California Public Employee Relations 2008 Index

(Issues 188-193)

An annual index to CPER Journal
2008 CPER INDEX

An index to the 2008 issues of

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Issues 188-193

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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).
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<td>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.</td>
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<td>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.</td>
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<td>Arteaga v. Brink's, Inc.</td>
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<td>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.</td>
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<td>Association for Los Angeles Deputy Sheriffs v. County of Los Angeles</td>
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<td>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.</td>
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<td>(9-24-08; modified 10-6-08) B197611 (2d Dist.) 166 Cal.App.4th 1625/193:29</td>
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<td>Avila v. Continental Airlines, Inc.</td>
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<td>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.</td>
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<td>Bates v. United Parcel Service, Inc.</td>
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<td>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.</td>
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<td>(9th Cir. 2007) 511 F.3d 974/189:92</td>
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<td>Berkeley Police Assn. v. City of Berkeley</td>
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<td>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</td>
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entitled to all rights and protections extended by the
Public Safety Officers Procedural Bill of Rights Act.

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.

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.

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 num-
bers of guards are not available and prison overcrowding
is an “urgent, temporary” situation, exceptions to civil
service law that prohibits contracting out of public em-
ployee jobs were met.

California Department of Corrections and Rehabili-
tation
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 Rela-
tions 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.

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.

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).
CBOCS West, Inc. v. Humphries
A civil rights law enacted shortly after the Civil War, 42 USC Sec. 1981, encompasses retaliation claims.

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.

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.

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.

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.

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.

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.


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.


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


Federal Express Corp. v. Holowecki


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.


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.


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.


**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

**Jakks 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.


**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.


**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.


**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.

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.

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.


Mt. Diablo Unified School Dist. v. Workers’ Compensation 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.


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.


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 2-26-08
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.


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.


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 involves 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.


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.

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.

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

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.

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.

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

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.

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.

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**

(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.)

(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.)

(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.)

(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.)
(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.)

(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.)

(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.)

(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.)

(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.)

(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.)

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

(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.)

(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.)

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

(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 zip-per 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 Druzdalski 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.)

(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

(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 facie 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.)

(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.)

(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.)

(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.)

### 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.)

**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.)
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