

2006 CPER INDEX

An index to the 2006 issues of
CALIFORNIA PUBLIC EMPLOYEE RELATIONS (CPER)
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A service of the California Public Employee Relations Program

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TABLE OF CONTENTS

How to Use the CPER Annual Index 5

Part I: General Index 7

Part II: Table of Cases 25

Part III: Table of PERB Orders and Decisions 34

Section A: Annotated Table of PERB Orders and Decisions 34

Dills Act Cases 34

EERA Cases 34

HEERA Cases 36

MMBA Cases 38

Trial Court Cases Act 39

Section B: Key to Orders and Decisions by PERB Decision Number 40

Part IV: Index of Arbitration 43

Grievance Actions 43

Neutrals 45

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).

PART I

GENERAL INDEX

A

ADMINISTRATIVE REMEDIES

Parties Alleging Constitutional Violations Must Exhaust Administrative Remedies Before Filing Suit/180:85

AFL-CIO

NEA and AFL-CIO Partnership Benefits Both Organizations/177:38

AGENCY SHOP, OTHER ORGANIZATIONAL SECURITY, AND DUES DEDUCTION

Agency Fee Cases Get New Treatment From PERB/176:71
High Court to Review Agency Fee Case/181:63

AMERICANS WITH DISABILITIES ACT (ADA)

California's Unruh Act and Disabled Persons Act Do Not Include ADA Protections/180:81
Discriminatory Refusal to Reinstate Separate From Claim of Wrongful Termination/176:62
UPS Cannot Discriminate Against Deaf Truck Driver Applicants/181:57

ARBITRATION

Arbitrator May Rule on Legal Defense to Grievance (Katherine Thomson)/180:28
Binding Arbitration Rejected in Santa Clara/181:25
Binding Arbitration Unnecessary When Impasse Is Reached Over Antidiscrimination Effort/179:40
Binding Interest Arbitration Upheld Under Agricultural Labor Relations Act/179:35
CSU Cannot Bargain Limits on Arbitrators' Authority in Tenure Cases/177:45
Employer Cannot Compel Arbitration When Nonwaivable, Statutory Right Is Involved/181:64
Restricted Review of Arbitration Award Maintained/181:65
SPB Only Recourse for Disciplined Civic Service Employees/176:37

ATTORNEY GENERAL DECISIONS

Board Cannot Designate Second Exempt Position/180:60

AT-WILL EMPLOYMENT

California Supreme Court Confirms At-Will Contract/180:83

B

BROWN ACT

Bill to Require Open Meetings Regarding U.C. Exec Pay/180:69
Chronicle v. U.C.: Limited Win for Newspaper, But Controversy Forces Reforms/180:63
Decision Not to Dismiss Public Employee Need Not Be Reported Under Brown Act/179:37

C

CALIFORNIA FAMILY RIGHTS ACT (CFRA)

No Family Rights Act Claim Where Employee Fired for Cause/181:60

CERTIFICATION OF BARGAINING UNIT

see Representation Elections, Recognition, and Decertification Procedures

CHARTER SCHOOLS

Charter Schools Attempt to Avoid PERB Jurisdiction in Representation Cases/177:39
No Funds for Non-Resident Students of Online Charter Schools/180:38
Teachers Union Opens Ranks to Support Staff/179:5

CITIES

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

CIVIL SERVICE

Board Cannot Designate Second Exempt Position/180:60

CIVIL SERVICE COMMISSIONS AND MERIT SYSTEMS

SPB Only Recourse for Disciplined Civil Service Employees/176:37

COLLECTIVE BARGAINING

CAUSE Wins Election, Asks DPA for Pay Equity/176:42
 CSU and CSU Employees Union Reach Tentative Accord/181:44

CSU and Faculty Settle Summer Employment Dispute/178:53

Hostility Apparent on CCPOA Website/179:64

Legislature Approves Seven More MOUs/180:56

Marathon Negotiations Avert SEIU Local 1000 Strike/179:56

No Concessions by Highway Patrol Union/180:51

Nurses Reach Agreement With U.C. on Reopener Issues/181:39

Nurses Settle With U.C. /176:57

Seasonal Firefighters Gain From CDFP Contract Extension/179:66

Successful BART Negotiations Over Retiree Health Benefits...According to Management (Darrell Murray)/178:11

Successful BART Negotiations Over Retiree Health Benefits...According to the Union (Peter W. Saltzman)/178:5

U.C. Berkeley Picketed After Raising Wages/178:54

U.C. Settles With Four Unions/176:52

Union Agitation Stops CASE Retirement Opt-Out/177:52
 Unit 12 Settles for Package Similar to SEIU Local 1000/179:59

COMMUNITY COLLEGES — IN GENERAL

Hartnell College Strike Ends With a Mediator-Brokered Contract/181:33

No Conflict of Interest if Community College Board Member Excluded From Negotiating Process/181:36

CONTRACT INTERPRETATION

Parties Alleging Constitutional Violations Must Exhaust Administrative Remedies Before Filing Suit/180:85

CONTRACTING OUT; PRESERVATION OF UNIT WORK

Court Rejects PECG's Efforts to Limit the Effect of Prop. 35/176:43

Efforts Renewed to Stop Contracting Out at SPB/178:41

PECG Loses Another Battle in Fight Against Contracting Out/179:60

COURT EMPLOYEES

Bill Broadens Record Inspection Rights of Court Employees/180:50

D

DILLS ACT, Gov. Code Secs. 3512-3524

Novel Question Raised in Bid for New State IT Unit/179:65

DISABILITY

Disabled Office of Education Employee Entitled Only to Placement on Reemployment List/176:28

Employers Must Reasonably Accommodate Employees 'Regarded As' Disabled/179:74

Employment or Disability Income Nixes Reinstatement/180:48

Police Officer Permitted Court Review of Belated Acceptance of Employment Offer/178:34

DISABLED PERSONS ACT

California's Unruh Act and Disabled Persons Act Do Not Include ADA Protections/180:81

DISCIPLINE AND DISCHARGE (JUST CAUSE FOR)

City Failed to Prove Employee's Inappropriate Sexual Relations/179:77

Decision Not to Dismiss Public Employee Need Not Be Reported Under Brown Act/179:37

Judicial Review Barred Unless Provided for in Arbitration Agreement/180:86

K-12 Teacher Termination Hearings: Are They Worth the Cost? (Michael Blacher)/180:13

K-12 Teacher Termination Hearings: Worth the Price of Fairness (Beverly Tucker)/181:19

Legitimate Absences Lead to Termination/176:73

Officer Engages in Unnecessary Drama, Mimics Assault to Victim/181:67

One-Year Limitations Period Bans Police Officer's Pay-Grade Reduction/179:38

Police Officer Disciplinary Records Are Confidential Under Public Records Act/180:42

Temporary Transfer of Difficult Employee Becomes Permanent/177:67

DISCRIMINATION — DISABILITY

California's Unruh Act and Disabled Persons Act Do Not Include ADA Protections/180:81

No Duty to Accommodate Where It Would Require Creation of New Position/177:60

Participation in Good Faith Interactive Process Required to Determine Reasonable Accommodation/176:67

UPS Cannot Discriminate Against Deaf Truck Driver Applicants/181:57

DISCRIMINATION — IN GENERAL

see also Americans with Disabilities Act
Retaliation

Judge Extends LAPD Consent Decree for Three Years/178:35

DISCRIMINATION — PREGNANCY

Fired Pregnant Employee Allowed to Take Her Discrimination Claim to Trial/177:63

DISCRIMINATION — RACE

McCrae Court of Appeal Not Dissuaded by Supreme Court Ruling in *Yanowitz*/180:78

Supreme Court Says Use of Term 'Boy' Can Evidence Discrimination/177:58

DUTY TO BARGAIN (MEET AND CONFER) IN GOOD FAITH

Ninth Circuit Reverses NLRB, Finds Failure to Back Up 'Inability to Pay' Claim/178:63

E

EDUCATION CODE

Administrator's Right to Faculty Position Not Absolute/178:31

Attorney General OKs Deduction From CalSTRS for PACs/179:42

'Dance of the Lemons' Cut Short? /180:35

Disabled Office of Education Employee Entitled Only to Placement on Reemployment List/176:28

No Funds for Non-Resident Students of Online Charter Schools/180:38

EDUCATIONAL EMPLOYMENT RELATIONS ACT (EERA)

Charter Schools Attempt to Avoid PERB Jurisdiction in Representation Cases/177:39

PERB Finds Teachers Union Waived Right to Bargain No-Strike Clause/177:34

PERB Sends the Wrong Message on Teacher Mailboxes (Priscilla Winslow)/176:5

Statistical Evidence Not Enough to Prove Union Planned Sickout/181:38

The Winton Act: A History Lesson About Special Interest Legislation (Stewart Weinberg)/177:5

Union Can Use Teachers' Mailboxes for Political Communications/179:47

EMERGENCY SERVICES ACT

Unions Say Governor's Emergency Proclamation Violates Constitutional Civil Service Rights/181:46

EMPLOYEE ORGANIZATIONS — FIREFIGHTERS

San Francisco Firefighters, Loc. 798

Binding Arbitration Unnecessary When Impasse Is Reached Over Antidiscrimination Effort/179:40

Santa Clara Firefighters Association

Binding Arbitration Rejected in Santa Clara/181:25

EMPLOYEE ORGANIZATIONS — HIGHER EDUCATION

American Federation of State, County and Municipal Employees

U.C. Berkeley Picketed After Raising Wages/178:54

U.C. Unions Bargaining Jointly to Fight Pension Contributions/181:42

California Faculty Association

CSU and Faculty Settle Summer Employment Dispute/178:53

CSU Cannot Bargain Limits on Arbitrators' Authority in Tenure Cases/177:45

California Nurses Association

Nurses Reach Agreement With U.C. on Reopener Issues/181:39

Nurses Settle With U.C. /176:57

California State University Employees Union

CSU and CSU Employees Union Reach Tentative Accord/181:44

Coalition of University Employees

U.C. Settles With Four Unions/176:52

U.C. Unions Bargaining Jointly to Fight Pension Contributions/181:42

Unions Accustomed to U.C.'s Lack of Transparency/178:44

University Council-American Federation of Teachers

U.C. Settles With Four Unions/176:52

University Professional and Technical Employees

Livermore Lab Employees Anxious/178:51

Los Alamos Lab Employees Sue Over Retirement Plan/
178:47

U.C. Settles With Four Unions/176:52

U.C. Unions Bargaining Jointly to Fight Pension
Contributions/181:42

Unions Accustomed to U.C.'s Lack of Transparency/178:44

EMPLOYEE ORGANIZATIONS — LAW ENFORCEMENT

Claremont Police Officers Association

Effects Bargaining Recognized, But 'Transactional Costs'
Now in the Mix (Carol Vendrillo)/180:21

Los Angeles Police Protective League

Police Protective League, City of L.A. Reach Accord on
Three-Year Pact/178:36

San Jose Police Officers Association

San Jose POA Settles With City on New Contract/176:35

Santa Clara Peace Officers Association

Binding Arbitration Rejected in Santa Clara/181:25

Stockton Police Officers Association

No Workers' Comp Coverage for Injury Suffered During
'Pickup' Basketball Game/177:31

EMPLOYEE ORGANIZATIONS — LOCAL GOVERNMENTS

American Federation of State, County and Municipal Employees

Sacramento County Endures Two-Week Work Stoppage/
180:39

American Federation of State, County and Municipal Employees, Loc. 101

Supervisors Not Excluded From Bargaining Obligation
Under Transit Act/179:33

American Federation of State, County and Municipal Employees, Loc. 512

Contra Costa County Workers Strike, Superior Court Issues
TRO/179:31

New MOUs in Contra Costa County/181:24

American Federation of State, County and Municipal Employees, Loc. 2700

Contra Costa County Workers Strike, Superior Court Issues
TRO/179:31

New MOUs in Contra Costa County/181:24

California Nurses Association

Contra Costa Nurses Poised to Strike/177:31

Engineers and Architects Association

Engineers and Architects Association Stages Two-Day
Strike/180:47

International Union of Operating Engineers Stationary, Loc. 39

Sacramento County Endures Two-Week Work Stoppage/
180:39

Physicians and Dentists Organization of Contra Costa

Contra Costa County Workers Strike, Superior Court Issues
TRO/179:31

New MOUs in Contra Costa County/181:24

San Bernardino County Public Attorneys Association

San Bernardino P.D.s and D.A.s Reach Agreement With
County/176:34

Service Employees International Union, Loc. 535

Contra Costa County Workers Strike, Superior Court Issues
TRO/179:31

New MOUs in Contra Costa County/181:24

Sacramento County Endures Two-Week Work Stoppage/
180:39

United Public Employees, Loc. No. 1

New MOUs in Contra Costa County/181:24

Sacramento County Endures Two-Week Work Stoppage/
180:39

Western Council of Engineers

Contra Costa County Workers Strike, Superior Court Issues
TRO/179:31

New MOUs in Contra Costa County/181:24

EMPLOYEE ORGANIZATIONS — PUBLIC SCHOOLS AND COMMUNITY COLLEGES

American Federation of Teachers

AFT Makes It a Three-Way Fight for Part-Time Teachers/
180:35

NEA and AFL-CIO Partnership Benefits Both
Organizations/177:38

California Federation of Teachers

'Dance of the Lemons' Cut Short? /180:35

California School Employees Association

Teachers Union Opens Ranks to Support Staff/179:5

The Health Benefits Equation: A Joint Labor-Management
Solution (Ruben Ingram and Cindy Young)/179:13

California Teachers Association

AFT Makes It a Three-Way Fight for Part-Time Teachers/
180:35

'Dance of the Lemons' Cut Short? /180:35

Governor Makes Nice With Teachers — Returns School
Funds/178:27

Lawsuit Settlement Benefits Lowest-Performing Schools/
180:33

Mixed Reception to L.A. Mayor's Plan to Restructure LAUSD/179:43

Part-Time Community College Teachers Want Own Union/178:32

Teachers Union Opens Ranks to Support Staff/179:5

Community College Association

Part-Time Community College Teachers Want Own Union/178:32

Grossmont Education Association

Statistical Evidence Not Enough to Prove Union Planned Sickout/181:38

Hartnell College Faculty Association

Hartnell College Strike Ends With a Mediator-Brokered Contract/181:33

Oakland Education Association

Strikes Narrowly Averted on Both Sides of S.F. Bay/178:26

San Leandro Teachers Association

Union Can Use Teachers' Mailboxes for Political Communications/179:47

Santee Teachers Association

PERB Finds Teachers Union Waived Right to Bargain No-Strike Clause/177:34

Service Employees International Union, Loc. 790

Last-Minute Agreement Averts Strike at San Francisco Unified/176:25

United Educators of San Francisco

Looming Teacher Strikes/176:26

Strikes Narrowly Averted on Both Sides of S.F. Bay/178:26

United Faculty

AFT Makes It a Three-Way Fight for Part-Time Teachers/180:35

Part-Time Community College Teachers Want Own Union/178:32

United Teachers of Richmond

New Contract for West Contra Costa Teachers/177:43

United Teachers-Los Angeles

Is Villaraigosa's Win LAUSD's Loss? /180:32

Mixed Reception to L.A. Mayor's Plan to Restructure LAUSD/179:43

United Teachers of Los Angeles Election Challenged/176:23

EMPLOYEE ORGANIZATIONS — STATE

American Federation of State, County and Municipal Employees

AFSCME Decertification Vote To Be Counted/177:57

AFSCME Defeats Decertification Attempt/178:42

Efforts Renewed to Stop Contracting Out at SPB/178:41

Legislature Approves Seven More MOUs/180:56

California Association of Highway Patrolmen

Legislature Approves Seven More MOUs/180:56

No Concessions by Highway Patrol Union/180:51

California Association of Professional Scientists

CAPS Contract Not Strong Enough to Fend Off Alternate Retirement Program (Katherine Thomson)/177:22

Efforts Renewed to Stop Contracting Out at SPB/178:41

Legislature Approves Seven More MOUs/180:56

California Association of Psychiatric Technicians

Legislature Approves Seven More MOUs/180:56

California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment

SPB Only Recourse for Disciplined Civil Service Employees/176:37

Union Agitation Stops CASE Retirement Opt-Out/177:52

California Correctional Peace Officers Association

Arbitrator May Rule on Legal Defense to Grievance (Katherine Thomson)/180:28

Hostility Apparent on CCPOA Website/179:64

On Second Thought, Correctional Supervisors Snag 3 Percent at 50 Retirement Formula/177:55

Unions Say Governor's Emergency Proclamation Violates Constitutional Civil Service Rights/181:46

California Correctional Supervisors Organization

Statute Does Not Require Equal Raises for Supervisors, Rank-and-File Employees/180:53

California Department of Forestry Firefighters

On Second Thought, Correctional Supervisors Snag 3 Percent at 50 Retirement Formula/177:55

Seasonal Firefighters Gain From CDFF Contract Extension/179:66

SPB Only Recourse for Disciplined Civil Service Employees/176:37

California State Employees Association

CSEA Seeks to Revoke SEIU Local 1000's Charter/177:53

California Union of Safety Employees

CAUSE Wins Election, Asks DPA for Pay Equity/176:42

Legislature Approves Seven More MOUs/180:56

Consulting Engineers and Land Surveyors of California

PECG Loses Another Battle in Fight Against Contracting Out/179:60

International Union of Operating Engineers, Unit 12

Unit 12 Settles for Package Similar to SEIU Local 1000/179:59

Professional Engineers in California Government

Court Rejects PECG's Efforts to Limit the Effect of Prop. 35/176:43

PECG Loses Another Battle in Fight Against Contracting Out/179:60

Service Employees International Union, Loc. 1000

CSEA Seeks to Revoke SEIU Local 1000's Charter/177:53
 Lawsuit Brings Huge Pay Hike to Juvenile Justice Teachers/
 178:38

Marathon Negotiations Avert SEIU Local 1000 Strike/
 179:56

Novel Question Raised in Bid for New State IT Unit/179:65

PERB Counts Revocation Cards/180:60

Unions Say Governor's Emergency Proclamation Violates
 Constitutional Civil Service Rights/181:46

Teamsters, Loc. 228

CAUSE Wins Election, Asks DPA for Pay Equity/176:42

Union of American Physicians and Dentists

Legislature Approves Seven More MOUs/180:56

United Health and Social Service Professionals

AFSCME Defeats Decertification Attempt/178:42

EMPLOYERS, CALIFORNIA PUBLIC

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

California, State of**Agricultural Labor Relations Board**

Binding Interest Arbitration Upheld Under Agricultural
 Labor Relations Act/179:35

Department of Corrections and Rehabilitation

Discrimination Case Involving Warden's Affairs With
 Coworkers Can Proceed to Trial/177:65

DPA Welcomes Prison Receiver's Pay Raise
 Recommendations/181:49

Hostility Apparent on CCPOA Website/179:64

Judge Hikes Salaries of Correctional Medical Personnel/
 176:40

Lawsuit Brings Huge Pay Hike to Juvenile Justice Teachers/
 178:38

Unions Say Governor's Emergency Proclamation Violates
 Constitutional Civil Service Rights/181:46

Department of Forestry and Fire Protection

Seasonal Firefighters Gain From CDFP Contract
 Extension/179:66

Department of Industrial Relations

Supervisors Not Excluded From Bargaining Obligation
 Under Transit Act/179:33

Department of Personnel Administration

Arbitrator May Rule on Legal Defense to Grievance
 (Katherine Thomson)/180:28

DPA Welcomes Prison Receiver's Pay Raise
 Recommendations/181:49

Legislature Approves Seven More MOUs/180:56

Marathon Negotiations Avert SEIU Local 1000 Strike/
 179:56

No Concessions by Highway Patrol Union/180:51

On Second Thought, Correctional Supervisors Snag 3
 Percent at 50 Retirement Formula/177:55

Retired Firefighter Managers Get Pensions Higher Than
 Their Salaries/178:40

SPB Only Recourse for Disciplined Civil Service
 Employees/176:37

Statute Does Not Require Equal Raises for Supervisors,
 Rank-and-File Employees/180:53

Union Agitation Stops CASE Retirement Opt-Out/177:52
 Unit 12 Settles for Package Similar to SEIU Local 1000/
 179:59

Department of Transportation

Court Rejects PEGC's Efforts to Limit the Effect of Prop.
 35/176:43

PEGC Loses Another Battle in Fight Against Contracting
 Out/179:60

Prison Industry Board

Board Cannot Designate Second Exempt Position/180:60

State Personnel Board

Efforts Renewed to Stop Contracting Out at SPB/178:41

SPB Only Recourse for Disciplined Civil Service
 Employees/176:37

California, University of (U.C.)

Bill to Require Open Meetings Regarding U.C. Exec Pay/
 180:69

Chronicle v. U.C.: Limited Win for Newspaper, But
 Controversy Forces Reforms/180:63

Compensation Practices Under Fire at U.C. /176:47

Livermore Lab Employees Anxious/178:51

Nurses Reach Agreement With U.C. on Reopener Issues/
 181:39

Nurses Settle With U.C. /176:57

Report Questions U.C. Regents' Decision to Start
 Retirement Contributions/179:51

U.C. Adopts New Family-Friendly Policies for Faculty/
 177:49

U.C. Berkeley Picketed After Raising Wages/178:54

U.C. Launches New Compensation Reforms/180:73

U.C. Settles With Four Unions/176:52

U.C. Task Force Urges Focus on Faculty Diversity/179:54

U.C. Unions Bargaining Jointly to Fight Pension
 Contributions/181:42

Unions Accustomed to U.C.'s Lack of Transparency/178:44

California State University (CSU)

CSU and CSU Employees Union Reach Tentative Accord/
 181:44

CSU and Faculty Settle Summer Employment Dispute/
 178:53

CSU Cannot Bargain Limits on Arbitrators' Authority in Tenure Cases/177:45
 CSU Executive Pay/176:55

Cities

Alhambra

Settlements Down South: Bargaining Reports From the Cities/181:28

Bell Gardens

Settlements Down South: Bargaining Reports From the Cities/181:28

California City

Settlements Down South: Bargaining Reports From the Cities/181:28

Carson

Settlements Down South: Bargaining Reports From the Cities/181:28

Claremont

Effects Bargaining Recognized, But 'Transactional Costs' Now in the Mix (Carol Vendrillo)/180:21

Settlements Down South: Bargaining Reports From the Cities/181:28

Culver City

Settlements Down South: Bargaining Reports From the Cities/181:28

Del Mar

Settlements Down South: Bargaining Reports From the Cities/181:28

Downey

Settlements Down South: Bargaining Reports From the Cities/181:28

Fountain Valley

Settlements Down South: Bargaining Reports From the Cities/181:28

Fullerton

Settlements Down South: Bargaining Reports From the Cities/181:28

Indio

Settlements Down South: Bargaining Reports From the Cities/181:28

Los Alamitos

Settlements Down South: Bargaining Reports From the Cities/181:28

Los Angeles

City Council to Scrutinize LAPD's Flexible Workweek/181:27

Engineers and Architects Association Stages Two-Day Strike/180:47

Judge Extends LAPD Consent Decree for Three Years/178:35

Police Protective League, City of L.A. Reach Accord on Three-Year Pact/178:36

Pasadena

Settlements Down South: Bargaining Reports From the Cities/181:28

Sacramento

Police Officer Permitted Court Review of Belated Acceptance of Employment Offer/178:34

San Francisco

Binding Arbitration Unnecessary When Impasse Is Reached Over Antidiscrimination Effort/179:40

San Jose

San Jose POA Settles With City on New Contract/176:35

Santa Clara

Binding Arbitration Rejected in Santa Clara/181:25

Seal Beach

Settlements Down South: Bargaining Reports From the Cities/181:28

Stockton

No Workers' Comp Coverage for Injury Suffered During 'Pickup' Basketball Game/177:31

Tustin

Settlements Down South: Bargaining Reports From the Cities/181:28

Whittier

Settlements Down South: Bargaining Reports From the Cities/181:28

Yorba Linda

Settlements Down South: Bargaining Reports From the Cities/181:28

Counties

Contra Costa

Contra Costa County Workers Strike, Superior Court Issues TRO/179:31

Contra Costa Nurses Poised to Strike/177:31

New MOUs in Contra Costa County/181:24

Sacramento

Sacramento County Endures Two-Week Work Stoppage/180:39

San Bernardino

San Bernardino P.D.s and D.A.s Reach Agreement With County/176:34

Tehema

Public Employee's Religious Expression Trumped by County's Compelling Interests/178:64

Tulare

Employment or Disability Income Nixes Reinstatement/180:48

Supreme Court Says 'Dismissed' Means Terminated/179:41

Courts

American Federation of State, County and Municipal Employees

Bill Broadens Record Inspection Rights of Court Employees/
180:50

School and Community College Districts

Cuyamaca CC

AFT Makes It a Three-Way Fight for Part-Time Teachers/
180:35

Part-Time Community College Teachers Want Own
Union/178:32

Dunsmuir Joint Union HSD

Report of District Superintendent's Alleged Misconduct
Must Be Disclosed/181:30

Grant JUHSD

Looming Teacher Strikes/176:26
School Principal's Transfer May Constitute Retaliation/
176:32

Grossmont CC

AFT Makes It a Three-Way Fight for Part-Time Teachers/
180:35

Part-Time Community College Teachers Want Own
Union/178:32

Grossmont Union HSD

Statistical Evidence Not Enough to Prove Union Planned
Sickout/181:38

Harnell College

Hartnell College Strike Ends With a Mediator-Brokered
Contract/181:33

Los Angeles USD

Is Villaraigosa's Win LAUSD's Loss? /180:32
Mixed Reception to L.A. Mayor's Plan to Restructure
LAUSD/179:43

Oakland USD

Looming Teacher Strikes/176:26
Strikes Narrowly Averted on Both Sides of S.F. Bay/178:26

San Diego USD

Peoples Closes Loophole in University Internships (Dale
Brodsky)/178:23

San Francisco USD

Last-Minute Agreement Averts Strike at San Francisco
Unified/176:25

Looming Teacher Strikes/176:26
Strikes Narrowly Averted on Both Sides of S.F. Bay/178:26

San Leandro USD

Union Can Use Teachers' Mailboxes for Political
Communications/179:47

Santee ESD

PERB Finds Teachers Union Waived Right to Bargain No-
Strike Clause/177:34

Transit Districts and Public Transit Agencies

Santa Clara Valley Transportaton Authority

Supervisors Not Excluded From Bargaining Obligation
Under Transit Act/179:33

**EXCLUDED EMPLOYEES BILL OF RIGHTS
ACT (EEBRA)**

Arbitrator May Rule on Legal Defense to Grievance
(Katherine Thomson)/180:28

F

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

California Supreme Court Applies FEHA Sexual Harassment
Amendment Retroactively/179:71

Discrimination Case Involving Warden's Affairs With
Coworkers Can Proceed to Trial/177:65

Discriminatory Refusal to Reinstatement Separate From Claim
of Wrongful Termination/176:62

Employer Liable for Harassment of Gay Employee by
Coworker/176:65

Employers Must Reasonably Accommodate Employees
'Regarded As' Disabled/179:74

Fired Pregnant Employee Allowed to Take Her
Discrimination Claim to Trial/177:63

McCrae Court of Appeal Not Dissuaded by Supreme Court
Ruling in *Yanowitz*/180:78

No Duty to Accommodate Where It Would Require Creation
of New Position/177:60

Participation in Good Faith Interactive Process Required
to Determine Reasonable Accommodation/176:67

School Principal's Transfer May Constitute Retaliation/
176:32

UPS Cannot Discriminate Against Deaf Truck Driver
Applicants/181:57

Vulgar Language on *Friends* Not Hostile Workplace Sexual
Harassment/178:56

FEHC Cases

Gender-specific dress code violates the Unruh Civil Rights
Act (DFEH v. Marion's Place, No. 06-01)/177:91

Rape of employee is sex harassment, violation of Ralph Civil
Rights Act (DFEH v. Capital Hills Arco)/179:99

FAIR LABOR STANDARDS ACT

From Don to Doff Shalt Thou Pay (Peter Brown and Didier
Reiss)/177:11

FAMILY AND MEDICAL LEAVE ACT (FMLA)

No Family Rights Act Claim Where Employee Fired for Cause/181:60

FIRST AMENDMENT

see also Free Speech

'Getting Religion': Teaching About Religion in the Public Schools (Linda Lye)/181:6

New Supreme Court Sharply Circumscribes Public Employee Free Speech Rights (Eric Borgerson)/179:21

Parties Alleging Constitutional Violations Must Exhaust Administrative Remedies Before Filing Suit/180:85

Police Officer Disciplinary Records Are Confidential Under Public Records Act/180:42

Public Employee Free Speech in the Wake of *Ceballos* (Martin Fassler)/180:6

Public Employee's Religious Expression Trumped by County's Compelling Interests/178:64

FREE SPEECH

see also Political Speech

New Supreme Court Sharply Circumscribes Public Employee Free Speech Rights (Eric Borgerson)/179:21

Prison Liable for Inmates' Sexual Harassment of Guard, But May Skate on First Amendment/181:53

Public Employee Free Speech in the Wake of *Ceballos* (Martin Fassler)/180:6

G

GAY RIGHTS

see Harassment
Sexual Orientation

GOOD FAITH

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

GRIEVANCE PROCEDURES

see Arbitration

H

HARASSMENT

Employer Liable for Harassment of Gay Employee by Coworker/176:65

HEALTH AND SAFETY

Flu Pandemic: New Approaches to a New Problem (Jeffrey M. Tanenbaum and Joshua M. Henderson)/179:5

HEALTH CARE

The Health Benefits Equation: A Joint Labor-Management Solution (Ruben Ingram and Cindy Young)/179:13

VEBA: A Tax-Exempt Alternative for the Reimbursement of Health Care Costs (Daniel S. Connolly)/176:18

HIGHER EDUCATION

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

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

see 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'

HIRING

Judge Hikes Salaries of Correctional Medical Personnel/176:40

U.C. Task Force Urges Focus on Faculty Diversity/179:54

HOURS OF WORK, OVERTIME, SHIFT AND DUTY ASSIGNMENTS

see also Fair Labor Standards Act
City Council to Scrutinize LAPD's Flexible Workweek/181:27

I

IMPASSE RESOLUTION PROCEDURES

see also Arbitration
Strikes and Job Actions
Binding Arbitration Unnecessary When Impasse Is Reached Over Antidiscrimination Effort/179:40
Hartnell College Strike Ends With a Mediator-Brokered Contract/181:33
Looming Teacher Strikes/176:26
Statistical Evidence Not Enough to Prove Union Planned Sickout/181:38

INJUNCTIONS

see Strikes and Job Actions

J-K

JUDICIAL REVIEW

Judicial Review Barred Unless Provided for in Arbitration Agreement/180:86
Restricted Review of Arbitration Award Maintained/181:65

L

LABOR CODE

Employer Cannot Compel Arbitration When Nonwaivable, Statutory Right Is Involved/181:64
School Principal's Transfer May Constitute Retaliation/176:32

LAW ENFORCEMENT EMPLOYEES

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

LEGISLATION

Bill Broadens Record Inspection Rights of Court Employees (A.B. 1995)/180:50
Bill to Require Open Meetings Regarding U.C. Exec Pay (A.B. 775)/180:69
'Dance of the Lemons' Cut Short? (S.B. 1655)/180:35
Legislation Affects Atascadero Employees, Firefighters, Retirees, Park Rangers, and Computer Users (A. B. 546) (A.B. 1708) (A.B. 1880) (A.B. 2242) (A.B. 2683) (S.B. 1168)/180:61
Legislative Developments (S.B. 1133)(S.B. 1655)/181:37

LOCAL GOVERNMENT (IN GENERAL)

see also Employers, California Public
— Cities
— Counties
— Transit Districts
Local Government Employees Top List of Unionized Workers/176:35

M

MAINTENANCE OF MEMBERSHIP

see Agency Shop, Other Organizational Security, and Dues Deduction

MANAGEMENT RIGHTS

see Scope of Bargaining

MANAGERIAL EMPLOYEES

see Supervisory and Managerial Employees

MEDIATION

see Impasse Resolution Procedures

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
— Firefighters
— 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' Effects Bargaining Recognized, But 'Transactional Costs' Now in the Mix (Carol Vendrillo)/180:21

N

NATIONAL EDUCATION ASSOCIATION (NEA)

NEA and AFL-CIO Partnership Benefits Both Organizations/177:38
Teachers Union Opens Ranks to Support Staff/179:5

NATIONAL LABOR RELATIONS ACT (NLRA)

Charter Schools Attempt to Avoid PERB Jurisdiction in Representation Cases/177:39

NATIONAL LABOR RELATIONS BOARD (NLRB)

Charter Schools Attempt to Avoid PERB Jurisdiction in Representation Cases/177:39
Ninth Circuit Reverses NLRB, Finds Failure to Back Up 'Inability to Pay' Claim/178:63

O

OPEN MEETINGS ACT

see Brown Act

ORGANIZATIONAL SECURITY

see Agency Shop, Other Organizational Security, and Dues Deduction

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
Compensation Practices Under Fire at U.C. /176:47
CSU Executive Pay/176:55
DPA Welcomes Prison Receiver's Pay Raise Recommendations/181:49
Hartnell College Strike Ends With a Mediator-Brokered Contract/181:33
Judge Hikes Salaries of Correctional Medical Personnel/176:40
Last-Minute Agreement Averts Strike at San Francisco Unified/176:25
Lawsuit Brings Huge Pay Hike to Juvenile Justice Teachers/178:38
Legislation Affects Atascadero Employees, Firefighters, Retirees, Park Rangers, and Computer Users/180:61
Looming Teacher Strikes/176:26
New Contract for West Contra Costa Teachers/177:43
No Conflict of Interest if Community College Board Member Excluded From Negotiating Process/181:36

Part-Time Community College Teachers Want Own Union/178:32

Statute Does Not Require Equal Raises for Supervisors, Rank-and-File Employees/180:53

Strikes Narrowly Averted on Both Sides of S.F. Bay/178:26

The Looming Teacher Shortage — Can It Be Averted?/178:28

U.C. Launches New Compensation Reforms/180:73

PENSIONS

see Retirement and Pensions

PERSONNEL POLICIES

U.C. Adopts New Family-Friendly Policies for Faculty/177:49

PERSONNEL RECORDS

Bill Broadens Record Inspection Rights of Court Employees/180:50

POLICE

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

POLITICAL SPEECH

Teachers Can Wear Buttons That Are Organizational, Not Political/178:68

PRIVACY

Report of District Superintendent's Alleged Misconduct Must Be Disclosed/181:30

PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)

see also Retirement and Pensions
Retired Firefighter Managers Get Pensions Higher Than Their Salaries/178:40
Union Agitation Stops CASE Retirement Opt-Out/177:52

PUBLIC EMPLOYMENT RELATIONS BOARD — DUTY OF FAIR REPRESENTATION RULINGS

Dills Act

No duty to represent before State Personnel Board (Quigley v. Stationary Engineers Loc. 39) No. 1790-S/176:86

EERA

Duty of fair representation does not extend to appeals process before PERB (Cardoso v. Teamsters, Loc. 228) No. 1845/180:100

Late filing because of PERB error excused (Jones v. SEIU Loc. 99) No. Ad-352/178:84

No duty of fair representation exists in extra-contractual forums (Welch v. California Teachers Assn. and Oakland Education Assn.) No. 1850/180:108

MMBA

Favorable arbitration award does not imply union acted in violation of DFR (Mauriello v. Bay Area Air Quality Management District Employees Assn.) No. 1808-M/177:85

Non-unit member lacks standing (Tacke v. IBEW Loc. 1245) No. 1857-M/180:109

PUBLIC EMPLOYMENT RELATIONS BOARD — IN GENERAL

AFT Makes It a Three-Way Fight for Part-Time Teachers/180:35

Agency Fee Cases Get New Treatment From PERB/176:71
Board Case Law: A Year in Review (Michael Baranic)/176:11

CAPS Contract Not Strong Enough to Fend Off Alternate Retirement Program (Katherine Thomson)/177:22

CSU Cannot Bargain Limits on Arbitrators' Authority in Tenure Cases/177:45

Disabled Office of Education Employee Entitled Only to Placement on Reemployment List/176:28

Part-Time Community College Teachers Want Own Union/178:32

Statistical Evidence Not Enough to Prove Union Planned Sickout/181:38

PUBLIC EMPLOYMENT RELATIONS BOARD — JURISDICTION

EERA

Charter Schools Attempt to Avoid PERB Jurisdiction in Representation Cases/177:39

MMBA

Contra Costa County Workers Strike, Superior Court Issues TRO/179:31

Trial Court Act

Board lacks jurisdiction over due process violations (Keiser v. Lake County Superior Court) No. 1782-C/176:92

PUBLIC EMPLOYMENT RELATIONS BOARD — PROCEDURAL RULINGS

EERA

PERB Finds Teachers Union Waived Right to Bargain No-Strike Clause/177:34

PUBLIC EMPLOYMENT RELATIONS BOARD — REPRESENTATION RULINGS

Dills Act

PERB Counts Revocation Cards/180:60

EERA

Charter Schools Attempt to Avoid PERB Jurisdiction in Representation Cases/177:39

Confidential designation of payroll specialist not warranted by needs of small district staff (Burlingame Elementary School Dist. v. California School Employees Assn.) No. 1847179:86

MMBA

Los Angeles Wrestles With Release of Information Tied to Peace Officer Records/177:28

Revocation of authorization card must show intent that union no longer serve as representative (SEIU Loc. 399 v. Antelope Valley Health Care Dist.) No. 1816-M/177:85

PUBLIC EMPLOYMENT RELATIONS BOARD — UNFAIR PRACTICE RULINGS

Dills Act

ALJ has inherent authority to dismiss case for failure to prosecute (Horspool v. State of California [Dept. of Corrections]) No. 1806-S/177:78

Board vacates previous decision finding prima facie case of unfair practice (Zanchi v. State of California [Dept. of Corrections]) No. 1826-S/178:81

Charge was untimely and charging party no longer had standing (Kunkel v. State of California [Dept. of Transportation]) No. 1835-S/178:82

Exclusive representatives are not expected to satisfy all unit members (Meenakshi v. Union of American Physicians and Dentists) No. 1846-S/180:98

Improper request to negotiate leads to dismissal of charge (California Correctional Peace Officers Assn. v. State of California [Dept. of Corrections]) No. 1848-S/180:99

Internal union activities do not violate act unless they affect the employer-employee relationship (Pittman v. CDF Firefighters) No. 1814-S/177:79

Party failed to support allegations that union acted inappropriately (Pittman v. CDF Firefighters) No. 1815-S/177:80

Reneging on prior tentative agreements not unfair practice (California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California [Dept. of Personnel Administration]) No. 1836-S/179:85

Representation was not denied (*Magner v. Dept. of Forestry and Fire Protection*) No. 1862-S/ 181:75

EERA

Agency fee payer was given opportunity to be heard (*Maaskant v. Kern High Faculty Assn., CTA/NEA*) No. 1834/178:84

Changing ratio of bargaining-unit to non-bargaining-unit employees does not constitute violation (*Los Angeles School Police Assn. v. Los Angeles Unified School Dist.*) No. 1827/178:82

Charge dismissed for failure to demonstrate protected activity (*Casper v. Los Banos Unified School Dist.*) No. 1828/178:83

Charge dismissed for failure to state claim with specificity (*Bruce v. California School Employees Assn., Chap. 198*) No. 1858/181:75

No nexus between protected activity and teacher's dismissal (*Thomas v. Los Angeles USD*) No. 1787/176:87

Refund procedure for non-chargeable expenses is allowed (*Maaskant v. Kern High Faculty Assn., CTA/NEA*) No. 1844/180:99

Religious objector required to pay equivalent of temporary dues assessment to charity (*Heggem v. Arcadia Teachers Assn.*) No. 1833/178:83

Reprimand, leave of absence, and medical examination not retaliation (*Abner v. Compton Unified School Dist.*) No. 1805/177:81

Sending response to incorrect office excuses untimely filing (*Newark Teachers Assn., CTA/NEA v. Newark Unified School Dist.*) No. Ad-354/180:101

Settlement reached and appeal withdrawn (*Calexico Unified School Dist. v. Calexico Teachers Assn.*) No. 1860/181:76

Settlement reached and appeal withdrawn (*West Hills Community College v. West Hills Faculty Assn.*) No. 1861/181:76

Statistical evidence not enough to prove union planned sickout (*Grossmont Union High School Dist. v. Grossmont Education Assn.*) No. 1859/181:76

Supervisor's orders not adverse action (*Kahn v. Los Angeles Unified School Dist.*) No. 1791/176:88

Unfair practice charge withdrawn (*CSEA and Its Chap. 549 v. Tamalpais UHSD*) No. 1786/176:86

Union waived right to bargain board policy but not its impact (*Santee Teachers Assn. v. Santee Elementary School Dist.*) No. 1822/177:81

Unlawful interrogation found, but not retaliation (*Pitner v. Contra Costa Community College Dist.*) No. 1852/180:101

HEERA

Agency fee refund does not remedy faulty *Hudson* notice (*Abernathy et al. v. UPTE, CWA Loc. 9119*) No. 1784-H/176:89

Allegations support issuance of complaint for failure to request hearing (*Trout v. UPTE, CWA Loc. 9119*) No. 1830-H/178:86

Asserted facts fail to show interference with employees' rights (*Coalition of University Employees v. Regents of the University of California*) No. 1843-H/179:89

Board finds no duty to bargain before creating, contracting with, auxiliary corporation for housing services (*California State Employees Assn. v. California State University*) No. 1839-H/179:87

Board lacks authority to modify regulations, orders issuance of complaint (*Hermanson et al. v. UPTE, CWA Loc. 9119*) No. 1829-H/178:85

Board lacks authority to modify regulations, orders issuance of complaint (*Booth et al. v. UPTE, CWA Loc. 9119*) No. 1831-H/178:86

Board remands agency fee cases consistent with *Abernathy* (*Aldern et al. v. UPTE, CWA Loc. 9119*) No. 1792-H/176:90

(*Boylan v. UPTE, CWA Loc. 9119*) No. 1797-H/176:90

(*Brooks v. UPTE, CWA Loc. 9119*) No. 1803-H/176:90

(*Carter et al. v. UPTE, CWA Loc. 9119*) No. 1793-H/176:90

(*Chanes et al. v. UPTE, CWA Loc. 9119*) No. 1795-H/176:90

(*Cooper v. UPTE, CWA Loc. 9119*) No. 1799-H/176:90

(*Gill et al. v. UPTE, CWA Loc. 9119*) No. 1794-H/176:90

(*Joshel v. UPTE, CWA Loc. 9119*) No. 1801-H/176:90

(*Lee v. UPTE, CWA Loc. 9119*) No. 1800-H/176:90

(*Van Sluis v. UPTE, CWA Loc. 9119*) No. 1798-H/176:90

(*Welch et al. v. UPTE, CWA Loc. 9119*) No. 1796-H/176:90

(*Widman v. UPTE, CWA Loc. 9119*) No. 1802-H/176:90

Board remands agency fee cases consistent with *Abernathy* (*Bailey v. UPTE, CWA Local 9119*) No. 1812-H/177:82

(*Baratelli v. UPTE, CWA Loc. 9119*) No. 1810-H/177:82

(*Crisosto v. UPTE, CWA Local 9119*) No. 1811-H/177:82

- Clerical error and 'quirk' in postage meter no excuse for untimely filing (Coalition of University Employees, Loc. 6 v. Regents of the University of California, San Francisco) No. Ad-353-H/179:88
- Failure to negotiate policy change not bad faith where parties could not agree on meeting place (Academic Professionals of California v. Trustees of the California State University) No. 1842-H/179:89
- Formal audit not required for Hudson notices: (Nickols et al. v. UPTE, CWA Loc. 9119) No. 1817-H/177:83 (Ball v. UPTE, CWA Loc. 9119) No. 1821-H/177:83 (Hawley et al. v. UPTE, CWA Loc. 9119) No. 1818-H/177:83 (Jimenez-Newby v. UPTE, CWA Loc. 9119) No. 1819-H/177:83 (Yaron v. UPTE, CWA Loc. 9119) No. 1820-H/177:83
- No employer interference found when union acted outside scope of agreement (Coalition of University Employees, Loc. 6 v. Regents of the University of California) No. 1854-H/180:104
- No negotiable effects resulted from increased transfer of work (State Employees Trade Council United v. Regents of the University of California [San Diego]) No. 1832-H/178:86
- No violation when adverse action taken two months after protected activity (Coalition of University Employees v. Regents of the University of California) No. 1851-H/180:103
- Party has standing to object to agency fees only if he has paid them (Sarca v. CSEA) No. 1813-H/177:82
- PERB refuses to intervene in internal union affairs (Higgins v. Coalition of University Employees) No. 1855-H/180:104
- Right to representation exists only in limited circumstances (California State University v. Trustees of the California State University) No. 1853-H/180:105
- Supersession language of act prohibits restrictions on arbitrator's authority in tenure cases (California Faculty Assn. v. Trustees of the California State University) No. 1823-H/177:84
- Unfair practice charge withdrawn (Academic Professionals of California v. Trustees of the California State University) No. 1788-H/176:90
- Unfair practice charge withdrawn (Academic Professionals of California v. Trustees of the California State University) No. 1789-H/176:90
- Unfair practice charge untimely (Rock v. Regents of the University of California) No. 1804-H/177:81
- Unfair practice charges withdrawn (Trout et al. v. University Professional and Technical Employees) No. 1785-H/176:89
- Union satisfied its obligation to disclose documents (Sarca v. California State University Employees Union, SEIU Loc. 2579, CSEA) No. Ad-351-H/178:84
- Where conscientious effort is made to timely file, good cause may exist (California Faculty Assn. v. Trustees of the California State University) No. Ad-355-H/180:102
- MMBA**
- Asserted facts fail to show violation of MMBA (Health Services Agency Physicians Assn. v. County of Santa Cruz) No. 1849-M/180:106
- Charge dismissed for failure to demonstrate sufficient protected activity (Mauriello v. Bay Area Air Quality Management Dist.) No. 1807-M/177:84
- Charge dismissed for untimely filing and violation of PERB Reg. 32621 (Modic v. Sacramento Municipal Utility Dist.) No. 1838-M/179:90
- Charge sent back to general counsel for further investigation (Alameda County Probation Peace Officers Assn. v. County of Alameda) No. 1824-M/178:87
- County established prima facie case of failure to negotiate in good faith (County of Inyo v. United Domestic Workers of America) No. 1783-M/176:91
- County violated retroactive language in parties' agreement (SEIU, Loc. 1997 v. County of Riverside) No. 1825-M/178:88
- Dues deduction delay while awaiting certification is not violation (Health Services Agency Physicians Assn. v. County of Santa Cruz) No. 1840-M/179:91
- Employee's right to free speech protected under MMBA; letter to and survey of employees allowed absent showing of coercion (Stationary Engineers Loc. 39 v. City of Fresno) No. 1841-M/179:92
- Non-unit member lacks standing (Tacke v. Modesto Irrigation Dist.) No. 1856-M/180:107
- Six-month statute of limitations renders unfair practice claim untimely (Siskiyou County Employees Assn. v. County of Siskiyou) No. 1837-M/179:90
- Unfair practice charge dismissed at charging party's request (SEIU Loc. 535 v. County of Madera) No. 1809-M/177:85
- Untimely filing (Paez v. SEIU Loc. 790) No. Ad-356-M/180:106
- PUBLIC RECORDS ACT**
- Chronicle v. U.C.*: Limited Win for Newspaper, But Controversy Forces Reforms/180:63
- Contra Costa Nurses Poised to Strike/177:30
- Police Officer Disciplinary Records Are Confidential Under Public Records Act/180:42
- Report of District Superintendent's Alleged Misconduct Must Be Disclosed/181:30
- Unions Accustomed to U.C.'s Lack of Transparency/178:44

PUBLIC SAFETY OFFICERS

- Los Angeles Wrestles With Release of Information Tied to Peace Officer Records/177:28
- Officer Engages in Unnecessary Drama, Mimics Assault to Victim/181:67
- Police Officer Disciplinary Records Are Confidential Under Public Records Act/180:42

PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT (PSOPBRA)

- Officer Engages in Unnecessary Drama, Mimics Assault to Victim/181:67
- One-Year Limitations Period Bans Police Officer's Pay-Grade Reduction/179:38

PUBLIC SCHOOLS — GENERAL

- 'Dance of the Lemons' Cut Short? /180:35
- 'Getting Religion': Teaching About Religion in the Public Schools (Linda Lye)/181:6
- Governor Makes Nice With Teachers — Returns School Funds/178:27
- Is Villaraigosa's Win LAUSD's Loss? /180:32
- K-12 Teacher Termination Hearings: Are They Worth the Cost? (Michael Blacher)/180:13
- K-12 Teacher Termination Hearings: Worth the Price of Fairness (Beverly Tucker)/181:19
- Lawsuit Settlement Benefits Lowest-Performing Schools/180:33
- Peoples Closes Loophole in University Internships (Dale Brodsky)/178:23
- Report of District Superintendent's Alleged Misconduct Must Be Disclosed/181:30
- The Looming Teacher Shortage — Can It Be Averted? /178:28
- The Winton Act: A History Lesson About Special Interest Legislation (Stewart Weinberg)/177:5
- Union Can Use Teachers' Mailboxes for Political Communications/179:47

R**REASONABLE ACCOMMODATION**

- see also* Americans with Disabilities Act
- No Duty to Accommodate Where It Would Require Creation of New Position/177:60
- Participation in Good Faith Interactive Process Required to Determine Reasonable Accommodation/176:67

RECOGNITION

- see* Representation Elections, Recognition and Decertification Procedures

REHABILITATION ACT

- see* Americans with Disabilities Act

REINSTATEMENT

- Discriminatory Refusal to Reinstate Separate From Claim of Wrongful Termination/176:62

RELIGION

- 'Getting Religion': Teaching About Religion in the Public Schools (Linda Lye)/181:6

REPRESENTATION ELECTIONS, RECOGNITION, AND DECERTIFICATION PROCEDURES

- see also* Public Employment Relations Board — Representation Rulings
- AFSCME Decertification Vote To Be Counted/177:57
- AFSCME Defeats Decertification Attempt/178:42
- CAUSE Wins Election, Asks DPA for Pay Equity/176:42
- CSEA Seeks to Revoke SEIU Local 1000's Charter/177:53
- Novel Question Raised in Bid for New State IT Unit/179:65
- Part-Time Community College Teachers Want Own Union/178:32
- PERB Counts Revocation Cards/180:60

REPRISALS FOR PROTECTED ACTIVITY

- see also* Retaliation
- Supreme Court Adopts Broad Standard for Proving Retaliation Under Title VII/179:68

RETALIATION

- see also* Reprisals for Protected Activity
- Discrimination Case Involving Warden's Affairs With Coworkers Can Proceed to Trial/177:65
- McCrae Court of Appeal Not Dissuaded by Supreme Court Ruling in Yanowitz/180:78
- Prison Liable for Inmates' Sexual Harassment of Guard, But May Skate on First Amendment/181:53
- School Principal's Transfer May Constitute Retaliation/176:32
- Supreme Court Adopts Broad Standard for Proving Retaliation Under Title VII/179:68

RETIREMENT AND PENSIONS

- see also* Public Employees Retirement System (PERS)
- CAPS Contract Not Strong Enough to Fend Off Alternate Retirement Program (Katherine Thomson)/177:22

Disabled Office of Education Employee Entitled Only to Placement on Reemployment List/176:28
 Employment or Disability Income Nixes Reinstatement/180:48
 Legislation Affects Atascadero Employees, Firefighters, Retirees, Park Rangers, and Computer Users/180:61
 Livermore Lab Employees Anxious/178:51
 On Second Thought, Correctional Supervisors Snag 3 Percent at 50 Retirement Formula/177:55
 Police Officer Permitted Court Review of Belated Acceptance of Employment Offer/178:34
 Report Questions U.C. Regents' Decision to Start Retirement Contributions/179:51
 Retired Firefighter Managers Get Pensions Higher Than Their Salaries/178:40
 Successful BART Negotiations Over Retiree Health Benefits...According to Management (Darrell Murray)/178:11
 Successful BART Negotiations Over Retiree Health Benefits...According to the Union (Peter W. Saltzman)/178:5
 U.C. Unions Bargaining Jointly to Fight Pension Contributions/181:42

S

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 Effects Bargaining Recognized, But "Transactional Costs" Now in the Mix (Carol Vendrillo)/180:21
 PERB Finds Teachers Union Waived Right to Bargain No-Strike Clause/177:34

SENIORITY

Temporary Transfer of Difficult Employee Becomes Permanent/177:67

SEX DISCRIMINATION

see also Discrimination
 Requirement That Women Wear Makeup Not Discriminatory/178:59

SEXUAL HARASSMENT

see also Discrimination
 California Supreme Court Applies FEHA Sexual Harassment Amendment Retroactively/179:71

Discrimination Case Involving Warden's Affairs With Coworkers Can Proceed to Trial/177:65
 Employer Not Liable for Sexual Harassment by Supervisor/176:58
 Opinion Amended But No En Banc Rehearing in *Hardage*/177:59
 Prison Liable for Inmates' Sexual Harassment of Guard, But May Skate on First Amendment/181:53
 Vulgar Language on *Friends* Not Hostile Workplace Sexual Harassment/178:56

SEXUAL ORIENTATION

Employer Liable for Harassment of Gay Employee by Coworker/176:65

SICK LEAVE

see California Family Rights Act (CFRA)
 Family and Medical Leave Act (FMLA)
 Pay and Benefits

STATE EMPLOYER-EMPLOYEE RELATIONS ACT (SEERA)

see Dills Act

STATE TEACHERS RETIREMENT SYSTEM, CALIFORNIA (CalSTRS)

Attorney General OKs Deduction From CalSTRS for PACs/179:42

STATUTE OF LIMITATIONS

One-Year Limitations Period Bans Police Officer's Pay-Grade Reduction/179:38

STRIKES AND JOB ACTIONS

Contra Costa County Workers Strike, Superior Court Issues TRO/179:31
 Contra Costa Nurses Poised to Strike/177:31
 Engineers and Architects Association Stages Two-Day Strike/180:47
 Hartnell College Strike Ends With a Mediator-Brokered Contract/181:33
 Last-Minute Agreement Averts Strike at San Francisco Unified/176:25
 Looming Teacher Strikes/176:26
 PERB Finds Teachers Union Waived Right to Bargain No-Strike Clause/177:34
 Sacramento County Endures Two-Week Work Stoppage/180:39
 Statistical Evidence Not Enough to Prove Union Planned Sickout/181:38
 Strikes Narrowly Averted on Both Sides of S.F. Bay/178:26

SUBCONTRACTING

see Contracting Out; Preservation of Unit Work

SUPERVISORY AND MANAGERIAL EMPLOYEES

Excluded Employees Given 3.5 Percent Increase and Lump Sum/180:59

Retired Firefighter Managers Get Pensions Higher Than Their Salaries/178:40

Statute Does Not Require Equal Raises for Supervisors, Rank-and-File Employees/180:53

SURFACE BARGAINING

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

T**TEACHER EDUCATION**

Legislative Developments/181:37

TEACHERS

See also Employee Organizations — Public School and Community College

Employers, California Public — School and Community College Districts

Public Schools — General

AFT Makes It a Three-Way Fight for Part-Time Teachers/180:35

'Dance of the Lemons' Cut Short? /180:35

K-12 Teacher Termination Hearings: Are They Worth the Cost? (Michael Blacher)/180:13

K-12 Teacher Termination Hearings: Worth the Price of Fairness (Beverly Tucker)/181:19

Legislative Developments/181:37

Looming Teacher Strikes/176:26

NEA and AFL-CIO Partnership Benefits Both Organizations/177:38

Part-Time Community College Teachers Want Own Union/178:32

Peoples Closes Loophole in University Internships (Dale Brodsky)/178:23

PERB Sends the Wrong Message on Teacher Mailboxes (Priscilla Winslow)/176:5

Teachers Can Wear Buttons That Are Organizational, Not Political/178:68

Teachers Union Opens Ranks to Support Staff/179:5

The Looming Teacher Shortage — Can It Be Averted? /178:28

The Winton Act: A History Lesson About Special Interest Legislation (Stewart Weinberg)/177:5

Union Can Use Teachers' Mailboxes for Political Communications/179:47

TERMINATION

See also Discipline and Discharge

Due Process

City Failed to Prove Employee's Inappropriate Sexual Relations/179:77

Judicial Review Barred Unless Provided for in Arbitration Agreement/180:86

TITLE VII

Employer Not Liable for Sexual Harassment by Supervisor/176:58

Opinion Amended But No En Banc Rehearing in *Hardage*/177:59

Requirement That Women Wear Makeup Not Discriminatory/178:59

Supreme Court Adopts Broad Standard for Proving Retaliation Under Title VII/179:68

Supreme Court Says Use of Term 'Boy' Can Evidence Discrimination/177:58

TRANSFERS

see also Discipline and Discharge

School Principal's Transfer May Constitute Retaliation/176:32

Temporary Transfer of Difficult Employee Becomes Permanent/177:67

TRIAL COURT EMPLOYEES

see Court Employees

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

UNILATERAL ACTION

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

UNION ACTIVITY

Statistical Evidence Not Enough to Prove Union Planned Sickout/181:38
Union Can Use Teachers' Mailboxes for Political Communications/179:47

UNION MEMBERSHIP

AFT Makes It a Three-Way Fight for Part-Time Teachers/180:35
NEA and AFL-CIO Partnership Benefits Both Organizations/177:38
Part-Time Community College Teachers Want Own Union/178:32
Teachers Union Opens Ranks to Support Staff/179:5

UNION SECURITY

see Agency Shop, Other Organizational Security, and Dues Deduction

UNIT DETERMINATION OR MODIFICATION

see Public Employment Relations Board — Representation Rulings
Representation Elections, Recognition, and Decertification Procedures

UNIVERSITIES

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

UNRUH ACT

California's Unruh Act and Disabled Persons Act Do Not Include ADA Protections/180:81
UPS Cannot Discriminate Against Deaf Truck Driver Applicants/181:57

W-Z

WAGES AND BENEFITS

see Pay and Benefits

WORKERS' COMPENSATION

Employee's Accident While Sightseeing Not Compensable Workers' Comp Injury/176:69
No Workers' Comp Coverage for Injury Suffered During 'Pickup' Basketball Game/177:31
Psychiatric Injuries Cannot Be Parsed for Compensability Discrimination/180:75
Workers' Compensation Is for Workers, Not Employers/180:87

WRONGFUL TERMINATION

California Supreme Court Confirms At-Will Contract/180:83
Discriminatory Refusal to Reinstatement Separate From Claim of Wrongful Termination/176:62

V

VACATION, ANNUAL LEAVE

see Pay and Benefits

PART II

TABLE OF CASES

A

Arnold Worldwide, Inc.

see **Dore v. Arnold Worldwide, Inc.**

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

Ayers

see **Freitag v. Ayers**

B

Baize v. Eastridge Co.

Unless specifically provided for in the arbitration agreement, arbitrators’ decisions are not reviewable for errors of fact or law.

(8-25-06) 142 Cal.App.4th 293/180:86

Bass v. County of Butte

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. Department of Social Services, Tehama County

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 Court

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 Northern & Santa Fe Railway Co. 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*.
(9-22-06) 143 Cal.App.4th 207, 2006 DJDAR 12921/181:65

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

see **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**

California Department of Veterans Affairs

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

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.

see **Hardage v. CBS Broadcasting, Inc.**

City and County of San Francisco

see **San Francisco Fire Fighters, Loc. 798 v. City and County of San Francisco**

City of Burbank

see **Raine v. City of Burbank**

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 PEGC 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 PEGC 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

see **Kelly v. County of Los Angeles**

County of Tulare

see **Stephens v. County of Tulare**

D

Davenport v. Washington Education Assn., and Washington v. Washington Education Assn.

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**
Miller v. Department of Corrections

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

E

Eastridge Co.

see **Baize v. Eastridge Co.**

F

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

An employee who suffered injuries after the business part of his trip had concluded is not entitled to workers' compensation benefits because the driving accident occurred when the employee was no longer on a mission for his employer and was not involved in any compensable leisure-time activity or mission integral to the business trip.

(12-16-05) 134 Cal.App.4th 1316/176:69

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, 427 F.3d 1177, amended and superseded on rehearing (9th Cir. 1-6-06) 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**

I

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

J

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

K

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

L

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 coarse 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

M

McRae v. Department of Corrections

Ordered to vacate and reconsider its decision in *McRae v. Department of Corrections* (2005) 127 Cal.App.4th 779, 172 CPER 79, in light of the California Supreme Court's decisions in *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 174 CPER 23, and *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, the First District Court of Appeal modified its analysis, but not its conclusion that McRae failed to prove retaliation under California's Fair Employment and Housing Act. (8-29-06) 142 Cal.App.4th 377/180:78

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**
Workers International v. National Labor Relations Board

Neisendorf v. Levi Strauss & Co.

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 CFRA's 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

O

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

P-Q

Pacific Bell

see **Josephs v. Pacific Bell**

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).

(12-19-05) 134 Cal.App.4th 1378/176:32

Peoples v. San Diego Unified School Dist.

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.

(2006) 138 Cal.App.4th 463/178:23

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

see **Consulting Engineers and Land Surveyors of California, Inc. v. Professional Engineers in California Government**
Professional Engineers in California Government v. Morales

Professional Engineers in California Government v. Morales

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

R

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

see **Claudio v. Regents of the University of California**
San Francisco Chronicle v. Regents of the University of California

S

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

School districts cannot prohibit teachers unions from distributing newsletters with political content to members' school mailboxes. The court overruled the Public Employment Relations Board holding in this case, and directly contradicted PERB's decision in *San Diego Community College Dist.* (2001) No. 1467, 152 CPER 86.

(5-3-06) Ala.Co.Sup.Ct. RG05235795/179:47

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.

(8-1-06) Ala.Co.Sup.Co. R606269541/180:63

San Francisco Fire Fighters, Loc. 798 v. City and County of San Francisco

The City and County of San Francisco was not required to engage in binding interest arbitration with the San Francisco Fire Fighters, Local 798, over a bargaining impasse concerning a promotion rule mandated by anti-discrimination concerns.

(5-18-06) 38 Cal.4th 653/179:40

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.**

U-V

United Parcel Service

see **Bates et al. v. United Parcel Service**

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

Section A: Annotated Table of PERB Orders and Decisions

Dills Act Cases

California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Dept. of Personnel Administration), No. 1836-S/179:85

(The charge alleging bad faith bargaining was dismissed for failure to state a prima facie case.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections), No. 1848-S/180:99

(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.)

Horspool v. State of California (Dept. of Corrections), No. 1806-S/177:78

(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.)

Kunkel v. State of California (Dept. of Transportation), No. 1835-S/178:82

(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.)

Magner v. Dept. of Forestry and Fire Protection, No. 1862-S/181:75

(The charge failed to state a prima facie case because there was no evidence the charging party was denied representation at an investigatory interview.)

Meenakshi v. Union of American Physicians and Dentists, No. 1846-S/180:98

(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.)

Pittman v. CDF Firefighters, No. 1814-S/177:79

(The charge was dismissed for failure to demonstrate any violations of the Dills Act.)

Pittman v. CDF Firefighters, No. 1815-S/177:80

(The charge was dismissed for failure to demonstrate any violations of the Dills Act.)

Quigley v. Stationary Engineers Loc. 39, No. 1790-S/176:86

(The unfair practice charge was dismissed because the union had no duty to represent bargaining unit members before the State Personnel Board.)

Zanchi v. State of California (Dept. of Corrections), No. 1826-S/178:81

(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.)

EERA Cases

Abner v. Compton Unified School Dist., No. 1805/177:81

(The unfair practice charge was dismissed because the party failed to demonstrate a nexus between the protected activity and the adverse action.)

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, No. 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, No. 1786/176:86

(The unfair practice charge was withdrawn at the request of the charging party.)

Grossmont Union High School Dist. v. Grossmont Education Assn., No. 1859/181:76

(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, No. 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.)

Los Angeles School Police Assn. v. Los Angeles Unified School Dist., No. 1827/178:82

(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.)

Masskant 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.)

Newark Teachers Assn., CTA/NEA v. Newark Unified School Dist., No. Ad-354/180:101

(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 complaint 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, No. 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. UPTE, CWA Loc. 9119, No. 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. Trustees of the California State University, No. 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. Trustees of the California State University, No. 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. Trustees of the California State University, No. 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. Trustees of the California State University, No. 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. UPTE, CWA Loc. 9119, No. 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.)

Bailey v. UPTE, CWA Local 9119, No. 1812-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.)

Ball v. UPTE, CWA Loc. 9119, No. 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. UPTE, CWA Loc. 9119, No. 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. UPTE, CWA Loc. 9119, No. 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. UPTE, CWA Loc. 9119, No. 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. UPTE, CWA Loc. 9119, No. 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, No. 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. Trustees of the California State University, No. 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, No. 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. Trustees of the California State University, No. 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.)

Carter et al. v. UPTE, CWA Loc. 9119, No. 1793-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.)

Chanes et al. v. UPTE, CWA Loc. 9119, No. 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.)

Coalition of University Employees, Loc. 6 v. Regents of the University of California, San Francisco, No. Ad-353-H/179:88

(A clerical error leading to insufficient postage and subsequent delay in delivery is no excuse for filing a late appeal.)

Coalition of University Employees v. Regents of the University of California, No. 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.)

Coalition of University Employees v. Regents of the University of California, No. 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.)

Coalition of University Employees, Loc. 6 v. Regents of the University of California; No. 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.)

Cooper v. UPTE, CWA Loc. 9119, No. 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.)

Crisosto v. UPTE, CWA Local 9119, No. 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.)

Gill et al. v. UPTE, CWA Loc. 9119, No. 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.)

Hawley et al. v. UPTE, CWA Loc. 9119, No. 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.)

Hermanson et al. v. UPTE, CWA Loc. 9119, No. 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.)

Higgins v. Coalition of University Employees, No. 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.)

Jimenez-Newby v. UPTE, CWA Loc. 9119, No. 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.)

Joshel v. UPTE, CWA Loc. 9119, No. 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.)

Lee v. UPTE, CWA Loc. 9119, No. 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.)

Nickols et al. v. UPTE, CWA Loc. 9119, No. 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.)

Rock v. Regents of the University of California, No. 1804-H/177:81

(The unfair practice charge was dismissed as untimely.)

Sarca v. CSEA, No. 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.)

Widman v. UPTE, CWA Loc. 9119, No. 1802-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.)

MMBA Cases

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.)

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.)

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

No. 1782-C	Keiser v. Lake County Superior Court	No. 1801-H	Joshel v. UPTE, CWA Loc. 9119
No. 1783-M	County of Inyo v. United Domestic Workers of America	No. 1802-H	Widman v. UPTE, CWA Loc. 9119
No. 1784-H	Abernathy et al. v. UPTE, CWA Loc. 9119	No. 1803-H	Brooks v. UPTE, CWA Loc. 9119
No. 1785-H	Trout et al. v. University Professional and Technical Employees	No. 1804-H	Rock v. Regents of the University of California
No. 1786	California School Employees Assn. and Its Chap. 549 v. Tamalpais UHSD	No. 1805	Abner v. Compton Unified School Dist.
No. 1787	Thomas v. Los Angeles USD	No. 1806-S	Horspool v. State of California [Dept. of Corrections]
No. 1788-H	Academic Professionals of California v. Trustees of the California State University	No. 1807-M	Mauriello v. Bay Area Air Quality Management Dist.
No. 1789	Academic Professionals of California v. Trustees of the California State University	No. 1808-M	Mauriello v. Bay Area Air Quality Management District Employees Assn.
No. 1790-S	Quigley v. Stationary Engineers Loc. 39	No. 1809-M	SEIU Loc. 535 v. County of Madera
No. 1791	Kahn v. Los Angeles Unified School Dist.	No. 1810-H	Baratelli v. UPTE, CWA Loc. 9119
No. 1792-H	Aldern et al. v. UPTE, CWA Loc. 9119	No. 1811-H	Crisosto v. UPTE, CWA Local 9119
No. 1793-H	Carter et al. v. UPTE, CWA Loc. 9119	No. 1812-H	Bailey v. UPTE, CWA Local 9119
No. 1794-H	Gill et al. v. UPTE, CWA Loc. 9119	No. 1813-H	Sarca v. CSEA
No. 1795-H	Chanes et al. v. UPTE, CWA Loc. 9119	No. 1814-S	Pittman v. CDF Firefighters
No. 1796-H	Welch et al. v. UPTE, CWA Loc. 9119	No. 1815-S	Pittman v. CDF Firefighters
No. 1797-H	Boylan v. UPTE, CWA Loc. 9119	No. 1816-M	SEIU Loc. 399 v. Antelope Valley Health Care Dist.
No. 1798-H	Van Sluis v. UPTE, CWA Loc. 9119	No. 1817-H	Nickols et al. v. UPTE, CWA Loc. 9119
No. 1799-H	Cooper v. UPTE, CWA Loc. 9119	No. 1818-H	Hawley et al. v. UPTE, CWA Loc. 9119
No. 1800-H	Lee v. UPTE, CWA Loc. 9119	No. 1819-H	Jimenez-Newby v. UPTE, CWA Loc. 9119

No. 1820-H	Yaron v. UPTE, CWA Loc. 9119	No. 1837-M	Siskiyou County Employees Assn. v. County of Siskiyou
No. 1821-H	Ball v. UPTE, CWA Loc. 9119	No. 1838-M	Modic v. Sacramento Municipal Utility Dist.
No. 1822	Santee Teachers Assn. v. Santee Elementary School Dist.	No. 1839-H	California State Employees Assn. v. California State University
No. 1823-H	California Faculty Assn. v. Trustees of the California State University	No. 1840-M	Health Services Agency Physicians Assn. v. County of Santa Cruz
No. 1824-M	Alameda County Probation Peace Officers Assn. v. County of Alameda	No. 1841-M	Stationary Engineers Loc. 39 v. City of Fresno
No. 1825-M	SEIU, Loc. 1997 v. County of Riverside	No. 1842-H	Academic Professionals of California v. Trustees of the California State University
No. 1826-S	Zanchi v. State of California [Dept. of Corrections]	No. 1843-H	Coalition of University Employees v. Regents of the University of California
No. 1827	Los Angeles School Police Assn. v. Los Angeles Unified School Dist.	No. 1844	Maaskant v. Kern High Faculty Assn., CTA/NEA
No. 1828	Casper v. Los Banos Unified School Dist.	No. 1845	Cardoso v. Teamsters, Loc. 228
No. 1829-H	Hermanson et al. v. UPTE, CWA Loc. 9119	No. 1846-S	Meenakshi v. Union of American Physicians and Dentists
No. 1830-H	Trout v. UPTE, CWA Loc. 9119	No. 1847	Burlingame Elementary School Dist. v. California School Employees Assn.
No. 1831-H	Booth et al. v. UPTE, CWA Loc. 9119	No. 1848-S	California Correctional Peace Officers Assn. v. State of California [Dept. of Corrections]
No. 1832-H	State Employees Trade Council United v. Regents of the University of California [San Diego]	No. 1849-M	Health Services Agency Physicians Assn. v. County of Santa Cruz
No. 1833	Heggem v. Arcadia Teachers Assn.	No. 1850	Welch v. California Teachers Assn. and Oakland Education Assn.
No. 1834	Masskant v. Kern High Faculty Assn., CTA/NEA	No. 1851-H	Coalition of University Employees v. Regents of the University of California
No. 1835-S	Kunkel v. State of California [Dept. of Transportation]	No. 1852	Pitner v. Contra Costa Community College Dist.
No. 1836-S	California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California [Dept. of Personnel Administration]		

- No. 1853-H California State University v. Trustees of the California State University
- No. 1854-H Coalition of University Employees, Loc. 6 v. Regents of the University of California;
- No. 1855-H Higgins v. Coalition of University Employees
- No. 1856-M Tacke v. Modesto Irrigation Dist.
- No. 1857-M Tacke v. IBEW Loc. 1245
- No. 1858 Bruce v. California School Employees Assn., Chap. 198
- No. 1859 Grossmont Union High School Dist. v. Grossmont Education Assn.
- No. 1860 Calexico Unified School Dist. v. Calexico Teachers Assn.
- 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
- No. Ad-354 Newark Teachers Assn., CTA/NEA v. Newark Unified School Dist.
- No. Ad-355-H California Faculty Assn. v. Trustees of the California State University
- No. Ad-356-M Paez v. SEIU Loc. 790

PART IV

INDEX OF ARBITRATION

Grievance Actions

A

ACCOMMODATION
178:72

ARBITRABILITY
180:94

ARBITRABILITY — TIMELINESS
176:79

B

BARGAINING IMPASSE
156:83

BARGAINING UNIT WORK
180:92

C

CALL-BACK PAY
179:82

COMPENSATION — LONGEVITY PAY
177:75

CONTINUING VIOLATION
181:72

CONTRACT
176:80, 178:70, 178:72, 178:75

CONTRACT INTERPRETATION

176:76, 176:77, 177:70, 177:74 177:75, 179:80, 179:82,
180:90, 180:93, 181:70, 181:73

CONTRACT INTERPRETATION — JOB ASSIGNMENT

179:79

CONTRACT INTERPRETATION — SENIORITY

179:79

CONTRACTING OUT

181:70

D

DEMOTION

180:94

DISCIPLINE

176:81, 177:71, 177:72, 178:70, 178:74

DISCIPLINE — DISHONESTY

179:81, 181:69

DRESS CODE

180:90

E-H

EMPLOYER INDEMNIFICATION

181:71

EVALUATIONS

181:73

I-K

INVOLUNTARY TRANSFER

176:77, 177:72

L

LAYOFFS

177:74, 180:89, 180:92

LEAVES OF ABSENCE

176:76

M-N

MERIT RULES

180:89

MILEAGE REIMBURSEMENT

178:70

O

OUT-OF-CLASS PAY

181:72

P-Q

PAST PRACTICE

181:73

PAY CLAIM — TRAVEL REIMBURSEMENT

179:83

PAY RATE

178:75

R

RETIREMENT BENEFITS

176:76

RETURN TO WORK

176:80

S

SALARIES

180:89

SCOPE OF EMPLOYMENT

181:71

SICK LEAVE

181:69

T

TEACHING ASSIGNMENT

177:70

TRAINING INCENTIVE PAY

179:80

TRANSFER

178:70

U-V

UNIFORM POLICY

180:90

W-Z

WAIVER

176:79, 180:94

WORK SCHEDULE CHANGE

176:79

WORKERS' COMPENSATION

176:80

Neutrals

BOGUE, BONNIE

176:76, 177:74, 178:70, 179:82, 181:71

BURDICK, CHRISTOPHER D.

177:75

COLLINS, R. DOUGLAS

177:67

COSSACK, JERILOU

176:77, 180:89

GENTILE, JOSEPH

177:70, 178:70, 180:94

HENNER, MARTIN

181:72

KAUFMAN, WALTER N.

176:81, 181:67

POOL, C. ALLEN

178:75

RIKER, WILLIAM E.

177:71, 178:74, 179:81, 181:69

ROTHSTEIN, ALAN R.

180:93

SILVER, FRANK

176:73, 179:80, 180:92

STAUDO HAR, PAUL D.

177:72, 180:88, 181:73

STEINBERG, ROBERT

176:79

TAMOUSH, PHILIP

176:80, 179:77, 181:70

THOMSON, KATHERINE

179:79, 178:72, 179:83, 180:90

WORMUTH, JOHN

178:68, 179:79