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(Issues 198-201)

An annual index to *CPER* Journal

Institute for Research on Labor and Employment
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2010 CPER INDEX

with issue No. 201 (March 2011)

CALIFORNIA PUBLIC EMPLOYEE RELATIONS (*CPER*)
Issues 198-201

A service of the California Public Employee Relations Program

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HOW TO USE THE CPER ANNUAL INDEX

The 2010 issues of *CPER* — No. 198 (February), No. 199 (May) and No. 200 (August) — are indexed in this edition of the annual *CPER Index*. In addition, this index includes the final print editon of *CPER,* No. 202 (March 2011). New editions are now online at http://cper.berkeley.edu.

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. 198 is printed as **198:22**. 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: (l) 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 2010 issues of *CPER*, and in the March 2011 issue (*CPER* No. 202). 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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PART II

TABLE OF CASES

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A teacher convicted of three drunken driving offenses is not "per se," or automatically, unfit to teach. The trial court instead should have applied the California Supreme Court's seven-part test set out in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, to evaluate whether the teacher is fit to teach.

(2010) 184 Cal.App.4th 462/200:26

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

The governor has no authority to furlough employees of the State Compensation Insurance Fund. The holding applies only to SCIF employees.

(2010) 182 Cal.App.4th 1424/199:54

California Correctional Peace Officers Assn. v. State of California

The Department of Personnel Administration has discretion to grant supervisors salary increases in light of their overall compensation compared with rank-and-file officers.

(2010) 181 Cal.App.4th 1454/199:52

California Correctional Peace Officers Assn. v. State of California

Labor Code provisions that require employers to provide meal breaks to employees do not apply to the state employer. Because the meal break provisions did not expressly cover public employers, dismissal of the union's class action claims was affirmed.

(2010) 188 Cal.App.4th 646/201:52

California Correctional Peace Officers Assn. v. State of California

Correctional officers did not gain new rights to overtime pay after the collective bargaining agreement between the state and the California Correctional Peace Officers Association expired and the state implemented terms and conditions. A statute that makes 40 hours the "normal workweek" of state employees does not require the state to pay overtime compensation after 40 hours of work in a week.

(2010) 189 Cal.App.4th 849, rev. den./201:53

California School Employees Assn. v. Torrance USD

The district did not violate the Education Code by failing to pay classified employees who did not work on two staff-development days. Ed. Code Sec. 45203 did not apply because students would not "otherwise have been in attendance" on those days.

(2010) 182 Cal.App.4th 1040/199:41

Carver v. Holder

Where the Equal Employment Opportunity Commission made a finding of age discrimination and ordered certain remedies, the complainant cannot sue to expand those remedies without relitigating the issue of liability.

(9th Cir. 2010) 606 F.3d 690/200:63

Chavez v. City of Los Angeles

Cases brought under the state's Fair Employment and Housing Act are not exempt from Code of Civil Procedure Sec. 1033(a). The section provides that a court has discretion to deny attorney's fees when it finds that the matter should have been brought as a "limited civil case," where the amount in controversy does not exceed $25,000.

(2010) 47 Cal.4th 970/198:51

City of Richmond v. Service Employees International Union, Loc. 1021

The public policy against sexual harassment is insufficient to vacate an arbitration award reinstating an alleged harasser, where the arbitrator found the employer failed to take disciplinary action within the period allowed by the collective bargaining agreement. The public policy exception to the general rule of arbitral finality is limited and reserved for unusual circumstances.

(2011) 189 Cal.App.4th 663, rev. den./201:64

City of San Jose v. Operating Engineers Local Union No. 3

PERB has initial jurisdiction over a claim by a public agency that a strike by some or all of its employees is illegal.

(2010) 49 Cal.4th 597/200:33

Conn v. Western Placer Unified School Dist.

A teacher's complaints about special education services are not protected disclosures under the Reporting by School Employees of Improper Governmental Activities Act. Section 44113 of the act makes school officials liable for interfering with the right of a school teacher to disclose evidence of improper governmental activities to an administrator or school board.

(2010) 186 Cal.App.4th 1163/200:29

County of Los Angeles Dept. of Health Services v. Civil Service Commission; Latham, RPI.

The jurisdiction of the Los Angeles Civil Service Commission is divested when a county employee whose appeal is pending before the commission elects to retire. Because her future status as an employee is no longer an issue, the challenge to her discharge becomes a wage claim, over which the commission has no jurisdiction.

(2009) 180 Cal.App.4th 391/198:28

DiQuisto v. County of Santa Clara

The county did not impermissibly expend public funds for partisan electoral purposes when, during negotiations, it bargained for unions' non-support of an initiative measure calling for binding interest arbitration. The Meyers-Milias-Brown Act authorized the county's discussion of the ballot measure while bargaining with the unions. The county had made no *quid pro quo* offers to the unions to win their agreement to a bargaining proposal that they withhold their support for the initiative and disassociate themselves from the petition drive to get the arbitration measure on the ballot.

(2010) 181 Cal.App.4th 236/198:32

Dominguez et al. v. Schwarzenegger et al.

The reduction in the state's contribution directly influenced the wage rates negotiated in each county because it set the maximum payment the state would make toward wages and benefits.

(9th Cir. 2010) 596 F.3d 1087/199:26

Entezampour v. North Orange County Community College Dist.

When the North Orange County Community College District decided not to renew the charging party's employment as dean of science, engineering, and mathematics, he was entitled to a reassignment to one of two open faculty positions for which he was qualified. Education Code Sec. 87458 provides that an administrator "shall have the right to become a first-year probationary faculty member once his or her administrative assignment expires or is terminated."

(2010) 190 Cal.App.4th 832/201:37

George v. California Unemployment Insurance Appeals Board

When the State Personnel Board partially upheld two of the three suspensions challenged by a California Unemployment Insurance Appeals Board employee, those decisions did not eliminate a necessary element of the employee's claim that the CUIAB had suspended her in retaliation for filing a sex discrimination charge with the Department of Fair Employment and Housing. The employee did not need to prove she had a reasonable, good faith belief that her DFEH charge was well-founded. And, there was substantial evidence to support the jury's verdict in favor of the employee.

(2009) 179 Cal.App.4th 1475/198:59

Gilb v. Chiang

The Department of Personnel Administration has the authority to direct the controller to reduce salaries to the federal minimum wage during a budget impasse that continues past July 1. Although the controller has the duty to audit claims, he must seek a judicial resolution if he disagrees with DPA's order.

(2010) 186 Cal.App.4th 444/200:43

Harris v. City of Santa Monica

Where an employee establishes a prima facie case of workplace discrimination in violation of California's Fair Employment and Housing Act, and the employer claims that it had a legitimate non-discriminatory reason for its actions which, if standing alone, would have induced the employer to make the same decision, the employer is entitled to a mixed-motive jury instruction.

(2009) 178 Cal.App.4th 1157/198:61

International Association of Fire Fighters, Loc. 188 v. Public Employment Relations Board

When faced with a budget crisis, the city was not required to meet and confer with the firefighters union when it decided to lay off some firefighters as a cost-saving measure. The city's duty to bargain with the employee organization extends only to the implementation and effects of the layoff decision, including the number and identity of the employees to be laid off and the timing of the layoffs. The court also affirmed the lower court's ruling that permits limited review of the Public Employment Relations Board's decision not to issue a complaint based on an unfair practice charge.

(2011) 51 Cal.4th 259/201:29

Kaye v. Board of Trustees of the San Diego County Public Law Library

A reference librarian who lambasted his supervisors in a scathing email addressed to all employees is not shielded from termination because of free speech protections conveyed by the federal or California Constitutions.

(2009) 179 Cal.App.4th 48/198:67

Knox v. Westly

When SEIU Local 1000 temporarily increased fees and dues for a Political Fight Back Fund in 2005, it did not give fair share fee payers a chance to object to the new fees. However, its procedure complied with the First Amendment.

(9th Cir. 2010) 628 F.3d 1115/201:55

Mariscal v. Los Angeles City Employee Relations Board; SEIU Local 721, RPI

Local union members were given a fair opportunity with appropriate due process safeguards to approve the proposed consolidation and merger of their seven locals into one. The merger did not cause organizational changes so great as to present a question concerning representation.

(2010) 187 Cal.App.4th 164/200:36

McCarther v. Pacific Telesis

Labor Code Sec. 233, which permits employees to use accrued paid sick leave to care for ill relatives, does not apply to sick leave policies that provide for an uncapped number of paid sick days off.

(2010) 48 Cal.4th 104/199:59

Medical Development Intl. v. California Dept. of Corrections and Rehabilitation

The receiver in charge of the prison medical system is subject to suit in federal court for actions taken while operating the system.

(9th Cir. 2009) 585 F.3d 1211/198:43

Milan v. City of Holtville

Under California's Fair Employment and Housing Act, an employer has no duty to offer reasonable accommodation to a disabled employee who never expressly requested an accommodation or indicated she wanted to continue working

(2010) 186 Cal.App.4th 1028/200:64

Ohton v. Board of Trustees of California State University

The university misapplied the "good faith" standard when determining whether the coach made a protected disclosure. The university's determination letter did not satisfactorily address the coach's complaint because it did not state whether the retaliators had been disciplined or referred for criminal prosecution, as authorized by the whistleblower statute.

(2010) 1402 Cal.App.4th 180/198:46

Opinion by A.G. Edmund G. Brown, Jr.,

A joint labor-management benefits committee created by the terms of a collective bargaining agreement is not subject to the Ralph M. Brown open meetings act.

(12-31-09) No. 08-806, 2010 DJDAR 62/198:64

Page v. Mira Costa Community College Dist.

A community college district's settlement with a former president and superintendent upon her termination exceeded the amount allowed by Government Code Secs. 53260 and 53261.

(2009) 180 Cal.App.4th 471/198:65

Pearson Dental Supplies, Inc. v. Superior Court

The Supreme Court wedged open the courthouse door to allow narrow review in cases involving unwaivable statutory rights such as the Fair Employment and Housing Act. The ruling widens slightly the scope of judicial review when parties move to vacate an award on the ground that the arbitrator exceeded his powers.

(2010) 48 Cal.4th 665/199:63

Professional Engineers in California Government v. Schwarzenegger

Furloughs of represented employees in 2009-10 were legal even though the governor lacked authority to impose them unilaterally. While the governor had no power to furlough represented employees under the Constitution or the Government Code, the legislature ratified the invalid December 2008 Executive Order when it passed its February 2009 budget.

(2010) 50 Cal.4th 989/201:47

Reeves v. MV Transportation, Inc.

Under California's Fair Employment and Housing Act, an applicant alleging age discrimination must show that he was a member of a protected class, he was qualified for the position, he suffered an adverse employment action, and some other circumstance suggests discriminatory motive.

(2010) 186 Cal.App.4th 666/200:67

Reid v. Google, Inc.

The California Supreme Court refused to apply to state cases the "stray remarks doctrine" fashioned by federal courts in dealing with employment discrimination cases. Under federal law, statements made by non-decisionmakers or by decisionmakers outside of the decisional process are "stray" and irrelevant when considering the legal theory of a discrimination lawsuit. The high court, in a unanimous opinion, agreed with the Court of Appeal that application of the "stray remarks doctrine" is unnecessary and might lead to unfair results. The court also concluded that where a trial court fails to rule on objections to evidence, those objections are not waived and can be raised on appeal.

(2010) 50 Cal.4th 512/200:62

Renee v. Duncan

The court invalidated a federal regulation that permitted teachers who are participating in alternative-route teacher training programs — but who have not yet obtained state certification — to be characterized as "highly qualified teachers" under the No Child Left Behind Act. This distribution of interns has resulted in a poorer quality of education than those students would have otherwise received.

(9th Cir. 2010) 623 F. 3d 787/201:33

Rent-a-Center, West. Inc. v. Jackson

When a mandatory arbitration agreement provides that an arbitrator will decide any dispute over the validity of the arbitration agreement, a court must not decide the issue. Only if the delegation provision itself is challenged would a court need to decide whether the provision is valid before compelling arbitration. Since the employee challenged only the arbitration agreement, and not the provision delegating to an arbitrator the issue of validity of the agreement, the employer's motion to compel arbitration was properly granted.

(6-21-10) Supreme Ct. 09-497, ___U.S. ___, 130 S.Ct. 2772/200:68

Riverside Sheriffs Assn. v. Board of Administration of the California Public Employees Retirement System

The sheriffs association could not gain law enforcement status for the deputy coroners. The coroners' main function was to investigate the causes of death, and they were not *clearly* engaged in active law enforcement, as required by statute. Therefore, the coroners were not entitled to enhanced retirement benefits as safety members of the Public Employees Retirement System.

(2010) 184 Cal.App.4th 1/199:29

Roby v. McKesson

The Court of Appeal erred when it excluded personnel management actions as evidence in support of a claim of workplace harassment. There are differences between harassment and discrimination under the Fair Employment and Housing Act, while "they are sometimes closely interrelated, even overlapping, particularly with regard to proof."

(2009) 47 Cal.4th 686/198:57

Runyon v. Board of Trustees of the California State University

If an employee is not satisfied with the state university's response to a whistleblower complaint, the employee may sue for damages. Neither statutory language nor the administrative exhaustion doctrine requires a CSU whistleblower to ask a court to overturn an adverse administrative decision before suing for damages for retaliation.

(2010) 48 Cal.4th 760/199:45

San Francisco Housing Authority v. Service Employees International Union, Loc. 790

Where the agreement provided both express bumping rights and good faith meeting and conferring over the union's proposed alternatives to layoff, the arbitrator did not exceed her powers when she reinstated a laid-off employee to a position not required by the bumping provisions. Since nothing in the agreement precluded the arbitrator from reinstating the grievant to the position, and the remedy was rationally related to the arbitrator's interpretation of the contract, the remedy did not modify the agreement.

(2010) 182 Cal.App.4th 933/199:65

Service Employees International Union, Loc. 1000 v. Schwarzenegger

The court rejected claims that a back pay award was defective. In unpublished sections of the opinion, the court also held that the San Francisco Superior Court had jurisdiction over the case even though a Sacramento court already had decided a similar case, and that the Insurance Code prohibited the governor from ordering furloughs of SCIF employees.

(2010) 186 Cal.App.4th 747/200:48

Siskiyou County v. State Personnel Board

Unless the State Personnel Board's decision is arbitrary, capricious, or "beyond the bounds of reason," a judge cannot substitute her judgment in place of the board's decision.

(2010) 188 Cal.App.4th 1606, rev. den./201:57

Thompson v. North American Stainless, LP

An employee has standing to bring a claim under Title VII alleging that he was terminated in retaliation for his fiancée having filed a claim of sex discrimination against the same employer.

(2011) ___U.S.___, 131 S.Ct. 863/201:59

Traxler v. Multnomah County

Front pay under the federal Family Medical Leave Act is an equitable remedy to be determined by the judge, not the jury.

(9th Cir. 2010) 596 F.3d 1007/199:60

Turman v. Turning Point of Central California, Inc.

The employer was required to take corrective action to alleviate the sexual harassment. The trial court correctly analyzed the discrimination allegation under the disparate impact theory. The dismissal of punitive damages was proper because the employee had failed to allege facts showing malice.

(2010) 191 Cal.App.4th 53/201:60

United Teachers of Los Angeles v. Los Angeles Unified School

The California Supreme Court agreed to decide whether a school district can be required to arbitrate disputes over the district's approval of a charter school petition under the terms of a collective bargaining agreement.

(2009) 177 Cal.App.4th 863, modified 10-16-09, S177403/B214119, review granted 12-24-09/ 198:21

PART III

TABLE OF PERB ORDERS AND DECISIONS

Section A: Annotated Table of PERB Orders and Decisions

Dills Act Cases

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections and Rehabilitation), No. 2108-S/200:76

(The charging party did not allege facts that showed CDCR engaged in surface bargaining over the effects of a change in policy concerning protective vests. The charging party's failure to name CDCR, rather than the Department of Personnel Administration, did not warrant dismissal.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections & Rehabilitation), No. 2118-S/200:79

(Negative comments on a satisfactory performance evaluation and a referral to the Employee Assistance Program are not adverse actions that constitute retaliation or interference with the right to file grievances.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections and Rehabilitation), No. 2154-S/201:72

(Retired annuitants working in state service are not automatically included in the same bargaining unit as full-time employees performing similar tasks. The state did not make a unilateral change when it did not withhold fair share fees from retired annuitants.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections and Rehabilitation, Avenal State Prison), No. 2111-S/200:77

(The charge failed to state a claim that CDCR engaged in surface bargaining or unilaterally changed its released time policy by ending released time for union members when the union's negotiator did not come to a bargaining session.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections & Rehabilitation, Dept. of Personnel Administration), No. 2115-S/200:78

(The charging party's facts did not show that the state unilaterally established an area of layoff or that it engaged in surface bargaining over the area of layoff after it elected to close two facilities.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Corrections and Rehabilitation, Ventura Youth Correctional Facility), No. 2131-S/201:69

(For a charge to be timely, the charging party need allege only when it learned of a unilateral change, not when the change was implemented. Assertions that only one employee was instructed to complete training at home does not show a change in training policy.)

California Correctional Peace Officers Assn. v. State of California (Dept. of Personnel Administration), No. 2081-S/198:77

(The state did not engage in conditional bargaining by insisting to impasse on permissive subjects of bargaining where the charge does not show the union objected to bargaining the non-mandatory subjects.)

California Correctional Peace Officers Assn v. State of California (Dept. of Personnel Administration), No. 2102-S/201:68

(Legislative rejection of raises in a last, best, and final offer, worsening state fiscal conditions, and DPA's withdrawal of raises in future years did not constitute changed circumstances requiring DPA to reopen bargaining at CCPOA's request, particularly since the union demanded return to the terms and conditions of bargaining that existed before implementation of the LBFO.)

Diunugala v. SEIU Loc. 1000, No. 2060-S/198:78
(Neither the union's neglect of the grievance after the arbitration request nor the ultimate decision not to arbitrate alleged a breach of the duty of fair representation.)

Edelen v. California Statewide Law Enforcement Assn., and Lewis v. California Statewide Law Enforcement Assn., No. 2088-S/199:74
(An employee organization interfered with employee rights when it refused to honor requests to withdraw from membership after expiration of the MOU, which contained a maintenance of membership clause.)

International Union of Operating Engineers, Unit 12 v. State of California (Dept. of Personnel Administration), No. 2152-S/201:71
(Since the legislature retained authority to modify terms and conditions of employment without collective bargaining, it had the power to ratify the unilateral implementation of state employee furloughs.)

Menaster v. State of California (Dept. of Social Services), No. 2072-S/198:76
(The supervisor's continued questioning after the charging party requested union representation did not violate the Dills Act where the supervisor eventually dispensed with the interview. The charging party did not prove the state employer retaliated against him for engaging in protected activity when the employer wrote an "expectations" memorandum, placed him on administrative leave, rejected him on probation, and failed to reinstate him.)

Morgan v. California Statewide Law Enforcement Assn., No. 2089-S/199:75
(Where the charging party requested withdrawal of membership in January 2009, the board reached the same conclusion as summarized above in *Edelen v. CSLEA,* No. 2088-S, above.)

SEIU Loc. 1000 v. State of California (Dept. of Developmental Services and Office of Protective Services). No. 2062-S/198:75
(The employer's refusal to bargain was not an unfair practice because the union failed to identify in its demand to bargain the negotiable effects on security guards of a new security booth and surveillance cameras.)

Slotterbeck v. SEIU Loc. 1000, No. 2135-S/201:70
(The unfair practice charge was untimely because it was filed more than six months after the charging party knew or should have known that full dues, rather than reduced agency fees, were being deducted from his paycheck. He failed to exhaust internal procedures for challenging the fee calculations before filing his charge.)

Stationary Engineers Loc. 39, IUOE, and State of California (Dept. of Personnel Administration), No. 2078-S/198:76
(Economic uncertainty justified DPA's deferral of bargaining over economic items. The state negotiators' lack of authority to bargain economic items was not bad faith bargaining because it did not thwart negotiations. The governor's letter to employees about proposed furloughs did not bypass the union.)

Stationary Engineers Loc. 39, IUOE, and State of California (Dept. of Personnel Administration), No. 2085-S/198:78
(The legislature did not make a unilateral change by enacting a law altering the method of calculating eligibility for overtime, even though the union's expired contract remained in effect. The governor was not required to provide notice and an opportunity to bargain before submitting the legislation.)

Union of American Physicians & Dentists v. State of California (Dept of Personnel Administration), No. 2123-S/201:69
(The union's allegations of retaliation and discrimination were not sufficient because they did not identify members' protected activity or show a nexus to the department's decision to furlough employees and not contract physicians. The union also did not sufficiently allege interference with employee rights.)

Union of American Physicians & Dentists v. State of California (Dept. of Veterans Affairs), No. 2110-S/200:76
(The department's layoff decision was not within the scope of representation where there was no allegation that it subcontracted the laid off employees' work. The union did not allege facts showing it demanded to bargain over the effects of the layoff decision.)

Woods v. State of California (Dept. of Corrections & Rehabilitation), No. 2136-S/201:70
(The charging party did not show a nexus between her involvement of the union in her workplace complaints and her rejection from probation. Her failure to file an appeal on the ALJ's evidentiary rulings during the hearing did not foreclose her right to file exceptions to those rulings after she received the proposed decision.)

EERA Cases

Baprawski v. Los Angeles Community College Dist., No. 2059/198:79
(Equitable tolling does not apply because the parties' grievance process ended in binding arbitration. The charging party has the burden of proving the timeliness of a charge.)

California School Employees Assn., Chap. 106 v. Desert Sands Unified School Dist., No. 2092/199:77
(The district unlawfully changed policies within the scope of representation when it transferred work from one position to others, changed its policies regarding field-trip work, and altered its practice regarding training compensation for bus drivers. The district did not unlawfully change the duties of bus mechanics.)

Compton Unified School Dist., Compton Unified School District Police Management Police Officers Assn., and Service Employees International Union, Loc. 99, No. Ad-385/201:76
(A petition to sever police department supervisors from the bargaining unit was not filed within the 29-day window period and was dismissed as untimely.)

DeLarge v. SEIU Loc. 1021, No. 2068/198:81
(The union's duty of fair representation does not extend to representing the charging party at a personnel commission hearing, an extra-contractual matter.)

DeRuiter v. Garden Grove Unified School Dist., No. 2086/199:75
(The charge was untimely with respect to all allegations of unlawful conduct occurring more than six months prior to filing the charge. The continuing violation doctrine does not apply because the charging party did not establish that the district's conduct within the statutory period was an independent violation of EERA. The charging party did not state a prima facie case of retaliation because she failed to show a nexus between her protected activity and the alleged adverse actions.)

Gibson v. California School Employees Assn. Chap. 168, No. 2128/201:78
(The charging party failed to show that the association's conduct was arbitrary, in bad faith, or discriminatory.)

Gregory v. Oakland Unified School Dist., No. 2061/198:80
(While the evidence established a prima facie case of discrimination, the district would have terminated the charging party for job abandonment regardless of her protected activity.)

Isenberg v. Los Angeles Unified School Dist., No. 2124/201:73
(The decision not to select the charging party for a technical services coordinator position was not in retaliation for his protected activities.)

Martinez v. Fontana Unified School Dist., No. 2147/201:75
(The charging party failed to allege sufficient facts to demonstrate that the district retaliated against him for engaging in protected activity.)

Meredith v. Grossmont Union High School Dist., No. 2126/201:73
(The charging party failed to demonstrate he was given a negative performance evaluation and rejected during his probation in retaliation for sending a letter accusing the principal of violating the collective bargaining agreement and asking for union representation during a meeting with his supervisors and the director of human resources.)

O'Neil et al. v. Santa Ana Educators Assn., No. 2087/199:78
(The charging parties failed to show that the union's conduct in obtaining ratification of a contract was arbitrary, discriminatory, or in bad faith, or that it was without a rational basis or devoid of honest judgment.)

Pratt v. United Teachers of Los Angeles, No. Ad-381/198:82
(The request to excuse the late-filed appeal was denied, and the request for an extension of time to file an appeal did not comply with PERB regulations.)

Sacramento Teachers Assn. v. Sacramento City Unified School Dist., No. 2129/201:74

(Timing of the adverse action relative to the successful resolution of his grievance plus the district's exaggerated reaction to the changing party's tardiness is sufficient to establish a prima facie case of retaliation.)

Santa Ana Unified School Dist. v. Communication Workers of America, AFL-CIO, No. Ad-383/199:77
(A unit exclusively composed of substitute teachers is an appropriate bargaining unit.)

Scott v. Mount Diablo Education Assn., No. 2127/201:77
(A DFR violation may be established based on inaction that occurred more than six months before the charge was filed, provided the inaction was part of the same course of conduct as occurred within the prior six months. The association's overall pattern of conduct toward the charging party was one of assistance, and the charging party failed to show that it acted in bad faith, or in an arbitrary or discriminatory manner.)

Stott v. San Joaquin Delta Community College Dist., No. 2091/199:76
(The charging party did not state a prima facie case of discrimination because he failed to establish that he engaged in protected activity under EERA.)

Strygin v. United Teachers of Los Angeles, No. 2149/201:79
(The charge failed to allege sufficient facts to demonstrate that the union breached its duty of fair representation.)

Tarvin v. United Faculty of Grossmont-Cuyamaca Community College Dist., No. 2133/201:79
(The charging party failed to allege sufficient facts demonstrating that the union breached its duty of fair representation.)

Thomas v. United Teachers of Los Angeles, No. 2150/201:79
(The charging party failed to show that the allegations occurred within the six-month statute of limitations period, or that the union's refusal to file a grievance was arbitrary, discriminatory, or made in bad faith. PERB has no duty to provide legal assistance to the charging party or to advise her to file a charge against the union. PERB has no authority to extend a statute of limitations. Whether PERB should have joined the union as a necessary party in the charging party's charge against the district was not an issue that could be raised in this case.)

Tsai v. California Teachers Assn., Solano Community College Chap., CTA/NEA, No. 2096/199:79
(The charging party failed to show that the association had no rational basis for refusing to take her grievance to arbitration or that it made its decision because she had filed her own grievance.)

Ulmschneider v. Los Banos Unified School Dist., No. 2063/198:81
(The charge was untimely with respect to all allegations of reprisal other than the charging party's dismissal. The charging party failed to state a prima facie case of discrimination because he did not establish that he was dismissed because of his protected activity.)

Ventura County Community College Dist. v. Ventura County Federation of College Teachers, AFT Loc. 1828, No. 2082/199:75
(The charging party failed to allege any conduct by the federation that violated EERA, and therefore did not establish a prima facie case.)

Victor Valley Community College Dist., Police Officers Assn., Victor Valley Community College Dist.-Police Dept., and California School Employees Assn. and its Chap. 584, No. Ad-388/201:76
(The bargaining unit sought by the association is not an appropriate unit, and the severance petition is dismissed.)

Villasenor v. National School Dist., No. Ad-389/201:75
(Good cause to excuse the late filing was not demonstrated.)

Weightman v. Los Angeles Unified School Dist., No. 2073/198:81
(The board upheld the dismissal of the charging party's claim that the district interfered with his rights under EERA by failing to follow contractual grievance timelines.)

HEERA Cases

AFSCME Loc. 3299 and Regents of the University of California, No. 2109-H/200:81
(The charging party failed to allege facts showing that the university changed its vacation and sick leave policies.)

California Nurses Assn. v. Regents of the University of California, No. 2094-H/201:80

(Unfair practice strikes are legal under HEERA, even if they occur prior to the completion of impasse procedures. Under a new two-prong test, CNA's strike threat was an illegal economic action because U.C. did not engage in unfair practices. As part of a make-whole order, the board has authority to award monetary damages for an employer's direct economic losses resulting from a union's strike preparations.)

California State University Employees Union v. Trustees of the California State University (San Marcos), No. 2070-H/198:83

(The manager's complaint to campus police showed retaliation against an employee for using union assistance and filing a grievance. The charge was insufficient to show the university unilaterally transferred bargaining unit work.)

Coalition of University Employees v. Regents of the University of California (Davis), No. 2101-H/199:81

(U.C.'s breach of a contract provision requiring notice to the union when the university proposed to replace a unit position with a non-unit position was a change in policy. Notice of a change in policy must be given to a union official, not to unit employees. The university had a duty to provide or disclose the website location of relevant information regarding non-unit positions.)

Delgado v. Trustees of the California State University (San Marcos), No. 2134-H/201:80

(The university did not interfere with employee rights when it refused to meet at level 1 of the grievance process on the grounds that the grievance was untimely. The employees did not have standing to assert a breach of a settlement agreement between their union and CSU.)

Halcoussis v. California Faculty Assn., No. 2117-H/200:83

(Where the charging party restricted a vote on a furlough proposal to union members and gave nonmembers notice of the bargaining proposal and opportunities to comment on it, the board reached the same conclusion as summarized above in *Williams v. CFA*, No. 2116-H, below.)

Hall v. Coalition of University Employees, No. 2095-H/199:82

(The charging party did not allege facts showing that the union discriminated against her or breached its duty of fair representation when it opposed reclassifying her position out of the bargaining unit. There was no good cause to consider new allegations on appeal.)

Pelonero v. Trustees of the California State University (San Marcos), No. 2093-H/199:80

(The charging party did not prove by a preponderance of the evidence that management employees interfered with his right to file grievances. The statute of limitations was tolled by the filing of a grievance concerning the same conduct underlying the unfair practice charge.)

Regents of the University of California v. AFSCME Loc. 3299, No. 2105-H/200:80

(Leafleting in places prohibited by university access policies was only an isolated breach of contract, not an unfair practice, because AFSCME leafleters left the prohibited places when directed to move.)

Regents of the University of California and UPTE, CWA Loc. 9119, No. 2107-H/200:81

(Proof of majority support among 163 case managers at the university's medical centers was not required before ordering that the healthcare unit of 4,000 employees be modified to include the classification. A party cannot waive its right to file a unit modification petition.)

Sarca v. CSU Employees Union, SEIU Loc. 2579, No. 2137-H/201:81

(The charging party, whom the union exempted from paying fair share fees, has no standing to file a charge challenging the amount of the fee. The union's decision to exempt him from paying is not an unfair practice.)

State Employees Trades Council United v. Regents of the University of California (Los Angeles and San Diego), No. 2084-H/199:79

(The charge alleging failure to meet and discuss health benefits was untimely since it was filed more than six months after the university closed the open enrollment period. The union also failed to allege facts showing the university refused to meet and discuss changes to employee premium contributions within the statute of limitations.)

United Automobile Workers, Loc. 4123 v. Trustees of the California State Univ., No. 2151-H/201:82

(The union did not allege facts showing that the university's inaccurate statement to a factfinding panel was an indication of bad faith participation in impasse proceedings. An amendment to the charge based on facts not alleged in the original charge was untimely filed.)

Ventura et al. v. State Employees Trades Council United, Dec. No. 2069-H/198:82
(The union violated the act by failing to provide a financial report to the charging parties on request. The charging parties did not allege facts showing retaliation, and have no standing to challenge the union's alleged violation of the MOU as an unfair practice charge.)

Williams v. California Faculty Assn., No. 2116-H/200:83
(Restricting a vote on a furlough proposal to union members did not breach the duty of fair representation since the charged party gave nonmembers notice of the proposal and opportunities to comment on it.)

Williams & Pelonero v. Trustees of the California State University (San Marcos), No. 2140-H/201:81
(The university did not engage in retaliation by settling the employees' grievances with their union. The charging parties did not have standing to challenge unilateral changes.)

Yi-Kuang Liu v. Regents of the University of California, No. 2153-H/201:83
(Claims that U.C. breached an employee's contract, defamed his character, and misrepresented his scholarly/academic efforts are not within PERB's jurisdiction. The charge that U.C. discriminated against him because of protected activity did not allege facts showing that his grievances were filed in furtherance of concerted action.)

MMBA Cases

Alhambra Firefighters Assn., Loc. 1578 v. City of Alhambra, No. 2139-M/201:85
(The decision to change the minimum qualifications for the fire captain classification did not have a significant or adverse impact on working conditions of bargaining unit employees. Broadening the pool of applicants and thereby increasing competition is not an adverse impact. The determination of minimum job qualifications is a fundamental managerial decision outside the scope of bargaining.)

Amalgamated Transit Union Loc. 1704 v. Omnitrans, 2121-M/200:86
(The employer terminated the union president because of his unauthorized absences from work during a severe manpower shortage, not because of his protected activities.)

Amalgamated Transit Union, Loc. 1704 v. Omnitrans, No. 2143-M/201:85
(Omnitrans unlawfully bypassed the union when it formed a focus group that formulated new bidding procedures for drivers. Its failure to permit the union to file a grievance on its own behalf was a unilateral change.)

City of Lodi and Lodi Professional & Technical Employees and AFSCME Loc. 146, No. 2142-M/201:89
(The Lodi Professional & Technical Employees failed to show that the classes in the proposed unit share a community of interest separate and distinct from the general services unit. A state bargaining relationship exists between the city and AFSCME, and granting the petition could lead to a fragmentation of units.)

Coffman v. City of Brea, No. 2083-M/199:83
(The charging party failed to allege sufficient facts to show that the city discriminated against him.)

County of Orange, Union of American Physicians & Dentists, and Orange County Employees Assn., No. Ad-386-M/201:88
(The board lacks jurisdiction over the union's representation petition because the county's local rule provides for severance petitions.)

County of Siskiyou and Siskiyou County Employees Assn., and Siskiyou County Employees Assn./AFSCME; Siskiyou County Superior Court and Siskiyou County Employees Assn., and Siskiyou County Employees Assn./AFSCME, No. 2113-M/200:88
(Two petitions filed by SCEA seeking to disaffiliate from AFSCME were dismissed because SCEA failed to show that there was substantial continuity of representation between the pre-disaffiliation organization, SCEA/AFSCME, and the post-disaffiliation organization, SCEA.)

Engineers Society v. Santa Clara Valley Water Dist., No. 2148-M/201:87
(In light of the parties' settlement agreement, granting the charging party's request to withdraw its appeal is consistent with the purposes of the act and within the parties' best interests.)

Feger v. County of Tehama, No. 2122-M/200:87
(The charging party failed to demonstrate that the county abolished an eligibility list in retaliation for her participation in a coworker's disciplinary arbitration.)

Flowers v. IBEW Loc. 1245, No. 2079-M/198:91
(The allegations raised by the charging party were sufficient to state a prima facie case that the manner in which the union pursued his grievance breached the duty of fair representation.)

Gallardo v. International Brotherhood of Electrical Workers, Loc. 1245, No. 2146-M/201:91
(The union's decision not to pursue a grievance challenging the level of disciplinary action imposed on the charging party was not without a rational basis, or arbitrary or discriminatory.)

Jackson v. County of Riverside, No. 2065-M/198:85
(A classification study undertaken to resolve the charging party's out-of-class grievance did not result in adverse action because, while her job title changed, the charging party continued to perform the same duties with no loss of compensation after the study was implemented.)

Jones-Boyce v. Metropolitan Water District of Southern California, No. 2066-M/198:85
(The charging party failed to allege sufficient facts in support of her claim that the district placed her on administrative leave and terminated her employment and medical benefits because she engaged in protected activity.)

Laborers International Union of North America, Loc. 777 v. County of Riverside, No. 2097-M/199:83
(The charging party failed to request to negotiate the effects of the county's decision to change a compensation plan and therefore waived its right to bargain.)

Lam v. City and County of San Francisco, No. 2075-M/198:88
(The charging party failed to allege sufficient facts to show that the city colluded with his exclusive representative to close grievances he had filed, that the city did so in retaliation for his protected activity, or that it had a duty to inform him of the closures.)

Lam v. SEIU Loc. 1021, No. 2076-M/198:90
(The charging party failed to allege sufficient facts to show that, by its involvement in the closure of two grievances, the union breached its duty of fair representation.)

May v. Stationary Engineers, Loc. 39, No. 2098-M/199:84
(The union's conduct was a matter of internal affairs and did not impact the unit employees' relationship with the employer. The union's bargaining proposal regarding layoffs did not breach its duty of fair representation.)

Maxey v. IFPTE Loc. 21, AFL-CIO, No. 2077-M/198:90
(The allegations were insufficient to demonstrate that the union's grievance handling amounted to a breach of the duty of fair representation.)

Mendocino County Public Attorney's Assn. v. County of Mendocino), No. 2104-M/200:84
(Employees whose classifications were moved to a newly created bargaining unit were not entitled to wage increases that attached to the MOUs covering the units from which they migrated, and no unilateral change ensued when the county corrected the error.)

Operating Engineers, Loc. 3 v. City of Clovis, No. 2074-M/198:87
(The city did not commit an unfair practice by failing to implement a salary increase because the union did not accept the city's final offer of a 3 percent raise when it left a voicemail message offering to withdraw its unfair practice charge if the city implemented the final wage offer.)

Roeleveld v. County of San Bernardino (County Library), No. 2071-M/198:86
(The county's personnel rules deal with relations between the county and individual employees. They are not local rules under Sec. 3507(a) and are outside PERB's jurisdiction.)

Salinas Valley Memorial Healthcare System, National Union of Healthcare Workers, and SEIU-Heathcare Workers West, Loc. 2005, No. Ad-387-M/201:88
(The election objections asserted by SEIU failed to establish that the employer's conduct interfered with employees' free choice in the decertification election. That conclusion has no preclusive effect on the pending unfair practice charge based on the same factual allegations.)

San Diego Firefighters, Loc. 145, IAFF v. City of San Diego (Office of the City Attorney), No. 2103-M/200:83

(The city unlawfully bypassed the union; it did not unilaterally change the retirement service credit policy.)

Santa Clara County Correctional Peace Officers Assn. v. County of Santa Clara, No. 2114-M/200:85
(The county failed to bargain with the association before it placed a measure on the ballot that would have altered the prevailing wage provision of the charter.)

Santa Clara County Registered Nurses Professional Assn. v. County of Santa Clara, 2120-M/200:85
(The county failed to bargain with the association before it placed a measure on the ballot that would have altered the prevailing wage provision of the charter.)

Schmidt v. SEIU Loc. 1021, No. 2080-M/198:90
(The allegations raised by the charging party failed to establish that the union's conduct breached the duty of fair representation.)

SEIU Loc. 521 v. County of Fresno, No. 2125-M/201:84
(The county did not unilaterally change the mandatory furlough policy when it implemented furloughs in 2009. It acted consistent with a 1993 personnel rule regarding mandatory furloughs, and negotiations between the parties over furloughs during intervening years did not permanently change the policy or instill a duty to bargain on other occasions.)

SEIU Loc. 721 v. County of Riverside, No. 2119-M/200:87
(The county reasonably concluded that a unit of temporary employees did not share a community of interest warranting a separate bargaining unit. Statements by county executives and members of the board of supervisors interfered with the union's right to organize and represent employees.)

SEIU Loc. 721 v. County of Riverside, No. 2132-M/201:84
(The charge alleging that the county unilaterally changed the manner of calculating overtime benefits for employees exempt from the Fair Labor Standards Act was untimely. The allegation that the county failed to bargain over the impact of that decision also was untimely.)

SEIU-United Healthcare Workers West, Loc. 2005 v. West Contra Costa Healthcare Dist.; SEIU-United Healthcare Workers West, Loc. 200 v. National Union of Healthcare Workers; West Contra Costa Healthcare Dist. and National Union of Healthcare Workers and SEIU-United Healthcare Workers West, Loc. 2005, No. 2145-M/201:90
(The district did not deny access rights to SEIU representatives during a decertification election. Nor did it grant preferential treatment to the challenging organization. There was no interference with employees' free choice.)

Shelton v. San Bernardino County Public Defender, No. 2058a-M/198:88
(The charging party failed to present a sufficient basis for reconsideration.)

Sonoma County Law Enforcement Assn. v. County of Sonoma, No. 2100-M/199:84
(The county was not required to engage in binding interest arbitration because the appellate court ruled that the statute is unconstitutional. The terms of employment implemented by the county were reasonably contemplated in its final offer.)

Stationary Engineers, Loc. 39 v. City and County of San Francisco, No. 2064-M/198:84
(The city's presentation to the union of a regressive bargaining proposal and notification of the obligation to select an arbitration panel representative are insufficient to demonstrate bad faith or surface bargaining.)

Turlock Emergency Medical Services Assn. v. West Side Healthcare Dist., No. 2144-M/201:86
(The association failed to assert sufficient factual allegations in support of its claim that the district made unilateral changes without bargaining or that it engaged in surface bargaining.)

Union of American Physicians & Dentists v. County of Orange, No. 2138-M/201:87
(The county's local rule requiring majority support to seek severance of classifications from an existing bargaining unit is not unreasonable.)

Union of American Physicians and Dentists v. County of Ventura, No. 2067-M/198:89
(Because the county retains and exercises control over the manner and method in which work is performed, the county is a joint employer of the physicians who work at its clinics and must process the union's request for recognition in accordance with the MMBA and its local rules. However, it was premature to direct the county to proceed with a representation election or recognize the union as the employees' exclusive representative.)

Trial Court Act Cases

California Federation of Interpreters, Loc. 39521 v. Los Angeles Superior Court) No. 2112-I/200:89
(The court did not unilaterally change policies and practices for filling vacant assignments, making staff reductions, or imposing limitations on work hours. The court's actions were not retaliation for the employees' protected activity.)

California Federation of Interpreters-TNG/CWA v. Region 2 Court Interpreter Employment Relations Committee, No. 2099-I/199:85
(The union's allegations establish a prima facie case that the respondent courts violated the act when they paid independent contractors more than employee court interpreters and did so to discourage independent contractors from applying for pro tempore interpreter jobs.)

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

PART IV

INDEX OF ARBITRATION

Grievance Actions

Neutrals