSU Layoffs While SETC and SUPA Enjoy Good Will/162:55  
CSEA Fights Prison Educator Cuts With Unfair Practice Charge/161:64  
DFEH to Close Southern California Offices/160:46  
Governor Warns: 'Give-Backs or Layoffs'/158:55  
Mid-Year Layoffs Possible at U.C. But Not CSU/158:66  
Most Surplus State Employees Still Waiting for Pink Slips/163:59  
State Employee Unions Fight Layoffs and Salary Cuts/159:46  
State Readies Its Sword/160:44  
Surplus Employees Lose Options as State Abolishes All Vacancies/161:62  
Unions Enlist State Auditor in Battle for CSU Money and Jobs/160:50

**LEAVES — ANNUAL, DISABILITY, FAMILY, JURY DUTY, MATERNITY, MILITARY, SICK**

*see also* Family and Medical Leave  
Family and Medical Leave Act  
Family Temporary Disability Insurance  
Pay and Benefits  
arbitration log/159:69  
arbitration log/161:80

**LEGISLATION**

CSU Employees Benefit Modestly From New Laws/163:56  
Effort to Shore Up Arbitration Law Wins Governor's Approval/163:33  
New Law Gives PERS and STRS Authority Over Managers' Pay/163:60

**LOCAL GOVERNMENT (IN GENERAL)**

*see also* Employers, California Public  
— Cities  
— Counties  
— Special Districts and Authorities  
— Transit Districts and Public Transit Agencies  
— Meyers-Milias-Brown Act  
Contracting Out Restrictions in the Public Sector (Weinberg)/160:5

**M****MAINTENANCE OF MEMBERSHIP**

*see* Agency shop, other organizational security, and dues deduction

**MANAGEMENT RIGHTS**

*see* Scope of Bargaining

**MANAGERIAL EMPLOYEES**

*see also* Supervisory and Managerial Employees  
Legislature Eases Unionization by Public School Employees/163:47

**MEDIATION**

*see* Impasse

**MEET AND CONFER**

*see* Duty to Bargain (Meet and Confer) in Good Faith

**MEYERS-MILIAS-BROWN ACT (MMBA), Gov. Code Secs. 3500-3510**

*see also* Employee Organizations  
— Fire  
— Law Enforcement  
— Local Government  
Employers, California Public  
— Cities  
— Counties  
— Table of PERB Orders and Decisions (Part III of Index) for PERB rulings listed under 'MMBA'  
City Must Meet and Confer With POA Over Vehicle Stop Policy/163:36  
Denial of Step Increase Did Not Prompt Meet and Confer Obligation/159:22  
PERB Asserts Retroactive Jurisdiction, Clarifies MMBA's Three-Year Limitations Period/161:32  
SEIU Bill Tinkers With MMBA/162:40

Supervisors, Confidential Employees Now Subject to MMBA Agency Fee Provisions/162:32  
 Union Remains Exclusive Rep After Bargaining Unit Is Divided/160:4

**N**

**'NO CHILD LEFT BEHIND' (FEDERAL EDUCATION ACT)**

California Crafts New Credential Requirements for Teachers/161:41  
 State Sued Over Definition of 'Highly Qualified Teacher'/158:32

**O**

**ORGANIZATIONAL SECURITY**

*see also* Agency Shop, Other Organizational Security, and Dues Deduction  
 Supervisors, Confidential Employees Now Subject to MMBA Agency Fee Provisions/162:32

**OVERTIME**

*see* Hours of Work, Overtime, Shift and Duty Assignments  
 Pay and Benefits

**P-Q**

**PAST PRACTICE**

*see* Duty to Bargain (Meet and Confer) in Good Faith

**PAY AND BENEFITS**

*see also* Retirement and Pensions  
 A Short Primer on Retirees' Vested Health Benefits (Bezemek)/163:14  
 An Update of the Vested Benefits Doctrine and Its Effects on Collective Bargaining (Hartinger)(Lyman)/162:12  
 arbitration log/159:70  
 arbitration log/162:72  
 arbitration log/163:78  
 CalPERS' 2004 Rates Spur Some Employers to Split/162:46  
 Court Sets Pay Rules of Budget Impasse Game (Thomson)/160:14  
 CSU Employees Benefit Modestly From New Laws/163:56  
 CSU Tenure-Track Faculty Better Paid and More Diverse Than in 1985/161:54

New Law Gives PERS and STRS Authority Over Managers' Pay/163:60  
 PERS May Not Exempt Employees From Civil Service to Increase Their Pay/159:49  
 State Employees Receive Retroactive Pay Increases Blocked by Impasse/162:46  
 State Rescinds Expected Increases for Excluded Employees; Unions Sue/161:56

**PENSIONS**

*see also* Retirement and Pensions  
 Exploring the Myths of Enhanced Retirements: A Labor Perspective (Brennand)159:5

**PERSONNEL RECORDS**

Report of Citizens' Review Board Barred From Release to Public/159:26

**PICKETING**

*see also* Strikes and Job Actions  
 Instructive PERB Decision Enlightens Us on 'Picketing' (Vendrillo)/158:24

**POLICE**

*see* Employee Organizations — Law Enforcement  
 Public Safety Officers Procedural Bill of Rights Act

**PRIVACY**

*Contra Costa Times* Wins Access to 200 Disciplinary Files/158:60

**PRIVATIZATION**

*see also* Contracting Out; Preservation of Unit Work  
 Contracting Out Work in Hard Economic Times (Hersch)/163:6

**PROTECTED ACTIVITY**

Appeals Court Overturns PERB: Teachers Can't Wear Buttons (McKee)/163:24

**PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)**

*see also* Retirement and Pensions  
 CalPERS' 2004 Rates Spur Some Employers to Split/162:46  
 Exploring the Myths of Enhanced Retirements: A Labor Perspective (Brennand)159:5  
 Huge Settlement in Age Discrimination Case/159:58  
 New Law Gives PERS and STRS Authority Over Managers' Pay/163:60

PERS May Not Exempt Employees From Civil Service to Increase Their Pay/159:49  
 So How Did This Happen? The Fantasy World of Retirement Benefits (Branan)/158:5

## **PUBLIC EMPLOYEES UNION**

West Contra Costa County USD and Unions Negotiate Differences in Budget Dispute/161:41

## **PUBLIC EMPLOYMENT RELATIONS BOARD — DUTY OF FAIR REPRESENTATION RULINGS**

### **EERA**

Failure to provide forms not a breach of DFR (DeLauer v. California School Employees Assn.) No. 1523/161:92  
 No breach of DFR when association negotiated retirees' health benefits (Rossmann v. Orange Unified Education Assn. and California Teachers Assn.) No. 1533/162:86  
 No good cause to excuse late filing (Kestin v. United Teachers of Los Angeles) No. Ad-325/161:93  
 No good cause to present new allegations on appeal (Davidson v. Public Employees Union, Loc. 1) No. 1537/162:87  
 Refusal to arbitrate not a breach of DFR (Fanene v. SEIU, Loc. 790) No. 1513/160:75  
 Refusal to enforce 'settlement' not a DFR breach (Deglow v. Los Rios College Federation of Teachers, Loc. 2279) No. 1515/160:76

### **HEERA**

Failure to pursue grievance under expired CBA not a breach of DFR (Buxton v. Coalition of University Employees) No. 1517-H/161:94

### **MMBA**

Charge dismissed as untimely (Tupou v. International Brotherhood of Electrical Workers, Loc. 1245) No. 1536-M/162:90  
 Untimely filing excused for good cause (Irish v. IUOE Loc. 39) No. 1542-M/162:90

## **PUBLIC EMPLOYMENT RELATIONS BOARD — JURISDICTION**

### **MMBA**

Board Asserts Jurisdiction, Reverses City's Application of Local Rule/162:38  
 Move to Have PERB Adjudicate Trial Court Employees' Unfair/160:36  
 MTA Supervisors Get Their Own Bargaining Law/163:38  
 PERB Asserts Retroactive Jurisdiction, Clarifies MMBA's Three-Year Limitations Period/161:32  
 PERB Defends Its Jurisdiction in MMBA Charter County Case/158:45

## **PUBLIC EMPLOYMENT RELATIONS BOARD — REPRESENTATION RULINGS**

### **EERA**

Appropriate unit of teachers is possible at charter school (Robert L. Mueller Charter School v. Mueller Charter School Teachers Assn., CTA/NEA) No. Ad-320/160:74  
 Board thwarts district's attempt to accrete unrepresented part-time faculty into existing unit (Part-Time Faculty United, AFT v. Victor Valley Community College Dist.) No. 1543/162:86  
 Community college district cannot influence employees to join one union over another (Part-Time Faculty United, AFT v. Santa Clarita CCD) No. 1506/158:85  
 Mere possibility of future confidential duties in future not enough to justify reclassification (Mendocino County Office of Education and Mendocino County Federation of School Employees) No. 1505/158:93  
 Response accepted despite defective proof of service (Fontana Unified School Dist. v. United Steelworkers of America) No. Ad-324/161:92

### **MMBA**

Board grants city's request to stay order regarding unit modification (City of Carson v. American Federation of State, County and Municipal Employees, Loc. 809, AFL-CIO) No. Ad-323-M/161:97  
 Exceptions withdrawn (California Nurses Assn. v. Antelope Valley Health Care Dist.) No. 1509-M/159:72

## **PUBLIC EMPLOYMENT RELATIONS BOARD — UNFAIR PRACTICE RULINGS**

### **Dills Act**

Board has no authority to enforce arbitration award (California State Employees Assn., Loc. 1000, SEIU, AFL-CIO, CLC v. State of California [Dept. of Youth Authority]) No. 1526-S/161:86  
 Board holds charging party has no standing (Moore v. California Correctional Peace Officers Assn.) No. 1530-S/162:78  
 Board refused to accept late filing (Hutchinson v. State of California [Dept. of Transportation]) No. Ad-326-S/162:79  
 Board rejected appeal that sought to amend complaint rather than challenge partial dismissal (Horspool v. State of California [Dept. of Corrections]) No. 1546-S/162:80  
 NLRB deferred policy applies to Dills Act (Vickers v. State of California [Dept. of Corrections]) No. 1540-S/162:79  
 No bad faith violation by mere response to legislative concerns (Professional Engineers in California Government v. State of California [Dept. of Personnel Administration]) No. 1516-S/161:85

No evidence of CYA ignoring arbitration award (California State Employees Assn., Loc. 1000, SEIU, AFL-CIO, CLC v. State of California [Dept. of Youth Authority]) No. 1527-S/161:87

No good cause to excuse state's late-filed response (Vickers v. State of California [Dept. of Corrections]) No. Ad-328/163:80

Request for stay and reconsideration denied (International Union of Operating Engineers v. State of California [State Personnel Board]) No. 1491a-S/158:81

### **EERA**

Appeals Court Overturns PERB: Teachers Can't Wear Buttons (McKee)/163:24

Arbitrator's decision not repugnant to act (Willits Teachers Assn., CTA/NEA v. Willits Unified School Dist.) No. 1521/161:90

Board agent not required to disqualify herself from case (Larkins v. Chula Vista Elementary E.A., CTA) No. Ad-322/161:87

Board determines school administrator's action constitutes retaliation (Oakland Education Assn. v. Oakland Unified School Dist.) No. 1529/162:80

Board finds good cause to excuse late-filed charge (California School Employees Assn., Chap. 147 v. Bannin Unified School Dist.) No. 1549/163:85

Board finds sufficient nexus to show retaliation (Berkeley Federation of Teachers No. 1078 v. Berkeley Unified School Dist.) No. 1538/162:84

Board modified remedy, orders comp time negotiations and possible backpay (Angels Camp Educators Assn. v. Mark Twain Union Elementary School Dist.) No. 1548/163:84

Charge on behalf of bus driver gets run over by the board (California School Employees Assn., Chap. 244 v. Colton Joint Unified School Dist.) No. 1534/162:83

Charge shows sufficient evidence of nexus to go forward (United Teachers of Los Angeles v. Los Angeles Unified School Dist.) No. 1532/162:82

District had no obligation to negotiate with union regarding longstanding activity (United Administrators of Oakland Schools v. Oakland Unified School Dist.) No. 1544/162:85

District's ratification of bargaining unit member's actions violates EERA (Compton Education Assn. v. Compton Unified School Dist.) No. 1518/161:88

District-sponsored election violated EERA (California School Employees Assn., Chap. 250 v. Clovis Unified School Dist.) No. 1504/158:81

Honest mistake caused late filing (Bailey v. Los Angeles Unified School Dist.) No. Ad-318/159:71

Hours of employment is within scope of representation, whether position is occupied or vacant (District Educators Assn., CTA/NEA v. Huntington Beach Union High School Dist.) No. 1525/161:91

Late filing excused due to postage meter error (Angels Camp Educators Assn., CTA/NEA v. Mark Twain Union Elementary School Dist.) No. Ad-319/159:71

No additional EERA allegations allowed on appeal (DeLauer v. Sonoma Valley Unified School Dist.) No. 1522/161:91

No nexus between protected activity and termination (Fanene v. Oakland Unified School Dist.) No. 1512/160:73

Non-disruptive picketing is protected (California School Employees Assn. v. San Marcos USD) No. 1508/158:83

Prevailing party's preemptive exceptions denied (Turney v. Fremont Unified School Dist.) No. 1528/161:91

Request for reconsideration of flyer-distribution decision denied (American Federation of Teachers Guild, California Federation of Teachers, Loc. 1931 v. San Diego Community College Dist.) No. 1467a/161:88

Student not 'employee' for purposes of EERA (DeLauer v. Santa Rosa Junior College) No. 1511/160:73

Transfer of instructional work from district to sheriff is unlawful (Ventura County Federation of College Teachers, Loc. 1828, AFL-CIO v. Ventura County Community College Dist.) No. 1547/163:81

Unfair practice charge must be cast as a unit modification request (Burlingame Elementary School Dist. v. California School Employees Assn.) No. 1510/159:72

Vocal support of employee protests deemed protected activity (Pitner v. Contra Costa Community College Dist.) No. 1520/161:89

### **HEERA**

Computer and telephone/fax policy changes affected matters within scope (Academic Professionals of California v. Trustees of the California State University) No. 1507-H/158:85

Employee's unfair practice claim denied for lack of standing, prima face case (Enter v. Regents of the University of California [Los Alamos National Laboratory]) No. 1519-H/161:94

Unfair practice charge, exceptions withdrawn (State Employees Trades Council v. Trustees of the California State University) No. 1514-H/160:77

### **MMBA**

Attorneys' fees awarded to improperly disciplined employee (Union of American Physicians and Dentists v. County of San Joaquin [Health Care Services]) No. 1524-M/161:96

Board rejects charge as untimely (Siroky v. City of Folsom) No. 1531-M/162:87

Board rejects exclusive representative's attempt to 'raid' another bargaining unit (City of Carson v. American Federation of State, County and Municipal Employees, Loc. 809, AFL-CIO) No. Ad-327-M/162:88

No retaliation shown by city's attempt to collect attorneys' fees (Siroky v. City of Folsom) No. 1539-M/162:88

Three-year statute of limitations, retroactive jurisdiction applied to MMBA complaint (International Brotherhood of Electrical Workers, Loc. 47 v. City of Anaheim) No. Ad-321/161:96)

Union waived right to confer by refusing to meet until it gained district recognition (Stationary Engineers Loc. 39, International Union of Operating Engineers, AFL-CIO v. Diablo Water Dist.) No. 1545-M/162:90

Untimely filing excused for good cause (Irish v. City of Sacramento) No. 1541-M/162:89

Wrongful termination charge dismissed as untimely (Tupou v. Sacramento Municipal Utility Dist.) No. 1535-M/162:88

#### **PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT**

Bill of Rights Limitations Period Trumps Local Charter Rule/162:33

No Right to Confront Witnesses in Challenge to Personnel Memos/159:24

Officers' Choice of Representative Limited by 'Reasonableness and Common Sense'/162:30

Peace Officers Can Bring Defamation Suits Against Citizen Complainants/161:37

Personnel Records Are Confidential in Context of Disciplinary Appeals/158:46

#### **PUBLIC SCHOOLS — GENERAL**

Appeals Court Overturns PERB: Teachers Can't Wear Buttons (McKee)/163:24

Battle of the Budget: Impact on Public Schools/162:23

California Crafts New Credential Requirements for Teachers/161:41

Charter Schools: Legislation, Studies, Litigation, and Grants (McKee)/161:27

Class-Size Reduction Modification and Teacher Retirement Bonus Linked/160:30

Contracting Out Restrictions in the Public Sector (Weinberg)/160:5

Contracting Out Work in Hard Economic Times (Hersch)/163:6

Court Clarifies Type of Verification Required by Small Unions to Support Agency Fee/160:34

CTA Initiative to Fund Schools/Preschools Takes on Prop. 13 Supporters/163:45

Davis' Proposed Budget Cuts Would Hit Schools Hard/158:29

Education: The Circle Game (Dannis)/158:17

Legislature Eases Unionization by Public School Employees/163:47

Oakland Public School District Overspends Itself Into State Takeover/158:38

Oakland School Bailout/160:35

Rich School Districts Howl Over Davis Budget Proposal/158:30

State Sued Over Definition of 'Highly Qualified Teacher'/158:32

Teachers Hit Hard by Budget Cuts/Tax Changes/159:29

Teachers Oppose Closure of Sacramento High/158:40

West Fresno Elementary Taken Over by State/159:34

What Can the Public Schools Expect From Governor Schwarzenegger?/163:42

## **R**

#### **REASONABLE ACCOMMODATION**

*see* Americans With Disabilities Act

#### **RECLASSIFICATION**

arbitration log/159:67

#### **RECOGNITION**

*see also* Representation Elections, Recognition, and Decertification Procedures

Civil Service Division Wins Charter, Welcomes New CSEA Officers/163:61

HEERA Card Check Provisions Strengthened/163:58

Legislature Eases Unionization by Public School Employees/163:47

#### **REHABILITATION ACT**

*see* Americans With Disabilities Act

#### **RELEASED TIME**

Teachers, Administrators Tangle Over Successful Released-Time Program/161:77

#### **REPRESENTATION ELECTIONS, RECOGNITION, AND DECERTIFICATION PROCEDURES**

Civil Service Division Wins Charter, Welcomes New CSEA Officers/163:61

HEERA Card Check Provisions Strengthened/163:58

Legislature Eases Unionization by Public School Employees/163:47

**REPRISALS**

CSEA Fights Prison Educator Cuts With Unfair Practice Charge/161:64

**RETIREMENT AND PENSIONS**

*see also* Public Employees Retirement System (PERS)  
 A Short Primer on Retirees' Vested Health Benefits (Bezemek)/163:14  
 Accrued Vacation, Sick Leave Not Part of Retirement Calculations/162:36  
 An Update of the Vested Benefits Doctrine and Its Effects on Collective Bargaining (Hartinger)(Lyman)/162:12  
 CalSTRS Asks Supreme Court to Order State to Make Contribution/161:46  
 Class-Size Reduction Modification and Teacher Retirement Bonus Linked/160:30  
 Exploring the Myths of Enhanced Retirements: A Labor Perspective (Brennand)/159:5  
 Most Surplus State Employees Still Waiting for Pink Slips/163:59  
 So How Did This Happen? The Fantasy World of Retirement Benefits (Branan)/158:5  
 Teachers' Early Retirement Bill Becomes Law/162:27

**'RIGHT TO PRIVACY'**

Workers' Compensation Is Not Exclusive Remedy for Employee's Claimed Privacy Breach/161:35

**RIGHT TO WORK**

*see* Agency Shop, Other Organizational Security, and Dues Deduction

**S**

**SAFETY**

arbitration log/158:72

**SAFETY SERVICES EMPLOYEES**

*see* Employee Organizations — Firefighters  
 Employee Organizations — Law Enforcement

**SCOPE OF BARGAINING**

*see also* Duty to Bargain (Meet and Confer) in Good Faith City Must Meet and Confer With POA Over Vehicle Stop Policy/163:36

**SCOPE OF REPRESENTATION**

*Arcata* Overruled as PERB Clarifies Scope Rule Regarding Hours of Employment/161:43

**SEX DISCRIMINATION**

*see also* Discrimination — Sex  
 Supreme Court Clarifies Burden of Proof in Mixed-Motive Cases/161:67

**SEXUAL HARASSMENT**

*see also* Discrimination, Harassment  
 Bill Targets *Salazar* Decision/159:58  
 California Supreme Court to Review *Mackey v. Department of Corrections*/160:60  
 Employee Terminated After Reporting Sexual Harassment May Sue/162:64  
 Employer Vicariously Liable for Supervisor's Coercion of Sexual Favors by Threat of Discharge/162:58  
 Employers Liable for Harassment by Clients, Customers/163:65  
 Supreme Court Clarifies Burden of Proof in Mixed-Motive Cases/161:67  
 U.C. Profs Restrict Faculty-Student Dating/162:53  
 Veterans Hospital Not Liable for Harassment by Patient/161:71

**SEXUAL ORIENTATION**

*see* Discrimination

**SHIFT ASSIGNMENTS**

*see also* Hours of Work, Overtime, Shift and Duty Assignments  
 arbitration log/160:69

**SHIFT DIFFERENTIAL PAY**

*see* Pay and Benefits

**SICK LEAVE**

*see also* Family and Medical Leave Act (FMLA)  
 Family Rights Act (CFRA)  
 Pay and Benefits  
 Accrued Vacation, Sick Leave Not Part of Retirement Calculations/162:36

**STATE EMPLOYER-EMPLOYEE RELATIONS ACT (SEERA)**

*see* Dills Act

**STATE EMPLOYMENT**

*Contra Costa Times* Wins Access to 200 Disciplinary Files/158:60  
 Court Sets Pay Rules of Budget Impasse Game (Thomson)/160:14  
 Governor Warns: 'Give-Backs or Layoffs'/158:55

- Most Surplus State Employees Still Waiting for Pink Slips/  
163:59
- PERS May Not Exempt Employees From Civil Service to  
Increase Their Pay/159:49
- State Employee Unions Fight Layoffs and Salary Cuts/  
159:46
- Under the FMLA, State Immunity Is No Bar to Lawsuits by  
State Employees (Giese)(O'Sullivan)/161:5

### STATE PERSONNEL BOARD

- Arbitration of Disciplinary Action Robs SPB of Constitu-  
tional Authority Over State Employees/161:58
- Rehearing in *SPB v. DPA* Reaches Same Result/162:51
- Reviewing Court Not Required to Give Weight to SPB  
ALJ's Unsupported Credibility Determinations/158:58

### STATE TAKEOVER

- Oakland Public School District Overspends Itself Into State  
Takeover/158:38
- Oakland School Bailout/160:35
- West Fresno Elementary Taken Over by State/159:34

### STATE TEACHERS RETIREMENT SYSTEM, CALIFORNIA (CalSTRS)

- CalSTRS Asks Supreme Court to Order State to Make Con-  
tribution/161:46
- New Law Gives PERS and STRS Authority Over Manag-  
ers' Pay/163:60

### STATUTE OF LIMITATIONS

- PERB Asserts Retroactive Jurisdiction, Clarifies MMBA's  
Three-Year Limitations Period/161:32

### STRIKES AND JOB ACTIONS

- U.C. Academic Student Employees Strike During Nego-  
tiations/163:52

### SUBCONTRACTING

- see* Contracting Out; Preservation of Unit Work

### SUPERVISORY AND MANAGERIAL EM- PLOYEES

- MTA Supervisors Get Their Own Bargaining Law/163:38
- Report Reveals Lack of Diversity in U.C. Senior Staff/  
159:44
- State Rescinds Expected Increases for Excluded Employ-  
ees; Unions Sue/161:56
- Supervisors, Confidential Employees Now Subject to  
MMBA Agency Fee Provisions/162:32

### SURFACE BARGAINING

- see* Duty to Bargain (Meet and Confer) in Good Faith

### SUSPENSION

- arbitration log/161:81
- arbitration log/163:775

## T

### TEACHERS

- See also* Employee Organizations — Public School and  
Community College
- Employers, California Public — School and Com-  
munity College Districts
- Public Schools — General
- Appeals Court Overturns PERB: Teachers Can't Wear But-  
tons (McKee)/163:24
- California Crafts New Credential Requirements for Teach-  
ers/161:41
- Class-Size Reduction Modification and Teacher Retirement  
Bonus Linked/160:30
- Community College District Cannot Influence Employees  
to Join One Union Over Another/158:33
- Education: The Circle Game (Dannis)/158:17
- Muslim Substitute Teacher May Take Discrimination  
Claims to Trial/160:58
- New Certificated Teachers Entitled to Written Notice of  
Employment Status On or Before First Day of Work/  
159:31
- School District Not Liable to Parents of Student Who Had  
Affair With Teacher/163:43
- Teacher Not Entitled to Identifying Information of Wit-  
nesses Named in Investigative Report/162:28
- Teachers, Administrators Tangle Over Successful Released-  
Time Program/161:77
- Teachers' Early Retirement Bill Becomes Law/162:27
- Teachers Hit Hard by Budget Cuts/Tax Changes/159:29
- Teachers Oppose Closure of Sacramento High/158:40

### TERMINATION

- See also* Discipline and Discharge
- Due Process

### TITLE VII

- Employee Terminated After Reporting Sexual Harassment  
May Sue/162:64
- Employer Vicariously Liable for Supervisor's Coercion of  
Sexual Favors by Threat of Discharge/162:58
- Supreme Court Clarifies Burden of Proof in Mixed-Motive  
Cases/161:67

**TRANSIT**

BART Study on Track (Leichleiter)/159:11  
MTA Supervisors Get Their Own Bargaining Law/163:38  
Transit Strike in L.A. Ends With Agreement to Arbitrate/  
163:29

**TRANSFERS**

*see* Discipline and Discharge

**U**

**UNFAIR PRACTICES (IN GENERAL)**

*See rulings under Public Employment Relations Board and separate subject headings for specific unfair practice issues:*

Duty of Fair Representation  
Duty to Bargain (Meet and Confer) In Good Faith  
Scope of Bargaining  
Unilateral Change

Appeals Court Overturns PERB: Teachers Can't Wear Buttons (McKee)/163:24

**UNILATERAL ACTION**

*see* Duty to Bargain (Meet and Confer) in Good Faith  
Scope of Bargaining

**UNION MEMBERSHIP**

Union Membership Data Released/159:62

**UNION SECURITY**

*see* Agency Shop, Other Organizational Security, and Dues Deduction

**UNIONS**

*see* Employee Organizations

**UNPROFESSIONAL CONDUCT**

arbitration log/163:74

**UNIT DETERMINATION OR MODIFICATION**

*see* Representation Elections, Recognition, and Decertification Procedures

**UNIVERSITIES**

*see* Employers, California Public  
— California, University of  
— California State University

**V**

**VACATION, ANNUAL LEAVE**

*see* Pay and Benefits

**W-Z**

**WAGES AND BENEFITS**

*see* Pay and Benefits

**WHISTLEBLOWERS**

U.C. Employee Must Exhaust Internal Grievance Procedure Prior to Filing Whistleblower Claim/160:54  
Whistleblower's PERS Disability Retirement Does Not Preclude Finding of Constructive Discharge/159:37

**WORKERS' COMPENSATION**

A.G.: Firefighter Trainee Is Entitled to Enhanced Workers' Comp Benefits/161:39  
Court Orders Arbitration of Employee's Claim She Was 'Available' to Return to Work/160:63  
Workers' Compensation Is Not Exclusive Remedy for Employee's Claimed Privacy Breach/161:35

**WORKING CONDITIONS**

*see* Pay and Benefits  
Scope of Bargaining



## PART II

## TABLE OF CASES

## A

**Amalgamated Transit Union, Loc. 1277, v. Los Angeles County Metropolitan Transportation Authority**

*Workers' Compensation Act does not preclude arbitration of an employee's claim that she was able to return to work following an industrial injury.*

(2003) 107 Cal.App.4th 673, 160 CPER 63

**Amway Corp.**

*see* **Liu v. Amway Corp.**

**Anaheim Union High School Dist.**

*see* **Steven F. v. Anaheim Union High School Dist.**

## B

**Bernstein v. Lopez**

*School principals and vice principals can be reassigned to lower-paying positions; plaintiffs did not have any property right in their higher salaries.*

(9th Cir. 2003) 321 F.3d 903, 160 CPER 32

**Board of Retirement, Los Angeles County Employees Retirement Assn.**

*see* **Medina v. Board of Retirement, Los Angeles County Employees Retirement Assn.**

**Board of Trustees of the California State University**

*see* **Colores v. Board of Trustees of the California State University**

**Bollinger**

*see* **Grutter v. Bollinger**

**Braemar Country Club**

*see* **Colmenares v. Braemar Country Club**

**Brown v. City of Tuscon**

*The court upheld the lower court's decision to dismiss a police detective's claim of retaliation in violation of the Americans With Disabilities Act, but the court reversed the dismissal of her claim of interference under the act; differing standards of proof should be applied to the two claims; while the burden-shifting analysis of the U.S. Supreme Court in McDonnell Douglas under Title VII is appropriate to determine liability in retaliation claims, it is inappropriate to use the same analysis when considering interference claims. In those situations, the courts must look to the Fair Housing Act for guidance.*

(9th Cir. 2003) 336 F.3d 1181, 162 CPER 62

## C

**California Commission on Teacher Credentialing Committee on Credentials**

*see* **California Teachers Assn. v. California Commission on Teacher Credentialing Committee on Credentials**

**California Department of Veterans' Affairs**

*see* **Carter v. California Department of Veterans' Affairs**

**California Institute of Technology**

*see* **Holly D. v. California Institute of Technology**

**California Public Employees' Retirement System Board of Administration**

*see* **Westly v. California Public Employees' Retirement System Board of Administration**

**California State Employees Assn.**

*see* **Cummings v. Connell, Morgenstern, and California State Employees Assn., Loc. 1000**  
**Hard v. California State Employees Assn.**

**California Teachers Assn.**

see **Harik v. California Teachers Assn.**

**California Teachers Assn. v. California Commission on Teacher Credentialing Committee on Credentials**

*A credentialed teacher is not entitled to identifying information, other than names, of witnesses listed in an investigative report regarding allegations of misconduct.*

(2003) 111 Cal.App.4th 1001, 162 CPER 27

**California Youth Authority v. State Personnel Board (Henderson)**

*Gov. Code Sec. 11425.50 generally requires that a court reviewing SPB decisions give great weight to witness credibility determinations made by the administrative law judge. However, if the ALJ does not identify the observations of demeanor, manner, or attitude supporting his or her credibility determinations, those judgments are not entitled to deference.*

(2002) 104 Cal.App.4th 575, 158 CPER 58

**Californians for Justice v. State Board of Education**

*Community groups filed suit claiming the state board of education has been lowering the standard for who is qualified to teach in the state's public schools; according to the federal "No Child Left Behind Act," only "highly qualified teachers" are to be hired in programs receiving federal Title I funds for low-income children and, by 2005-06, all children must receive instruction from "highly qualified" teachers in core academic courses.*

158:32

**Carter v. California Department of Veterans' Affairs**

*An employer cannot be held liable under the Fair Employment and Housing Act for the conduct of a client or customer.*

(2003) 109 Cal.App.4th 469, 161 CPER 71 (review granted and remanded by Supreme Court 6-4-04)

**Cherosky v. Henderson**

*The refusal to accommodate a federal employee pursuant to a continuing policy is a discrete act, and the complainant must consult with the Equal Employment Opportunity Commission within 45 days of the refusal or lose his discrimination claim under the Rehabilitation Act of 1973.*

(9th Cir. 2003) 330 F.3d 1243, 161 CPER 69

**City of Anaheim v. Nolan**

*The court clarified the standard to establish disability retirement, holding that an applicant for disability retirement must show that he or she is incapacitated from performing work in a similar position elsewhere in the state, not just in the applicant's department.*

(2002) 104 Cal. App.4th 1170, 158 CPER 50

**City of Claremont**

see **Claremont Police Officers Assn. v. City of Claremont**

**City of Coronado**

see **James v. City of Coronado**

**City of Los Angeles**

see **Jackson v. City of Los Angeles**

**City of San Diego**

see **Davis v. City of San Diego**

**City of San Diego Civil Service Commission**

see **San Diego Police Officers Assn. v. City of San Diego Civil Service Commission**

**City of Tuscon**

see **Brown v. City of Tuscon**

**City of Upland**

see **Upland Police Officers Assn. v. City of Upland**

**Claremont Police Officers Assn. v. City of Claremont**

*City was obligated to meet and confer with Claremont Police Officers Association before it enacted a vehicle stop policy that required police officers to record information concerning the race and ethnicity of persons they detained; under provisions of Meyers-Milias-Brown Act, the policy significantly affected officers' working conditions and was not a fundamental policy decision that the city could unilaterally impose.*

(2003) 112 Cal.App.3d 639, 163 CPER 36 (petition for review granted by Supreme Court 1-14-04)

**Colmenares v. Braemar Country Club**

*The court unanimously held that the definition of disability under California's Fair Employment and Housing Act is broader than that of the federal Americans With Disabilities Act.*

(2003) 29 Cal.4th 1019, 159 CPER 52

**Colores v. Board of Trustees of the California State University**

*Employee's decision to take disability retirement for health conditions exacerbated by her superiors' conduct did not foreclose a finding that the university had constructively discharged her. The six-month period for filing a tort claim began when she commenced her disability retirement, not when she filed her application.*

(2003) 105 Cal.App.4th 1293, 159 CPER 37

**Connell, Morgenstern, and California State Employees Assn., Loc. 1000**

*see* **Cummings v. Connell, Morgenstern, and California State Employees Assn., Loc. 1000**

**Cook**

*see* **Degrassi v. Cook**

**Costa**

*see* **Desert Palace, Inc., dba Caesars Palace Hotel and Casino v. Costa**

**County of Riverside**

*see* **Public Defenders Organization v. County of Riverside**  
**Riverside Sheriff's Assn. v. County of Riverside**

**County of Riverside v. Superior Court of Riverside County; Riverside Sheriffs Assn. RPI**

*Unanimous ruling struck down the labor-backed binding arbitration law that gave police and fire unions the option of calling on an arbitrator to resolve bargaining impasses over economic issues with local public safety employers.*  
(2003) 30 Cal.4th 278, 160 CPER 19

**Cumming v. Connell, Morgenstern, and California State Employees Assn., Loc. 1000**

*Agency fee notice clarified; notice is sufficient even though it does not contain any audit of the union's allocation of expenses between chargeable and non-chargeable expenditures.*  
(9th Cir. 2003) 316 F.3d 886, 158 CPER 56

**D**

**Davis**

*see* **White v. Davis**

**Davis v. City of San Diego**

*A narrative report by the city's Citizens' Review Board on Police Practices summarizing the board's investigation into a shooting was a confidential personnel record, and the city could not voluntarily disclose it to the public.*  
(2003) 106 Cal.App.4th 893, 159 CPER 26.

**Degrassi v. Cook**

*City council member could not recover damages for the city's violation of her free speech rights under the California Constitution.*  
(2002) 29 Cal.4th 333, 158 CPER 64

**Department of Corrections**

*see* **Hastings v. Department of Corrections**  
**Mackey v. Department of Corrections**

**Department of Personnel Administration**

*see* **State Personnel Board v. Department of Personnel Administration**

**Desert Palace, Inc., dba Caesars Palace Hotel and Casino v. Costa**

*A worker alleging discrimination by his employer does not have to present direct evidence in order to prove his case; a plaintiff is not required to present direct evidence of discrimination in order to obtain a mixed-motive instruction under Title VII of the Civil Rights Act of 1964.*  
(2003) 539 U.S. 90, 161 CPER 67

**Dixon v. Regents of the University of California**

*The doctrine mandating that a plaintiff exhaust administrative remedies before filing a legal action in court is not boundless; it would have been "idle, futile, and practically useless" for the discharged employee to continue to press his appeal through an internal grievance process that had proceeded in fits and starts for more than two years.*  
(2003) 112 Cal.App.4th 1062, 163 CPER 70 (ordered depublished by Supreme Court 2-4-04)

**E**

**Eastern Municipal Water Dist. Board**

*see* **McDaneld v. Eastern Municipal Water Dist. Board**

**F**

**Fairbanks North Star Borough School Dist.**

*see* **Raad v. Fairbanks North Star Borough School Dist.**

**Fenn v. Workers Compensation Appeals Board and City of Anaheim**

*Fireman not entitled to overtime compensation for hours he would have worked had he not been out on disability leave. Premium pay awarded under Fair Labor Standards Act is not part of salary but a benefit earned by an employee who actually works excess hours during a pay period.*  
(2003) 107 Cal. App.4th 1292, 160 CPER 37

**Flores v. Morgan Hill Unified School Dist. et al.**

*School administrators must take “more than the minimal amount of action” in response to complaints of student harassment on the basis of sexual orientation; if they treat such complaints with “deliberate indifference,” they can be held personally responsible for the students’ injuries.*

(9th Cir. 2003) 324 F.3d 1130, 160 CPER 27

**G****Gradilla v. Ruskin Manufacturing**

*Court narrowly interpreted California Family Rights Act to deny leave to employee who traveled with his ailing wife to Mexico to attend her father’s funeral; CFRA does not require employer to permit employee to travel with spouse for reasons unrelated to her medical treatment.*

(9th Cir. 2003) 320 F.3d 951, 159 CPER 46

**Grutter v. Bollinger**

*Upholds the affirmative action program at the University of Michigan law school; the law school had a compelling interest in attaining a diverse student body. The school’s policy did not assure a specified percentage of a particular group merely because of its race or ethnic origin; instead the “critical mass” sought to achieve specific educational benefits that ranged from livelier classroom discussion to better preparation for an increasingly diverse workforce.*

(2003) 123 S.Ct. 2325, 162 CPER 5

**H-I****Hard v. California State Employees Assn.**

*CSEA must issue its Civil Service Division an independent charter; association’s interpretation of bylaws is unreasonable.*

(2003) 112 Cal.App.4th 1343, 163 CPER 61

**Harik v. California Teachers Assn.**

*First decision withdrawn and second opinion provides more specific guidance to small local unions regarding the type of verification that they are required to give non-union members about their expenditures in order to justify their agency fee.*

(9th Cir. 2003) 326 F.3d 1042, 160 CPER 34

**Hastings v. Department of Corrections**

*A correctional officer cadet injured during training was not entitled to reassignment to a desk job for which he had not taken a competitive examination; the reasonable accommodation requirement of the California Fair Employment and Housing Act applies only to a position within the same*

*civil service classification for which a disabled employee is a candidate.*

(2003) 110 Cal. App.4th 963, 162 CPER 49

**Henderson**

*see* **Cherosky v. Henderson**

**Hernandez v. Spacelabs Medical Inc.**

*Employee terminated after reporting sexual harassment may sue; court applied McDonnell Douglas analysis to find that employee engaged in protected activity and suffered an adverse employment action, but that alleged acts of discrimination occurred beyond the statute of limitations period.*

(9th Cir. 2003) 343 F.3d 1107, 162 CPER 64

**Hibbs**

*see* **Nevada Department of Human Resources v. Hibbs**

**Holly D. v. California Institute of Technology**

*“A plaintiff who contends that she was coerced into performing unwanted sexual acts with her supervisor, by threats that she would be discharged if she failed to comply with his demands, has alleged a tangible employment action under Title VII that, if proved, entitles her to relief against her employer”; the case expands the potential liability of employers for sexual harassment claims under Title VII of the Civil Rights Act to include cases in which no adverse job action was taken against the employee.*

(9th Cir. 2003) 339 F.3d 1158, 162 CPER 58

**J****Jackson v. City of Los Angeles**

*The statute of limitations period for issuing an administrative complaint against a peace officer as set out in the Public Safety Officers Procedural Bill of Rights Act prevails over the limitations period established by the Los Angeles City Charter because the rights and protections afforded peace officers by the act address matters of statewide concern. Since the officer’s termination was initiated more than one year after a sergeant learned of the alleged misconduct, the punitive action was based on an untimely complaint and barred by state law.*

(2003) 111 Cal.App.4th 899, 162 CPER 33

**James v. City of Coronado**

*Police officers are not entitled to confront and cross-examine witnesses during an administrative appeal convened to challenge misconduct claims outlined in memos placed in their personnel files; every appeal mandated by the Public Safety*

*Officers Procedural Bill of Rights Act does not, as a matter of law, include full panoply of judicial procedures.*  
(2003) 106 Cal.App.4th 905, 159 CPER 24

**Johnson (Individually and as Chief Probation Officer)**  
*see* **Operating Engineers Loc. 3 v. Johnson (Individually and as Chief Probation Officer)**

## K

**Katzberg v. Regents of the University of California**  
*An individual may not bring an action for damages under the California Constitution for deprivation of his due process "liberty interest."*  
(2002) 29 Cal.4th 300, 158 CPER 64

**Kavanaugh v. West Sonoma County Union High School Dist.**

*Interpreting Ed. Code Sec. 44916, the court held that a certificated teacher who did not receive written notice of her status as a temporary employee until two weeks after beginning work must be considered a probationary employee.*  
(2003) 29 Cal.4th 911, 159 CPER 31

**Kinder**  
*see* **Loshonkohl v. Kinder**

## L

**Liu v. Amway Corp.**  
*The employer's conduct in discouraging the extension of pregnancy leave and in mischaracterizing the nature of the leave is actionable under the federal Family and Medical Leave Act and the California Family Rights Act.*  
(2003) 347 F.3d 1125, 163 CPER 66

**Lockyer**  
*see* **Opinion by A.G. Bill Lockyer**

**Lopez**  
*see* **Bernstein v. Lopez**

**Los Angeles County Metropolitan Transportation Authority**  
*see* **Amalgamated Transit Union, Loc. 1277, v. Los Angeles County Metropolitan Transportation Authority**

**Loshonkohl v. Kinder**

*Civil Code Sec. 47.5, which allows peace officers to file defamation suits against citizens who complain about police misconduct, does not abridge constitutional free speech protections because the law targets only complaints triggered by spite, hatred, or ill will; statute falls within category of permissible content discrimination because it suppresses only knowingly false complaints against police officers.*  
(2003) 109 Cal.App.4th 510, 161 CPER 37

## M

**Mackey v. Department of Corrections**

*Retaliation for threatened or actual reporting of sexual relationships is not activity prohibited by California's Fair Employment and Housing Act; being forced to work in an atmosphere where paramours were given preferential treatment and those who protested were abused does not violate the act.*  
(2003) 105 Cal.App.4th 945, 159 CPER 55; petition for review granted 4-23-03, Supreme Ct. No. S114097, 160 CPER 60

**Mason v. Retirement Board of the City and County of San Francisco**

*The San Francisco Retirement Board correctly determined that cash payments for unused vacation or sick leave are terminal pay and not to be included in retirement calculation; vacation and sick leave have no cash value while an employee is providing service under the retirement plan, therefore these benefits are not part of compensation earned during the specified measuring period.*  
(2003) 111 Cal.App.4th 1221, 162 CPER 36

**McDaneld v. Eastern Municipal Water Dist. Board**

*An employee properly may be discharged by an employer who holds a reasonable, good faith belief that the employee has misused his family leave.*  
(2003) 109 Cal.App.4th 702, 161 CPER 75

**Medina v. Board of Retirement, Los Angeles County Employees Retirement Assn.**

*The retirement board of the county employees retirement association lacks the authority to classify two deputy district attorneys as safety members even though they erroneously had been classified as safety members and had made contributions at the higher safety member rate for over a decade.*  
(2003) 2003 Cal.App.4th 1567, 163 CPER 40

**Morgan Hill Unified School Dist.**

*see* **Flores v. Morgan Hill Unified School Dist.**

**Morgenstern**

*see* **Cummings v. Connell, Morgenstern, and California State Employees Assn., Loc. 1000**

**N****Nevada Department of Human Resources v. Hibbs**

*Under FMLA, state immunity is no bar to lawsuits by state employees; state employees may continue to sue for money damages when their state employer fails to comply with the leave provisions of the Family and Medical Leave Act of 1993.*

(2003) 538 U.S. 721, 161 CPER 5

**Nolan**

*see* **City of Anaheim v. Nolan**

**O****Operating Engineers Loc. 3 v. Johnson (Individually and as Chief Probation Officer)**

*Additional exception added to exclusivity provision of the Workers' Compensation Act; employee may claim invasion of constitutional right to privacy and seek damages separate from those awarded under the workers' compensation system.*

(2003) 110 Cal.App.4th 180, 161 CPER 35

**Opinion by A.G. Bill Lockyer**

*Because the term "firefighter" is expansively defined by the Workers' Compensation Act to encompass a person providing firefighting services as an apprentice or volunteer, a firefighter is entitled to the enhanced benefits granted by law.*

Ops.Cal.Atty.Gen., No. 03-301 (6-20-03) 2003 DJDAR 6917, 161 CPER 39

**P-Q****Palmer v. Regents of the University of California**

*A U.C. employee must use internal complaint procedures prior to filing a claim that the university retaliated against her for reporting unlawful activity.*

(2003) 107 Cal.App.4th 899, 160 CPER 54

**People v. Stanistreet**

*Knowingly false accusations of police misconduct are not protected speech; upholds Penal Code Sec.148.6, which makes it a misdemeanor to file a knowingly false complaint of police misconduct.*

(2002) 29 Cal.4th 497, 158 CPER 52

**Public Defenders Organization v. County of Riverside**

*A union that represents employees in a professional bargaining unit retains its status as the exclusive representative of employees who are carved out of the original unit and placed in a new unit.*

(2003) 106 Cal.App.4th 1403, 160 CPER 40

**R****Raad v. Fairbanks North Star Borough School Dist.**

*An American citizen of Lebanese descent and Muslim faith who was refused a permanent teaching position may proceed to trial with her claim of discrimination on the basis of her national origin and religion and claim of retaliation.*

(9th Cir. 2003) 323 F.3d 1185, 160 CPER 58

**Regents of the University of California**

*see* **Dixon v. Regents of the University of California**

**Katzberg v. Regents of the University of California**

**Palmer v. Regents of the University of California**

**Retirement Board of the City and County of San Francisco**

*see* **Mason v. Retirement Board of the City and County of San Francisco**

**Riverside Sheriffs Assn.**

*see* **County of Riverside v. Superior Court of Riverside County; Riverside Sheriffs Assn. RPI**

**Riverside Sheriffs Assn. v. County of Riverside**

*No requirement that the county automatically grant a step increase to a deputy sheriff on disability leave; county did not deviate from clearly established past practice of granting step increases nor did it neglect obligation under MMBA to meet and confer with deputy's exclusive representative.*

(2003) 106 Cal.App.4th 1285, 159 CPER 22

**Ruskin Manufacturing**

*see* **Gradilla v. Ruskin Manufacturing**

## S

**San Diego Police Officers Assn. v. City of San Diego Civil Service Commission**

*A public entity may not release the personnel records of a law enforcement officer at a public disciplinary appeal hearing because an officer's personnel records are confidential and cannot be made public if the officer objects.*

(2002, modified 1-9-03) 104 Cal.App.4th 275, 158 CPER 46

**Spacelabs Medical Inc.**

*see* **Hernandez v. Spacelabs Medical Inc.**

**Stanistreet**

*see* **People v. Stanistreet**

**State Personnel Board (Henderson)**

*see* **California Youth Authority v. State Personnel Board (Henderson)**

**State Personnel Board v. Department of Personnel Administration**

*Contract provisions that permit employees to bypass the State Personnel Board and have disciplinary matters adjudicated by an arbitrator deprive the SPB of its constitutional authority to review disciplinary actions; ensuring the fairness of employee discipline goes hand in hand with the board's central function of administering the state civil service in accordance with the merit principle.*

(2003) 109 Cal.App.4th 1574, 161 CPER 59 (re-hearing granted 6-27-03)

**State Personnel Board v. Department of Personnel Administration**

*Collective bargaining agreements that allow for arbitration of disciplinary cases conflict with the constitutional jurisdiction of the SPB; the SPB's power to "review disciplinary actions" refers to adjudicatory review of state employer actions and not appellate review of decisions in another forum.*

(2003) 111 Cal. App.4th 839, 162 CPER 51 (review granted 11-12-03)

**Steven F. v. Anaheim Union High School Dist.**

*The school district is not liable for the emotional distress of parents of a high school student who had an affair with her teacher. The district cannot be held vicariously liable for the actions of its teacher, although it can be held liable for its own conduct, such as negligence in the hiring of the teacher and/or continuing to employ him.*

(2003) 112 Cal.App.4th 904, 163 CPER 43

**Superior Court of Riverside County**

*see* **County of Riverside v. Superior Court of Riverside County; Riverside Sheriffs Assn. RPI**

## T

**Teamsters, Loc. 856 v. Priceless, LLC**

*Court upheld propriety of trial court decision ordering cities to release names, titles, and wages of all city employees but without divulging individuals' names; however, ruling did not decide merits of the case. Determination will come after a trial, when all evidence and arguments are presented.*

(2003) 112 Cal.App.4th 1500, 163 CPER 34

## U

**Upland Police Officers Assn. v. City of Upland**

*The Public Safety Officers Procedural Bill of Rights Act mandates that a peace officer under investigation has the right to a representative of his or her choice, but the legislature did not intend to allow officers to dictate, by their choice of representative, whether an investigation will occur at all.*

(2003) 111 Cal.App.4th 1294, 162 CPER 30

## W-Z

**West Sonoma County Union High School Dist.**

*see* **Kavanaugh v. West Sonoma County Union High School Dist.**

**Westly v. California Public Employees' Retirement System Board of Administration**

*State agencies cannot evade civil service provisions and the Department of Personnel Administration's control over salaries, even if the desire is to pay employees higher in accordance with market rates.*

(2003) 105 Cal.App.4th 1095, 159 CPER 48

**White v. Davis**

*After the state legislature misses its constitutional budget deadline, the controller may pay only minimum wage and overtime pay after July 1, unless the legislature enacts an appropriation for salaries.*

(2003) 30 Cal.4th 528, 160 CPER 14

**Workers' Compensation Appeals Board and City of Anaheim**

*see* **Fenn v. Workers' Compensation Appeals Board and City of Anaheim**

## PART III

## TABLE OF PERB ORDERS AND DECISIONS

## Section A: Annotated Table of PERB Orders and Decisions

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*Dills Act Cases*

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**California State Employees Assn., Loc. 1000, SEIU, AFL-CIO, CLC v. State of California (Dept. of Youth Authority), No. 1526-S/161:86**

(The board affirmed the B.A.'s dismissal and rejected the association's appeal because the board does not have jurisdiction to enforce an arbitration award.)

**California State Employees Assn., Loc. 1000, SEIU, AFL-CIO, CLC v. State of California (Dept. of Youth Authority), No. 1527-S/161:87**

(The charge was properly dismissed and deferred to arbitration.)

**International Union of Operating Engineers v. State of California (State Personnel Board), No. 1491a-S/158:81**

(The board denied SPB's request for reconsideration.)

**Horspool v. State of California (Dept. of Corrections), No. 1546-S/162:80**

(The charging party's appeal was rejected because it sought to amend the complaint to include additional allegations, rather than challenge the partial dismissal.)

**Hutchinson v. State of California (Dept. of Transportation), No. Ad-326-S/162:79**

(The board denied Hutchinson's request to excuse her late filing.)

**Moore v. California Correctional Peace Officers Assn., No. 1530-S/162:78**

(Dismissal of the unfair practice charge was affirmed.)

**Professional Engineers in California Government v. State of California (Dept. of Personnel Administration), No. 1516-S/161:85**

(The state did not violate the parties' ground rules for negotiation of a new contract.)

**Vickers v. State of California (Dept. of Corrections), No. 1540-S/162:79**

(The case was dismissed and deferred to arbitration because the Dills Act proscribes the issuance of a complaint against conduct also prohibited by the parties' agreement.)

**Vickers v. State of California (Dept. of Corrections), No. Ad-328/163:80**

(The board did not find good cause to excuse the state's late-filed response.)

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*EERA Cases*

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**American Federation of Teachers Guild, California Federation of Teachers, Loc. 1931 v. San Diego Community College Dist., No. 1467a/161:88**

(The board rejected the guild's request for reconsideration.)

**Angels Camp Educators Assn. v. Mark Twain Union Elementary School Dist., No. 1548/163:84**

(The board upheld the ALJ's order to provide compensatory time off to remedy unilaterally increased hours, but modified the order to require the district to negotiate over the manner in which comp time is granted and, if negotiations are unsuccessful, to award backpay to affected teachers.)

**Angels Camp Educators Assn., CTA/NEA v. Mark Twain Union Elementary School Dist., No. Ad-319/159:71**

(The district's response was accepted as timely filed.)



- Bailey v. Los Angeles Unified School Dist., No. Ad-318/159:71**  
(The charging party demonstrated “good cause” to excuse her late filing of an appeal.)
- Berkeley Federation of Teachers No. 1078 v. Berkeley Unified School Dist., No. 1538/162:84**  
(The federation demonstrated a sufficient nexus between protected union activity and the district’s adverse action.)
- Burlingame Elementary School Dist. v. California School Employees Assn., No. 1510/159:72**  
(The association did not violate EERA by representing the payroll benefits technician.)
- California School Employees Assn. v. San Marcos USD, No. 1508/158:83**  
(Non-disruptive, informational picketing is protected by EERA.)
- California School Employees Assn., Chap. 147 v. Banning Unified School Dist., No. 1549/163:85**  
(The board found good cause to excuse CSEA’s late-filed amended charge.)
- California School Employees Assn., Chap. 244 v. Colton Joint Unified School Dist., No. 1534/162:83**  
(The charging party did not state a prima facie case demonstrating that the district violated EERA by retaliating against bus drivers, failing to participate in good faith in impasse procedures, bargaining in bad faith, or denying CSEA’s rights guaranteed by the act.)
- California School Employees Assn., Chap. 250 v. Clovis Unified School Dist., No. 1504/158:81**  
(The district violated EERA when, without notifying the association, it conducted an employee election in order to implement changes in the employees’ retirement benefits.)
- Compton Education Assn. v. Compton Unified School Dist., No. 1518/161:88**  
(The board adopted the ALJ’s proposed decision finding that the district violated EERA Secs. 3543.5[a] and [b].)
- Davidson v. Public Employees Union, Loc. 1, No. 1537/162:87**  
(The charge was dismissed because it was untimely and failed to state a prima facie case. No new allegations or evidence was allowed on appeal.)
- Deglow v. Los Rios College Federation of Teachers, Loc. 2279, No. 1515/160:76**  
(The federation did not breach its duty of fair representation.)
- DeLauer v. Santa Rosa Junior College, No. 1511/160:73**  
(The charging party, who was an employee of the district, was not protected under EERA in her capacity as a student at the junior college.)
- DeLauer v. Sonoma Valley Unified School Dist., No. 1522/161:91**  
(The board refused to consider DeLauer’s additional EERA allegations on appeal and affirmed the regional attorney’s dismissal.)
- DeLauer v. California School Employees Assn., No. 1523/161:92**  
(The association did not violate its duty of fair representation.)
- District Educators Assn., CTA/NEA v. Huntington Beach Union High School Dist., No. 1525/161:91**  
(Unfair practice ruling: The district violated EERA by unilaterally modifying the hours of three new positions in an existing classification. The hours of employment assigned to a position is a matter within the scope of representation regardless of whether the position is occupied or vacant.)
- Fanene v. Oakland Unified School Dist., No. 1512/160:73**  
(The charging party did not show that her union activities motivated the district’s decision to terminate her.)
- Fanene v. SEIU, Loc. 790, No. 1513/160:75**  
(The union did not breach its duty of fair representation.)
- Fontana Unified School Dist. v. United Steelworkers of America, No. Ad-324/161:92**  
(The board excused the Steelworkers’ defective proof of service and thereby accepted the union’s response to the district’s exceptions.)
- Kestin v. United Teachers of Los Angeles, No. Ad-325/161:93**  
(Kestin’s motion to file late was denied because there was no good cause to excuse the late filing.)
- Larkins v. Chula Vista Elementary E.A., CTA, No. Ad-322/161:87**  
(The board agent did not err in refusing to disqualify herself.)
- Mendocino County Office of Education and Mendocino County Federation of School Employees, No. 1505/158:93**  
(The administrative and program secretaries should remain in the classified bargaining unit.)
- Oakland Education Assn. v. Oakland Unified School Dist., No. 1529/162:80**  
(The charging party demonstrated a sufficient nexus between the adverse action and the protected conduct to state a prima facie case of retaliation.)
- Part-Time Faculty United, AFT v. Santa Clarita CCD, No. 1506/158:85**  
(Public school employers cannot encourage employees to join one employee organization in preference to another.)

**Part-Time Faculty United, AFT v. Victor Valley Community College Dist., No. 1543/162:86**

(The district violated EERA by agreeing to amend its contract to allow the association to accrete unrepresented part-time faculty members into an existing unit when the district was aware that PFU had begun its organizing campaign.)

**Pitner v. Contra Costa Community College Dist., No. 1520/161:89**

(The board reversed the board agent's dismissal of the unfair practice charge.)

**Robert L. Mueller Charter School v. Mueller Charter School Teachers Assn., CTA/NEA, No. Ad-320/160:74**

(An appropriate unit of certificated employees exists and an election must be conducted.)

**Rossmann v. Orange Unified Education Assn. and California Teachers Assn., No. 1533/162:86**

(The charge failed to state a prima facie violation of the duty of fair representation.)

**Turney v. Fremont Unified School Dist., No. 1528/161:91**

(The board dismissed the district's exceptions to the ALJ's decision.)

**United Administrators of Oakland Schools v. Oakland Unified School Dist., No. 1544/162:85**

(The district had no obligation to negotiate with the charging party because the alleged change concerning the faculty councils merely stated a practice already in existence.)

**United Teachers of Los Angeles v. Los Angeles Unified School Dist., No. 1532/162:82**

(The charging party met its burden of establishing a prima facie case of retaliation against him for engaging in protected union activities.)

**Ventura County Federation of College Teachers, Loc. 1828, AFL-CIO v. Ventura County Community College Dist., No. 1547/163:81**

(The district committed an unfair practice when it unilaterally acted to transfer instructional duties performed by its employees to law enforcement academy instructors who were jointly employed by the sheriff.)

**Willits Teachers Assn., CTA/NEA v. Willits Unified School Dist., No. 1521/161:90**

(The board affirmed the regional attorney's holding that the arbitrator's decision is not repugnant to EERA.)

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## *HEERA Cases*

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**Academic Professionals of California v. Trustees of the California State University, No. 1507-H/158:85**

(The university's implementation of a shift in computer, telephone, and fax policies was a unilateral change.)

**Buxton v. Coalition of University Employees, No. 1517-H/161:94**

(The coalition did not breach its duty of fair representation.)

**Enter v. Regents of the University of California (Los Alamos National Laboratory), No. 1519-H/161:94**

(The R.D.'s dismissal of the charging party's unfair practice claim is affirmed.)

**State Employees Trades Council v. Trustees of the California State University, No. 1514-H/160:77**

(The parties' requests to withdraw the unfair practice charge and exceptions and to dismiss the action with prejudice were granted.)

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## *MMBA Cases*

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**California Nurses Assn. v. Antelope Valley Health Care Dist., No. 1509-M/159:72**

(The district's exceptions were withdrawn with prejudice.)

**City of Carson v. American Federation of State, County and Municipal Employees, Loc. 809, AFL-CIO, No. Ad-323-M/161:97**

(The board granted the city's request for a stay of the B.A.'s order.)

**City of Carson v. American Federation of State, County and Municipal Employees, Loc. 809, AFL-CIO, No. Ad-327-M/162:88**

(The board exercised jurisdiction to review the city's interpretation of its local rule concerning unit modification petitions and ruled that the petition seeking to remove a classification represented by AFSCME was barred by the MOU between AFSCME and the city.)

**International Brotherhood of Electrical Workers, Loc. 47 v. City of Anaheim, No. Ad-321-M/161:96**

(A three-year statute of limitations applies to charges filed under the MMBA. The board has jurisdiction to hear cases based on conduct that predates July 1, 2001. (See Local Government section of this issue for complete summary.)

**Irish v. City of Sacramento, No. 1541-M/162:89**

(The charging party's untimely filing was excused because it resulted from a postal error and the board agent did not provide notice of what PERB considers to be a successfully "filed" document.)

**Irish v. IUOE Loc. 39, No. 1542-M/162:90**

(The charging party's untimely filing was excused because it resulted from a postal error and the board agent did not provide notice of what PERB considers to be a successfully "filed" document.)

**Siroky v. City of Folsom, No. 1531-M/162:87**

(The charge was dismissed because it was not timely filed and the charging party did not have standing to allege a failure to bargain.)

**Siroky v. City of Folsom, No. 1539-M/162:88**

(The charging party failed to state a prima facie case showing that the city retaliated against him.)

**Stationary Engineers Loc. 39, International Union of Operating Engineers, AFL-CIO v. Diablo Water Dist., No. 1545-M/162:90**

(The union waived its right to meet and confer over new work rules because it refused to accept the district's invitations to discuss the matter until the district recognized the union as an employee organization.)

**Tupou v. Sacramento Municipal Utility Dist., No. 1535-M/162:88**

(The charge was dismissed because it was untimely.)

**Tupou v. International Brotherhood of Electrical Workers, Loc. 1245, No. 1536-M/162:90**

(The charge was dismissed because it was untimely.)

**Union of American Physicians and Dentists v. County of San Joaquin (Health Care Services), No. 1524-M/161:96**

(An employee was improperly disciplined, the plan of corrective action imposed on him was rescinded, and the county was ordered to reimburse him for attorneys' fees.)

### *Section B: Key to Orders and Decisions by PERB Decision Number*

No. 1467a	American Federation of Teachers Guild, California Federation of Teachers, Loc. 1931 v. San Diego Community College Dist./161:88	No. 1515	Deglow v. Los Rios College Federation of Teachers, Loc. 2279/160:76
No. 1491a-S	International Union of Operating Engineers v. State of California (State Personnel Board)/158:81	No. 1516-S	Professional Engineers in California Government v. State of California (Dept. of Personnel Administration)/161:85
No. 1504	California School Employees Assn., Chap. 250 v. Clovis Unified School Dist./158:81	No. 1517-H	Buxton v. Coalition of University Employees/161:94
No. 1505	Mendocino County Office of Education and Mendocino County Federation of School Employees/158:93	No. 1518	Compton Education Assn. v. Compton Unified School Dist./161:88
No. 1506	Part-Time Faculty United, AFT v. Santa Clarita CCD/158:85	No. 1519-H	Enter v. Regents of the University of California (Los Alamos National Laboratory)/161:94
No. 1507-H	Academic Professionals of California v. Trustees of the California State University	No. 1520	Pitner v. Contra Costa Community College Dist./161:89
No. 1508	California School Employees Assn. v. San Marcos USD/158:83	No. 1521	Willits Teachers Assn., CTA/NEA v. Willits Unified School Dist./161:90
No. 1509	California Nurses Assn. v. Antelope Valley Health Care Dist./159:72	No. 1522	DeLauer v. Sonoma Valley Unified School Dist./161:91
No. 1510	Burlingame Elementary School Dist. v. California School Employees Assn./159:72	No. 1523	DeLauer v. California School Employees Assn./161:92
No. 1511	DeLauer v. Santa Rosa Junior College/160:73	No. 1524-M	Union of American Physicians and Dentists v. County of San Joaquin (Health Care Services)/161:96
No. 1512	Fanene v. Oakland Unified School Dist./160:73	No. 1525	District Educators Assn., CTA/NEA v. Huntington Beach Union High School Dist./161:91
No. 1513	Fanene v. SEIU, Loc. 790/160:75	No. 1526-S	California State Employees Assn., Loc. 1000, SEIU, AFL-CIO, CLC v. State of California (Dept. of Youth Authority)/161:86
No. 1514-H	State Employees Trades Council v. Trustees of the California State University/160:77	No. 1527-S	California State Employees Assn., Loc. 1000, SEIU, AFL-CIO, CLC v. State of California (Dept. of Youth Authority)/161:87

No. 1528	Turney v. Fremont Unified School Dist./161:91	No. 1546-S	Horspool v. State of California (Dept. of Corrections)/162:80
No. 1529	Oakland Education Assn. v. Oakland Unified School Dist./162:80	No. 1547	Ventura County Federation of College Teachers, Loc. 1828, AFL-CIO v. Ventura County Community College Dist./163:81
No. 1530-S	Moore v. California Correctional Peace Officers Assn./162:78	No. 1548	Angels Camp Educators Assn. v. Mark Twain Union Elementary School Dist./163:84
No. 1531-M	Siroky v. City of Folsom/162:87	No. 1549	California School Employees Assn., Chap. 147 v. Banning Unified School Dist./163:85
No. 1532	United Teachers of Los Angeles v. Los Angeles Unified School Dist./162:82	No. Ad-318	Bailey v. Los Angeles Unified School Dist./159:71
No. 1533	Rossmann v. Orange Unified Education Assn. and California Teachers Assn./162:86	No. Ad-319	Angels Camp Educators Assn., CTA/NEA v. Mark Twain Union Elementary School Dist./159:71
No. 1534	California School Employees Assn., Chap. 244 v. Colton Joint Unified School Dist./162:83	No. Ad-320	Robert L. Mueller Charter School v. Mueller Charter School Teachers Assn., CTA/NEA/160:74
No. 1535-M	Tupou v. Sacramento Municipal Utility Dist./162:88	No. Ad-321	International Brotherhood of Electrical Workers, Loc. 47 v. City of Anaheim/161:96
No. 1536-M	Tupou v. International Brotherhood of Electrical Workers, Loc. 1245/162:90	No. Ad-322	Larkins v. Chula Vista Elementary E.A., CTA/161:87
No. 1537	Davidson v. Public Employees Union, Loc. 1/162:87	No. Ad-323-M	City of Carson v. American Federation of State, County and Municipal Employees, Loc. 809, AFL-CIO/161:97
No. 1538	Berkeley Federation of Teachers No. 1078 v. Berkeley Unified School Dist./162:84	No. Ad-324	Fontana Unified School Dist. v. United Steelworkers of America/161:92
No. 1539-M	Siroky v. City of Folsom/162:88	No. Ad-325	Kestin v. United Teachers of Los Angeles/161:93
No. 1540-S	Vickers v. State of California (Dept. of Corrections)/162:79	No. Ad-326-S	Hutchinson v. State of California (Dept. of Transportation)/162:79
No. 1541-M	Irish v. City of Sacramento/162:89	No. Ad-327-M	City of Carson v. American Federation of State, County and Municipal Employees, Loc. 809, AFL-CIO/162:88
No. 1542-M	Irish v. IUOE Loc. 39/162:90	No. Ad-328	Vickers v. State of California (Dept. of Corrections)/163:80
No. 1543	Part-Time Faculty United, AFT v. Victor Valley Community College Dist./162:86		
No. 1544	United Administrators of Oakland Schools v. Oakland Unified School Dist./162:85		
No. 1545-M	Stationary Engineers Loc. 39, International Union of Operating Engineers, AFL-CIO v. Diablo Water Dist./162:90		

*PART IV*

**INDEX OF ARBITRATION**

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*Grievance Actions*

---

**A-B**

**BARGAINING UNIT WORK**  
162:73

**C**

**COMPUTER SECURITY**  
163:72

**CONTRACT INTERPRETATION**  
158:71, 158:75, 158:76, 159:67, 159:69, 159:70, 160:67,  
160:68, 162:72, 163:77

**CONTRACT INTERPRETATION — BENEFITS**  
158:74

**CONTRACT INTERPRETATION — INVOLUN-  
TARY TRANSFER**  
162:70

**CONTRACT INTERPRETATION — PARITY  
CLAUSE**  
163:78

**CONTRACT INTERPRETATION — PROCEDURAL  
NOTIFICATION**  
161:83

**CONTRACT INTERPRETATION — TIME  
MONITORING**  
162:71

**CONTRACT INTERPRETATION — VACATION  
LEAVE**  
161:83

**CONTRACT INTERPRETATION — WORK RULES**  
163:74

**CONTRACTING OUT**  
162:73

**D**

**DISCHARGE**  
158:73, 159:64

**DISCHARGE — DISHONESTY**  
159:66, 159:67, 161:82

**DISCHARGE — JUST CAUSE**  
162:74

**DISCHARGE — MISCONDUCT**  
160:66, 162:67

**DISCHARGE — PROGRESSIVE DISCIPLINE**  
163:76

**DISCHARGE — THREAT OF VIOLENCE**  
160:69

**DISCHARGE — UNSATISFACTORY  
PERFORMANCE**  
161:82

**DISCHARGE — VIOLENCE**  
160:65

**DISCIPLINE**

161:81

**DISCIPLINE JUST CAUSE**

161:80, 163:75, 163:76

**DISCIPLINE — PROGRESSIVE**

159:66, 162:74

**DISCRIMINATION**

158:76

**DUE PROCESS**

159:67

**E-K**

**EVALUATIONS — NOTICE**

161:83

**L-O**

**LEAVE**

159:69

**LEAVE — SICK LEAVE**

161:80

**P-Q**

**PAY CLAIM — OUT OF CLASSIFICATION**

162:72

**PAY CLAIM — SALARY SCHEDULE  
CLASSIFICATION**

159:70

**PAY CLAIM — SALARY SCHEDULE INCREASE**

163:78

**PROMOTION**

160:61

**R**

**RECLASSIFICATION**

159:67

**RELEASED TIME**

161:77

**S-T**

**SAFETY**

158:72

**SHIFT ASSIGNMENT**

160:69

**SUSPENSION — JUST CAUSE**

161:81

**SUSPENSION — PROGRESSIVE DISCIPLINE**

163:75

**U-Z**

**UNPROFESSIONAL CONDUCT**

163:77

---

*Neutrals*

---

**BLOCK, HOWARD S.**

163:74

**BOGUE, BONNIE G.**

158:72, 159:64, 160:65, 161:81, 162:73, 163:76

**BRAND, NORMAN**

162:68, 163:72

**BRISCO, C. CHESTER**

161:83

**COLLINS, R. DOUGLAS**

159:66

**COSSACK, JERILOU**

160:65

**DAVIS, MORRIS**

158:74, 159:67

**EGLIT, HOWARD**

158:71

**GENTILE, JOSEPH**

159:70

**KAUFMAN, WALTER N.**

161:83

**KEPPLER, MARK**

162:70

**POOL, C. ALLEN**

161:78, 162:74

**RIKER, WILLIAM E.**

158:73, 159:67, 160:69, 163:75

**ROBERTS, THOMAS T.**

160:67

**ROTHSTEIN, ALAN**

160:68, 162:67

**SILVER, FRANKLIN**

158:76

**SILVER, MELVYN D.**

160:61, 161:80

**STAUDO HAR, PAUL D.**

159:69

**TAMOUSH, PHILIP**

161:82

**THOMSON, KATHERINE**

158:75, 162:72

**VENDRILLO, CAROL**

163:78

**WORMUTH, JOHN**

163:77