

Labor and Employment Intelligence for the Public Sector

*cp er*  
CALIFORNIA  
PUBLIC  
EMPLOYEE  
RELATIONS  
2008  
INDEX

(Issues 188-193)

An annual index to  
*CPER* Journal

Institute for Research on Labor and Employment  
University of California Berkeley

# 2008 CPER INDEX

An index to the 2008 issues of  
*CALIFORNIA PUBLIC EMPLOYEE RELATIONS (CPER)*  
Issues 188-193

A service of the California Public Employee Relations Program

---

Carol Vendrillo, *Director*

Institute for Research on Labor and Employment  
University of California  
Berkeley, CA 94720-5555  
(510) 643-7092

<http://cper.berkeley.edu>



## TABLE OF CONTENTS

*How to Use the CPER Annual Index*      *i*

<b>Part I: General Index</b>	<b>1</b>
<b>Part II: Table of Cases</b>	<b>19</b>
<b>Part III: Table of PERB Orders and Decisions</b>	<b>29</b>
Section A: Annotated Table of PERB Orders and Decisions	29
Dills Act Cases	29
EERA Cases	29
HEERA Cases	32
MMBA Cases	32
Trial Court Act Cases	34
Section B: Key to Orders and Decisions by PERB Decision Number	35
<b>Part IV: Index of Arbitration</b>	<b>37</b>
Grievance Actions	37
Neutrals	39



## HOW TO USE THE CPER ANNUAL INDEX

The 2008 issues of the *CPER* bimonthly periodical — No. 188 (February) through No. 193 (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. 188 is printed as **188:22**. 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 2008 issues of *CPER*. The official title of each case is followed by a brief statement of the court's holding, the official court citations, and the citation to *CPER* analysis of the decision.

## Part III: Table of PERB Orders and Decisions

This table contains two sections.

**Section A** is an annotated table of all final rulings of the Public Employment Relations Board, whether abstracted in the *CPER* log of PERB rulings or featured in a news story. The table is presented in subdivisions reflecting the 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**

California Supreme Court Holds Equitable Tolling Applies to FEHA/193:63

Does the Whistleblower Protection Act Live Up to Its Name? /193:55

Unchallenged SPB Findings Cannot Be Relitigated in Whistleblower Suit/189:72

**AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA)**

*see also* Discrimination — Age

Supreme Court Finds Retirement System Does Not Violate ADEA/191:77

United States Supreme Court Expands Protection Against Retaliation/191:70

U.S. Supreme Court: Admissibility of ‘Me Too’ Evidence Depends on Facts/189:86

U.S. Supreme Court Adopts Liberal EEOC Definition of ‘Charge’/189:87

U.S. Supreme Court Rules for Workers in Age Bias Case/191:74

**AGENCY FEES**

Fair Share Rescission Election Fails to Produce Enough Votes/188:50

Inadequate Agency Fee Notice Given by SEIU Local 1000 for Special Election Assessment/190:53

**AGENCY SHOP**

Fair Share Rescission Election Fails to Produce Enough Votes/188:50

**AMERICANS WITH DISABILITIES ACT (ADA)**

Congress Amends ADA to Expand Protections for Disabled/192:65

En Banc Ninth Circuit Reverses Panel Decision in *Bates v. UPS*/189:92

Supreme Court to Hear Important ADA Accommodation Case/188:64

**ARBITRATION**

Arbitrator’s Disclosure Obligations Not Triggered Until Notified of Selection/189:105

Delaware Enacts Binding Arbitration Law to Resolve School Bargaining Impasses/190:38

Discipline Justified Because Video Captures Grievant’s Failure to Perform Work/190:7

District Must Give Notice Prior to Contract Termination/188:75

District Wrong to Vacate Arbitration Award Reinstating Employee/191:32

DPA Challenges Retirement Retroactivity Arbitration Award on Public Policy Grounds/192:50

FERP Program Participants Cannot Be Assigned Teaching-Only Duties/189:102

Firefighters Seek MMBA Amendment to Protect Local Interest Arbitration/191:26

For What It’s Worth: Myth and Reality of Evidence in Arbitration (Bonnie G. Bogue)/191:13

Legislation Affirms Superior Court Jurisdiction Over Local Interest Arbitration Disputes/193:32

One-Year Limitations Period on FEHA Claim Not Unconscionable Arbitration Provision/192:72

PERB Holds That EERA Preempts City Charter’s Interest Arbitration Provisions/190:30



**ATTORNEY'S FEES**

Sheriffs Association Wins Attorney's Fees in Bill of Rights Case/185:27

**B**

**BAGLEY-KEENE ACT**

Employee's Return From Leave of Absence Is Proper Topic of Closed Session/190:63

**BALLOTS MEASURES**

Charter Amendments, Ordinances, and Impasse Procedures, Oh My! City and County Bargaining Obligations (Alan Hersh)/193:5

School Bonds and Parcel Taxes Pass Overwhelmingly, With a Few Exceptions/193:37

**BENEFITS**

*see* Pay and Benefits

**BUDGET**

Brunt of Threatened Budget Cuts Lands on Teachers/189:42

Governor Slams Schools in His 'Year of Education'/188:28  
Legislative Analyst Proposes Alternative Budget: No Cost-of-Living Adjustments for U.C., CSU Employees/189:53

Legislature Poised to Eliminate Rural Health Care Subsidy for Retirees/191:68

Minimum Wage Order Stalled by Controller, Court Maneuvers/192:43

New Budget Leaves Schools Short/192:26

**C**

**CALIFORNIA FAMILY RIGHTS ACT (CFRA)**

California Supreme Court Limits Employees' CFRA Rights/190:72

Court's Interpretation of CFRA's Request Requirement Favors Employees/192:68

**CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)**

Legislature Considering Post-Employment Benefits Commission Recommendations/190:56

**CERTIFICATION OF BARGAINING UNIT**

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

U.C. Postdocs Form Union, Face University Opposition/192:62

**CHARTERS**

Charter Amendments, Ordinances, and Impasse Procedures, Oh My! City and County Bargaining Obligations (Alan Hersh)/193:5

**CITIES**

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

**CIVIL SERVICE COMMISSIONS AND MERIT SYSTEMS**

SEIU Local 1000 Litigates Layoff of Temporary Employees/192:47

**COLLECTIVE BARGAINING**

Agreement for Compressed Salary Schedule Violates Education Code/191:35

Audit Finds Questionable Union-Leave Side Agreement/190:60

CSU and Staff Union Reach Agreement on Compensation/188:53

Delaware Enacts Binding Arbitration Law to Resolve School Bargaining Impasses/190:38

Five-Year Contract for U.C. and Patient Care Technicians/193:48

Governor Proposes to Legislate Compensation Take-aways/193:53

Study Concludes Most Teacher Agreements Are Ambiguous, Not Rigid/190:28

U.C. and Nurses Reach Tentative Agreement on Wages, Paid Time-Off/189:62

UTLA Declares Impasse in Contract Negotiations With LAUSD/192:28

**COMMUNITY COLLEGES — IN GENERAL**

Proposition 92 Runs Into Heavy Opposition/188:29

**CONTRACTING OUT; PRESERVATION OF UNIT WORK**

Food Service Workers at U.C. Davis to Become University Employees/190:69

Legislature Cannot Mandate That State Engineers Be Used for Highway Projects/193:60  
 SEIU Local 1000 Battles to Keep Information Technology Work In-House/190:50  
 State Is Liable Under FEHA for Sexual Harassment of Registry Employee/189:65

## COUNTIES

Meal Period Provision in County MOU Trumps Labor Code, IWC Wage Orders/192:38  
 Wage, Meal and Rest Provisions of Labor Code Are Not Applicable to Charter County/191:29

## D

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

Governor Proposes to Legislate Compensation Take-aways/193:53

## DISABILITY

*see also* Discrimination — Disability  
 Firefighters  
 Reasonable Accommodation  
 Education Code Payments Are Part of Temporary Disability Benefits/192:30

## DISCIPLINE AND DISCHARGE (JUST CAUSE FOR)

*see also* Layoffs  
 Bill of Rights' Notice Must Include Contemplated Disciplinary Action/189:40  
 County Civil Service Commission Bound by Disciplinary Terms of MOU/188:37  
 Discipline Justified Because Video Captures Grievant's Failure to Perform Work/190:7  
 District Wrong to Vacate Arbitration Award Reinstating Employee/191:32  
 Reckless Driving Supplies 'Just Cause' for 10-Day Suspension/193:66  
 SPB Fights Receiver's Physician Discipline Plan/191:59

## DISCRIMINATION — AGE

*see also* Age Discrimination in Employment Act (ADEA)  
 FEHA Claims Not Time-Barred Where Adverse Actions Continued Within Limitations Period/189:97

U.S. Supreme Court: Admissibility of 'Me Too' Evidence Depends on Facts/189:86  
 U.S. Supreme Court Adopts Liberal EEOC Definition of 'Charge'/189:87

## DISCRIMINATION — DISABILITY

*see also* Americans with Disabilities Act (ADA)  
 Disability  
 Reasonable Accommodation  
 Congress Amends ADA to Expand Protections for Disabled/192:65  
 En Banc Ninth Circuit Reverses Panel Decision in *Bates v. UPS*/189:92  
 No Discrimination Where Symptoms Do Not Constitute Physical Disability/191:80  
 No Inconsistency in Reasonable Accommodation Verdicts/188:67  
 Reasonable Accommodation and Assistance Dogs in the Workplace (Ed Eames)/189:21  
 Supreme Court to Hear Important ADA Accommodation Case/188:64

## DISCRIMINATION — IN GENERAL

*see also* Americans with Disabilities Act  
 Retaliation  
 Sexual Harassment  
 Workers' Compensation  
 Family Responsibility Discrimination and Public Agencies:  
 No Employer Left Behind (Consuela A. Pinto)/190:5  
 Pending Federal Legislation Would Prohibit Sexual Orientation Discrimination/190:76  
 Section 1981 Provides No Private Cause of Action Against States/188:69  
 State Audit Finds CSU's Approach Haphazard When Hiring for Diversity/188:56  
 Stereotypes and Decisionmaking: Reconciling Discrimination Law With Science (Jocelyn D. Larkin)/192:15  
 U.S. Supreme Court Adopts Liberal EEOC Definition of 'Charge'/189:87  
 U.S. Supreme Court to Rule on Scope of Retaliation Under Title VII/190:76

## DISCRIMINATION — RACE

FEHA Claims Not Time-Barred Where Adverse Actions Continued Within Limitations Period/189:97  
 Limitations Period Begins to Run When Employee Learns of Actual Injury/192:70

Ninth Circuit Reverses Itself: Reinstates Race/Sexual Orientation Discrimination Case/192:66  
Section 1981 Provides No Private Cause of Action Against States/188:69  
Two Incidents of Discrimination Insufficient to Establish Civil Rights Violation/189:93

**DISCRIMINATION — RELIGIOUS**

The Collision Between Religiously Motivated Anti-Gay Speech and Employer Harassment Policies (Vicki Laden)/189:5

**DISCRIMINATION — SEX**

Huge Class Certification Upheld in Wal-Mart Sex Discrimination Case/188:61  
State Is Liable Under FEHA for Sexual Harassment of Registry Employee/189:65

**DISCRIMINATION — SEXUAL ORIENTATION**

California Supreme Court Lets Retaliatory Supervisors Off the Hook/189:89  
The Collision Between Religiously Motivated Anti-Gay Speech and Employer Harassment Policies (Vicki Laden)/189:5  
When Firmly Held Religious Beliefs Conflict With the Right to Wedded Bliss (Emily Prescott)/191:5

**DRUG TESTING**

Ninth Circuit: Drug Testing of Library Page Is Impermissible/190:47

**DUE PROCESS**

Chat With HR Director Is Not Due Process Hearing, But No Liability Found/191:28  
Cost-Sharing Provision of MOU Is Unconstitutional/190:44

**E**

**EDUCATION**

Governor Releases Committee Report on Education: No Money to Implement/189:47

**EDUCATION CODE**

Agreement for Compressed Salary Schedule Violates Education Code/191:35  
California Supreme Court to Review Unions' Use of School Mailboxes/188:31  
District May Terminate Substitute Teacher Who Was Not Permanent Employee/189:43  
District Wrong to Vacate Arbitration Award Reinstating Employee/191:32  
Education Code Payments Are Part of Temporary Disability Benefits/192:30  
Legislative Round-Up/193:40  
Legislature Poised to Pass Bills Regarding Teacher Criminal Conduct/191:40

**EDUCATIONAL EMPLOYMENT RELATIONS ACT (EERA)**

CTA Appeals PERB Dismissal of Retaliation Charge/190:25  
PERB Holds That EERA Preempts City Charter's Interest Arbitration Provisions/190:30

**ELECTIONS**

Inadequate Agency Fee Notice Given by SEIU Local 1000 for Special Election Assessment/190:53

**ELEVENTH AMENDMENT**

Government Employee Rights Act Not Effective Against Eleventh Amendment Immunity Claim/188:48

**EMPLOYEE ORGANIZATIONS — FIREFIGHTERS**

**California Department of Forestry Firefighters**  
Legal Setbacks for CDFP in Dispute With Members/189:77  
**International Association of Fire Fighters, Loc. 1186**  
City's Interim Deal With Unions Avoids Bankruptcy — For Now/189:37

**EMPLOYEE ORGANIZATIONS — HIGHER EDUCATION**

**American Federation of State, County and Municipal Employees**  
AFSCME's Service Unit Strikes Despite Court's Restraining Order; Still No Contract/191:42  
**Five-Year Contract for U.C. and Patient Care Technicians/193:48**

Food Service Workers at U.C. Davis to Become University Employees/190:69

PERB Declares Impasse in Talks Between U.C., Hospital Workers Union/188:54

**California Faculty Association**

California's Financial Woes Force Salary Negotiations at CSU/193:45

Parking Case Sent Back to PERB for Full Scope Analysis/189:51

**California Nurses Association**

U.C. and Nurses Reach Tentative Agreement on Wages, Paid Time-Off/189:62

**California State University Employees Union**

California's Financial Woes Force Salary Negotiations at CSU/193:45

CSU and Staff Union Reach Agreement on Compensation/188:53

**Federated University Police Officers Association**

New Contract Gives U.C. Police Salary-Range Increase/193:52

**United Auto Workers**

U.C. Postdocs Form Union, Face University Opposition/192:62

**Union of American Physicians and Dentists**

California's Financial Woes Force Salary Negotiations at CSU/193:45

**University Professional and Technical Employees**

Employee May Abandon Internal Grievance Process to Pursue FEHA Claim/189:56

**EMPLOYEE ORGANIZATIONS — LAW ENFORCEMENT**

**Association for Los Angeles Deputy Sheriffs**

'Anti-Huddling' Policy Is Reasonable Restriction on PSOP-BRA/193:29

**California Statewide Law Enforcement Association**

Audit Finds Questionable Union-Leave Side Agreement/190:60

DPA Challenges Retirement Retroactivity Arbitration Award on Public Policy Grounds/192:50

Minimum Wage Order Stalled by Controller, Court Maneuvers/192:43

Peace Officers File Third Severance Petition/192:53

**Los Angeles Police Protective League**

Implementation of Financial Disclosure Rules Blocked by Ninth Circuit/192:36

**EMPLOYEE ORGANIZATIONS — LOCAL GOVERNMENTS**

**American Federation of State, County and Municipal Employees, Local 146**

PERB Jurisdictional Issue Heads to Supreme Court/192:32

**California Nurses Association**

In *Contra Costa* PERB Jurisdiction Case, Court Reaches Opposite Conclusion to *San Jose*/191:23

**Construction Trades Council**

PERB Jurisdictional Issue Heads to Supreme Court/192:32

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

PERB Jurisdictional Issue Heads to Supreme Court/192:32

**Operating Engineers, Loc. 3**

PERB Jurisdictional Issue Heads to Supreme Court/192:32

PERB Takes First Round in Jurisdictional Dispute With Superior Courts/189:33

**Public Employees Union Local One**

In *Contra Costa* PERB Jurisdiction Case, Court Reaches Opposite Conclusion to *San Jose*/191:23

**Teamsters, Loc. 228**

PERB Jurisdictional Issue Heads to Supreme Court/192:32

**United Public Employees, Loc. 1**

PERB Jurisdictional Issue Heads to Supreme Court/192:32

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

**California School Employees Association**

District Wrong to Vacate Arbitration Award Reinstating Employee/191:32

**California Teachers Association**

CTA Appeals PERB Dismissal of Retaliation Charge/190:25

**International Federation of Professional and Technical Engineers, AFL-CIO, Loc. 21**

PERB Holds That EERA Preempts City Charter's Interest Arbitration Provisions/190:30

**Stockton Teachers Association**

Agreement for Compressed Salary Schedule Violates Education Code/191:35

**United Teachers-Los Angeles**

UTLA Declares Impasse in Contract Negotiations With LAUSD/192:28

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

State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75

**California Association of Highway Patrolmen**

Salary Squeeze for Most State Workers/191:57

**California Association of Professional Scientists**

CAPS Sues to Enforce DPA's 'Like Pay for Like Work' Decision/191:66

DPA Recommends Reinstatement of 'Like Pay' for Supervisory Scientists and Engineers/190:48

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

CASE Loses Legal Challenge to Low Salaries/188:44

**California Correctional Peace Officers Association**

CCPOA Fighting Several Fronts/189:69

PERB Issues Complaint on Implementation of Three-Year Final Offer/188:46

Prison Overcrowding Is Sufficient Emergency to Allow Out-of-State Inmate Transfers/191:53

Salary Squeeze for Most State Workers/191:57

Minimum Wage Order Stalled by Controller, Court Maneuvers/192:43

**California State Employees Association**

Legislature Poised to Eliminate Rural Health Care Subsidy for Retirees/191:68

**Professional Engineers in California Government**

DPA Recommends Reinstatement of 'Like Pay' for Supervisory Scientists and Engineers/190:48

Legislature Cannot Mandate That State Engineers Be Used for Highway Projects/193:60

Salary Squeeze for Most State Workers/191:57

**Service Employees International Union, Loc. 1000**

Inadequate Agency Fee Notice Given by SEIU Local 1000 for Special Election Assessment/190:53

Minimum Wage Order Stalled by Controller, Court Maneuvers/192:43

PERB Rejects Revocation Cards in Severance Election/188:41

Prison Overcrowding Is Sufficient Emergency to Allow Out-of-State Inmate Transfers/191:53

SEIU Local 1000 Battles to Keep Information Technology Work In-House/190:50

SEIU Local 1000 Litigates Layoff of Temporary Employees/192:47

State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75

**Union of American Physicians and Dentists**

New Evaluation Program for Prison Doctors Not Negotiable/191:64

SPB Fights Receiver's Physician Discipline Plan/191:59

State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75

**EMPLOYERS, CALIFORNIA PUBLIC**

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

**California, State of****Department of Corrections and Rehabilitation**

Audit Finds Questionable Union-Leave Side Agreement/190:60

Prison Overcrowding Is Sufficient Emergency to Allow Out-of-State Inmate Transfers/191:53

**Department of Developmental Health**

State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75

**Department of Healthcare Services**

Peace Officer Entitled to Mandatory Reinstatement Need Not Submit to Background Investigation/189:80

**Department of Justice**

Audit Finds Questionable Union-Leave Side Agreement/190:60

**Department of Mental Health**

State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75

**Department of Personnel Administration**

Audit Finds Questionable Union-Leave Side Agreement/190:60

CAPS Sues to Enforce DPA's 'Like Pay for Like Work' Decision/191:66

CCPOA Fighting Several Fronts/189:69

DPA Challenges Retirement Retroactivity Arbitration Award on Public Policy Grounds/192:50

DPA Recommends Reinstatement of 'Like Pay' for Supervisory Scientists and Engineers/190:48

Minimum Wage Order Stalled by Controller, Court Maneuvers/192:43

New Evaluation Program for Prison Doctors Not Negotiable/191:64

Salary Squeeze for Most State Workers/191:57

**Department of Transportation**

Legislature Cannot Mandate That State Engineers Be Used for Highway Projects/193:60

**State Personnel Board**

Does the Whistleblower Protection Act Live Up to Its Name? /193:55

SEIU Local 1000 Battles to Keep Information Technology Work In-House/190:50

SEIU Local 1000 Litigates Layoff of Temporary Employees/192:47

SPB Fights Receiver's Physician Discipline Plan/191:59

SPB Wins Two, Loses One/193:57

Unchallenged SPB Findings Cannot Be Relitigated in Whistleblower Suit/189:72

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

AFSCME's Service Unit Strikes Despite Court's Restraining Order; Still No Contract/191:42

California Supreme Court: No Damages for Whistleblowers If U.C. Acts in Timely Manner/192:56

Constitutional Amendment Would Give U.C. Employees Seat at Pension Table/191:46

Five-Year Contract for U.C. and Patient Care Technicians/193:48

Food Service Workers at U.C. Davis to Become University Employees/190:69

State Senator Yee Introduces Whistleblower Bill in Response to *Miklosy*/192:60

U.C. and Employees to Resume Contributions to UCRP/193:46

U.C. and Nurses Reach Tentative Agreement on Wages, Paid Time-Off/189:62

U.C. Postdocs Form Union, Face University Opposition/192:62

UCOP Hires New President, Presents Plan to Cut Workforce by 25 Percent/190:66

**California State University (CSU)**

California's Financial Woes Force Salary Negotiations at CSU/193:45

CSU and Staff Union Reach Agreement on Compensation/188:53

Parking Case Sent Back to PERB for Full Scope Analysis/189:51

State Audit Finds CSU's Approach Haphazard When Hiring for Diversity/188:56

**Cities****Alameda**

Chat With HR Director Is Not Due Process Hearing, But No Liability Found/191:28

**Berkeley**

Records of Police Review Commission Must Be Kept Confidential/193:32

**Fullerton**

Failure to promote and termination based solely on disability violate FEHA/191:106

**Los Angeles**

Implementation of Financial Disclosure Rules Blocked by Ninth Circuit/192:36

**San Jose**

Begging to Differ: *City of San Jose* Court Clarifies That PERB Has Initial Exclusive Jurisdiction Over Strikes (Margot Rosenberg and Ari Krantz)/190:17

*City of San Jose v. Operating Engineers Local No. 3*: For Essential Services Strikes, PERB Gets the First Bite, But We Haven't Heard the Last Word (Jeffrey Sloan)/189:13

In *Contra Costa* PERB Jurisdiction Case, Court Reaches Opposite Conclusion to *San Jose*/191:23

**Vallejo**

City's Interim Deal With Unions Avoids Bankruptcy — For Now/189:37

**Counties****Contra Costa**

In *Contra Costa* PERB Jurisdiction Case, Court Reaches

**Los Angeles**

'Anti-Huddling' Policy Is Reasonable Restriction on PSOP-BRA/193:29

Benefit Eligibility Demands Six-Month Tenure With County/192:39

County Civil Service Commission Bound by Disciplinary Terms of MOU/188:37

**Orange**

Future Pension Hikes in Orange County Must Win Voter Approval/193:35

Lawsuit Challenging Orange County Retirement Benefits Goes Forward/190:43

**Riverside**

Cost-Sharing Provision of MOU Is Unconstitutional /190:44

**School and Community College Districts****Bonita USD**

District Wrong to Vacate Arbitration Award Reinstating Employee/191:32

**Los Angeles USD**

UTLA Declares Impasse in Contract Negotiations With LAUSD/192:28

**Mt. Diablo USD**

Education Code Payments Are Part of Temporary Disability Benefits/192:30

**San Francisco USD**

PERB Holds That EERA Preempts City Charter's Interest Arbitration Provisions/190:30

SFSUSD Teachers to Receive Raises Thanks to Parcel Tax Passage/191:39

**Stockton USD**

Agreement for Compressed Salary Schedule Violates Education Code/191:35

**Special Districts**

**San Joaquin Regional Transportation District**

District Must Give Notice Prior to Contract Termination/188:75

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)**

Government Employee Rights Act Not Effective Against Eleventh Amendment Immunity Claim/188:48

**EQUAL PAY**

U.S. Senate Republicans Dash Hopes of Overturning *Ledbetter*/190:77

**EQUAL PROTECTION IN EMPLOYMENT**

U.S. Supreme Court Rejects 'Class-of-One' Theory of Equal Protection (Melanie M. Poturica and David A. Urban)/192:5

**EVALUATIONS**

New Evaluation Program for Prison Doctors Not Negotiable/191:64

**EXECUTIVE COMPENSATION**

UCOP Hires New President, Presents Plan to Cut Workforce by 25 Percent/190:66

**EXHAUSTION OF REMEDIES**

*see* Administrative Remedies

**F**

**FACULTY EARLY RETIREMENT PROGRAM**

FERP Program Participants Cannot Be Assigned Teaching-Only Duties/189:102

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

California Supreme Court Holds Equitable Tolling Applies to FEHA/193:63

California Supreme Court Lets Retaliatory Supervisors Off the Hook/189:89

County Retaliated Against Whistleblower, But Supervisor's Comments Not Sexual Harassment/188:65

Employee May Abandon Internal Grievance Process to Pursue FEHA Claim/189:56

FEHA Claims Not Time-Barred Where Adverse Actions Continued Within Limitations Period/189:97

No Discrimination Where Symptoms Do Not Constitute Physical Disability/191:80

No Inconsistency in Reasonable Accommodation Verdicts/188:67

One-Year Limitations Period on FEHA Claim Not Unconscionable Arbitration Provision/192:72

Two Incidents of Discrimination Insufficient to Establish Civil Rights Violation/189:93

When Firmly Held Religious Beliefs Conflict With the Right to Wedded Bliss (Emily Prescott)/191:5

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

**Cases**

Failure to promote and termination based solely on disability violate FEHA/191:106

**FAIR LABOR STANDARDS ACT (FLSA)**

Governor Proposes to Legislate Compensation Takeaways/193:53

**FIREFIGHTERS**

Firefighters Seek MMBA Amendment to Protect Local Interest Arbitration/191:26

Legislation Affirms Superior Court Jurisdiction Over Local Interest Arbitration Disputes/193:32

**FIRST AMENDMENT**

*see* Freedom of Speech

**FITNESS FOR DUTY**

Officer's Unfitness for Duty Established by Administrative Record/188:34

**FREEDOM OF SPEECH**

First Amendment Protects Employee's Speech Where Complaints Are Not Job Related/188:71

Internet Use and Getting 'Dooxed': Regulating Employees' Online Speech (Marion McWilliams and Alison Neufeld)/188:5

Teachers Claim Free Speech Rights Violated/193:44

**G****GAY RIGHTS**

*see* Discrimination — Sexual Orientation

**GOOD FAITH**

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

**GRIEVANCE PROCEDURES**

*see* Arbitration

District Wrong to Vacate Arbitration Award Reinstating Employee/191:32

Employee May Abandon Internal Grievance Process to Pursue FEHA Claim/189:56

U.C. Regents' Untimely Grievance Rejection Permits Employee's Suit for Damages/189:59

**H****HIGHER EDUCATION**

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

Legislative Analyst Proposes Alternative Budget: No Cost-of-Living Adjustments for U.C., CSU Employees/189:53

**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**

SEIU Local 1000 Battles to Keep Information Technology Work In-House/190:50

SPB Wins Two, Loses One/193:57

State Audit Finds CSU's Approach Haphazard When Hiring for Diversity/188:56

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

*see* Fair Labor Standards Act

**I****IMMUNITY**

Government Employee Rights Act Not Effective Against Eleventh Amendment Immunity Claim/188:48

**IMPASSE**

*see also* Arbitration

Strikes and Job Actions

CCPOA Fighting Several Fronts/189:69

Firefighters Seek MMBA Amendment to Protect Local Interest Arbitration/191:26

PERB ALJ Concludes Pre-Impasse Unfair Practice Strikes Are Permissible Under HEERA/191:48

PERB Declares Impasse in Talks Between U.C., Hospital Workers Union/188:54

PERB Issues Complaint on Implementation of Three-Year Final Offer/188:46

**INJUNCTIONS**

*see* Strikes and Job Actions

AFSCME's Service Unit Strikes Despite Court's Restraining Order; Still No Contract/191:42



**INTEREST ARBITRATION**

Firefighters Seek MMBA Amendment to Protect Local Interest Arbitration/191:26

**INTERNAL UNION ACTIVITY**

Legal Setbacks for CDFP in Dispute With Members/189:77

**J-K**

**JOB ACTION**

*see* Strikes and Job Actions

**JUDICIAL REVIEW**

DPA Challenges Retirement Retroactivity Arbitration Award on Public Policy Grounds/192:50

**L**

**LABOR CODE**

A Riddle Wrapped in a Mystery: Application of State Wage and Hour Provisions (Miles Locker)/193:13

Meal Period Provision in County MOU Trumps Labor Code, IWC Wage Orders/192:38

**LAW ENFORCEMENT EMPLOYEES**

*see* Employee Organizations — Law Enforcement

**LAYOFFS**

SEIU Local 1000 Litigates Layoff of Temporary Employees/192:47

UCOP Hires New President, Presents Plan to Cut Workforce by 25 Percent/190:66

**LEGISLATION**

Does the Whistleblower Protection Act Live Up to Its Name? /193:55

Legislation Allows for Bonuses to Science and Math Teachers/190:37

Legislature Considering Post-Employment Benefits Commission Recommendations/190:56

Constitutional Amendment Would Give U.C. Employees Seat at Pension Table/191:46

Majority of New Laws for State Employees Address Retirement/193:57

SPB Wins Two, Loses One/193:57

State Senator Yee Introduces Whistleblower Bill in Response to Miklosy/192:60

**LOCAL GOVERNMENT (IN GENERAL)**

*see* Employers, California Public

— Cities

— Counties

— Transit Districts

**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

**MEAL, REST BREAKS**

Wage, Meal and Rest Provisions of Labor Code Are Not Applicable to Charter County/191:29

**MEDIATION**

*see* Impasse

**MEET AND CONFER**

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

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

*see also* Employee Organizations

— 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'

'Anti-Huddling' Policy Is Reasonable Restriction on PSOP-BRA/193:29

Charter Amendments, Ordinances, and Impasse Procedures, Oh My! City and County Bargaining Obligations (Alan Hersh)/193:5

**N**

**NO CHILD LEFT BEHIND ACT (NCLB)**

Algebra Mandate Exacerbates Teacher Shortage/192:25  
 Legislature Wary of School Performance Bill That Would Weaken Sanctions/191:38

**O**

**OPEN MEETINGS ACT**

*see* Brown Act

**ORGANIZATIONAL SECURITY**

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

**OVERTIME**

*see* Fair Labor Standards Act (FLSA) Pay and Benefits

**P-Q**

**PAST PRACTICE**

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

**PAY AND BENEFITS**

*see also* Retirement and Pensions  
 A Riddle Wrapped in a Mystery: Application of State Wage and Hour Provisions (Miles Locker)/193:13  
 Adult Education Teachers Not Entitled to Overtime Pay/193:42  
 Agreement for Compressed Salary Schedule Violates Education Code/191:35  
 CAPS Sues to Enforce DPA's 'Like Pay for Like Work' Decision/191:66  
 CASE Loses Legal Challenge to Low Salaries/188:44  
 Down and Out: Economists Assess the Teacher Pay Disadvantage (Sylvia A. Allegretto, Sean P. Corcoran and Lawrence Mishel)/188:13

DPA Recommends Reinstatement of 'Like Pay' for Supervisory Scientists and Engineers/190:48  
 Governor Proposes to Legislate Compensation Takeaways/193:53  
 Legislation Allows for Bonuses to Science and Math Teachers/190:37  
 Legislative Analyst Proposes Alternative Budget: No Cost-of-Living Adjustments for U.C., CSU Employees/189:53  
 Minimum Wage Order Stalled by Controller, Court Maneuvers/192:43  
 Salary Squeeze for Most State Workers/191:57  
 SFSUSD Teachers to Receive Raises Thanks to Parcel Tax Passage/191:39  
 State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75

**PEACE OFFICER STANDARDS AND TRAINING (POST)**

Peace Officer Entitled to Mandatory Reinstatement Need Not Submit to Background Investigation/189:80

**PENSIONS**

*see* Retirement and Pensions  
 Constitutional Amendment Would Give U.C. Employees Seat at Pension Table/191:46  
 Future Pension Hikes in Orange County Must Win Voter Approval/193:35

**PITCHESS MOTION**

*Pitchess* Motion Denied in Search and Seizure Case/185:33

**POLICE**

*see* Employee Organizations — Law Enforcement  
 Public Safety Officers Procedural Bill of Rights Act  
 New Contract Gives U.C. Police Salary-Range Increase/193:52

**PRIVACY**

School District Immune From Liability for Secretly Videotaping Teacher's Wedding/188:72

**PROBATIONARY EMPLOYEES**

Peace Officer Entitled to Mandatory Reinstatement Need Not Submit to Background Investigation/189:80

**PROPOSITION 92**

Proposition 92 Runs Into Heavy Opposition/188:29

**PROPOSITION 98**

Governor Slams Schools in His 'Year of Education'/188:28

**PUBLIC EMPLOYEES RETIREMENT SYSTEM (PERS)**

*see* California Public Employees Retirement System (CALPERS)

**PUBLIC EMPLOYMENT RELATIONS BOARD — ADMINISTRATIVE APPEALS RULINGS****MMBA**

Request for oral argument must accompany statement of exceptions (*Brewington v. County of Riverside*) No. Ad-376-M/193:85

**PUBLIC EMPLOYMENT RELATIONS BOARD — DUTY OF FAIR REPRESENTATION RULINGS****Dills Act**

Board agent must ignore revocation cards when determining sufficient support for severance election (*State of California, IT Bargaining Unit 22, and Service Employees International Union, Loc. 1000, CSEA*) No. Ad-367-S/188:90

**EERA**

Charge dismissed as untimely (*Onkvisit v. California Faculty Assn.*) No. 1947/190:95

Employee's self representation defeats DFR claim (*Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO*) No. 1934/188:100

Untimely filed appeal rejected due to lack of 'excusable misinformation' or explanation how illness prevented prompt filing (*Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO*) No. Ad-369/188:102

**HEERA**

Charge dismissed as untimely filed (*Chapman and Druzgalski v. California Faculty Assn.*) No. 1933-H/188:105

Withdrawal of appeal granted (*Woolfolk v. AFSCME, Loc. 3299*) No. 1966-H/192:92

**MMBA**

Charge dismissed as untimely (*Fisher v. Stationary Engineers Loc. 39*) No. 1940-M/189:122

**PUBLIC EMPLOYMENT RELATIONS BOARD — IN GENERAL**

Governor Fills PERB Seat/189:101

Karen Neuwald Talks About PERB (*Carol Vendrillo*)/188:23

More Personnel Changes/189:101

**PUBLIC EMPLOYMENT RELATIONS BOARD — JURISDICTION****MMBA**

Begging to Differ: *City of San Jose* Court Clarifies That PERB Has Initial Exclusive Jurisdiction Over Strikes (*Margot Rosenberg and Ari Krantz*)/190:17

*City of San Jose v. Operating Engineers Local No. 3*: For Essential Services Strikes, PERB Gets the First Bite, But We Haven't Heard the Last Word (*Jeffrey Sloan*)/189:13

In *Contra Costa* PERB Jurisdiction Case, Court Reaches Opposite Conclusion to *San Jose*/191:23

PERB Holds That EERA Preempts City Charter's Interest Arbitration Provisions/190:30

PERB Jurisdictional Issue Heads to Supreme Court/192:32

PERB Takes First Round in Jurisdictional Dispute With Superior Courts/189:33

**PUBLIC EMPLOYMENT RELATIONS BOARD — REPRESENTATION RULINGS**

PERB Rejects Revocation Cards in Severance Election/188:41

**Dills Act**

Withdrawal of appeal of dismissed severance petition granted (*State of California, Peace Officers of California, and California Statewide Law Enforcement Assn.*) No. Ad-371-S/190:90

**EERA**

Lompoc upheld; managerial employees deemed inappropriate for bargaining unit (*Grossmont-Cuyamaca Community College Dist. v. Grossmont-Cuyamaca Community College District Administrators Assn.*) No. 1958/191:88

**Trial Court Acts**

Act permits union to represent management and non-management employees (*Stationary Engineers Loc. 39 v. Tehama County Superior Court*) No. 1957-C/191:99

**PUBLIC EMPLOYMENT RELATIONS BOARD — UNFAIR PRACTICE RULINGS****Dills Act**

Charge dismissed for failure to state prima facie case (*Swan v. State of California [Dept. of Corrections & Rehabilitation]*) No. 1961-S/192:86

- Implementation of new retirement policy did not trigger bargaining obligation (AFSCME Loc. 2620 v. State of California [Dept. of Personnel Administration]) No. 1978-S/73
- No duty to negotiate decision to implement medical improvement program (Union of American Physicians and Dentists v. State of California [Department of Correction and Rehabilitation]) No. 1967-S/190:83
- EERA**
- Arbitrator's award on retaliation not repugnant to EERA (O'Neil v. Santa Ana Unified School Dist.) No. 1951/190:92
- Charge dismissed as untimely, beyond PERB's statutory jurisdiction (Grove v. Los Angeles City and County School Employees Union, Loc. 99) No. 1973/193:77
- Charge dismissed due to lack of dates of violations (United Teachers of Los Angeles v. Los Angeles Unified School Dist.) No. 1929/188:94
- Charge dismissed for failure to show actual impact on work hours (Beverly Hills Education Assn. v. Beverly Hills Unified School Dist.) No. 1969/192:89
- Charges dismissed as untimely and unfounded (Franz v. Sacramento City Teachers Assn.) No. 1959/191:90
- Complaint to issue on DFR claim (Meredith v. SEIU, Loc. 221) No. 1982/193:79
- CTA Appeals PERB Dismissal of Retaliation Charge/190:25
- Delivery of reprimand does not trigger representation rights (Ulmschneider v. Los Banos Unified School Dist.) No. 1935/188:99
- Failure to follow established procedure provides prima facie case of retaliation (Gregory v. Oakland Unified School Dist.) No. 1965/192:88
- Failure to state prima facie case (DePace v. Los Angeles Unified School Dist.) No. 1963/191:87
- Inadvertent filing error excuses late-filed appeal (Kern Community College Dist. v. California School Employees Assn. and Its Chaps. 246, 336, 617) No. Ad-372/191:85
- Insisting on correct interpretation of law is not bad faith bargaining (Berkeley Council of Classified Employees v. Berkeley Unified School Dist.) No. 1954/191:83
- Insufficient facts to show retaliation: (Moberg v. San Mateo County Office of Education) No. 1946/190:91
- Lack of control over terms and conditions of employment precludes joint-employer status (Doherty and O'Neil v. San Jose/Evergreen Community College Dist.) No. 1928/188:91
- Lack of justification for late filing of amended charge (Body v. Compton Unified School Dist.) No. Ad-374, 5-16-08/191:87
- Lack of nexus defeats retaliation charge (Collins v. San Mateo County Community College Dist.) No. 1980/193:78
- Leave to amend charge granted after inadvertent postal error (Gregory v. AFSCME Council 57) No. 1952/191:90
- No duty to bargain over 'contracting out' when rights waived in MOU (Long Beach Community College District Police Officers Assn. v. Long Beach Community College Dist.) No. 1941/189:116
- No duty to reopen bargaining after mutual mistake (Berkeley Federation of Teachers v. Berkeley Unified School Dist.) No. 1976/193:77
- No evidence of surface bargaining (Temple City Educators Assn., CTA/NEA v. Temple City Unified School Dist.) No. 1972/193:75
- PERB Holds That EERA Preempts City Charter's Interest Arbitration Provisions/190:30
- Reconsideration request denied because no prejudicial errors of fact, newly discovered evidence (Mandell v. San Leandro Unified School Dist.) No. 1924a/188:99
- Retaliation allegations dismissed because no nexus between protected activities and adverse actions (Kettenring v. Los Angeles United School Dist.) No. 1930/188:96
- Speech must relate to employees' interests as employees to be protected (California Teachers Assn./NEA v. Journey Charter School) No. 1945/190:90
- Unfair practice charge dismissed as untimely (Schoessler v. Yuba Community College Dist.) No. 1936/189:114
- Unfair practice charge partially dismissed as untimely (California Federation of Interpreters/TNG/CWA v. Santa Cruz County Superior Court) No. 1931/188:98
- Untimely filed appeal dismissed (Katz v. Newport-Mesa Unified School Dist.) No. Ad-373/191:86
- Untimely filing excused due to honest mistake: (Gold v. Los Angeles Unified School Dist.) No. Ad-368/188:90
- HEERA**
- Charge alleging duty of fair representation breach not timely filed (Owens v. American Federation of State, County and Municipal Employees) No. 1974-H/193:80
- Decision to stop staffing instructors is not an unlawful unilateral change if contracting-out was not a factor (California Faculty Assn. v. Trustees of the California State University [San Diego]) No. 1955-H/191:92
- Failure to rehire was retaliation for grievance filing (California State Employees Assn. v. California State University) No. 1970-H/192:90

Implementation of computer use policy is managerial prerogative (California Faculty Assn. v. Trustees of the California State University) No. 1926-H/188:103

Judicial estoppel bars unfair practice charge based on inconsistent position (Academic Professionals of California v. Trustees of the California State University) No. 1949-H/190:93

No showing of good cause for late filing (University Professional and Technical Employees, CWA Loc. 8 v. Regents of the University of California) No. Ad-370-H/190:95

PERB ALJ Concludes Pre-Impasse Unfair Practice Strikes Are Permissible Under HEERA/191:48

PERB decision overturned by Court of Appeal (California Faculty Assn. v. Trustees of California State University) No. 1823a-H/189:118

Request to withdraw appeal granted (Coalition of University Employees v. Regents of the University of California) No. 1981-H/193:80

**MMBA**

Alleged contract violation not unilateral change (Montoya v. City of Long Beach) No. 1977-M/193:84

Appeal of dismissal must state grounds for board review (Neronha v. IBEW Local 1245) No. 1950-M/190:97

Charge dismissed due to insufficient facts (Wilson v. County of Plumas) No. 1938-M/189:119

Charging party's withdrawal granted because his former representative lacked standing to file application for joinder (Mauriello v. Bay Area Air Quality Management Dist.) No. 1927-M/188:107

City retaliated against union president; union failed to bargain in good faith (Torrance Municipal Employees, AFSCME Loc. 1117 v. City of Torrance) No. 1971-M/193:80

Employer discipline in response to unprotected activity is not unfair practice (AFSCME Local 146 v. Carmichael Recreation and Park Dist.) No. 1953-M/191:93

Employer-employee relationship must be substantially affected to sustain charge of improper internal union conduct (Marriott v. SEIU Loc. 1292) No. 1956-M/191:94

Failure to establish new leave policy (SEIU, Loc. 707 v. County of Sonoma) No. 1962-M/191:98

Failure to meet and confer over unilateral classification change found (South Placer Fire Administrative Officers Association v. South Placer Fire Protection Dist.) No. 1960-M/191:96

Insufficient facts to show unilateral change leads to dismissal (Commerce City Employees Assn. v. City of Commerce) No. 1937-M/189:118

Knowledge of conduct, not legal significance, begins limitations period (Orange County Professional Firefighters Assn., IAFF, Loc. 3621 v. Orange County Fire Authority) No. 1968-M/192:93

No reconsideration without board error or newly discovered evidence (Fisher v. Stationary Engineers Loc. 39) No. 1940a-M/190:97

No unilateral change where newly assigned duties were part of position's job description (AFSCME Council 57, Loc. 146 v. Sacramento Housing and Redevelopment Agency) No. 1939-M/189:119

Notice of intent to change policy triggers limitations period (South Placer Fire Administrative Officers Assn. v. South Placer Fire Protection Dist.) No. 1944-M/190:96

Protected activity and adverse action alleged, but not nexus (American Federation of State, County and Municipal Employees, Loc. 2703 v. County of Merced) No. 1975-M/193:83

Reassignment is not unilateral change (IFPTE, Loc. 21, AFL-CIO v. City and County of San Francisco (International Airport) No. 1932-M/188:108

Request for reconsideration denied (AFSCME, Loc. 146 v. Carmichael Recreation & Park Dist.) No. 1953a-M/192:94

Rescission of a policy does not cure unilateral change (Sacramento County Attorneys Assn. v. County of Sacramento; Sacramento County Professional Accountants Assn. v. County of Sacramento) No. 1943-M/189:121

**Trial Court Acts**

Discipline of union president not discrimination based on protected activity (American Federation of State, County and Municipal Employees, Loc. 575 v. Los Angeles County Superior Court) No. 1979-C/193:85

Unilateral change in policy excluded from scope of bargaining (Service Employees International Union, Loc. 535 v. Fresno County Superior Court) No. 1942-C/189:123

## **PUBLIC RECORDS**

Records of Police Review Commission Must Be Kept Confidential/193:32

## **PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ACT (PSOPBRA)**

'Anti-Huddling' Policy Is Reasonable Restriction on PSOPBRA/193:29

Bill of Rights' Notice Must Include Contemplated Disciplinary Action Public Schools/189:40

Bill of Rights Protections Do Not Apply to Criminal Investigations/188:33  
 High Court Defines PSOPBRA Notice Requirement/190:40  
 Records of Police Review Commission Must Be Kept Confidential/193:32

### **PUBLIC SCHOOLS — GENERAL**

Algebra Mandate Exacerbates Teacher Shortage/192:25  
 Brunt of Threatened Budget Cuts Lands on Teachers/189:42  
 California Supreme Court to Review Unions' Use of School Mailboxes/188:31  
 Collaboration, Communication and Core Values Versus Contradiction, Cacophony and Chaos (Gregory Dannis)/189:27  
 Delaware Enacts Binding Arbitration Law to Resolve School Bargaining Impasses/190:38  
 Down and Out: Economists Assess the Teacher Pay Disadvantage (Sylvia A. Allegretto, Sean P. Corcoran and Lawrence Mishel)/188:13  
 Education Budget Unsettled — How Low Will It Go? /193:38  
 Governor Announces Plan to Reform Low-Performing School Districts/188:32  
 Governor Releases Committee Report on Education: No Money to Implement/189:47  
 Governor Slams Schools in His 'Year of Education'/188:28  
 Legislative Round-Up/193:40  
 New Budget Leaves Schools Short/192:26  
 School Bonds and Parcel Taxes Pass Overwhelmingly, With a Few Exceptions/193:37  
 School District Immune From Liability for Secretly Videotaping Teacher's Wedding/188:72  
 Signs of Progress in Schools in Spite of Big Challenges/189:49  
 Study Concludes Most Teacher Agreements Are Ambiguous, Not Rigid/190:28

## **R**

### **REASONABLE ACCOMMODATION**

*see also* Americans with Disabilities Act  
 Discrimination — Disability  
 No Inconsistency in Reasonable Accommodation Verdicts/188:67

Supreme Court to Hear Important ADA Accommodation Case/188:64

### **RECOGNITION**

*see* Representation Elections, Recognition and Decertification Procedures

### **RELEASED TIME**

Audit Finds Questionable Union-Leave Side Agreement/190:60

### **RELIGIOUS ACCOMMODATION**

When Firmly Held Religious Beliefs Conflict With the Right to Wedded Bliss (Emily Prescott)/191:5

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

*see also* Public Employment Relations Board — Representation Rulings  
 PERB Rejects Revocation Cards in Severance Election/188:41  
 PERB's Revocation Card Decisions Analyzed in Context of Card Check Debate/189:100  
 Peace Officers File Third Severance Petition/192:53

### **REPRISALS FOR PROTECTED ACTIVITY**

CTA Appeals PERB Dismissal of Retaliation Charge/190:25

### **RETALIATION**

California Supreme Court Lets Retaliatory Supervisors Off the Hook/189:89  
 County Retaliated Against Whistleblower, But Supervisor's Comments Not Sexual Harassment/188:65  
 CTA Appeals PERB Dismissal of Retaliation Charge/190:25  
 United States Supreme Court Expands Protection Against Retaliation/191:70  
 U.S. Supreme Court to Rule on Scope of Retaliation Under Title VII/190:76

### **RETIREMENT AND PENSIONS**

*see also* California Public Employees Retirement System (CalPERS)  
 DPA Challenges Retirement Retroactivity Arbitration Award on Public Policy Grounds/192:50

Lawsuit Challenging Orange County Retirement Benefits Goes Forward/190:43  
 Legislature Considering Post-Employment Benefits Commission Recommendations/190:56  
 Legislature Poised to Eliminate Rural Health Care Subsidy for Retirees/191:68  
 Majority of New Laws for State Employees Address Retirement/193:57  
 San Francisco Voters Enact Deferred Retirement Option/189:39  
 State Medical Employees Enjoy Ripple Effect From Prison Raises/189:75  
 U.C. and Employees to Resume Contributions to UCRP/193:46

**S**

**SAFETY SERVICES EMPLOYEES**

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

**SCOPE OF BARGAINING**

Internet Use and Getting ‘Dooed’: Regulating Employees’ Online Speech (Marion McWilliams and Alison Neufeld)/188:5  
 New Evaluation Program for Prison Doctors Not Negotiable/191:64

**SCOPE OF REPRESENTATION**

Parking Case Sent Back to PERB for Full Scope Analysis/189:51

**SECTION 1981**

Limitations Period Begins to Run When Employee Learns of Actual Injury/192:70  
 Ninth Circuit Reverses Itself: Reinstates Race/Sexual Orientation Discrimination Case/192:66  
 Section 1981 Provides No Private Cause of Action Against States/188:69  
 Two Incidents of Discrimination Insufficient to Establish Civil Rights Violation/189:93  
 United States Supreme Court Expands Protection Against Retaliation/191:70

**SEX DISCRIMINATION**

*see* Discrimination — Sex

**SEXUAL HARASSMENT**

*see also* Discrimination — Sex  
 California Supreme Court Lets Retaliatory Supervisors Off the Hook/189:89  
 County Retaliated Against Whistleblower, But Supervisor’s Comments Not Sexual Harassment/188:65  
 State Is Liable Under FEHA for Sexual Harassment of Registry Employee/189:65

**SICK LEAVE**

*see* California Family Rights Act (CFRA)  
 Pay and Benefits

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

*see* Dills Act

**STATUTE OF LIMITATIONS**

FEHA Claims Not Time-Barred Where Adverse Actions Continued Within Limitations Period/189:97  
 Limitations Period Begins to Run When Employee Learns of Actual Injury/192:70  
 One-Year Limitations Period on FEHA Claim Not Unconscionable Arbitration Provision/192:72

**STRIKES AND JOB ACTIONS**

AFSCME’s Service Unit Strikes Despite Court’s Restraining Order; Still No Contract/191:42  
 Begging to Differ: *City of San Jose* Court Clarifies That PERB Has Initial Exclusive Jurisdiction Over Strikes (Margot Rosenberg and Ari Krantz)/190:17  
*City of San Jose v. Operating Engineers Local No. 3*: For Essential Services Strikes, PERB Gets the First Bite, But We Haven’t Heard the Last Word (Jeffrey Sloan)/189:13  
 In *Contra Costa* PERB Jurisdiction Case, Court Reaches Opposite Conclusion to *San Jose*/191:23  
 PERB ALJ Concludes Pre-Impasse Unfair Practice Strikes Are Permissible Under HEERA/191:48  
 PERB Takes First Round in Jurisdictional Dispute With Superior Courts/189:33

**SUBCONTRACTING**

*see* Contracting Out; Preservation of Unit Work

**SUPERVISORY AND MANAGERIAL EMPLOYEES**

DPA Recommends Reinstatement of ‘Like Pay’ for Supervisory Scientists and Engineers/190:48  
 Salary Squeeze for Most State Workers/191:57

**T****TEACHERS**

*See also* Employee Organizations — Public School and Community College  
Employers, California Public — School and Community College Districts  
Public Schools — General

Adult Education Teachers Not Entitled to Overtime Pay/193:42

Agreement for Compressed Salary Schedule Violates Education Code/191:35

Algebra Mandate Exacerbates Teacher Shortage/192:25

Brunt of Threatened Budget Cuts Lands on Teachers/189:42

California Supreme Court to Review Unions' Use of School Mailboxes/188:31

CTA Appeals PERB Dismissal of Retaliation Charge/190:25

Delaware Enacts Binding Arbitration Law to Resolve School Bargaining Impasses/190:38

District May Terminate Substitute Teacher Who Was Not Permanent Employee/189:43

Legislation Allows for Bonuses to Science and Math Teachers/190:37

Legislative Round-Up/193:40

Legislature Poised to Pass Bills Regarding Teacher Criminal Conduct/191:40

SFSUSD Teachers to Receive Raises Thanks to Parcel Tax Passage/191:39

Study Concludes Most Teacher Agreements Are Ambiguous, Not Rigid/190:28

Teachers Claim Free Speech Rights Violated/193:44

**TEMPORARY EMPLOYEES**

SEIU Local 1000 Litigates Layoff of Temporary Employees/192:47

**TERMINATION**

*See also* Discipline and Discharge  
Due Process

District May Terminate Substitute Teacher Who Was Not Permanent Employee/189:43

**TITLE VII**

Huge Class Certification Upheld in Wal-Mart Sex Discrimination Case/188:61

U.S. Supreme Court to Rule on Scope of Retaliation Under Title VII/190:76

**TRANSFERS**

*see* Discipline and Discharge

**TRIAL COURT EMPLOYEES**

*see* Court Employees

**TRIAL COURT EMPLOYMENT PROTECTION AND GOVERNANCE ACT**

PERB Establishes Fundamental Principles Under Trial Court Act/189:83

**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

Parking Case Sent Back to PERB for Full Scope Analysis/189:51

**UNIFORMS**

A Riddle Wrapped in a Mystery: Application of State Wage and Hour Provisions (Miles Locker)/193:13

**UNILATERAL ACTION**

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

**UNION MEMBERSHIP**

DOL Statistics Show First Increase in Union Membership Since 1983/189:98

**UNION SECURITY**

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

**UNIONS**

California Supreme Court to Review Unions' Use of School Mailboxes/188:31

Study Concludes Most Teacher Agreements Are Ambiguous, Not Rigid/190:28



**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

**WORKERS' COMPENSATION**

Education Code Payments Are Part of Temporary Disability Benefits/192:30  
Workers' Compensation Is Exclusive Remedy for Injury in State-Owned Residence/188:51

**V**

**VACATION, ANNUAL LEAVE**

*see* Pay and Benefits

**W-Z**

**WAGES AND BENEFITS**

*see* Pay and Benefits  
Benefit Eligibility Demands Six-Month Tenure With County/192:39  
Benefits Extended to Military Personnel and Their Families/189:99  
California's Financial Woes Force Salary Negotiations at CSU/193:45  
New Contract Gives U.C. Police Salary-Range Increase/193:52

**WHISTLEBLOWERS**

California Supreme Court: No Damages for Whistleblowers If U.C. Acts in Timely Manner/192:56  
County Retaliated Against Whistleblower, But Supervisor's Comments Not Sexual Harassment/188:65  
Does the Whistleblower Protection Act Live Up to Its Name? /193:55  
State Senator Yee Introduces Whistleblower Bill in Response to *Miklosy*/192:60  
U.C. Regents' Untimely Grievance Rejection Permits Employee's Suit for Damages/189:59  
Unchallenged SPB Findings Cannot Be Relitigated in Whistleblower Suit/189:72

## PART II

## TABLE OF CASES

## A

**Adair v. Stockton Unified School Dist.**

A collective bargaining agreement between a school district and the teachers union, implementing a new salary schedule that would have allowed teachers to obtain merit increases more quickly, violates Education Code Sec. 45028. The new salary schedule did not comport with the statute's uniformity requirement.

(2008) 162 Cal.App.4th 1436/191:35

**Admadi-Kashani v. Regents of the University of California et al.**

Because the plaintiff could have bypassed the administrative proceeding altogether and had not obtained a quasi-judicial decision on her grievance, she could abandon her grievance and was not required to seek judicial review of any adverse administrative decision.

(2008) 159 Cal.App.4th 449/189:56

**AFSCME Local 146 et al.**

*see* **County of Sacramento v. AFSCME Local 146 et al.**

**Antelope Valley Community College Dist.**

*see* **McDonald v. Antelope Valley Community College Dist.**

**Arteaga v. Brink's, Inc.**

The court denied an employee's claim of disability discrimination, finding his infirmities did not constitute a physical disability under the Fair Employment and Housing Act. The employer had a legitimate, nondiscriminatory reason for terminating him.

(2008) 163 Cal.App.4th 327/191:80

**Association for Los Angeles Deputy Sheriffs v. County of Los Angeles**

A policy prohibiting Los Angeles deputy sheriffs from consulting with an attorney in a group before being interviewed about an officer-involved shooting does not conflict with the Public Safety Officers Procedural Bill of Rights Act, the Meyers-Milias-Brown Act, or protections conveyed by the state or federal constitutions.

(9-24-08; modified 10-6-08) B197611 (2d Dist.) 166 Cal.App.4th 1625/193:29

**Avila v. Continental Airlines, Inc.**

An employee's submission of medical excuse forms to his employer is sufficient to constitute a request for leave under California's Family Rights Act.

(2008) 165 Cal.App.4th 1237/192:68

**Bates v. United Parcel Service, Inc.**

United Parcel Service cannot be prohibited from categorically excluding from employment applicants for the position of "package-car driver" who cannot pass a Department of Transportation hearing test. At a new trial, UPS will prevail if it can show that the qualification standard is job-related and consistent with business necessity, and that performance of the position cannot be accomplished with reasonable accommodation.

(9th Cir. 2007) 511 F.3d 974/189:92

**Berkeley Police Assn. v. City of Berkeley**

The city must maintain the confidentiality of records compiled by its police review commission charged with investigating citizen complaints. An evidentiary hearing must be closed to the public even if the commission itself has no power to discipline officers. Officers who are subjected to an investigation by the commission are

entitled to all rights and protections extended by the Public Safety Officers Procedural Bill of Rights Act.

(2008) 167 Cal.App.4th 385/193:32

**Board of Trustees of California State University**

*see* **Travis v. Board of Trustees of California State University**

**Bonita Unified School Dist.**

*see* **California School Employees Assn. v. Bonita Unified School Dist.**

**Bradley v. California Department of Corrections and Rehabilitation**

A social worker hired by the California Department of Corrections and Rehabilitation under a contract with National Medical Registry was an employee for purposes of sexual harassment protection under the Fair Employment and Housing Act. Although most of the harassment took place away from work, the court upheld the jury's verdict that a hostile work environment existed. The department's bureaucratic investigation process did not constitute adequate remedial action under the act.

(2008) 158 Cal.App.4th 1612/189:65

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

The university's failure to reach a decision on the employee's internal complaints within the established time limit permits the employee to file suit for damages.

(2008) 159 Cal.App.4th 1349/189:59

**Brink's, Inc.**

*see* **Arteaga v. Brink's, Inc.**

**California Correctional Peace Officers Assn. v. Schwarzenegger**

Nearly 3,900 prisoners legally can be housed in private prisons in other states, despite constitutional limitations on contracting out state services. Because sufficient numbers of guards are not available and prison overcrowding is an "urgent, temporary" situation, exceptions to civil service law that prohibits contracting out of public employee jobs were met.

(2008) 163 Cal.App.4th 802/191:53

**California Department of Corrections and Rehabilitation**

*see* **Bradley v. California Department of Corrections and Rehabilitation**

**California Department of Transportation**

*see* **Consulting Engineers and Land Surveyors of California v. California Department of Transportation**

**California Faculty Assn. v. Public Employment Relations Board**

The terms and conditions on which the university provides its employees with parking — including location — do involve the employment relationship between the university and its employees. PERB's decision to the contrary was "clearly erroneous" and was sent back to the board to apply the remaining parts of the scope test, and then decide whether the university's action was a unilateral change.

(2008) 160 Cal.App.4th 609/189:53

**California Nurses Association**

*see* **County of Contra Costa v. Public Employees Union Local One; County of Contra Costa v. California Nurses Assn.**

**California Public Employees' Retirement System v. Superior Court of Sacramento Co.**

The State Personnel Board's findings on a whistleblower claim are binding in a later lawsuit unless overturned by a writ of mandate, even though the whistleblower statute does not say so. Although overturning administrative findings is not a prerequisite to filing a lawsuit, findings that are not vacated are binding in a later court action.

(2008) 160 Cal.App.4th 174/189:72

**California School Employees Assn. v. Bonita Unified School Dist.**

A school district's governing board erred when it vacated an arbitration award reinstating a classified employee. The board violated the terms of the collective bargaining agreement and Education Code Sec. 45113(e).

(2008) 163 Cal.App.4th 387/191:32

**CBOCS West, Inc. v. Humphries**

A civil rights law enacted shortly after the Civil War, 42 USC Sec. 1981, encompasses retaliation claims.  
(2008) 553 U.S.\_\_\_\_, 128 S.Ct. 1951/191:70

**CDF Firefighters v. Maldonado**

The union's contract claim for unpaid fines failed to prove the reasonableness of the fines it levied against the two members. In an unpublished section of the opinion, the court held the union members were not required to exhaust internal union remedies since such an effort would have been futile.  
(2008) 158 Cal.App.4th 1226/189:77

**City of Alameda**

*see* **Levine v. City of Alameda; Levine v. Flint**

**City of Berkeley**

*see* **Berkeley Police Assn. v. City of Berkeley**

**City of San Jose v. Operating Engineers Local Union 3**

The Public Employment Relations Board, and not the superior court, has exclusive jurisdiction over "essential" strikes by local government employees. PERB has the authority to seek injunctive relief on behalf of public agencies when they face a strike by their employees. The agency cannot proceed on its own to the local superior court to seek an injunction.  
(2008) 160 Cal.App.4th 951/189:13, 190:17

**City of Los Angeles**

*see* **Mays v. City of Los Angeles**  
**Quihuis v. City of Los Angeles**

**City of Woodburn**

*see* **Lanier v. City of Woodburn**

**Consulting Engineers and Land Surveyors of California v. California Department of Transportation**

The legislature cannot require a California agency to use state civil service engineers and architects on public works projects. Under Prop. 35, the California Department of Transportation and other governmental entities must be free to decide whether to use state employees or to contract with private firms for architectural and engineering services.  
(2008) 167 Cal.App.4th 1453/193:60

**Continental Airlines, Inc.**

*see* **Avila v. Continental Airlines, Inc.**

**County of Alameda**

*see* **Curcini v. County of Alameda**

**County of Contra Costa v. Public Employees Union Local One; County of Contra Costa v. California Nurses Assn.**

Contrary to the recent ruling of the Sixth District Court of Appeal in *City of San Jose v. Operating Engineers Local Union No. 3* (2008) 160 Cal.App.4th 951, 191 CPER 23, the Public Employment Relations Board does not have exclusive jurisdiction to determine whether certain "essential employees" may be prevented from participating in a strike.  
(2008) 163 Cal.App.4th 139/191:23

**County of Los Angeles**

*see* **Association for Los Angeles Deputy Sheriffs v. County of Los Angeles**  
**Dimon v. County of Los Angeles**  
**Hammond v. County of Los Angeles**

**County of Orange et al.**

*see* **Mokler v. County of Orange et al.**

**County of Riverside**

*see* **Soto v. County of Riverside**

**County of Sacramento v. AFSCME Local 146 et al.**

PERB has exclusive jurisdiction over strike activity arising under the Meyers-Milias-Brown Act.  
(2008) 165 Cal.App.4th 401/192:32

**County of Sonoma**

*see* **Valencia v. County of Sonoma**

**County of Ventura**

*see* **Van Winkle v. County of Ventura**

**County of Yuba**

*see* **Sager v. County of Yuba**

**Crawford v. Metropolitan Government of Nashville and Davidson County**

The United States Supreme Court has agreed to review

a federal appeals court decision that raises the following question: Whether, or to what extent, the anti-retaliation provision of Title VII of the 1964 Civil Rights Act protects an employee from dismissal because she cooperated with her employer's internal investigation of sexual harassment?

(1-18-08, cert. granted) No. 06-1595/190:76

### **Curcini v. County of Alameda**

Provisions of the state Labor Code that set overtime pay and minimum wages and impose mandatory meal periods and rest breaks do not apply to Alameda County because it is a charter county. These entitlements involve employee compensation and, under the California Constitution, a charter county has the exclusive right to provide for the number, compensation, tenure, and appointment of employees. Under the home rule doctrine, matters of compensation are of a local rather than a statewide concern and fall within the county's exclusive constitutional purview.

(6-5-08; certified for publication 7-1-08) 164 Cal. App.4th 629/191:29

### **Dimon v. County of Los Angeles**

The California Constitution extends to charter counties the authority to set compensation for its employees. Thus, a charter county like Los Angeles can determine wages as a matter of local concern. When a county adopts a charter that includes the right to set wages, the local rule trumps conflicting state laws. Here, provisions in the county's memorandum of understanding with the union representing its probation officers that addresses meal periods takes precedence over any contrary statutory provisions.

(2008) 166 Cal.App.4th 1276/192:38

### **Dobos v. Voluntary Plan Administrators**

Under the terms of the Los Angeles County Code, an employee must work through the six-month qualifying period before she is eligible for long-term disability benefits under the county's plan.

(2008) 166 Cal.App.4th 678/192:39

### **Dukes v. Walmart, Inc.**

The court upheld a district court's class certification of a nationwide group of women who claim Wal-Mart

discriminated against them because of their sex in violation of Title VII of the Civil Rights Act of 1964.

(9th Cir. 2007) 509 F.3d. 1168/188:61

### **Equal Employment Opportunity Commission**

*see* **Kentucky Retirement Systems v. Equal Employment Opportunity Commission**  
**State of Alaska v. Equal Employment Opportunity Commission**

### **Federal Express Corp. v. Holowecki**

The court adopted the Equal Employment Opportunity Commission's liberal interpretation of the term "charge" under the Age Discrimination in Employment Act.

(2008) 128 U.S. 1147/189:87

### **Fresno County Superior Court**

*see* **Service Employees International Union, Loc. 535 v. Fresno County Superior Court**

### **Gomez-Perez v. Potter**

The federal-sector provision of the Age Discrimination in Employment Act, Sec. 633a(a), prohibits retaliation.

(2008) \_\_\_ U.S. \_\_\_, 128 S.Ct. 1931/191:70

### **Hammond v. County of Los Angeles**

In a claim of age and race discrimination and of retaliation in violation of California's Fair Employment and Housing Act, evidence demonstrates that the plaintiff experienced adverse employment activity that began outside the limitations period but continued within it.

(2008) 159 Cal.App.4th 1430/189:96

### **Happy Valley Union School Dist.**

*see* **Vasquez v. Happy Valley Union School Dist.**

### **Holowecki**

*see* **Federal Express Corp. v. Holowecki**

### **Hulings v. State Department of Health Care Services**

A permanent state peace officer rejected from probation in a new position is not subject to another background investigation before exercising his right to mandatory reinstatement to his former position. The court found unlawful a practice of the Peace Officer Standards

and Training Commission that required background investigations of employees mandatorily reinstated to a state peace officer position.  
(2008) 159 Cal.App.4th 1114/189:80

### **Humphries**

*see* **CBOCS West, Inc. v. Humphries**

### **In re Marriage Cases**

State statutes precluding same-sex marriage violate the California Constitution. Limiting same-sex couples to domestic partnerships impinged on their right to marry. This statutory scheme violated same-sex couples' privacy and due process rights to marriage, and the guarantee of equal protection under the Constitution. The state could neither demonstrate a compelling interest in maintaining this dichotomy, nor show that limiting marriage to heterosexual couples was necessary to preserve the institution of marriage.  
(2008) 43 Cal.4th 757/191:5

### **Jaks Pacific, Inc. v. Superior Court of Los Angeles**

An arbitrator's required disclosures must be made when the arbitrator is notified in writing that he has been selected by the parties or appointed by the court, not when the names of a group of potential arbitrators are given to the parties for their consideration.  
(2008) 160 Cal.App.4th 596/189:105

### **Johnson v. Riverside Health Care System**

Reversing parts of its earlier decision in *Johnson v. Riverside Health Care Systems* (9th Cir. 2008) 189 CPER 93, the court found that the plaintiff had alleged sufficient facts to state the elements of a hostile work environment claim because of race in violation of 42 USC Sec. 1981. It again upheld the lower court's dismissal of allegations of racial and sexual orientation discrimination in violation of California's Unruh Civil Rights Act and the Fair Employment and Housing Act.  
(9th Cir. 2008) 534 F.3d 1116/192:66

### **Jones v. Lodge at Torrey Pines Partnership**

An individual cannot be held liable for retaliation under California's Fair Employment and Housing Act. The majority relied on the analysis used by the court in *Reno v. Baird* (1998) 18 Cal.4th 640, 131 CPER 62, where it

held that non-employer individuals are not personally liable for discrimination under the FEHA.

(2008) 42 Cal.4th 1158/189:89

### **Kentucky Retirement Systems v. Equal Employment Opportunity Commission**

A Kentucky state retirement plan covering "hazardous position" employees does not discriminate against older workers in violation of the Age Discrimination in Employment Act, even though older workers are disproportionately impacted by its rules.

(2008) \_\_\_ U.S. \_\_\_, 128 S.Ct. 2361/191:77

### **Kettenring v. Los Angeles Unified School Dist.**

Adult education teachers are not entitled to pay for time spent outside the classroom. They fall within the professional exemption to an Industrial Welfare Commission wage order and the salary structure under which the district's teachers were paid does not violate the California Education Code.

(2008) 167 Cal.App.4th 507/193:42

### **Knolls Atomic Power Laboratory**

*see* **Meacham v. Knolls Atomic Power Laboratory**

### **Knox v. Westly**

A union's special dues assessment required specific advance notice to agency fee payers and an opportunity for them to object to paying the non-chargeable portion of the assessment. The union failed to adequately notify fee payers of the nature of the forthcoming expenditures. Collection of the assessment without a constitutionally adequate notice and opportunity to object violated fee payers' constitutional rights

(3-28-08) 2:05-cv-02198-MCE-KJM, 2008 WL 850128/190:53

### **Lanier v. City of Woodburn**

A city's drug testing policy that required a library page to submit to a pre-employment drug and alcohol test was unconstitutional. While the court did not rule out that the policy could never be constitutionally applied to any city position, as applied to the applicant for a part-time library page position, it was an impermissible suspicionless search.

(9th Cir. 2008) 518 F.3d 1147/190:47

**Levine v. City of Alameda; Levine v. Flint**

A civil service employee was not afforded appropriate due process rights when he was not allowed a pre-termination hearing before being laid off. The court ordered an evidentiary hearing before an impartial decisionmaker. However, the court found no liability — and thus no right to damages — on the part of the city or the city manager.

(9th Cir. 2008) 525 F.3d 903/191:28

**Lodge at Torrey Pines Partnership**

*see* **Jones v. Lodge at Torrey Pines Partnership**

**Lonicki v. Sutter Health Central**

Employers are not required to have a health care provider chosen by the parties determine an employee's entitlement to medical leave prior to discharging the employee. The fact that, during a period of medical leave, an employee continued to perform a similar job for another employer does not conclusively establish the employee's ability to do the job for the original employer.

(2008) 43 Cal.4th 201/190:72

**Los Angeles Unified School Dist.**

*see* **Kettenring v. Los Angeles Unified School Dist.**

**Lukovsky v. City and County of San Francisco**

The time for filing a complaint alleging employment discrimination in violation of a federal civil rights statute begins to run when the employee knows or has reason to know of the injury that is the basis of the action, not when he or she learns that the action may be illegal.

(9th Cir. 2008) 535 F.3d. 1044/192:70

**Maldonado**

*see* **CDF Firefighters v. Maldonado**

**Marable v. Nitchman**

A Washington State public employee was protected by First Amendment free speech guarantees because the corrupt practices he reported were not related to his job duties and had all the hallmarks normally associated with constitutionally protected speech.

(2007) 511 F.3d 924/188:71

**Mays v. City of Los Angeles**

The Public Safety Officers Procedural Bill of Rights Act requires a law enforcement agency to inform a public safety officer of its proposed disciplinary action within one year of the discovery of the alleged misconduct. The Supreme Court clarified that notice advising the officer that misconduct charges would be "adjudicated by a Board of Rights" is sufficient. Contrary to an earlier case interpreting the language of Gov. Code Sec. 3304(d), the court announced that the notice need not inform the officer of the specific punishment or discipline contemplated. It is sufficient that the notice inform the officer that disciplinary action *may* be taken after an investigation into the alleged misconduct.

(9th Cir. 2008) 43 Cal.4th 313/190:40

**McDonald v. Antelope Valley Community College Dist.**

The doctrine of equitable tolling applies to the one-year statutory time limit for filing administrative complaints of discrimination under California's Fair Employment and Housing Act. The time for filing a claim with the Department of Fair Employment and Housing can, in the proper circumstance, stop running while the complainant pursues internal remedies with her employer.

(2008) 45 Cal.4th 88/193:63

**Meacham v. Knolls Atomic Power Laboratory**

Employers have the burden of proving that layoffs which disproportionately impact older employees were based on reasonable factors other than age. An employer who claims the reasonable-factors-other-than-age defense must not only produce evidence raising the defense, but also persuade the factfinder of its merit.

(2008) \_\_\_ U.S. \_\_\_, 128 S.Ct. 1764/191:74

**Mendelsohn**

*see* **Sprint/United Management Co. v. Mendelsohn**

**Metropolitan Government of Nashville and Davidson County**

*see* **Crawford v. Metropolitan Government of Nashville and Davidson County**

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

Section 8547.10(c) of the California Whistleblower

Protection Act states, “any action for damages shall not be available...unless the injured party has first filed a complaint with the (designated) university officer..., and the university has failed to reach a decision regarding that complaint within the time limits established for that purpose by the regents.” Based on that language, the court denied damages to two university employees who were terminated shortly after they expressed concerns about problems at the Lawrence Livermore National Laboratory.

(2008) 41 Cal.4th 876/192:56

**Mokler v. County of Orange et al.**

The executive director of the county’s Office on Aging was discharged for whistleblowing. However, the court did not find that the supervisor sexually harassed the executive director, because his conduct was not sufficiently severe or pervasive to create an abusive work environment.

(2007) 157 Cal.App.4th 121/188:64

**Mt. Diablo Unified School Dist. v. Workers’ Compensation Appeals Bd**

Payments to an injured employee by a school district under Education Code Sec. 44043 are, in part, temporary disability benefits under workers’ compensation laws. Therefore, the two-year time limit for receipt of workers’ compensation benefits begins to run when the teacher receives the first Sec. 44043 payment, which augments workers’ compensation benefits with accrued leave.

(2008) 165 Cal.App.4th 1164/192:30

**Nitchman**

*see* **Marable v. Nitchman**

**Operating Engineers Local Union 3**

*see* **City of San Jose v. Operating Engineers Local Union 3**

**Pearson Dental Supplies v. Superior Court of Los Angeles; Turcios, RPI**

A mandatory arbitration agreement that includes a one-year statute of limitations provision did not unreasonably restrict the employee’s ability to vindicate his rights under the Fair Employment and Housing Act. The Court

of Appeal declined to vacate the arbitrator’s award which found that the employee had failed to timely submit his FEHA claim to arbitration.

(2008) 166 Cal.App.4th 71/192:72

**Pittman v. State of Oregon**

The court dismissed a race discrimination case brought against the Employment Department of the State of Oregon, finding that 42 USC Sec. 1981 does not provide for a cause of action against states by a private party.

(9th Cir. 2007) 509 F.3d 1065/188:69

**Plata v. Schwarzenegger**

Changes to the existing system of physician peer review within the California Department of Corrections and Rehabilitation are constitutionally required, and the majority of the changes proposed by the Receiver should be adopted as unopposed. Also, the State Personnel Board must review the medical findings of physician peer review panels under the “substantial evidence” standard, rather than the “great weight” standard proposed by the SPB, and implementing a “substantial evidence” standard of review does not violate the California Constitution.

(N.D.Cal. 2008) 556 F.Supp.2d 1087/191:59

**Potter**

*see* **Gomez-Perez v. Potter**

**Public Employees Union Local One; County of Contra Costa v. California Nurses Assn.**

*see* **County of Contra Costa v. Public Employees Union Local One; County of Contra Costa v. California Nurses Assn.**

**Public Employment Relations Board**

*see* **California Faculty Assn. v. Public Employment Relations Board**

**Quihuis v. City of Los Angeles**

Under the Public Safety Officers Procedural Bill of Rights Act, when a public agency determines that discipline will be taken against a police officer, it must complete its investigation and notify the officer of its proposed disciplinary action within one year. Therefore, the personnel complaint issued by the



agency must provide notice of the disciplinary action it is proposing. Informing the officer of the city's power to recommend termination does not satisfy the statute's notice requirement.

(2008) 159 Cal.App.4th 443; modified 2-26-082008 DJDAR 2803/189:40

#### **Regents of the University of California**

*see* **Ahmadi-Kashani v. Regents of the University of California**  
**Brand v. Regents of the University of California**  
**Miklosy v. Regents of the University of California**

#### **Richardson-Tunnell v. School Insurance Program for Employees**

The court immunized a school district from liability for secretly videotaping a teacher's wedding reception and honeymoon while investigating the authenticity of her workers' compensation claim. The teacher's claims were barred by governmental investigatory immunity conveyed by Government Code Sec. 821.6.

(2007) 157 Cal.App.4th 1056/188:73

#### **Riverside Health Care System**

*see* **Johnson v. Riverside Health Care System**

#### **Sager v. County of Yuba**

The trial court misapplied the standard of review when it reversed the county's decision that one of its deputy sheriffs was unfit for duty. The lower court should have begun with a strong presumption that the county's decision was correct, and should have placed on the deputy the burden of proving that the decision was against the weight of the evidence. A deputy's fitness is to be measured against relevant statutory provisions and requirements that are incorporated into every peace officer's job description through Police Officer Standards and Training.

(2007) 156 Cal.App.4th 1049/188:34

#### **San Leandro Teachers Assn. v. San Leandro Unified School Dist.**

The California Supreme Court has granted review in *San Leandro Teachers Assn. v. San Leandro Unified School Dist.* (2007) 154 Cal.App. 4th 866, 186 CPER 28. The case in-

volves the issue of whether a teachers union is prohibited by Education Code Sec. 7054 from using school district mailboxes to distribute materials that contain political endorsements. The First District Court of Appeal ruled in the affirmative, finding that "section 7054 unambiguously decrees that school district resources may not be used in furtherance of political activities, regardless of the identity of the actor or the cost to the district." In doing so, the appellate court overruled the trial court's decision and rehabilitated the Public Employment Relations Board's interpretation of the statute.

(2007) 154 Cal.App. 4th 866/188:31

#### **San Francisco Unified School Dist.**

*see* **International Federation of Professional and Technical Engineers, Loc. 21, AFL-CIO v. San Francisco Unified School Dist.**

#### **San Leandro Unified School Dist.**

*see* **San Leandro Teachers Assn. v. San Leandro Unified School Dist.**

#### **School Insurance Program for Employees**

*see* **Richardson-Tunnell v. School Insurance Program for Employees**

#### **Schwarzenegger**

*see* **California Correctional Peace Officers Assn. v. Schwarzenegger**  
**Plata v. Schwarzenegger**

#### **Soto v. County of Riverside**

The county unconstitutionally insisted that an employee who elected to contest his termination using a private attorney, rather than an attorney provided by the union, must pay one-half of anticipated arbitration costs prior to the hearing. The county has a constitutional obligation to provide the employee with a due process hearing concerning his termination without requiring that he pay a share of the costs, even if he voluntarily elects to forego union representation.

(2008) 162 Cal.App.4th 492/190:44

**Sprint/United Management Co. v. Mendelsohn**

The admissibility of evidence of discrimination directed at employees other than the plaintiff, who are not parties to the lawsuit, must be evaluated on a case-by-case basis. The decision vacated the Tenth Circuit Court of Appeals decision indicating that such evidence always is admissible.

(2008) 128 U.S. 1140/189:86

**State Department of Health Care Services**

*see* **Hulings v. State Department of Health Care Services**

**State of Alaska v. Equal Employment Opportunity Commission**

Congress' attempt to abrogate the states' immunity under the Eleventh Amendment by extending Title VII protection to state governors' closest advisors was not effective.

(9th Cir. 2007) 508 F.3d 476/188:48

**State of California**

*see* **Union of American Physicians and Dentists v. State of California (Dept. of Corrections)**  
**Vaught v. State of California**

**State of Oregon**

*see* **Pittman v. State of Oregon**

**Stockton Unified School Dist.**

*see* **Adair v. Stockton Unified School Dist.**

**Superior Court of Los Angeles**

*see* **Jakks Pacific, Inc. v. Superior Court of Los Angeles**  
**Pearson Dental Supplies v. Superior Court of Los Angeles; Turcios, RPI**

**Superior Court of Sacramento Co.**

*see* **California Public Employees' Retirement System v. Superior Court of Sacramento Co.**

**Sutter Health Central**

*see* **Lonicki v. Sutter Health Central**

**Travis v. Board of Trustees of California State University**

The personnel exception to the Bagley-Keene Act permits the discussion of an employee's return from a leave of absence in closed session. The appellate court denied the union president's petition to make public the details of a CSU board of trustees' closed session during which the reinstatement of a former chancellor was discussed.

(2008) 161 Cal.App.4th 335/190:63

**United Parcel Service, Inc.**

*see* **Bates v. United Parcel Service, Inc.**

**Valencia v. County of Sonoma**

A local government agency may not impose discipline on an employee that is not consistent with the terms of the memorandum of understanding negotiated by the employer and the union. The county civil service commission lacked the authority to impose discipline in excess of that permitted by the contract because the commission was bound by the negotiated terms of the MOU.

(2007) 158 Cal.App.4th 644/188:37

**Van Winkle v. County of Ventura**

The Public Safety Officers Procedural Bill of Rights Act extends procedural protection to police officers subject to administrative investigations, but not to criminal investigations

(2007) 158 Cal.App.4th 492/188:33

**Vasquez v. Happy Valley Union School Dist.**

Following a clear and comprehensive summary of the statutory teacher classification system, a school district may terminate a substitute teacher who was not reelected for a permanent position after having served two years as a probationary teacher.

(2008) 159 Cal.App.4th 969/189:43

**Vaught v. State of California**

A park ranger who was injured while checking on a leaky pipe in his state-owned residence has no cause of action against the state for negligence or other civil claims. His exclusive remedy is the right to recover workers' compensation benefits, which are more limited than tort

damages, but are available without having to prove that the employer was at fault in causing the injury.  
(2007) 157 Cal.App.4th 1538/188:51

**Voluntary Plan Administrators**

*see* **Dobos v. Voluntary Plan Administrators**

**Walmart, Inc.**

*see* **Dukes v. Walmart, Inc.**

**Westly**

*see* **Knox v. Westly**

**Workers' Compensation Appeals Bd.**

*see* **Mt. Diablo Unified School Dist. v. Workers' Compensation Appeals Bd.**

## PART III

## TABLE OF PERB ORDERS AND DECISIONS

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

---

*Dills Act Cases*

---

**AFSCME Loc. 2620 v. State of California (Dept. of Personnel Administration), No. 1978-S/193:73**

(The state did not commit a unilateral change when the governor signed into law an alternate retirement program and the department did not negotiate prior to its implementation.)

**State of California, IT Bargaining Unit 22, and Service Employees International Union, Loc. 1000, CSEA, No. Ad-367-S/188:90**

(The board agent was instructed to ignore revocation cards when determining whether a petitioner has shown sufficient support for a severance election. Although the board agent based his acceptance of the revocation cards on *Antelope Valley Health Care Dist.* (2006) No. 1816-M, 177 CPER 26, the board found that neither *Antelope Valley* nor the Dills Act provided adequate precedent for consideration of revocation cards where a party has challenged their validity.)

**State of California, Peace Officers of California, and California Statewide Law Enforcement Assn., No. Ad-371-S/190:90**

(The petitioner's request to withdraw its appeal of the dismissal of its severance petition was granted.)

**Swan v. State of California (Dept. of Corrections & Rehabilitation), No. 1961-S/192:86**

(The charging party's unfair practice charge was timely filed but was dismissed because it failed to demonstrate

that CDCR discriminated against him or interfered with any rights granted to the charging party under the Dills Act.)

**Union of American Physicians and Dentists v. State of California (Department of Correction and Rehabilitation), No. 1967-S/191:83**

(The charging party's unfair practice charge was dismissed because the California Department of Corrections and Rehabilitation's implementation of the Quality Improvement in Correctional Medicine Program was related to a fundamental policy and therefore created no duty to negotiate.

---

*EERA Cases*

---

**AFSCME Loc. 146 v. Carmichael Recreation and Park Dist., No. 1953-M/191:83**

(The unfair practice charge was dismissed because the employer's actions toward the bargaining unit member were not responses to her protected activity.)

**Berkeley Council of Classified Employees v. Berkeley Unified School Dist., No. 1954/191:85**

(An employee on leave from his or her normal duties to engage in union work under Education Code Sec. 45210, cannot receive released time under EERA Sec. 3543.1(c). And, the district's firm adherence to its bargaining proposal consistent with this statutory interpretation did not constitute bad faith bargaining.)

**Berkeley Federation of Teachers v. Berkeley Unified School Dist., No. 1976/193:77**

(A party's entitlement to rescind a contract provision based on mutual mistake of fact does not create a duty to bargain over a replacement provision.)

**Beverly Hills Education Assn. v. Beverly Hills Unified School Dist., No. 1969/192:89**

(The charge was dismissed because the charging party failed to show that a non-negotiable unilateral change had affected negotiable work hours and that it had demanded to bargain over the issue.)

**Body v. Compton Unified School Dist., No. Ad-374/191:87**

(The charging party's appeal was dismissed as untimely because she failed to show good cause for a late filing.)

**California Federation of Interpreters/TNG/CWA v. Santa Cruz County Superior Court, No. 1931/188:98**

(Allegations that occurred more than six months prior to the filing of the unfair practice charge were dismissed as untimely filed.)

**California Teachers Assn./NEA v. Journey Charter School, No. 1945/190:25**

(The charging party's unfair practice charge was dismissed because the evidence failed to establish that the discharge was based on a protected activity.)

**Collins v. San Mateo County Community College Dist., No. 1980/193:78**

(The factual allegations in the charge do not establish that the charging party suffered retaliation because he engaged in protected activity.)

**DePace v. Los Angeles Unified School Dist., No. 1963/191:87**

(The charging party's unfair practice charges were dismissed for failure to state a prima facie case.)

**DePace v. United Teachers of Los Angeles, No. 1964/191:91**

(The charges were dismissed for failure to state a prima facie case of a breach of the duty of representation.)

**Doherty and O'Neil v. San Jose/Evergreen Community College Dist., No. 1928/188:91**

(Because the district did not exert a significant degree of control over the terms and conditions of the charging parties' employment, a joint-employer relationship did not exist. Because the underlying retaliation charge was based solely on acts of non-district employees, the lack of a joint-employer relationship defeated the unfair practice charge.)

**Franz v. Sacramento City Teachers Assn., No. 1959/191:90**

(The majority of the charging party's allegations were dismissed as untimely. The remaining allegations were dismissed because the evidence did not establish a breach of the duty of fair representation. The continuing violation doctrine did not apply to any of the allegations.)

**Gold v. Los Angeles Unified School Dist., No. Ad-368/188:90**

(Because of an honest mistake, the charging party never received correspondence from the board; this led to dismissal of the charge for failure to file a timely response. The charging party was given another opportunity to file an amended unfair practice charge.)

**Gregory v. AFSCME Council 57, No. 1952/191:90**

(Because of an inadvertent post office error, the charging party was allowed to file an amended charge after the board agent dismissed her charge.)

**Gregory v. Oakland Unified School Dist., No. 1965/192:88**

(The board agent's dismissal was reversed and the case remanded to the general counsel because the charging party's unfair practice charge was timely filed and she asserted facts sufficient to establish a prima facie case of retaliation under EERA.)

**Grossmont-Cuyamaca Community College Dist. v. Grossmont-Cuyamaca Community College District Administrators Assn., No. 1958/191:88**

(Following the ruling in *Lompoc* that EERA Sec. 3540.1(g) must be read in the conjunctive, not in the disjunctive, the district demonstrated that four of the eight disputed positions are management employees because they have significant responsibilities for both formulating district policies and administering district programs. The remaining positions were found to be non-managerial and therefore were included in the bargaining unit.)

**Grove v. Los Angeles City and County School Employees Union, Loc. 99, No. 1973/193:77**

(The charging party's unfair practice charge was untimely and raised a constitutional claim outside of PERB's jurisdiction.)

**International Federation of Professional and Technical Engineers, Loc. 21, AFL-CIO v. San Francisco Unified School Dist., No. 1948/190:90**

(The charging party's unfair practice charge was dismissed because EERA's impasse resolution provisions

preempt the binding interest arbitration provisions contained in the city charter.)

**Katz v. Newport-Mesa Unified School Dist., No. Ad-373/191:86**

(Because the charging party did not demonstrate good cause to excuse the late-filed appeal, his charge was dismissed.)

**Kern Community College Dist. v. California School Employees Assn. and Its Chaps. 246, 336, 617, No. Ad-372/191:85**

(Good cause exists to excuse a late-filed appeal of a dismissal where an attorney relies on a trustworthy employee to file the appeal, but the employee inadvertently does not file the appeal on time.)

**Kettenring v. Los Angeles United School Dist., No. 1930/188:96**

(The charging party's unfair practice charge was dismissed because there was no nexus between the protected activities and the adverse retaliatory actions taken by the district.)

**Long Beach Community College District Police Officers Assn. v. Long Beach Community College Dist., No. 1941/189:116**

(By the terms of the managerial rights clause, the association waived its right to bargain over the employer's decision to contract out bargaining unit work. However, the employer failed to negotiate over the effects of that decision.)

**Mandell v. San Leandro Unified School Dist., No. 1924a/188:99**

(The charging party's request for reconsideration was denied because it neither identified prejudicial errors of fact, nor presented newly discovered evidence.)

**Meredith v. SEIU, Loc. 221, No. 1982/193:79**

(The charge sufficiently alleged a pattern of conduct which demonstrated that the union arbitrarily failed to represent the charging party, thus establishing a prima facie case of a breach of the duty of fair representation.)

**Moberg v. San Mateo County Office of Education, No. 1946/190:92**

(The charging party's unfair practice charge was dismissed because there were insufficient facts to demonstrate a nexus between his protected activity and the reprimand he received for rude and disrespectful behavior.)

**O'Neil v. Santa Ana Unified School Dist., No. 1951/190:93**

(The board dismissed the unfair practice charge and deferred to the arbitrator's award which found that the charging party was not retaliated against for her participation in association activities.)

**Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO, No. 1934/188:100**

(The charging party's charge alleging a breach of the duty of representation was dismissed, in part, because it was untimely filed. The timely portion of the charge was dismissed because the charging party ignored the union's advice regarding grievance proceedings, thus effectively choosing to represent himself and relieving the union of its representation responsibilities.)

**Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO, No. Ad-369/188:102**

(The charging party's appeal of the dismissal and request that the board accept the late filing of his appeal were rejected because he failed to provide a reasonable excuse for the late filing or show excusable misinformation. The charging party failed to explain how his hospitalization prevented timely filing.)

**Schoessler v. Yuba Community College Dist., No. 1936/189:114**

(The charging party's unfair practice charge was dismissed as untimely because the statute of limitations began to run when the charging party was informed about his reassignment, not on the date he rejected it.)

**Temple City Educators Assn., CTA/NEA v. Temple City Unified School Dist., No. 1972/193:75**

(The ALJ's proposed decision was reversed and the unfair practice charge dismissed because the district did not engage in surface bargaining.)

**Ulmschneider v. Los Banos Unified School Dist., No. 1935/188:99**

(The charging party's unfair practice charge was dismissed because the delivery of a predetermined disciplinary action, such as a letter of reprimand, does not trigger the right to representation.)

**United Teachers of Los Angeles v. Los Angeles Unified School Dist., No. 1929/188:94**

(The charging party's unfair practice charge was dismissed because the board could not calculate the timeliness of the filing due to an absence of a concise statement of the dates of the occurrences underlying the alleged violations in the charge.)

---

*HEERA Cases*

---

**Academic Professionals of California v. Trustees of the California State University, No. 1949-H/190:94**

(The charging party's unfair practice charge was dismissed because the union was precluded from asserting a position to the board that was inconsistent with the assertion made in superior court.)

**California Faculty Assn. v. Trustees of the California State University, No. 1926-H/188:103**

(The association's unfair practice charge alleging that the university unilaterally implemented a computer use policy in violation of HEERA was dismissed because implementation was a managerial prerogative not within the scope of bargaining. The union's refusal to negotiate the effects of the policy in reliance on the contract's zipper clause did not bar implementation of the policy.)

**California Faculty Assn. v. Trustees of California State University, No. 1823a-H/189:118**

(Because the Court of Appeal overturned PERB's original decision, on remand, pursuant to the court's ruling, the board vacated its original decision and dismissed CFA's unfair practice charge.)

**California Faculty Assn. v. Trustees of the California State University (San Diego), No. 1955-H/191:92**

(The charge was dismissed because the university did not contemporaneously decide to contract with San Diego City College to provide instruction for more remedial classes and to cut its own remedial classes.)

**California State Employees Assn. v. California State University, No. 1970-H/192:90**

(CSU retaliated against the employee for filing grievances and an unfair practice charge against the university. The employee was awarded reinstatement and back wages.)

**Chapman and Druzgalski v. California Faculty Assn., No. 1933-H/188:104**

(The charging parties' allegations that the association obstructed implementation of a Senate bill governing grievance procedure rights were dismissed as untimely because the charge was not filed until three years after the bill's provisions were not incorporated into the memorandum of understanding.)

**Coalition of University Employees v. Regents of the University of California, No. 1981-H/193:80**

(The charging party's request to withdraw its appeal is granted.)

**Onkvisit v. California Faculty Assn., No. 1947/190:96**

(The charging party's unfair practice charge was dismissed as untimely because it was filed with PERB nearly a year after the union informed him that it would no longer pursue his grievance, and therefore six months after the statute of limitations period ended.)

**Owens v. American Federation of State, County and Municipal Employees, No. 1974-H/193:80**

(The unfair practice charge alleging that AFSCME breached its duty of fair representation was filed more than six months after the charging party knew or should have known that further assistance from the union was unlikely.)

**University Professional and Technical Employees, CWA Loc. 8 v. Regents of the University of California, No. Ad-370-H/190:96**

(The case was not reopened because the charging party failed to file a timely appeal and did not show good cause for a late filing. The board agent's dismissal was affirmed.)

**Woolfolk v. AFSCME, Loc. 3299, No. 1966-H/192:92**

(The withdrawal of the charge was granted in the best interests of the parties and consistent with the purposes of HEERA.)

---

*MMBA Cases*

---

**AFSCME Council 57, Loc. 146 v. Sacramento Housing and Redevelopment Agency, No. 1939-M/189:119**

(The union's unfair practice charge was dismissed because the reassigned employees' duties were reasonably comprehended within their job descriptions, and thus there was no unilateral reclassification.)

**AFSCME Local 146 v. Carmichael Recreation and Park Dist., No. 1953-M/191:93**

(The unfair practice charge was dismissed because the employer's actions toward the bargaining unit member were not responses to her protected activity.)

**AFSCME, Loc. 146 v. Carmichael Recreation & Park Dist., No. 1953a-M/192:94**

(The union and the employer were the only parties to the initial board decision. Thus, the employee who was the subject of the allegations in the initial charge lacks standing to request reconsideration.)

**American Federation of State, County and Municipal Employees, Loc. 2703 v. County of Merced, No. 1975-M/193:83**

(The allegations support the finding that the employee engaged in protected activity and suffered an adverse action, but the necessary nexus between the two is not alleged in the charge.)

**Brewington v. County of Riverside, No. Ad-376-M/193:85**

(The county's request for oral argument was untimely filed.)

**Commerce City Employees Assn. v. City of Commerce, No. 1937-M/189:118**

(The unfair practice charge was dismissed because it failed to include sufficient facts to establish a unilateral change in the terms of the parties' memorandum of understanding or in a past practice.)

**Fisher v. Stationary Engineers Loc. 39, No. 1940-M/189:122**

(The charging party's duty of fair representation charge was dismissed because it was untimely filed.)

**Fisher v. Stationary Engineers Loc. 39, No. 1940a-M/190:98**

(The request for reconsideration failed to demonstrate that the board's decision contained prejudicial errors of fact or, alternatively, to present newly discovered evidence.)

**IFPTE, Loc. 21, AFL-CIO v. City and County of San Francisco (International Airport), No. 1932-M/188:108**

(The charging party's unfair practice charge was dismissed because reassignment of an employee to similar work in the same location is neither a transfer nor a mandatory subject of bargaining.)

**Marriott v. SEIU Loc. 1292, No. 1956-M/191:94**

(Because the charging party failed to allege facts showing that her relationship with the county was substantially affected by SEIU's merger of its local unions or its failure to allow bargaining unit employees to vote on the merger, her charge was dismissed.)

**Mauriello v. Bay Area Air Quality Management Dist., No. 1927-M/188:107**

(Because the joinder application filed by the charging party's former representative was not related to the subject matter of the unfair practice charge and was based on a common law tort beyond the scope of the board's statutory authority, the representative lacked standing to file such an application.)

**Montoya v. City of Long Beach, No. 1977-M/193:84**

(The charge was as untimely and failed to state a prima face case of either unilateral change or retaliation.)

**Orange County Professional Firefighters Assn., IAFF, Loc. 3621 v. Orange County Fire Authority, No. 1968-M/192:93**

(The six-month statute of limitations began when the charging party discovered the conduct leading to the charge, and not when the charging party discovered the legal significance of the conduct. Because the charging party knew or should have known that the bargaining unit had been modified long before six months prior to the instant charge, the filing was untimely and the charge dismissed.)

**Neronha v. IBEW Local 1245, No. 1950-M/190:98**

(The charging party's appeal of the dismissal of her unfair practice failed to state the grounds for her appeal and was dismissed.)

**Sacramento County Attorneys Assn. v. County of Sacramento; Sacramento County Professional Accountants Assn. v. County of Sacramento, No. 1943-M/189:121**

(The county violated the MMBA by unilaterally modifying a policy regarding the eligibility criteria for future retirees' access to health insurance benefits even though the county eventually rescinded the change.)

**SEIU, Loc. 707 v. County of Sonoma, No. 1962-M/191:98**

(The board reversed the ALJ's proposed decision and dismissed the unfair practice charge because the charging party failed to establish that the county implemented a new policy of placing employees on unpaid leave after an on-the-job injury.)

**South Placer Fire Administrative Officers Assn. v. South Placer Fire Protection District, No. 1960-M/191:96**

(The district violated the MMBA and PERB regulation when it unilaterally removed the fire marshal classifica-



tion from the battalion chiefs bargaining unit without providing an opportunity to meet and confer.)

**South Placer Fire Administrative Officers Assn. v. South Placer Fire Protection Dist.), No. 1944-M/190:97**

(The association's charge was dismissed as untimely because the six-month statute of limitations began to run when the association received notice of the employer's intent to implement an action that constituted a basis for the unfair practice charge and not when the action was actually implemented.)

**Torrance Municipal Employees, AFSCME Loc. 1117 v. City of Torrance, No. 1971-M/193:80**

(The city retaliated against the local union president by requesting reimbursement for released time in excess of a prior agreement. The union refused to bargain in good faith over the amount of presidential released time.)

**Wilson v. County of Plumas, No. 1938-M/189:119**

(The unfair practice charge was dismissed because the charging party did not allege specific facts necessary to determine whether the county violated the MMBA.)

**Stationary Engineers Loc. 39 v. Tehama County Superior Court, No. 1957-C/191:99**

(The court violated the Trial Court Employment Protection and Governance Act when, based on the court's local rule, it rejected the union's petition for recognition as the representative of a bargaining unit composed of managerial employees.)

---

*Trial Court Act Cases*

---

**American Federation of State, County and Municipal Employees, Loc. 575 v. Los Angeles County Superior Court, No. 1979-C/193:85**

(Although one of the union president's email messages and her use of a courtroom for a union meeting were protected activities, the court established that it would have disciplined the employee regardless of her unprotected activities.)

**Service Employees International Union, Loc. 535 v. Fresno County Superior Court, No. 1942-C/189:83**

(The board dismissed the union's unfair practice charge because the unilateral change in the Fresno court policy regarding court reporter position qualifications was excluded from the scope of bargaining by the act, and the union failed to demand to bargain over the effects of the change.)

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

No. 1823a-H	California Faculty Assn. v. Trustees of California State University	No. 1940-M	Fisher v. Stationary Engineers Loc. 39
No. 1924a	Mandell v. San Leandro Unified School Dist.	No. 1940a-M	Fisher v. Stationary Engineers Loc. 39
No. 1926-H	California Faculty Assn. v. Trustees of the California State University, California	No. 1941	Long Beach Community College District Police Officers Assn. v. Long Beach Community College Dist.
No. 1927-M	Mauriello v. Bay Area Air Quality Management Dist.	No. 1942-C	Service Employees International Union Loc. 535 v. Fresno County Superior Court
No. 1928	Doherty and O'Neil v. San Jose/Evergreen Community College Dist.	No. 1943-M	Sacramento County Attorneys Assn. v. County of Sacramento; Sacramento County Professional Accountants Assn. v. County of Sacramento
No. 1929	United Teachers of Los Angeles v. Los Angeles Unified School Dist.	No. 1944-M	South Placer Fire Administrative Officers Assn. v. South Placer Fire Protection Dist.)
No. 1930	Kettenring v. Los Angeles Unified School Dist.	No. 1945	California Teachers Assn./NEA v. Journey Charter School
No. 1931	California Federation of Interpreters/TNG/CWA v. Santa Cruz County Superior Court	No. 1946	Moberg v. San Mateo County Office of Education
No. 1932-M	IFPTE, Loc. 21, AFL-CIO v. City and County of San Francisco (International Airport),	No. 1947	Onkvisit v. California Faculty Assn.
No. 1933-H	Chapman and Druzgalski v. California Faculty Assn.,	No. 1948	International Federation of Professional and Technical Engineers, Loc. 21, AFL-CIO v. San Francisco Unified School Dist.
No. 1934	Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO	No. 1949-H	Academic Professionals of California v. Trustees of the California State University
No. 1935	Ulmschneider v. Los Banos Unified School Dist.	No. 1950-M	Neronha v. IBEW Local 1245
No. 1936	Schoessler v. Yuba Community College Dist.	No. 1951	O'Neil v. Santa Ana Unified School Dist.
No. 1937-M	Commerce City Employees Assn. v. City of Commerce	No. 1952	Gregory v. AFSCME Council 57
No. 1938-M	Wilson v. County of Plumas	No. 1953-M	AFSCME Loc. 146 v. Carmichael Recreation and Park Dist.
No. 1939-M	AFSCME Council 57, Loc. 146 v. Sacramento Housing and Redevelopment Agency	No. 1953a-M	AFSCME, Loc. 146 v. Carmichael Recreation & Park Dist.

- No. 1954 Berkeley Council of Classified Employees v. Berkeley Unified School Dist.
- No. 1955-H California Faculty Assn. v. Trustees of the California State University (San Diego)
- No. 1956-M Marriott v. SEIU Loc. 1292
- No. 1957-C Stationary Engineers Loc. 39 v. Tehama County Superior Court
- No. 1958 Grossmont-Cuyamaca Community College Dist. v. Grossmont-Cuyamaca Community College District Administrators Assn.
- No. 1959 Franz v. Sacramento City Teachers Assn.
- No. 1960-M South Placer Fire Administrative Officers Assn. v. South Placer Fire Protection Dist.
- No. 1961-S Swan v. State of California (Dept. of Corrections & Rehabilitation)
- No. 1962-M SEIU, Loc. 707 v. County of Sonoma
- No. 1963 DePace v. Los Angeles Unified School Dist.
- No. 1964 DePace v. United Teachers of Los Angeles
- No. 1965 Gregory v. Oakland Unified School Dist.
- No. 1966-H Woolfolk v. AFSCME, Loc. 3299
- No. 1967-S Union of American Physicians and Dentists v. State of California (Department of Correction and Rehabilitation)
- No. 1968-M Orange County Professional Firefighters Assn., IAFF, Loc. 3621 v. Orange County Fire Authority
- No. 1969 Beverly Hills Education Assn. v. Beverly Hills Unified School Dist.
- No. 1970-H California State Employees Assn. v. California State University
- No. 1971-M Torrance Municipal Employees, AFSCME Loc. 1117 v. City of Torrance
- No. 1972 Temple City Educators Assn., CTA/NEA v. Temple City Unified School Dist.
- No. 1973 Grove v. Los Angeles City and County School Employees Union, Loc. 99
- No. 1974-H Owens v. American Federation of State, County and Municipal Employees
- No. 1975-M American Federation of State, County and Municipal Employees, Loc. 2703 v. County of Merced
- No. 1976 Berkeley Federation of Teachers v. Berkeley Unified School Dist.
- No. 1977-M Montoya v. City of Long Beach
- No. 1978-S AFSCME Loc. 2620 v. State of California (Dept. of Personnel Administration)
- No. 1979-C American Federation of State, County and Municipal Employees, Loc. 575 v. Los Angeles County Superior Court
- No. 1980 Collins v. San Mateo County Community College Dist.
- No. 1981-H Coalition of University Employees v. Regents of the University of California
- No. 1982 Meredith v. SEIU, Loc. 221
- No. Ad-367-S State of California, IT Bargaining Unit 22, and Service Employees International Union, Loc. 1000, CSEA
- No. Ad-368 Gold v. Los Angeles Unified School Dist.
- No. Ad-369 Osewe v. Long Beach Council of Classified Employees, AFT, AFL-CIO
- No. Ad-370-H University Professional and Technical Employees, CWA Loc. 8 v. Regents of the University of California
- No. Ad-371-S State of California, Peace Officers of California, and California Statewide Law Enforcement Assn.
- No. Ad-372 Kern Community College Dist. v. California School Employees Assn. and Its Chaps. 246, 336, 617
- No. Ad-373 Katz v. Newport-Mesa Unified School Dist.
- No. Ad-374 Body v. Compton Unified School Dist.
- No. Ad-376-M Brewington v. County of Riverside

*PART IV*

<i>Grievance Actions</i>	<b>DUE PROCESS</b> 190:185
<b>A</b>	<b>DUTY TO BARGAIN</b> 190:184
<b>ABSENTEEISM</b> 188:80	<b>E</b>
<b>B</b>	<b>EQUITY INCREASES</b> 193:689
<b>BARGAINING UNIT WORK</b> 190:181	<b>F-I</b>
<b>C</b>	<b>FREE SPEECH</b> 188:84
<b>CLASS SIZE</b> 192:80	<b>J-K</b>
<b>CONTRACT INTERPRETATION</b> 188:78, 188:80, 188:83, 189:108, 189:109, 189:110, 189:112, 190:180, 190:181, 190:183, 192:75, 192:76, 192:80, 193:69, 193:70	<b>L</b>
<b>D</b>	<b>LEAVE OF ABSENCE</b> 190:180
<b>DISCIPLINE</b> 193:70, 192:79, 193:71	<b>LENGTH OF SCHOOL DAY</b> 189:110
<b>DISCIPLINE — JUST CAUSE</b> 188:82, 188:84, 189:111, 193:68, 193:71	<b>M-N</b>
<b>DRUG AND ALCOHOL ABUSE</b> 186:83	<b>MANAGERIAL STATUS</b> 190:181
<b>DRUG TESTING</b> 190:185	<b>MATERNITY LEAVE</b> 189:108

**O**

**OVERTIME**  
193:68, 192:76

**P-Q**

**PAST PRACTICE**  
188:78, 190:181, 190:183, 193:68

**PREMIUM PAY**  
189:112

**PREPERATION PERIODS**  
189:110

**R**

**RETIREMENT BENEFITS**  
193:70

**S**

**SCOPE OF BARGAINING**  
188:83

**SENIORITY**  
188:80

**SICK LEAVE ABUSE**  
193:70

**SUBCONTRACTING**  
188:78

**T**

**TEACHER WORKDAY**  
192:80

**TRAINING**  
192:75

**TRANSFER**  
188:83

**U**

**UNILATERAL ACTION**  
188:83

**V**

**VACANCY POSTING**  
192:76

**W-Z**

**WORKERS' COMPENSATION**  
190:180

---

*Neutrals*

---

**BOGUE, BONNIE**

188:78, 190:180, 192:75, 193:68

**COSSACK, JERILOU**

188:82, 189:112

**GENTILE, JOSEPH**

193:70

**NELSON, LUELLA**

188:84, 189:109, 190:181

**POOL, C. ALLEN**

190:184, 192:79, 193:69

**RIKER, WILLIAM E.**

188:80, 189:108, 189:110, 190:183, 192:76, 193:70

**STAUDO HAR, PAUL D.**

190:185, 192:76

**THOMSON, KATHERINE**

192:80, 193:71

**YANK, RON**

188:83

**WORMUTH, JOHN**

189:111