



November 25, 2014

## YOUR PUBLIC EMPLOYEE RELATIONS BOARD

The **Public Employment Relations Board** (“PERB”) is a quasi-judicial administrative agency that is responsible for administering the collective bargaining statutes covering employees of California’s public schools and other public sector employers. Public school districts fall under the auspices of PERB by virtue of the Educational Employment Relations Act (“EERA”) which is set forth in Government Code sections 3540-3549.3. This update is intended to summarize the background of existing PERB board members, review the nature and scope of PERB’s authority and provide some statistical information on PERB’s pending matters.

### A. PERB COMPOSITION

PERB regulations provide for a five member board who are selected from California’s public and private sectors. PERB currently has four members (all Governor Brown appointees):

*Anita I. Martinez (Chair):* Ms. Martinez was recently appointed Member and Chair of PERB. She has been employed with PERB since 1976 and formerly served as the San Francisco Regional Director. Before joining PERB, Ms. Martinez worked for the National Labor Relations Board and the Agricultural Labor Relations Board.

*A. Eugene Huguenin:* Prior to his appointment, Mr. Huguenin practiced labor, employment and education law in the Sacramento area. In private practice, Mr. Huguenin advised and represented public employees and their organizations. Mr. Huguenin worked for the California Teachers’ Association from 1973 to 1979.

*Priscilla Winslow:* Ms. Winslow served for 15 years as Assistant Chief Counsel for the California Teachers’ Association (“CTA”) where she litigated and advised on a variety of labor, education and constitutional law issues. Before joining CTA, Ms. Winslow represented employees and public sector unions in private practice.

*Eric Banks:* Mr. Banks worked at Ten Page Memo, LLC, as a partner providing organizational consulting services prior to his appointment. He served in multiple positions at the

Service Employees International Union, Local 221, from 2001 to 2013, including Advisor to the President, President, and Director of Government and Community Relations.

**B. WHAT DOES PERB DO?**

PERB has the authority to:

- conduct secret ballot elections to determine whether or not employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- prevent and remedy unfair labor practices;
- interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings; and
- take such other action as PERB deems necessary to effectuate the purposes of the Acts it administers.

**C. HOW DOES PERB FUNCTION?**

*Petitions:* EERA recognizes the right of exclusive representation by employee representatives. Requests for recognition are filed concurrently with the employer and PERB. A request for recognition must be based on majority support. Proof of majority support must clearly demonstrate that the employee wishes to be represented by the petitioning employee representative. Proof of majority support can be established by a current dues deduction form, membership cards or applications, authorization cards and other documentation.

Employers must grant a request for recognition unless the employer doubts the appropriateness of the unit; another employee organization intervenes or challenges the appropriateness of the unit; or there is a legal bar to the recognition. Where there is a dispute over the request for recognition, PERB will investigate the representation request and conduct an election where appropriate.

*Unfair Labor Practice:* Violations of EERA are processed in the context of unfair practice charges. Unfair Labor Practices are initiated by the filing of a charge with PERB alleging a violation of EERA. Either the union or employee has standing to file a charge. Charges must be filed within 6 months of the alleged violation of EERA.

The most common unfair practice charges allege: (1) unlawful unilateral change of a mandatory subject of bargaining made by the employer; or (2) discrimination against an employee for exercising rights under EERA. Once the charge is filed, it is served on the employer. The employer has an opportunity to submit a written position statement in response to the charge allegations. The General Counsel of PERB, through Regional Attorneys, investigates unfair practice charges. The Regional Attorney will issue a complaint if the charge is sufficient to allege a

prima case violation of EERA. If there is insufficient evidence to support a violation, the charge will be dismissed.

Complaints will end up in a formal hearing before an Administrative Law Judge ("ALJ"). After hearing evidence, the ALJ will issue a proposed decision which includes findings of fact and a determination of whether an unfair practice has been committed. The ALJ's proposed decision is subject to appeal to PERB. In considering the appeal, PERB will review the entire administrative record and appellate papers in rendering a decision.

A PERB decision is subject to appellate review by the filing of a writ of extraordinary relief in the appropriate court of appeal. The court of appeal has the authority to enforce the order of PERB, modify it or set it aside.

*Fact-Finding:* EERA contains a number of provisions governing impasse resolution. Impasse is defined as a point during negotiations over matters within the scope of representation where the parties' differences are so far apart that continued negotiations would be of no benefit. The fact-finding process starts with mediation which begins after a declaration of impasse. PERB will appoint a mediator to assist the parties. If mediation is unsuccessful, the mediator will certify the matter for fact-finding.

Fact-finding is conducted by a three-member panel (union appointee, district appointee and a Chairperson selected by PERB). After a hearing, the fact-finding panel will render an advisory recommendation privately to the parties. The advisory recommendation must be made public by the employer within 10 days after receipt.

*Mediation/Conciliation:* The State Mediation and Conciliation Service ("SMCS") was established in 1947 to prevent labor disputes and promote union-management relationships. The SMCS was originally a unit of the Department of Industrial Relations. Effective July 1, 2012, SMCS became a division of PERB. SMCS is comprised of neutrals who mediate labor disputes between employers, including grievance disputes. The neutrals also conduct representation elections. SMCS also provides a panel of arbitrators, training and facilitation work on a cost reimbursement basis.

#### **D. SOME STATISTICS**

In fiscal year 2013-14, a total of 949 unfair practice charges were filed with PERB. The number of charges filed alleging a violation of EERA increased by 7% from the prior year (290 filed in 2013-14).

The ALJs at PERB issued 76 proposed decisions in 2013-14, which remained unchanged from the prior fiscal year.

PERB itself issued 87 decisions in 2013-14 and considered 25 requests for injunctive relief. In 2012-13, PERB issued 51 decisions. Presently, PERB has 59 cases on its docket, 16 involving school districts.

PERB entertained 91 requests for fact-finding. Of those, 26 involved EERA/HEERA which was down from 34 requests in 2012-13. PERB has the following school district matters on its docket:

- Representation Petitions: 1
- Fact-Finding: 0
- Unfair Practice Charges: 12
- Dismissals: 3
- Motions: 0

If you have any questions about the foregoing please contact Tim Salazar or Daryl Valdez for assistance.

– Timothy L. Salazar

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