2006 CPER INDEX

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HOW TO USE THE CPER ANNUAL INDEX

The 2006 issues of the CPER bimonthly periodical — No. 176 (February) through No. 181 (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. 176 is printed as 176:22. 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 2006 issues of CPER. The official title of each case is followed by a brief statement of the court’s holding, the official court citation, 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 seven statutes under PERB’s jurisdiction. This volume contains cases under the Dills Act, the Educational Employment Relations Act (EERA), the Higher Education Employer-Employee Relations Act (HEERA), the Meyers-Milias-Brown Act (MMBA), and the Trial Court Employment Protection and Governance Act (Trial Court Act). 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).
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Ash v. Tyson Foods, Inc.
Use of the term “boy” by a white supervisor referring to an African-American male is not evidence of discrimination unless modified by a racial classification. The Supreme Court also found the appellate court erred in its articulation of the standard for determining whether evidence concerning disparate job qualifications demonstrates that the employer’s stated reason for its promotional decision is pretextual.
(2-1-06) 546 U.S. 454/177:58

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B

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California’s Unruh Civil Rights Act and Disabled Persons Act cannot be read to include the protections of the federal Americans with Disabilities Act.
(9th Cir. 8-15-06) 458 F.3d 978/180:81

Bates et al. v. United Parcel Service
United Parcel Service is prohibited from categorically excluding from employment as “package-car drivers” individuals who cannot pass a Department of Transportation hearing test. UPS’ conduct violated the Americans with Disabilities Act and California’s Fair Employment and Housing Act, but not California’s Unruh Civil Rights Act.
(9th Cir. 10-10-06) 465 F.3d 1069/181:57

Berry v. D epartment of Social Services, T ehama C ounty
A county social worker was reasonably barred from praying with his clients, displaying religious items on his desk, and using a conference room to conduct prayer meetings with coworkers. Applying the Pickering balancing test, the court reasoned that the county could not accommodate the employee’s religious beliefs without running the risk of appearing to support his religious tenets.
(9th Cir. 5-1-06) 447 F.3d 642/178:65

BRV, Inc. v. Superior C ourt
The report of an investigation into allegations of misconduct by a school district superintendent cannot be protected from public disclosure by an agreement between the district and the superintendent. The public’s interest in disclosure outweighed the superintendent’s interest in keeping the report confidential under the Public Records Act’s balancing test.
(9-29-06) 143 Cal.App.4th 742/181:30

Burlington N orthern & Santa Fe Railway C o. v. White
Employees who complain of harassment or discrimination are protected against retaliation under Title VII of the Civil Rights Act of 1964, even if the retaliatory act is not connected to the terms, conditions,
or status of employment. The decision resolves conflicts between various federal appellate circuits regarding whether the challenged action has to be employment- (or workplace-) related and about how harmful that action must be to constitute retaliation.

(6-22-06) 126 S.Ct. 2405/179:68

**C**

**Cable Connection, Inc. v. DIRECTV, Inc.**

DIRECTV attempted to compel judicial review by placing a term in the parties’ contract that stated, “arbitrators shall not have the power to commit errors of law.” This wording was an attempt to create an exception to the general rule that limits judicial review and was viewed as an “end run” around *Moncharsh.*


**California Agricultural Labor Relations Board; United Food and Commercial Workers Union and Fresh Fruit and Vegetable Workers, Local 1096, RPI**

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**California Department of Veterans Affairs**

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**California Youth Authority**

*see* **Hope v. California Youth Authority**

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

An amendment to the Fair Employment and Housing Act making employers liable when their employees are harassed by nonemployees applies retroactively because the amendment did not change existing law but merely clarified it.

(6-8-06) 38 Cal.4th 914/179:71

**CBS Broadcasting, Inc.**

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**City and County of San Francisco**

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**City of Los Angeles**

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

**City of Sacramento**

*see* **Pitts v. City of Sacramento**

**City of Stockton v. Workers’ Compensation Appeals Board**

A police officer for the City of Stockton who injured his leg during a “pickup” game of basketball while off duty, was not entitled to workers’ compensation benefits. The recreational activity was neither a reasonable expectancy of, nor expressly or impliedly required by, his employment.

(1-27-06) 135 Cal.App.4th 1513/177:31

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

The city was entitled to unilaterally implement a data collection study designed to assess whether police officers were engaged in racial profiling. There was no requirement to meet and confer with the association first because the study did not have a significant and adverse effect on the officers’ working conditions.

(8-14-06) 39 Cal.4th 623/180:21

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

Although the interactive process usually takes place between the employer and the employee, without involvement of attorneys, special circumstances existed that rendered unreasonable the employer’s refusal to communicate with the employee’s counsel. The court returned to the trial court the issue of whether the university violated its duty under the Fair Employment and Housing Act to engage in an interactive process to determine whether it could reasonably accommodate a disabled employee.

(11-22-05) 134 Cal.App.4th 224/176:67
Consulting Engineers and Land Surveyors of California, Inc. v. Professional Engineers in California Government
Provisions on contracting out that the PECG obtained during bargaining in 2003 conflict with Article XXII of the State Constitution. The court barred implementation of the contracting out section of the memorandum of understanding between PECG and the state because the Constitution exempts architectural and engineering services from the general civil service limitations on contracting out work that civil service employees perform.
(6-14-06) 140 Cal.App.4th 466/179:60

County of Butte
see Bass v. County of Butte

County of Los Angeles
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see Stephens v. County of Tulare

D
The United States Supreme Court has agreed to hear a challenge to the constitutionality of a Washington State law that requires unions to obtain consent from each non-union member before it can use any agency fees for political purposes. The Washington law was enacted in 1992 as part of a voter initiative. It requires the union to get nonmembers’ affirmative authorization to use the agency fees, rather than to allow the union to use the fees unless a nonmember utilizes the opt-out procedure to prevent their use.
(12-11-06) 127 S.Ct. 845/181:63

Department of Corrections
see McRae v. Department of Corrections
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Department of Industrial Relations; AFSCME, Loc. 101, RPI
see Santa Clara Valley Transportation Authority v. Department of Industrial Relations; AFSCME, Loc. 101, RPI

Department of Personnel Administration
see SEIU, Loc. 1000 v. Department of Personnel Administration

State Personnel Board v. Department of Personnel Administration

Department of Social Services, Tehama County
see Berry v. Department of Social Services, Tehama County

DIRECTV, Inc.
see Cable Connection, Inc. v. DIRECTV, Inc.

Dore v. Arnold Worldwide, Inc.
Inclusion of the words “at will” in an employment contract, without more, means that the employee may be terminated without cause. The employee could not establish the existence of either an express or an implied-in-fact agreement that his employment was terminable only for cause.
(8-3-06) 39 Cal.4th 384/180:83

Freitag v. Ayers
Prisons must attempt to prevent sexual harassment of female employees, even if the harassment is perpetrated by inmates. The California Department of Corrections and Rehabilitation made insufficient
efforts to correct a hostile work environment. However, since her internal complaints about the harassment may not be protected speech under Garcetti v. Ceballos (2006) 126 S.Ct. 1951, 179 CPER 21, the court directed the trial court to determine whether the jury’s consideration of this speech was harmful error.

(11-03-06) 468 F.3d 528 (pet. for rehearing den)/181:53

G

Garcetti v. Ceballos
When public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate the communications from employer discipline.

(5-30-06)126 S.Ct. 1951/179:21, 180:13

Gelfo v. Lockheed Martin Corp.
California’s Fair Employment and Housing Act requires employers to provide reasonable accommodations to employees regarded as disabled, even if not actually disabled. And, employers must engage in an informal interactive process aimed at effecting accommodation.

(6-2-06) 140 Cal.App.4th 34/179:74

Governing Board of the San Leandro School Dist.
see San Leandro Teachers Assn. v. Governing Board of the San Leandro School Dist.

Grant Joint Union High School Dist.
see Patten v. Grant Joint Union High School Dist.

H

Hardage v. CBS Broadcasting, Inc. (I)
The court dismissed a lawsuit brought by an employee who was sexually harassed by his supervisor. The majority found that, although there was no dispute that the harassment took place, the employee suffered no tangible employment action and the employer took reasonable care to prevent and correct the harassment. The court reached this conclusion despite the fact that the employer did not investigate the complaint and took no corrective action.

(9th Cir. 11-1-05, amended 1-6-06) No. 03-35906, 427 F.3d 1177, amended and superseded on rehearing (9th Cir. 1-6-06) ___F.3d___, 2006 WL27475/176:58

Hardage v. CBS Broadcasting, Inc. (II)
The Ninth Circuit Court of Appeals panel amended its opinion in Hardage v. CBS Broadcasting, Inc., further addressing the employer’s duty to investigate a complaint of sexual harassment where the complainant failed to report specific details concerning the harassment and indicated that he wanted to handle the situation himself. The majority commented that, “Considering the ‘overall picture,’ CBS’s response was both prompt and reasonable as a matter of law.”

(9th Cir. 11-1-05, amended 1-6-06, second amendment 2-8-06) No. 03-35906, 433 F.3d 672, amended and superseded (9th Cir. 2-8-06) 436 F.3d 1050/177:59

Harrah’s Operating Co., Inc.
see Jespersen v. Harrah’s Operating Co., Inc.

Hope v. California Youth Authority
The court upheld a jury award of $2 million against the California Youth Authority for sexual-orientation harassment in violation of California’s Fair Employment and Housing Act. The plaintiff, a gay man who worked as a cook in a correctional facility, was subjected to derogatory remarks by his immediate supervisor and a coworker based on his sexual orientation.

(11-30-05) 134 Cal.App.4th 577, certified for publication, S138308, 2005 DJDAR 13780/176:65

Hunton
see Sonoma State University and Octagon Risk Services v. Workers’ Compensation Appeals Board and Hunton
International Chemical Workers Union Council of the United Food & Commercial Workers International v. National Labor Relations Board
An employer who asserts an inability to pay in response to a union’s proposal for wage and benefit increases fails to bargain in good faith when it refuses to reveal its financial documents to support its claim.
(9th Cir. 4-28-06) 447 F.3d 1153/178:63

Jespersen v. Harrah’s Operating Co., Inc.
An employer’s requirement that women employees wear makeup did not constitute sex discrimination under Title VII.
(4-14-06) 444 F.3d 1104/178:59

Jones v. Los Angeles County Office of Education
An employee injured on the job and then denied disability retirement benefits was entitled only to be placed on a reemployment list, not to reinstatement.
(12-09-05) 134 Cal.App.4th 983/176:28

Josephs v. Pacific Bell
In a situation where “new elements of unfairness, not existing at the time of the original violation,” have arisen and attach to the denial of reemployment, that conduct can constitute a separate claim of discrimination. The majority affirmed the jury’s verdict, finding the employer’s refusal to reinstate the employee violated the Americans with Disabilities Act and the Fair Employment and Housing Act.
(9th Cir. 12-27-05) 432 F.3d 1006/176:62

Kelly v. County of Los Angeles
Government Code Sec. 31725 requires an employer to reinstate an employee who has been dismissed due to disability if that employee is found by the retirement board not to be disabled. The reinstatement must be retroactive to the day following the effective date of dismissal, and include back wages and benefits.
(7-26-06) 141 Cal.App.4th 910/180:48

Kelly v. Stamps.com, Inc.
The employee was terminated because of her pregnancy in violation of the California Fair Employment and Housing Act. The employee demonstrated that the company’s stated reasons for her termination were pretextual, even though the employer had laid off many other employees at the same time for legitimate business reasons.
(12-21-05, modified 1-20-06) 135 Cal.App.4th 1088/177:63

Levi Strauss & Co.
see Neisendorf v. Levi Strauss & Co.

Lockheed Martin Corp.
see Gelfo v. Lockheed Martin Corp.

Lockyer
see Opinion of A. G. Bill Lockyer

Los Angeles County Office of Education
see Jones v. Los Angeles County Office of Education

Lyle v. Warner Brothers Television Productions
A writers’ assistant who was required to attend meetings at which writers for the television series Friends displayed sexually course and vulgar language and conduct, did not experience hostile workplace sexual harassment within the meaning of California’s Fair Employment and Housing Act. The court relied heavily on the fact that most of the language was not directed to the complainant or other women in the workplace and that the Friends production was “a creative workplace focused on generating scripts for an adult-oriented comedy show featuring sexual themes.”
(4-20-06) 38 Cal.4th 264/178:56
McRae v. Department of Corrections

Miller v. Department of Corrections
Two women employed by the California Department of Corrections who alleged adverse job actions and harassment by a prison warden and his lover in violation of the Fair Employment and Housing Act can proceed to trial. The case was reconsidered in light of the California Supreme Court ruling that an employee may establish sexual harassment in violation of the FEHA “by demonstrating that widespread sexual favoritism was severe or pervasive enough to alter his or her working conditions and create a hostile environment.” (1-19-06) C040262 (3d Dist.) unpublished opinion/177:65

Morales
see Professional Engineers in California Government v. Morales

N
National Labor Relations Board
see International Chemical Workers Union Council of the United Food & Commercial v. National Labor Relations Board

California’s Family Rights Act was not violated when an employee was fired the same day she returned to work after an extended leave. The CFRAs reinstatement requirement did not apply because the employee was not able to return to work at the expiration of the act’s 12-week-maximum leave time and was not entitled to reasonable accommodation. (9-28-06) 143 Cal.App.4th 509/181:60

Ohlone College
see Wong v. Ohlone College

Opinion of A. G. Bill Lockyer
The Ralph M. Brown Act requires local legislative bodies to conduct business openly and publicly. Personnel-related matters, such as employee discipline and dismissal, are not subject to public review. Although these sessions are closed to public participation and debate, the act does require that actions taken in these sessions be publicly disclosed. An opinion of the Attorney General determined that the outcome of a closed session held to consider the dismissal of a public employee need not be reported if the employee is retained by the local entity. (5-25-06) Ops.Cal. Atty. Gen. No. 05-701, 2006 DJDAR 7371/179:42

Opinion by A.G. Bill Lockyer
Online charter schools may not receive state funding for the instruction of pupils unless the student resides in the county where the school is chartered or in an adjacent county. (8-10-06) Ops.Cal. Atty. Gen. No. 06-201, 2006 DJDAR 10577/180:38

Opinion by A.G. Bill Lockyer
The Prison Industry Board may not establish an executive officer position exempt from the civil service system because it already has another exempt employee. (8-23-06) Ops.Cal. Atty. Gen. No. 05-1014, 2006 DJDAR 11356/180:60

Opinion by A.G. Bill Lockyer
The governing board of a community college district may renegotiate the amount of health benefits under a collective bargaining agreement so long as a financially interested board member does not participate in the decisionmaking process. (10-03-06) Ops.Cal. Atty. Gen. No. 05-1006, 2006 DJDAR 13425/181:36
Patten v. Grant Joint Union High School Dist.
A school district's transfer of a principal from one junior high school to another may constitute whistleblower retaliation under Labor Code Sec. 1102.5(b).

Service under a university internship credential counts toward the attainment of permanent status if the employee completes one more year of service under a preliminary or clear credential.

Pitts v. City of Sacramento
Conditions placed on a police officer's right to reinstatement following denial of a disability retirement application did not foreclose a second petition seeking court review of the officer's belated acceptance of the conditional offer to return to work. The two petitions involved different rights, and the denial of the first did not bar the officer from bringing the second.
(4-19-02) 138 Cal.App.4th 853/178:34

Professional Engineers in California Government
The appeals court upheld Caltrans' contractor selection procedures and its disregard of statutory restrictions that existed prior to Prop. 35. However, in an unpublished portion of the opinion, it found that Caltrans had failed to comply with the Administrative Procedure Act, which requires the opportunity for public comment and review of new regulations.
(11-16-05) 134 Cal.App.4th 15/176:43

Raine v. City of Burbank
An employer's duty to provide reasonable accommodation to disabled employees under California's Fair Employment and Housing Act does not require the employer to make a temporary position permanent. The court adopted the reasoning of federal Circuit Courts of Appeals addressing a similar issue under the Americans with Disabilities Act.
(1-25-06) 135 Cal.App.4th 1215/177:60

Regents of the University of California
San Francisco Chronicle v. Regents of the University of California
The regents violated open meeting laws by taking "action" on compensation for top university officials in closed meetings.

San Francisco Chronicle v. Regents of the University of California
The regents violated open meeting laws by taking "action" on compensation for top university officials in closed meetings.
(5-3-06) Ala.Co.Sup.Ct. RG052355795/179:47
Sanchez v. City of Los Angeles
The court strictly construed Sec. 3304(d) of the Public Safety Officers Procedural Bill of Rights Act, which provides that no punitive action for misconduct may be taken if investigation of the allegation is not completed within one year of the discovery of misconduct. A Los Angeles police officer must be reinstated to his level III position because the police department added the downgrade penalty more than one year after it learned of the underlying misconduct. (5-26-06) 139 Cal.App.4th 1297/179:37

Santa Clara Valley Transportation Authority v. Department of Industrial Relations; AFSCME, Loc. 101, RPI
The Authority is required to bargain with the American Federation of State, County and Municipal Employees, Local 101, even though the bargaining unit represented by AFSCME includes supervisory personnel of the transit district. The court concluded that the legislature intended to provide for the continuity of collective bargaining rights of all transferring county employees. The obligation that VTA grant recognition to the representatives of all transferring employees implies that the transit authority must accept the bargaining unit inclusive of supervisors as it currently is composed. (6-28-06) 140 Cal.App.4th 1303/179:33

Scott Brothers Dairy
see Zavala v. Scott Brothers Dairy

SEIU, Loc. 1000 v. Department of Personnel Administration
If a collective bargaining agreement provides for arbitration in the settlement of disputes, a party must exhaust these remedies before filing suit in court. (9-1-06) 142 Cal.App.4th 866/180:85

Sonoma State University and Octagon Risk Services v. Workers’ Compensation Appeals Board and Hunton
Individual psychological diagnoses cannot be parsed up for purposes of assessing whether the workplace was the predominate cause of a mental disability. The cluster of problems must be assessed as a whole to determine whether the disability is attributable to work-related injuries. (8-29-06) 142 Cal.App.4th 500/180:75

Stamps.com, Inc.
see Kelly v. Stamps.com Inc.

State of California
see Wirth v. State of California

State Personnel Board v. Department of Personnel Administration
Memoranda of understanding that allow employees to appeal disciplinary actions to a board of adjustment or arbitrator and bypass the review procedures of the State Personnel Board violate the state Constitution. Because “the public interest in a merit-based civil service is best served by recognizing that the State Personnel Board’s authority to review employee discipline is exclusive,” the legislature had no power to approve contracts that permitted the alternative means of contesting discipline. (12-1-05) 37 Cal.4th 512/176:37

Stephens v. County of Tulare
The court reversed the ruling of the Fifth District Court of Appeal in Stephens v. County of Tulare and announced that a county employee who is not “dismissed” from his employment is not entitled to the protections afforded by Government Code Sec. 31725. (5-25-06) 38 Cal.4th 793/179:41

Superior Court
see BRV, Inc. v. Superior Court

T

The Copley Press, Inc. v. The Superior Court of San Diego County; County of San Diego, RPI
The records held by the San Diego Civil Service Commission relating to a peace officer’s administrative appeal of a disciplinary matter are not subject to disclosure under the California Public Records Act. The statutory guarantees of confidentiality found in Penal Code Sec. 832.7 are not restricted to criminal and civil proceedings and the commission’s records concerning the disciplinary appeal are protected from disclosure as records maintained by the officer’s “employing agency.” (8-31-06) 39 Cal.4th 1272/180:42
The Hess Collection Winery v. California Agricultural Labor Relations Board; United Food and Commercial Workers Union and Fresh Fruit and Vegetable Workers, Local 1096, RPI

The court dismissed a constitutional challenge to the mandatory interest arbitration provisions added in 2002 to the Agricultural Labor Relations Act that allow a “mediator” to establish the final terms of a collective bargaining agreement.

(7-5-06) 140 Cal.App.4th 1584/179:35

The Superior Court of San Diego County; County of San Diego, RPI

see The Copley Press, Inc. v. The Superior Court of San Diego County; County of San Diego, RPI

Tyson Foods, Inc.

see Ash v. Tyson Foods, Inc.

United Parcel Service

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W - Y

Warner Brothers Television Productions

see Lyle v. Warner Brothers Television Productions

Washington

see Davenport v. Washington Education Assn.

Washington Education Assn

see Davenport v. Washington Education Assn.

White

see Burlington Northern & Santa Fe Railway Co. v. White

Wirth v. State of California

Supervisors of state peace officers and firefighters are not entitled to receive the same percentage salary increase as rank-and-file employees under their supervision, despite statutes that require “equivalent” compensation increases. The Department of Personnel Administration, which sets salaries for managers and supervisors and bargains with employee unions, has discretion to combine salary increases with other benefits to provide equivalent compensation enhancements to supervisors.

(7-31-06) 142 Cal.App.4th 131/180:53

Wong v. Ohlone College

Section 87458 of the Education Code affords a community college administrator the right to become a first-year probationary faculty member. However, this right is not absolute. The college is not required to appoint a former administrator where there is no position available to which he may be appointed.

(3-28-06) 137 Cal.App.4th 1379/178:31

Workers’ Compensation Appeals Board

see City of Stockton v. Workers’ Compensation Appeals Board

Fleetwood Enterprises, Inc. v. Workers’ Compensation Appeals Board

Sonoma State University and Octagon Risk Services v. Workers’ Compensation Appeals Board and Hunton

Z

Zavala v. Scott Brothers Dairy

The court held that “where nonnegotiable, non-waivable, minimum statutory labor standards are at issue, plaintiffs are not precluded from vindication of these individual rights in court,” and arbitration cannot be compelled.

(9-28-06) 143 Cal.App.4th 585/181:64
## PART III

### TABLE OF PERB ORDERS AND DECISIONS

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<td>California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections), No. 1848-S/180:99</td>
<td>(Because the union did not demand to bargain the effects of a non-negotiable decision, the charge was dismissed for failure to state a prima facie case.)</td>
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<td>(The ALJ's sua sponte dismissal of a complaint was upheld because the party failed to demonstrate due diligence in pursuing the appeal or good cause for why the appeal was not timely filed.)</td>
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<td>Kunkel v. State of California (Dept. of Transportation), No. 1835-S/178:82</td>
<td>(The charge was dismissed because it was untimely and, as the charging party was no longer a state employee, he no longer had standing to file an unfair practice charge under the Dills Act.)</td>
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<td>Magner v. Dept. of Forestry and Fire Protection, No. 1862-S/181:75</td>
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<td>Meenakshi v. Union of American Physicians and Dentists, No. 1846-S/180:98</td>
<td>(Because exclusive representatives enjoy considerable bargaining latitude and are not expected to satisfy all unit members, the charge was dismissed for failure to state a prima facie case.)</td>
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<td>Quigley v. Stationary Engineers Loc. 39, No. 1790-S/176:86</td>
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<td>Zanchi v. State of California (Dept. of Corrections), No. 1826-S/178:81</td>
<td>(The charging party failed to demonstrate a prima facie case because the filing of a fraudulent reimbursement, not the filing of a grievance, prompted the investigation.)</td>
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#### EERA Cases

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<td>Abner v. Compton Unified School Dist., No. 1805/177:81</td>
<td>(The unfair practice charge was dismissed because the party failed to demonstrate a nexus between the protected activity and the adverse action.)</td>
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Bruce v. California School Employees Assn., Chap. 198, No. 1858/181:75
(Because the grievant did not follow PERB regulations in filing her charge, and because the facts alleged did not state a prima facie case, the charge was dismissed.)

Burlingame Elementary School Dist. v. California School Employees Assn., No. 1847/179:86
(The district's unit modification petition to exclude the benefits and payroll specialist from a classified wall-to-wall bargaining unit was denied because the incumbent did not have regular access to, or possession of, information concerning the district's employer-employee relations and thus did not support classification as a confidential employee.)

Calexico Unified School Dist. v. Calexico Teachers Assn., No. 1860/181:76
(Because the parties mutually reached a settlement, the board found the withdrawal of the appeal in the best interests of the parties.)

Cardoso v. Teamsters, Loc. 228, N.o. 1845/180:100
(Because the union was not obligated to assist the charging party in filing an unfair practice charge with PERB, the claim was dismissed for failure to state a prima facie case.)

Casper v. Los Banos Unified School Dist., No. 1828/178:83
(The charge was dismissed for failure to state a prima facie case because the charging party failed to provide any evidence of protected activity.)

California School Employees Assn. and Its Chap. 549 v. Tamalpais UHSD, N.o. 1786/176:86
(The unfair practice charge was withdrawn at the request of the charging party.)

(Because the district failed to clearly allege that the association planned and/or organized a sickout, the case was dismissed for failure to state a prima facie case.)

Heggem v. Arcadia Teachers Assn., No. 1833/178:83
(The charge was dismissed because the union could require the charging party, a religious objector, to pay the equivalent of a temporary dues assessment to one of its designated charities.)

Jones v. SEIU Loc. 99, N.o. Ad-352/178:84
(The board accepted the late-filed exceptions to an ALJ's proposed decision because the charging party had not been timely served by PERB.)

Kahn v. Los Angeles Unified School Dist., No. 1791/176:88
(The unfair practice charge was dismissed because the charging party failed to demonstrate any evidence of an adverse action.)

(A change in the ratio between bargaining unit and non-bargaining unit employees performing similar work does not constitute a unilateral change or transfer of bargaining unit work.)

Maaskant v. Kern High Faculty Assn., CTA/NEA, No. 1834/178:84
(The charge was dismissed because the union had provided the agency fee payer with information and an opportunity to be heard, and because he was not entitled to vote.)

Maaskant v. Kern High Faculty Assn., CTA/NEA, No. 1844/180:99
(Although CTA was required to rebate non-chargeable expenses, the charging party failed to avail himself of the rebate procedure and the claim was dismissed for failure to state a prima facie case.)

(A delay in filing caused by mailing a response to a PERB regional office instead of headquarters does not render the filing untimely.)

Pitner v. Contra Costa Community College Dist.; No. 1852/180:101
(The compliant was dismissed because the charging party failed to demonstrate retaliation for engaging in protected activities. The district did violate EERA by asking interview questions influenced by unlawful animus.)

Santee Teachers Assn. v. Santee Elementary School Dist., No. 1822/177:81
(The union waived its right to bargain a new board policy but not its impact; the district failed to bargain in good faith regarding the impact of the policy and also interfered with the right to engage in union activities.)

Thomas v. Los Angeles USD, N.o. 1787/176:87
(The unfair practice charge was dismissed because the charging party failed to show a nexus between her protected activity and the dismissal.)
West Hills Community College v. West Hills Faculty Assn., No. 1861/181:76
(Because the parties mutually reached a settlement, the board found the withdrawal of the appeal in the best interests of the parties.)

**HEERA Cases**

**Abernathy et al. v. UPT E, CWA Loc. 9119, N o. 1784-H/176:89**
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

**Academic Professionals of California v. T rustees of the California State University, N o. 1788-H/176:90**
(The unfair practice charge was withdrawn and the appeal dismissed without prejudice at the request of both parties.)

**Academic Professionals of California v. T rustees of the California State University, N o. 1789-H/176:90**
(The unfair practice charge was withdrawn and the appeal dismissed without prejudice at the request of both parties.)

**Academic Professionals of California v. T rustees of the California State University, N o. Ad-350-H/176:90**
(Exceptions filed to the conclusion that the university failed to comply with ordered posting requirements were withdrawn and the appeal dismissed with prejudice at the request of both parties. No withdrawal of the ALJ decision was ordered.)

**Academic Professionals of California v. T rustees of the California State University, N o. 1842-H/179:89**
(Because the parties were unable to agree on a meeting place, the university did not act in bad faith when negotiations on a policy change within the scope of representation did not occur.)

**Aldern et al. v. UPT E, CWA Loc. 9119, N o. 1792-H/176:90**
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

**Ball v. UPT E, CWA Loc. 9119, N o. 1821-H/177:83**
(The board affirmed the partial dismissal of the charges because unions are required only to have their expenses verified by an outside party, not to have a formal audit completed.)

**Baratelli v. UPT E, CWA Loc. 9119, N o. 1810-H/177:82**
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

**Booth et al. v. UPT E, CWA Loc. 9119, N o. 1831-H/178:86**
(The charges were remanded to the general counsel for issuance of a complaint because the board agent did not have the authority to modify PERB regulations concerning the time period in which an agency fee hearing may be requested.)

**Boylan v. UPT E, CWA Loc. 9119, N o. 1797-H/176:90**
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

**Brooks v. UPT E, CWA Loc. 9119, N o. 1803-H/176:90**
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

**California Faculty Assn. v. Trustees of the California State University, N o. 1823-H/177:84**
(Because the supersession language added to HEERA established a minimum right to a final arbitration decision that the parties could not waive in their collective bargaining agreement, the university’s insistence to impasse on a limitation on the arbitrator’s authority interfered with employee rights and constituted a refusal to participate in the impasse procedures in good faith.)

**California Faculty Assn. v. T rustees of the California State University, N o. Ad-355-H/180:102**
(Where a party makes a conscientious effort to timely file, and the delay in filing did not cause prejudice to any party, good cause may exist to excuse late filing.)

**California State Employees Assn. v. California State University, N o. 1839-H/179:87**
(The university did not unilaterally change its contracting out policy or deny unit employees bargaining rights when it entered into an operating agreement with an auxiliary organization.)

**California State University v. T rustees of the California State University, N o. 1853-H/180:105**
(Because the union failed to establish a nexus between the alleged adverse action and protected activity, the
claim was dismissed for failure to state a prima facie case.)

(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

Chanes et al. v. U P T E , C W A L o c . 9119 , N o . 1795-H / 176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

C o a l i t i o n o f U n i v e r s i t y E m p l o y e e s , L o c . 6 v . R e g e n t s of the U n i v e r s i t y o f C a l i f o r n i a , S a n F r a n c i s c o , N o . A d-353-H / 179:88
(A clerical error leading to insufficient postage and subsequent delay in delivery is no excuse for filing a late appeal.)

C o a l i t i o n o f U n i v e r s i t y E m p l o y e e s v . R e g e n t s of the U n i v e r s i t y o f C a l i f o r n i a , N o . 1843-H / 179:89
(Where the charging party cannot demonstrate an employee engaged in a protected action or invoked the right to union representation, a claim of interference will not stand.)

C o a l i t i o n o f U n i v e r s i t y E m p l o y e e s v . R e g e n t s of the U n i v e r s i t y o f C a l i f o r n i a , N o . 1851-H / 180:103
(Because there was neither disparate treatment nor a nexus between the adverse action and protected activity, the claim was dismissed for failure to state a prima facie case.)

C o a l i t i o n o f U n i v e r s i t y E m p l o y e e s , L o c . 6 v . R e g e n t s of the U n i v e r s i t y o f C a l i f o r n i a ; N o . 1854-H / 180:104
(Because the union posted flyers beyond the bargained-for area, the charge was dismissed for failure to state a prima facie case.)

C o o p e r v . U P T E , C W A L o c . 9119 , N o . 1799-H / 176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

C r i s o s t o v . U P T E , C W A L o c a l 9119 , N o . 1811-H / 177:82
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

G i l l e t a l . v . U P T E , C W A L o c . 9119 , N o . 1794-H / 176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

H a w l e y e t a l . v . U P T E , C W A L o c . 9119 , N o . 1818-H / 177:83
(The board affirmed the partial dismissal of the charges because unions are required only to have their expenses verified by an outside party, not to have a formal audit completed.)

H e r m a n s o n e t a l . v . U P T E , C W A L o c . 9119 , N o . 1829-H / 178:85
(The charges were remanded to the general counsel for issuance of a complaint because the board agent did not have the authority to modify PERB regulations concerning the time period in which an agency hearing may be requested.)

H i g g i n s v . C o a l i t i o n o f U n i v e r s i t y E m p l o y e e s , N o . 1855-H / 180:104
(The charge was dismissed because there was no showing of a substantial impact on the relationship between the charging party and her employer.)

J i m e n e z - N e w b y v . U P T E , C W A L o c . 9119 , N o . 1819-H / 177:83
(The board affirmed the partial dismissal of the charges because unions are required only to have their expenses verified by an outside party, not to have a formal audit completed.)

J o s h e l v . U P T E , C W A L o c . 9119 , N o . 1801-H / 176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

L e e v . U P T E , C W A L o c . 9119 , N o . 1800-H / 176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

N i c k o l s e t a l . v . U P T E , C W A L o c . 9119 , N o . 1817-H / 177:83
(The board affirmed the partial dismissal of the charges because unions are required only to have their expenses verified by an outside party, not to have a formal audit completed.)

R o c k v . R e g e n t s o f t h e U n i v e r s i t y o f C a l i f o r n i a , N o . 1804-H / 177:81
(The unfair practice charge was dismissed as untimely.)

S a r c a v . C S E A , N o . 1813-H / 177:82
(The charge was dismissed because the charging party had the opportunity to object and participate in the agency fee arbitration when he was a fee payer; he did not have standing to object to the agency fees when the union declined to accept them.)
Sarca v. California State University Employees Union, SEIU Loc. 2579, CSEA, No. Ad-351-H/178:84
(The complainant’s petition to compel production of financial documents was dismissed because the union had produced the required documents.)

State Employees Trade Council United v. Regents of the University of California (San Diego), No. 1832-H/178:86
(The charge was dismissed because the charging party failed to establish that the increased transfer of work resulted in negotiable effects and because the charge was untimely.)

Trout et al. v. University Professional and Technical Employees, No. 1785-H/176:89
(The unfair practice charges were withdrawn at the request of the charging parties.)

Trout v. UPTE, CWA Loc. 9119, No. 1830-H/178:86
(The charge was remanded to the general counsel for issuance of a complaint because the information required by the board agent was neither relevant to the charge nor within the charging party’s control.)

Van Sluis v. UPTE, CWA Loc. 9119, No. 1798-H/176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

Welch et al. v. UPTE, CWA Loc. 9119, No. 1796-H/176:90
(As agency fee payers, the charging parties have standing to file a charge, even though the union refunded the collected fees with interest.)

Yaron v. UPTE, CWA Loc. 9119, No. 1820-H/177:83
(The board affirmed the partial dismissal of the charges because unions are required only to have their expenses verified by an outside party, not to have a formal audit completed.)

Alameda County Probation Peace Officers Assn. v. County of Alameda, No. 1824-M/178:87
(The partial dismissal of the charge was remanded to the general counsel for further investigation.)

County of Inyo v. United Domestic Workers of America, No. 1783-M/176:91
(Based on the allegations in the charge, the county met its burden of showing the union failed to negotiate in good faith. Disputed facts are to be determined through the board hearing process.)

Health Services Agency Physicians Assn. v. County of Santa Cruz, No. 1840-M/179:91
(The two-week delay in affecting dues deductions for a newly elected exclusive representative was not unlawful interference or domination.)

Health Services Agency Physicians Assn. v. County of Santa Cruz, No. 1849-M/180:106
(The charge was dismissed for failure to state a prima facie case because the charging party could not demonstrate violation of the MMBA.)

Mauriello v. Bay Area Air Quality Management Dist., No. 1807-M/177:84
(The charge was dismissed because the only protected activity was the filing of the grievance at issue in the charge.)

Mauriello v. Bay Area Air Quality Management District Employees Assn., No. 1808-M/177:85
(A favorable arbitration award does not diminish or supplant the union’s reasoned decision not to represent the charging party at the Skelly hearing or in grievance proceedings.)

Modic v. Sacramento Municipal Utility Dist., No. 1838-M/179:90
(The case was dismissed because the charging party failed to show good cause for untimely filing.)

Paez v. SEIU Loc. 790, No. Ad-356-M/180:106
(The appeal was dismissed as untimely filed.)

Siskiyou County Employees Assn. v. County of Siskiyou, No. 1837-M/179:90
(The California Supreme Court holding in Coachella overruling the three-year statute of limitations for MMBA unfair practice claims applies retroactively; consequently, the six-month statute of limitations period applicable to unfair practice claims renders the charge untimely.)
SEIU Loc. 399 v. Antelope Valley Health Care Dist., No. 1816-M/177:85
(An employer must grant recognition upon a showing of majority support following a card check; revocation of a prior authorization card must show the intent that the union no longer serve as the employee’s representative.)

SEIU Loc. 535 v. County of Madera, No. 1809-M/177:85
(The unfair practice charge was dismissed at the request of the charging party.)

SEIU Loc. 1997 v. County of Riverside, No. 1825-M/178:88
(The charge was upheld because the board found that the parties’ language applied retroactively and, therefore, the county had refused to honor the agreement.)

Stationary Engineers Loc. 39 v. City of Fresno, No. 1841-M/179:92
(An employer’s right to free speech is protected under the MMBA absent a showing of coercion; a letter to, and survey of, employees was not direct bargaining or interference with representation; and, declaration of impasse was appropriate and did not indicate surface bargaining.)

Tacke v. IBEW Loc. 1245, No. 1857-M/180:109
(Because the charging party was not a member of the class he alleged was harmed, he did not have standing to bring a claim and the case was dismissed.)

Tacke v. Modesto Irrigation Dist., No. 1856-M/180:107
(Because the charging party was not a member of the class he alleged was harmed, he did not have standing to bring a claim and the case was dismissed.)

Welch v. California Teachers Assn. and Oakland Education Assn., No. 1850/180:108
(Because CTA had no duty to represent the charging party in a court of law, the charge was dismissed for failure to state a prima facie case.)

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**Trial Court Act Cases**

Keiser v. Lake County Superior Court, No. 1782-C/176:92
(The unfair practice charge was dismissed because the board lacked jurisdiction over the due process violation raised under the Trial Court Employment Protection and Governance Act.)
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No. 1783-M County of Inyo v. United Domestic Workers of America
No. 1784-H Abernathy et al. v. UPTE, CWA Loc. 9119
No. 1785-H Trout et al. v. University Professional and Technical Employees
No. 1786 California School Employees Assn. and Its Chap. 549 v. Tamalpais UHSD
No. 1787 Thomas v. Los Angeles USD
No. 1788-H Academic Professionals of California v. Trustees of the California State University
No. 1789 Academic Professionals of California v. Trustees of the California State University
No. 1790-S Quigley v. Stationary Engineers Loc. 39
No. 1791 Kahn v. Los Angeles Unified School Dist.
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No. 1840-M  Health Services Agency Physicians Assn. v. County of Santa Cruz
No. 1841-M  Stationary Engineers Loc. 39 v. City of Fresno
No. 1842-H  Academic Professionals of California v. Trustees of the California State University
No. 1843-H  Coalition of University Employees v. Regents of the University of California
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No. 1846-S  Meenakshi v. Union of American Physicians and Dentists
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No. 1848-S  California Correctional Peace Officers Assn. v. State of California [Dept. of Corrections]
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No. 1857-M Tacke v. IBEW Loc. 1245

No. 1858 Bruce v. California School Employees Assn., Chap. 198


No. 1861 West Hills Community College v. West Hills Faculty Assn.

No. 1862-S Magner v. Dept. of Forestry and Fire Protection

No. Ad-350-H Academic Professionals of California v. Trustees of the California State University

No. Ad-351-H Sarca v. California State University Employees Union, SEIU Loc. 2579, CSEA

No. Ad-352 Jones v. SEIU Loc. 99

No. Ad-353-H Coalition of University Employees, Loc. 6 v. Regents of the University of California, San Francisco


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