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# 2009 CPER INDEX

An index to the 2009 issues of  
*CALIFORNIA PUBLIC EMPLOYEE RELATIONS (CPER)*  
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## HOW TO USE THE CPER ANNUAL INDEX

The 2009 issues of the *CPER* quarterly periodical — No. 194 (February) through No. 197 (November) — 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. 194 is printed as **194:22**. 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 2009 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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*see* **Ricci v. DeStefano**

**Duncan**

*see* **Renee v. Duncan**

**E****Equal Employment Opportunity Commission**

*see* **State of Alaska v. EEOC**

**Equal Employment Opportunity Commission v. The Boeing Co.**

The employer's stated reasons for laying off two female employees were pretextual. The EEOC had established prima facie cases of sex discrimination, and the case could go to a jury because there was sufficient evidence to refute the company's claim that the women were laid off because of low test scores.

(9th Cir. 2009) 577 F.3d 1044/197:53

**Esquivel v. Workers' Compensation Appeals Board**

An employer is liable when an employee receiving workers' compensation benefits injures herself while en route to or from a medical appointment for an existing industrial injury. But, there are some limitations on that li-

ability. The employee must be traveling a reasonable distance and within a reasonable geographic area. Because there is no specific statutory or regulatory test for determining these boundaries, they must be addressed on a case-by-case basis.

(2009) 178 Cal.App.4th 330/197:60

## F

### **Farahani v. San Diego Community College Dist.**

A community college professor's "waiver" of his statutory due process rights related to faculty discipline was void as a matter of law.

(2009) 175 Cal.App.4th 1486/197:28

### **FBL Financial Services, Inc.**

*see* **Gross v. FBL Financial Services, Inc.**

## G

### **Gibson v. Office of the Attorney General**

The state attorney general's policy that prohibits its lawyers from engaging in the practice of law without prior approval is not a prior restraint on speech. The employee's malpractice lawsuit stemming from a divorce does not address a matter of public concern deserving of First Amendment protection.

(9th Cir. 2009) 554 F.3d 759/195:72

### **Gilb v. Chiang**

The state controller does not have authority to second-guess the legality of a pay letter issued by the Department of Personnel Administration. The controller provided insufficient evidence that the aged computer payroll system could not be programmed to implement the instructions. The court excluded from its ruling those state employees whose salaries are paid by programs subject to continuing appropriations or self-executing constitutional mandates.

(3-18-09) Sacto. Co. Sup. Ct. 34-2008-80000026/195:59

### **Governing Board of Ripon Unified School Dist. v. Commission on Professional Conduct**

The district's requirement that all teachers become certified to teach English learners was not preempted and, therefore, a teacher's refusal to take the training was a cause for termination.

(2009) 177 Cal.App.4th 1379/197:33

### **Governing Board of the San Leandro Unified School Dist.**

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

### **Governing Board of Ventura Unified School Dist.**

*see* **Cahoon v. Governing Board of Ventura Unified School Dist.**

### **Gross v. FBL Financial Services, Inc.**

The Age Discrimination in Employment Act does not authorize a "mixed motives" claim. The employee must prove by direct evidence that the employer would not have taken the adverse action "but for" the employee's age. A plaintiff does not prevail by proving that age was one of the factors affecting the decision.

(2009) \_\_\_ U.S. \_\_\_, 129 S.Ct. 1606/196:63

### **Grossmont Union High School Dist.**

*see* **Tucker v. Grossmont Union High School Dist.**

## H

### **Hansen v. California Department of Corrections and Rehabilitation**

An employee may not base his whistleblower retaliation case on statements coworkers made during an internal investigation, even if they were made in bad faith.

(2009) 171 Cal.App.4th 1537/195:63

### **Hildebrandt v. St. Helena Unified School Dist.**

When a school district lays off certificated employees because of a reduction of services pursuant to Educa-

tion Code Sec. 44955, part-time employees with greater seniority cannot “bump” less-senior full-time employees.  
(2009) 172 Cal.App.4th 334/195:41

## Hulteen

*see* **AT&T Corp. v. Hulteen**

## I

### **International Association of Fire Fighters, Loc. 188, AFL-CIO v. PERB; City of Richmond RPI**

A party aggrieved by a Public Employment Relations Board decision not to issue an unfair practice charge has recourse to challenge that decision in a superior court. The scope of judicial review is limited to determining whether the decision violates a constitutional right, exceeds a grant of authority, or is based on an erroneous statutory construction.

(2009) 172 Cal.App.4th 265/195:31

### **International Association of Firefighters, Loc. 230**

*see* **City of San Jose v. International Association of Firefighters, Loc. 230**

## J

### **Jacobs**

*see* **Sunnyvale Unified School Dist. v. Jacobs**

### **Journey Charter School**

*see* **California Teachers Assn. v. PERB (Journey Charter School)**

## K

### **Kolter v. Commission on Professional Competence of the Los Angeles Unified School Dist.**

A school board is not required to provide 24-hour notice prior to convening a closed session to consider the dismissal of a permanent certificated teacher. Govern-

ment Code Sec. 54957 provides an exception to the 24-hour prior notice requirement of the Ralph M. Brown Act.

(2009) 170 Cal.App.4th 1346/195:45

## L

### **Los Angeles County Civil Service Commission**

*see* **Munroe v. Los Angeles County Civil Service Commission**

### **Los Angeles County Department of Social Services**

*see* **Sandoval v. Los Angeles County Department of Social Services**

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

*see* **United Teachers Los Angeles v. Los Angeles Unified School Dist.**

## M-N

### **McMahon v. City of Los Angeles**

The City of Los Angeles acted in conformity with the Public Safety Officers Procedural Bill of Rights Act when it withheld from a police officer certain investigative materials — such as interview tapes and transcripts — that pertained to allegations of misconduct. Where the police department disclosed all adverse comments made against the officer, the officer’s speculation that the underlying investigative materials *might contain additional adverse comments* does not mandate disclosure under Sec. 3306.5(a) of the Bill of Rights Act. And, the undisclosed material is maintained by the police department in a way that precludes its use in personnel decisions.

(2009) 172 Cal.App.4th 1324/195:32



**Metropolitan Government of Nashville and Davidson County, Tennessee**

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

**Miller v. City of Los Angeles**

An employee who appeals his discharge to the Board of Civil Service Commissioners and receives a hearing officer's report recommending his discharge is barred from filing a discrimination lawsuit because he failed to exhaust his judicial remedies. While a public employee may opt to bypass the administrative process, if he pursues it through an evidentiary hearing, he must exhaust administrative and procedural remedies even if doing so may defeat the viability of a claim under the Fair Employment and Housing Act.

(2008) 169 Cal.App.4th 1373, certified for publication 1-7-09/194:34

**Mossman v. City of Oakdale**

When an arbitrator finds there has been a violation of a personnel rule, orders a "make whole" remedy, and retains jurisdiction to address issues the parties are unable to resolve, the arbitrator does not fail to determine all the issues submitted to her. Therefore, the award cannot be vacated on that basis. However, the award as written by the arbitrator was unenforceable because she did not specify either the amount of the back pay award or the exact position the grievant was entitled to receive. The court remanded the issue back to the original arbitrator.

(2009) 170 Cal.App.4th 83/194:63

**Munroe v. Los Angeles County Civil Service Commission**

The decision of the Los Angeles Civil Service Commission to reject an appeal as untimely was not an abuse of discretion. And the trial court's decision to view the appeal as a request for an extension of time improperly substituted its judgment for that of the commission.

(2009) 173 Cal.App.4th 1295/196:39

**O****Office of the Attorney General**

*see* **Gibson v. Office of the Attorney General**

**P-Q****Paterson v. City of Los Angeles**

An investigator sent to the home of a police officer suspected of abusing sick leave was engaged in an investigation of wrongdoing that *could* lead to punitive action. The court rejected the city's argument that the Public Safety Officers Procedural Bill of Rights Act did not apply because the officer ultimately was exonerated by a board of rights. Application of the act is determined at the beginning of the exchange between the investigator and the police officer and does not turn on whether, once the investigation concludes, punishment results.

(2009) 174 Cal.App.4th 1393/196:35

**Pierce Joint Unified School Dist.**

*see* **Achene v. Pierce Joint Unified School Dist.**

**Pocatello Education Assn.**

*see* **Ysursa v. Pocatello Education Assn.**

**Public Employment Relations Board**

*see* **California Teachers Assn. v. PERB (Journey Charter School)**

**International Association of Fire Fighters, Loc. 188, AFL-CIO v. PERB; City of Richmond RPI**

**R****Renee v. Duncan**

The Ninth Circuit Court of Appeals dismissed a lawsuit brought by a group of California parents and students against the United States Department of Education. The allegation was that the department failed to provide a quality teacher in each classroom as required

by the federal No Child Left Behind Act. Parents and students had no standing to challenge the federal regulation that considers teacher interns as “highly qualified” within the meaning of the act because they could not show that invalidating the regulation would redress the injury they claimed.

(9th Cir. 2009) 573 F.3d 903/197:26

#### **Ricci v. DeStefano**

New Haven, Connecticut, did not have a “strong basis in evidence” to throw out test results for firefighters seeking promotion where white candidates tested better than minority candidates. The city’s refusal to certify the test results amounted to race discrimination in violation of Title VII of the Civil Rights Act of 1964.

(2009) \_\_\_ U.S. \_\_\_, 129 S.Ct. 2658/196:60

#### **Riverside County Sheriffs Dept. v. Zigman; Reynolds, RPI**

The court overruled the decision of an arbitrator who found that a conversation between a deputy sheriff and her husband was a communication protected by the marital privilege. Since the “more fundamental constitutional privilege against self-incrimination does not apply in law enforcement administrative investigations,” the statutory privilege protecting marital communications likewise does not apply. The evidentiary hearing conducted by the arbitrator was a continuation of the administrative investigation to which the privilege does not apply.

(2008) 169 Cal.App.4th 763/194:31

## S

#### **San Diego City Employees Retirement System**

*see* **San Diego Police Officers Assn. v. San Diego City Employees Retirement System**

#### **San Diego Community College Dist.**

*see* **Farahani v. San Diego Community College Dist.**

#### **San Diego Police Officers Assn. v. San Diego City Employees Retirement System**

Employees’ vested contractual pension rights are protected by the U.S. Constitution’s contracts clause. But, terms that can be modified through the collective bargaining process are not. In this case, the city’s contribution to the employee retirement plan was a mandatory subject of bargaining and equal to a negotiated salary item. Therefore, the term was subject to modification and was not a vested pension right. Similarly, the eligibility requirement for retiree medical benefits was not a protected vested right because it could be altered through the bargaining process.

(9th Cir. 2009) 568 F.3d 725/196:36

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

A school district can prohibit teachers unions from using school mailboxes to disseminate materials to support or defeat political candidates. The district’s policy conformed to Education Code Sec. 7054(a), which prohibits the use of “school district funds, services, supplies or equipment” to urge support or defeat of political candidates or propositions. The policy did not violate Government Code Sec. 3543.1(b) of the Educational Employment Relations Act that affords school employee organizations the right to use mailboxes subject to “reasonable regulation.” And, it similarly rejected the union’s claim that the policy violated its constitutionally protected right to free speech.

(2009) 46 Cal.4th 822/196:20

#### **Sandoval v. Los Angeles County Department of Social Services**

A county employee received adequate notice of his termination following his absence from work for three consecutive days. Because of his failure to respond to three notices sent by his employer requesting him to appear for work, he properly was deemed to have resigned. The notice provided to the employee did not violate due process protections.

(2009) 169 Cal.App.4th 1167/194:36

**SASCO Electric v. California Fair Employment and Housing Commission**

The employer discriminated against a pregnant employee in violation of the Fair Employment and Housing Act. The FEHC had not abused its discretion, and its decision was supported by substantial evidence.

(2009) 176 Cal.App.4th 532/197:56

**Schwarzenegger**

*see* **California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment v. Schwarzenegger**

**Schwarzenegger v. Chiang**

The governor had the power to order state worker furloughs. The court rejected the officials' contention that the executive order violated the state constitutional system of divided executive power and interfered with their independent power.

(3-12-09) Sacto.Co.Sup.Ct. 2009-80000158/195:58

**Scotch v. Art Institute of California-Orange County Inc.**

An HIV-positive instructor failed to prove disability discrimination in violation of California's Fair Employment and Housing Act. The employee failed to show that the employer's stated reason for refusing to assign him a full caseload was false or pretextual and that there was a causal link between his disability and the adverse decision. An employee can prevail on a claim of failure to engage in the interactive process even where the employer agreed to reasonably accommodate his disability. Here, the employer's failure to engage in the interactive process inflicted no remedial injury on the employee.

(2009) 173 Cal.App.4th 986/196:67

**Sonoma County Law Enforcement Assn.**

*see* **County of Sonoma v. Sonoma County Law Enforcement Assn.**

**St. Helena Unified School Dist.**

*see* **Hildebrandt v. St. Helena Unified School Dist.**

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

When employees allege discriminatory conduct that violates the Fourteenth Amendment to the Constitution, sovereign immunity does not shield states from claims under the Government Employee Rights Act.

(9th Cir. 2009) 564 F.3d 1062/196:40

**State Personnel Board (Kendrick)**

*see* **Department of Transportation v. State Personnel Board (Kendrick)**

**Sunnyvale Unified School Dist. v. Jacobs**

A school district's decision not to reelect a probationary teacher is not subject to arbitration under a collective bargaining agreement even where it is alleged that the decision was in retaliation for the teacher's protected activities. Jurisdiction in such a situation lies exclusively with the Public Employment Relations Board.

(2009) 171 Cal.App.4th 168/195:42

**Superior Court of Sonoma County**

*see* **DeJung v. Superior Court of Sonoma County**

**T****The Boeing Co.**

*see* **Equal Employment Opportunity Commission v. The Boeing Co.**

**Tucker v. Grossmont Union High School Dist.**

A district must reemploy a laid-off employee for any position for which he applies and is qualified in preference over a new applicant. The court rejected the district's argument that the employee does not have reemployment rights to positions outside of the class from which he was laid off.

(2008) 168 Cal.App.4th 640/194:28

U-V

**United Teachers Los Angeles v. Los Angeles Unified School Dist.**

A school district cannot refuse to arbitrate a grievance on the ground that provisions of the collective bargaining agreement conflict with state law relating to charter schools. The court rejected the district's contention that an arbitrator should not be able to review contract language which prescribed notice requirements and other prerequisites when converting a high school to a charter school. The court found that *Board of Education v. Round Valley Teachers Assn.* (1996) 13 Cal.4th 269, 118 CPER 48, was not controlling.

(2009) 177 Cal.App.4th 863/197:64

Z

**Zigman; Reynolds, RPI**

*see* **Riverside County Sheriffs Dept. v. Zigman; Reynolds, RPI**

W-X

**Wilson v. County of Orange**

The county did not violate the Fair Employment and Housing Act when it did not accommodate a radio dispatcher's medical condition in a timely manner.

(2009) 169 Cal.App.4th 1185/194:61

**Workers' Compensation Appeals Board**

*see* **Esquivel v. Workers' Compensation Appeals Board**

Y

**Ysursa v. Pocatello Education Assn.**

A union's First Amendment rights are not abridged by the state's ban on payroll deductions that fund union political activities. The ban furthers Idaho's interest in separating the operation of government from politics.

(2009) \_\_\_ U.S. \_\_\_, 129 S.Ct. 1093/195:71

## PART III

## TABLE OF PERB ORDERS AND DECISIONS

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

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*Dills Act Cases*


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**Burnett v. Service Employees International Union, Loc. 1000; Burnett v. State of California (Dept. of Personnel Administration); Burnett v. State of California (Dept. of General Services and Dept. of Housing and Community Development), No. Ad-377-S/196:79**

(Charging party's failure to first seek disqualification of the board agents who dismissed his unfair practice charges precludes an appeal to the board based on the board agents' bias and failure to disqualify themselves.)

**California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections and Rehabilitation), No. 2024-S/196:77**

(Management statements and conduct did not constitute adverse action against the union chapter president or show union animus. Management's memo to unit members was protected free speech.)

**California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration), No. 1985-S/194:75**

(The union's right to collect nonmembers' fair share fees after the expiration of a collective bargaining agreement ends when the state implements its last, best, and final offer.)

**State of California (Dept. of Personnel Administration), No. 2013-S/196:76**

(Impasse mediation did not toll the statute of limitations for a claim of failure to provide information, and mediation communications could not be used as evidence in support of a prima facie case.)

**California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration), No. 2017-S/196:76**

(Bad faith bargaining allegations were time-barred. The state cannot be compelled to seek a second determination of impasse when negotiations stall during mediation.)

**California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration), No. 2018-S/196:77**

(The state's refusal to increase the mileage reimbursement rate in accordance with the state's last, best, and final offer was not an unfair practice since the legislature had not approved the expenditure of funds.)

**Eisenberg v. Civil Service Div., California State Employees Assn., No. 2034-S/196:78**

(An employee's allegations that a union agent interfered with his decertification effort do not state a prima facie case. Allegations that CSEA's president terminated his SEIU Local 1000 union membership in retaliation for an unfair practice charge do not show a causal connection.)

**George v. Service Employees International Union, Loc. 1000, No. 1984-S/194:77**

(The charging party's unfair practice charge was untimely and failed to state a prima facie case. The board agent dismissed the charging party's allegations that a union representative acted improperly when she requested the charging party rebut an informal reprimand while pursuing a grievance against the reprimanding supervisor. The alleged conduct took place beyond the six-month statute of limitations and was not part of a continuing violation as stated by the charging party.)

**Hernandez v. Service Employees International Union, Loc. 1000, No. 2049-S/197:71**

(Suspension of membership did not have a substantial impact on the employee's relationship with the employer. The union acted reasonably and followed its own procedures when suspending him for advocating decertification.)

**State of California (Departments of Veterans Affairs and Personnel Administration) v. Service Employees International Union, Loc. 1000, CSEA, No. 1997-S/195: 82**

(While SEIU may have condoned the nurses strike, it did not unilaterally change the no-strike policy in the parties' MOU.)

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### *EERA Cases*

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**Adams v. Los Angeles Unified School Dist., No. 2011/196:79**

(The partial dismissal of the unfair practice charge was affirmed because PERB cannot issue a complaint with respect to allegations of unfair practice occurring more than six months prior to the filing of the charge under EERA Sec. 3541.5[a][1].)

**Adams v. United Teachers of Los Angeles, No. 2012/196:84**

(The charging party failed to demonstrate arbitrary, discriminatory, or bad faith conduct by the union; failed to show that the allegations occurred within the six-month statute of limitations; and failed to allege facts sufficient to state a prima facie case.)

**Arteaga v. Service Employees International Union, Loc. 99, No. 1991/194:80**

(The charges were dismissed because the charging party failed to establish a prima facie case of a breach of the duty of fair representation.)

**Baker Valley Teachers Assn. v. Baker Valley USD, No. 1993/No. 194:78**

(There was no nexus between a teacher's protected activity and the adverse action taken against him because the district's reason for seeking his termination was well-documented and known to the teacher. There was a nexus between another teacher's protected activity and the adverse action against him because the district's reasons for nonrenewal of his contract were vague and ambiguous.)

**Bussman v. Alvord Unified School Dist., No. 2021/196:81**

(The charging party failed to establish that the district retaliated against him because of his union membership or that it interfered with his protected rights.)

**Bussman v. Alvord Educators Assn., No. 2046/197:75**

(The allegation that AEA representatives made defamatory comments about the charging party is outside of PERB's jurisdiction. The charging party's allegations that AEA failed to properly represent him during contract negotiations and retaliated against him for raising concerns about the agreement occurred outside the statute of limitations.)

**Bussman v. California Teachers Assn., No. 2047/197:76**

(CTA did not violate the duty of fair representation because it was not the exclusive representative of the certificated employees, which included the charging party, and it has no independent obligation under EERA to represent bargaining unit employees.)

**California School Employees Assn. and Its Chap. 150 v. Escondido Union Elementary School Dist., No. 2019/196:82**

(Three disciplinary actions were initiated in retaliation for protected activity.)

**California Teachers Assn. v. Journey Charter School, No. 1945a/197:72**

(The prior board decision finding no retaliation was vacated. The charter school was ordered to make teachers whole.)

- Cottonwood Teachers Assn. v. Cottonwood Union Elementary School Dist., No. 2026/196:83**  
(The purposes of EERA are effectuated by permitting withdrawal of exceptions to the administrative law judge's proposed decision.)
- Deglow v. Los Rios College Federation of Teachers, Loc. 2279, No. 1990/194:79**  
(The cases were dismissed because the charging party failed to exercise due diligence in prosecuting her charges and failed to establish good cause to excuse the delay.)
- Dunn v. California School Employees Assn., Chap. 379, No. 2028/196:85**  
(The charging party failed to allege facts sufficient to show that the union had no rational basis for withdrawing the grievance or acted in bad faith when it did so one week before the arbitration.)
- Felicijan v. Santa Ana Educators Assn., No. 2008/195:86**  
(Certificated employees on a 39-month reemployment list pursuant to Ed. Code Sec. 44978.1 are employees under EERA and are owed a duty of fair representation by their union.)
- Grossmont-Cuyamaca Community College Dist., Grossmont-Cuyamaca Community College District Faculty Assn., and United Faculty of Grossmont-Cuyamaca Community College Dist., No. Ad-378/196:83**  
(The petition to stay a scheduled decertification election was denied, but the board ordered ballots to be impounded pending PERB's decision on the faculty association's appeal of the dismissal of its decertification petition.)
- Grossmont-Cuyamaca Community College Dist., Grossmont-Cuyamaca Community College Dist. Faculty Assn., and United Faculty of Grossmont-Cuyamaca Community College Dist., No. Ad-380/197:74**  
(Dismissal of the decertification petition for insufficient support was upheld. The petitioner's request for withdrawal of the appeal was denied.)
- Hicks v. Compton Unified School Dist., No. 2015/196:79**  
(The dismissal of the unfair practice charge was untimely because the allegations occurred more than six months prior to the filing of the charge.)
- Hicks v. Compton Unified School Dist., No. 2016/196:80**  
(The unfair practice occurred more than six months prior to the filing of the charge.)
- Hsiung v. San Francisco Unified School Dist., No. 2000/195:83**  
(The board agent's dismissal of the unfair practice charge was upheld because the charging party lacked standing.)
- Kern Community College Dist. v. California School Employees Assn. and its Chaps. 246, 336, and 617, No. 1999/195:83**  
(The district's request to withdraw its appeal and the underlying unfair practice charge is in the best interests of the parties and consistent with the purposes of EERA.)
- Long Beach Community College District Police Officers Assn. v. Long Beach Community College Dist. No. Ad-379/197:76**  
(The board's original order called for a limited, not a traditional, back pay remedy. The request for attorney's fees was denied.)
- Long Beach Council of Classified Employees v. Long Beach Community College Dist., No. 2002/195:84**  
(The statute of limitations in EERA does not operate as a jurisdictional bar to PERB's authority. But, it is not an affirmative defense. Rather, as part of the charging party's prima facie case, it must assert that the alleged proscribed conduct occurred within the six-month limitations period.)
- Menges v. Torrance Unified School Dist., No. 2007/195:84**  
(The unfair practice charge was upheld because the charge failed to state a prima facie case.)
- Payne v. California School Employees Assn. and Its Chap. 410, No. 2029/196:86**  
(The charging party failed to show that the allegations occurred within the six-month statute of limitations or that the union's refusal to file a grievance was arbitrary, discriminatory, or made in bad faith.)
- United Association of Conejo Teachers v. Conejo Valley Unified School Dist., No. 2054/197:73**  
(Distribution of materials endorsing political candidates in district mailboxes is prohibited by Ed. Code Sec. 7054[a]. The district did not interfere with employees' rights by barring distribution of a union newsletter endorsing political candidates.)
- United Educators of San Francisco v. San Francisco Unified School Dist., No. 2040/197:72**  
(PERB has no jurisdiction to enforce provisions of the Education Code. The charge failed to state a prima fa-

cie case of unlawful unilateral change because the subject of teacher classification falls outside the scope of representation.)

**United Educators of San Francisco v. San Francisco Unified School Dist., No. 2048/197:73**

(Employees' reporting location is not within the scope of representation, and the charging party failed to show the change in location had an actual effect on terms or conditions of employment over which the district was obliged to negotiate.)

**United Educators of San Francisco v. San Francisco Unified School Dist., No. 2057/197:74**

(Work assigned to teachers by their principal is not a unilateral change but a nonnegotiable management prerogative. The charging party failed to show that the assignments had an impact on employment terms over which the district must negotiate. No prima facie case of retaliation was established.)

**Waszak v. Glendale Guild/AFT Loc. 2276, No. 2003/195:85**

(The board agent's dismissal of the unfair practice charge was upheld because the charge did not state a prima facie case. The union had a rational basis for not filing the charging party's grievance.)

### *HEERA Cases*

**California Alliance of Academic Student Employees/ UAW v. Trustees of CSU, No. 1992-H/194:81**

(The request by both parties to withdraw exceptions and cross-exceptions to the proposed decision and to vacate the proposed decision is granted.)

**Coalition of University Employees v. Regents of the University of California (Los Angeles), No. 1995-H/195:86**

(While the manager who initiated the layoff was aware of the employee's union activity, no evidence demonstrated that she harbored anti-union animus or was influenced by the animus of other employees.)

**Kyrias v. Trustees of California State University, No. 2038-H/197:77**

(Retaliation claims based on actions taken against a union steward were not timely under the continuing violation theory. The steward failed to allege facts showing

she was entitled to pay increases or to a position she was denied. The allegations did not show a nexus between her 2004 protected activity and a 2008 threat to reorganize her work and reassign her.)

**Onkvisit v. Trustees of the California State University (San Jose), No. 2032-H/196:87**

(The doctrine of equitable tolling can be applied under HEERA to toll the statute of limitations for an unfair practice charge while the same claim is pending in a negotiated dispute resolution procedure.)

### *MMBA Cases*

**Alhambra Firefighters Assn., Loc. 1578 v. City of Alhambra, No. 2036-M/197: 81**

(The association knew of the driver's license and relief driver policies long before the charge was filed, and equitable tolling did not apply to extend the limitations period while a Skelly hearing was pursued. An award of attorney's fees is warranted only where the case is without merit and pursued in bad faith.)

**Alhambra Firefighters Assn., Loc. 1578 v. City of Alhambra, No. 2037-M/197:82**

(The charge that the city unilaterally changed its policy regarding the location of personnel records was untimely. The award of attorney's fees is warranted where the case was without arguable merit and pursued in bad faith.)

**Amalgamated Transit Union, Loc. 1704 v. Omnitrans, No. 1996-M/195:87**

(The employer retaliated against a bus driver for his protected activity. The employer did not unilaterally change its union leave policy.)

**Amalgamated Transit Union, Loc. 1704 v. Omnitrans, No. 2001-M/195:88**

(No unilateral change was demonstrated where the employer gave the union notice and an opportunity to bargain, and the parties completed negotiations over proposed changes to the employee rulebook.)

**Amalgamated Transit Union, Loc. 1704 v. Omnitrans, No. 2010-M/196:87**

(The employer's refusal to process grievances the union filed in its own name denied the union its right to represent employees and interfered with employees' rights under the MMBA.)



**Amalgamated Transit Union, Loc. 1704 v. Omnitrans, No. 2030-M/197:79**

(The employer denied a union representative access to employees in the drivers' assembly rooms during non-working time and unilaterally adopted a new union access policy without providing the union with notice and an opportunity to meet and confer.)

**Amalgamated Transit Union, Loc. 1277, and Moore v. Riverside Transit Agency, No. 2053-M/197:86**

(Consistent with the purposes of the MMBA, the charging parties' request to withdraw their entire action, including their appeal of the partial dismissal of their unfair practice charge, was granted.)

**American Federation of State, County and Municipal Employees, Loc. 146, AFL-CIO v. Nevada Irrigation Dist., No. 2052-M/197:87**

(The unfair practice charge that the district violated the act by refusing to process a grievance was untimely and the doctrine of equitable tolling did not apply because the matter at issue in the grievance was not the same matter in dispute in the unfair practice.)

**American Federation of State, County and Municipal Employees, Loc. 1117 v. City of Torrence, No. 2004-M/195:89**

(The Administrative Procedure Act does not prohibit a PERB administrative law judge conducting an evidentiary hearing in an unfair practice case from admitting telephonic testimony of a witness.)

**Burbank City Employees Assn. v. City of Burbank, No. 1988-M/194:82**

(The city violated the MMBA when it failed to provide the association with requested information necessary and relevant to the association's representation of one of its members in a disciplinary appeal.)

**California School Employees Assn. and Its Chap. 2001 v. Coachello Valley Mosquito and Vector Control Dist. No. 2031-M/197:78**

(The district laid off employees based on their protected activity.)

**California United Homecare Workers Union v. Kings In-Home Supportive Services Public Authority, No. 2009-M/196:88**

(The factual allegations are sufficient to demonstrate a prima facie case that the public authority prematurely declared impasse. The allegations do not support the assertion that the public agency failed to comply with the local impasse procedures.)

**City and County of San Francisco v. Stationary Engineers, Loc. 39, No. 2041-M/197:83**

(The union violated the act by refusing to name a representative to an interest arbitration panel and participate in the impasse resolution procedures set forth in the city charter.)

**Coelho v. San Bernardino Public Employees Assn., No. 2014-M/196:88**

(The charging party's appeal of the dismissal of his unfair practice charge failed to comply with PERB Reg. 32635[a] concerning the required contents of such an appeal.)

**Estival v. Service Employees International Union, Loc. 1021, No. 1998-M/195:90**

(The board agent properly dismissed the charging party's assertion that the union breached its duty of fair representation by failing to file a grievance or challenge his release from employment.)

**Gilley-Mosier v. County of Yolo, No. 2020-M/196:89**

(The charging party failed to demonstrate a nexus between her protected activity and her involuntary transfer and, even if a nexus were established, the county would have taken the same action in the absence of protected activity.)

**Hagans and Toole v. Service Employees International Union, Loc. 721, No. 2050-M/197:89**

(The charge alleging that the union breached its duty of fair representation was dismissed as untimely.)

**Hagans and Toole v. Service Employees International Union, Loc. 721, No. 2051-M/197:90**

(Allegations in support of the duty of fair representation charge refer to events that occurred outside the six-month statute of limitations period.)

**Hinek v. Solano County Fair Assn., No. 2035-M/197:80**

(The doctrine of equitable tolling is applicable to cases brought under the MMBA; however, here, the charging party failed to sufficiently allege that he had resorted to a bilaterally agreed-on grievance procedure.)

**Hinek v. Teamsters Locals 78 and 853, No. 2056-M/197:90**

(The charging party was aware that the union had made a firm decision not to process his grievances, and his renewed efforts to get them to do so did not extend or restart the six-month limitations period.)

**Kroopkin v. County of San Diego, No. 1989-M/194:84**  
(The charging party's request to withdraw his appeal is granted.)

**Kroopkin v. County of San Diego; No. 2005-M/195:89**  
(The charging party does not have a right to attend labor/management committee meetings and, therefore, the county's decision to suspend those meetings was not improper.)

**Kroopkin v. Service Employees International Union, Loc. 221, No. 2006-M/195:90**

(The charging party failed to demonstrate an individual right to attend the labor/management committee meetings or how such a decision adversely impacted his employment relationship with the county.)

**Metropolitan Water District Supervisors Assn. v. Metropolitan Water District of Southern California, No. 2055-M/197:87**

(By failing to demand bargaining, the association waived its right to meet and confer over the district's decision to implement a new long-term vehicle assignment policy and the foreseeable effects of that decision which were evident from the policy itself.)

**Modesto City Employees Assn. v. City of Modesto, No. 1994-M/195:88**

(The association failed to demonstrate that the city increased an employee's suspension from two days to five in retaliation for his exercise of protected activity.)

**Modesto City Employees Assn. v. City of Modesto, No. 2022-M/196:89**

(The charging party's appeal of the dismissal of his unfair practice charge failed to comply with PERB Reg. 32635[a] concerning the required contents of such an appeal.)

**Rivera v. Service Employees International Union, United Healthcare Workers West, No. 2025-M/196:91**

(The duty of fair representation charge was untimely because the charging party was aware that the union would provide no further assistance more than six months prior to the filing of the charge.)

**Roeleveld v. County of San Bernardino, No. 2023-M/196:90**

(Good cause for late filing of the amended charge was demonstrated where the charging party's lateness was based on an honest mistake and the delay did not cause prejudice to any party.)

**Sacramento County Attorneys Assn. v. County of Sacramento; Sacramento County Professional Accountants Assn. v. County of Sacramento; American Federation of State, County and Municipal Employees, AFL-CIO, Loc. 146 v. County of Sacramento; Chauffeurs, Teamster & Helpers, Loc. 150 v. County of Sacramento, No. 2043-M/197:84**

(The county unilaterally changed the eligibility criteria for current employees/future retirees to participation in the retiree health insurance program and the retiree medical and dental insurance program.)

**Saenz v. County of San Diego (Health and Human Services), No. 2042-M/197:84**

(The charging party filed his unfair practice charge more than six months after the conduct alleged to be an unfair practice occurred.)

**San Mateo County Firefighters, Loc. 2400 v. Menlo Park Fire Protection Dist., No. 1983-M/194:81**

(The charging party failed to allege a nexus between the employee's protected activity and the adverse employment action taken against him.)

**Service Employees International Union, Loc. 715 v. El Camino Hospital Dist., No. 2033-M/197:79**

(The hospital is a public employer covered by the MMBA and was required to conduct an agency fee election based on the union's showing of support.)

**Service Employees International Union, Loc. 1997 v. City of Riverside, No. 2027-M/196:90**

(The city unilaterally changed the criteria for promoting mini-bus drivers without providing SEIU with notice and an opportunity to request to meet and confer.)

**Service Employees International Union, Loc. 1021 v. Calaveras County Water Dist. No. 2039-M/197:82**

(The allegations failed to demonstrate that the employee received a negative evaluation and was terminated because she engaged in protected activity.)

**Service Employees International Union, Loc. 1021 v. County of Sacramento, No. 2045-M/197:86**

(The county unilaterally changed the eligibility criteria for current employees/future retirees to participate in the retiree health insurance program and the retiree medical and dental insurance program.)

**Shelton v. San Bernardino County Public Defender, No. 2058-M/197:88**

(The charging party was not entitled to union representation because the meeting with her supervisors was not investigatory in nature.)

**United Public Employees, Loc. 1 v. County of Sacramento, No. 2044-M/197:85**

(The county unilaterally changed the eligibility criteria for current employees/future retirees to participate in the retiree health insurance program and the retiree medical and dental insurance program.)

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***Trial Court Act Cases***

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**California Federation of Interpreters/TNG/CWA v. Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside, No. 1987-I/194:84**

(The administrative law judge's proposed decision was rejected and the charges dismissed because the federation lacked standing to file a complaint on behalf of an independent contractor.)

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

No. 1945a	California Teachers Assn. v. Journey Charter School	No. 2001-M	Amalgamated Transit Union, Loc. 1704 v. Omnitrans
No. 1983-M	San Mateo County Firefighters, Loc. 2400 v. Menlo Park Fire Protection Dist.	No. 2002	Long Beach Council of Classified Employees v. Long Beach Community College Dist.
No. 1984-S	George v. SEIU, Loc. 1000	No. 2003	Waszak v. Glendale Guild/AFT Loc. 2276
No. 1985-S	California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration)	No. 2004-M	American Federation of State, County and Municipal Employees, Loc. 1117 v. City of Torrance
No. 1987-I	California Federation of Interpreters/TNG/CWA v. Region 4 Court Interpreter Employment Relations Committee and the Superior Court of California, County of Riverside	No. 2005-M	Kroopkin v. County of San Diego
No. 1988-M	Burbank City Employees Assn. v. City of Burbank	No. 2006-M	Kroopkin v. Service Employees International Union, Loc. 221
No. 1989-M	Kroopkin v. County of San Diego	No. 2007	Menges v. Torrance Unified School Dist.
No. 1990	Deglow v. Los Rios College Federation of Teachers, Loc. 2279	No. 2008	Felicijan v. Santa Ana Educators Assn.
No. 1991	Arteaga v. SEIU, Loc. 99	No. 2009-M	California United Homecare Workers Union v. Kings In-Home Supportive Services Public Authority
No. 1992-H	California Alliance of Academic Student Employees/UAW v. Trustees of CSU	No. 2010-M	Amalgamated Transit Union, Loc. 1704 v. Omnitrans
No. 1993	Baker Valley Teachers Assn. v. Baker Valley USD	No. 2011	Adams v. Los Angeles Unified School Dist.
No. 1994-M	Modesto City Employees Assn. v. City of Modesto	No. 2012	Adams v. United Teachers of Los Angeles
No. 1995-H	Coalition of University Employees v. Regents of the University of California (Los Angeles)	No. 2013-S	California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration)
No. 1996-M	Amalgamated Transit Union, Loc. 1704, v. Omnitrans	No. 2014-M	Coelho v. San Bernardino Public Employees Assn.
No. 1997-S	State of California (Depts. of Veterans Affairs and Personnel Administration) v. Service Employees International Union, Loc. 1000, CSEA	No. 2015	Hicks v. Compton Unified School Dist.
No. 1998-M	Estival v. Service Employees International Union, Loc. 1021	No. 2016	Hicks v. Compton Unified School Dist.
No. 1999	Kern Community College Dist. v. California School Employees Assn. and its Chaps. 246, 336, and 617	No. 2017-S	California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration)
No. 2000	Hsiong v. San Francisco Unified School Dist.	No. 2018-S	California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration)
		No. 2019	California School Employees Assn. and Its Chap. 150 v. Escondido Union Elementary School Dist.
		No. 2020-M	Gilley-Mosier v. County of Yolo
		No. 2021	Bussman v. Alvord Unified School Dist.
		No. 2022-M	Modesto City Employees Assn. v. City of Modesto

No. 2023-M	Roeleveld v. County of San Bernardino	No. 2044-M	United Public Employees, Loc. 1 v. County of Sacramento
No. 2024-S	California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections and Rehabilitation)	No. 2045-M	Service Employees International Union, Loc. 1021, v. County of Sacramento,
No. 2025-M	Rivera v. Service Employees International Union, United Healthcare Workers West	No. 2046	Bussman v. Alvord Educators Assn.
No. 2026	Cottonwood Teachers Assn. v. Cottonwood Union Elementary School Dist.	No. 2047	Bussman v. California Teachers Assn.
No. 2027-M	Service Employees International Union, Loc. 1997, v. City of Riverside	No. 2048	United Educators of San Francisco v. San Francisco Unified School Dist.
No. 2028	Dunn v. California School Employees Assn., Chap. 379	No. 2049-S	Hernandez v. Service Employees International Union, Loc. 1000
No. 2029	Payne v. California School Employees Assn. and Its Chap. 410	No. 2050-M	Hagans and Toole v. Service Employees International Union, Loc. 721
No. 2030-M	Amalgamated Transit Union, Loc. 1704 v. Omnitrans	No. 2051-M	Hagans and Toole v. Service Employees International Union, Loc. 721
No. 2031-M	California School Employees Assn. and Its Chap. 2001 v. Coachello Valley Mosquito and Vector Control Dist.	No. 2052-M	American Federation of State, County and Municipal Employees, Loc. 146, AFL-CIO v. Nevada Irrigation Dist.
No. 2032-H	Onkvisit v. Trustees of the California State University (San Jose)	No. 2053-M	Amalgamated Transit Union, Loc. 1277, and Moore v. Riverside Transit Agency
No. 2033-M	Service Employees International Union, Loc. 715 v. El Camino Hospital Dist.	No. 2054	United Association of Conejo Teachers v. Conejo Valley Unified School Dist.
No. 2034-S	Eisenberg v. Civil Service Div., California State Employees Assn.	No. 2055-M	Metropolitan Water District Supervisors Assn. v. Metropolitan Water District of Southern California
No. 2035-M	Hinek v. Solano County Fair Assn.	No. 2056-M	Hinek v. Teamsters Locals 78 and 853
No. 2036-M	Alhambra Firefighters Assn., Loc. 1578 v. City of Alhambra	No. 2057	United Educators of San Francisco v. San Francisco Unified School Dist.
No. 2037-M	Alhambra Firefighters Assn., Loc. 1578 v. City of Alhambra	No. 2058-M	Shelton v. San Bernardino County Public Defender
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