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## **2023 Public Sector Conference**

Hot Topics at PERB

Friday, April 28, 2023  
2:30 p.m. – 3:45 p.m.

Speakers:

Peter McEntee

Marie Nakamura

Kimberly Procida

### **Conference Reference Materials**

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## Hot Topics at PERB

Speakers:

Peter McEntee, Beeson Tayer & Bodine  
Marie A. Nakamura, Dannis Woliver Kelley

Moderator:

Kimberly J. Procida, Public Employment Relation Board

2023 Public Sector Conference, April 28, 2023

## Remedies at PERB

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- [Gov. Code § 3541.5\(c\)](#) (EERA)
  - The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

## Remedies at PERB

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- Attorney Fees
  - [\*Bellflower Unified School District \(2019\) PERB Order No. Ad-475-a\*](#)
    - Finding that the employer filed a request for reconsideration of the Board's decision for no purpose other than to delay compliance in that case, the Board ordered the employer to reimburse the union for attorney fees for responding to the request for reconsideration
- Reoffering Withdrawn Bargaining Proposals
  - [\*City of San Gabriel \(2020\) PERB Decision No. 2751-M\*](#)
    - Ordering the employer to reoffer a bargaining proposal improperly withdrawn

## Remedies at PERB

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- Non-Litigation Costs
  - [\*United Teachers Los Angeles \(Alliance\) \(2022\) PERB Decision No. 2809 \(Jud. Rev. Pending\)\*](#)
    - Ordering the employer to reimburse union for losses and expenditures as a result of employer's technical refusal to bargain incurred outside of litigation costs such as for organizing, bargaining, lost dues, legal costs beyond litigation regarding the charge.
- Reimbursement of Dues
  - [\*Bellflower Unified School District \(2022\) PERB Decision No. 2544a\*](#)
    - Ordering the District to reimburse union dues it would have received had the District not subcontracted the work and held that the District could not reduce the employees' backpay in order to reimburse the Union for the dues.

# Remedies at PERB

- The Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD)
  - [Gov. Code § 3550](#):
    - A public employer shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization. This is declaratory of existing law.
  - [Gov. Code § 3551.5](#):
    - (a) (1) An employee organization that is subject to the jurisdiction of the Public Employment Relations Board may bring a claim before the board alleging that a public employer violated Section 3550. Upon a finding by the board that the public employer violated Section 3550, the employer shall be subject to a civil penalty, to be deposited in the General Fund, of up to one thousand dollars (\$1,000) per each affected employee, not to exceed one hundred thousand dollars (\$100,000) in total, and shall be subject to attorney's fees and costs, as described in subdivision (b).
    - . . .
    - (b) (1) The Public Employment Relations Board shall award attorney's fees and costs to a prevailing employee organization unless the board finds the claim was frivolous, unreasonable, or groundless when brought, or the employee organization continued to litigate after it clearly became so. The attorney's fees and costs shall be calculated from the inception of proceedings before the board's Division of Administrative Law until final disposition of the claim by the board.

## Remedies at PERB

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- PEDD Violation
  - [Regents of the University of California \(2022\) PERB Decision No. 2835-H](#)
    - PERB held an employer violated provisions of the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD) by failing to meet and confer in good faith with the union prior to disseminating a set of four Frequently Asked Questions (FAQs) and corresponding answers to employees. PERB also held that the employer violated the same PEDD provisions by deterring or discouraging employees from becoming union members or supporting the union.

## Multiple Forums – Where Should We Start?

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Arbitration

Civil  
Litigation

Mediation

Civil Rights  
Department

Grievance

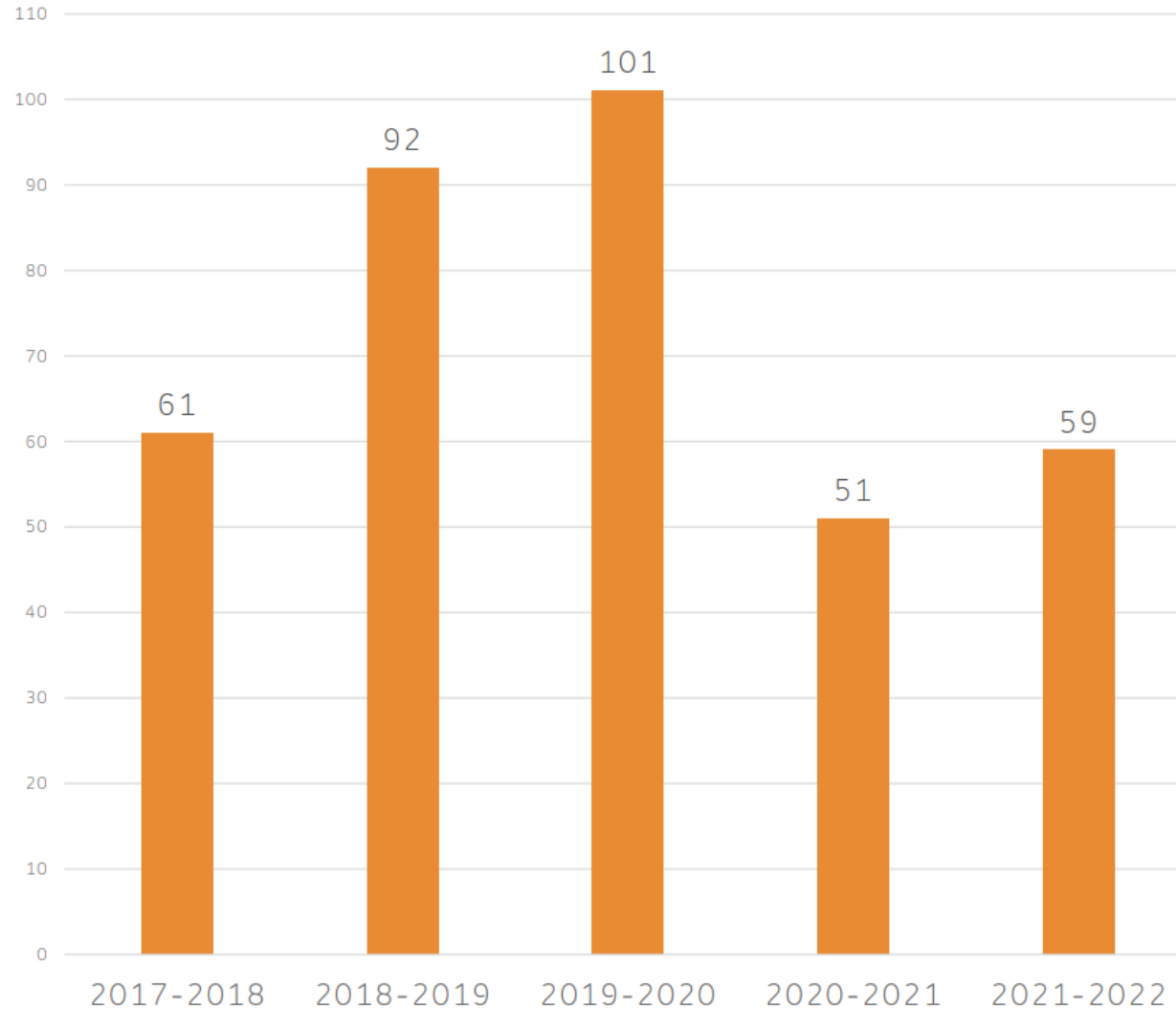


# Board Decisions

Proposed decisions, charge dismissals, and administrative determinations issued by Board agents may be appealed to the Board itself. During Fiscal Year 2021 - 2022, the Board issued 59 decisions as compared to 51 during Fiscal Year 2020 - 2021 and an average of 73 over the past five years.

The Board's docket remains historically low and decisions are being issued within six months of filings being complete.

Board Decisions Issued - Five Year Snapshot



## Updated PERB Regulations from January 2022

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- PERB Regulation 32150 – Subpoenas
- PERB Regulation 32170 – Authority of Board Agent Conducting a Hearing
- PERB Regulation 32190 – Motions
- PERB Regulation 32205 – Request to Continue a Formal Hearing
- PERB Regulation 32300 – Exceptions to a Board Agent Decision
- PERB Regulation 32310 – Response to Exceptions
- PERB Regulation 32312 – Reply Briefs

PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at <https://perb.ca.gov/laws-and-regulations/regulations/>.

# California Public Records Act

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- California Public Records Act
  - [Gov. Code § 7922.525\(a\)](#)
    - Public records are open to inspection at all times during the office hours of a state or local agency and every person has a right to inspect any public record, exempted as otherwise provided.

# Union Requests for Information

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- [Stockton Unified School District \(1980\) PERB Decision No. 143](#)
  - “In general, the exclusive representative is entitled to all information that is necessary and relevant to discharging its duty to represent employees. [Citation] An employer’s refusal to provide such information evidences bad faith bargaining unless the employer can supply adequate reasons why it cannot supply the information.”
- [County of Tulare \(2020\) PERB Decision No. 2697-M](#)
  - “[D]efenses to disclosure under the CPRA cannot be imported into labor law, because a union has a greater right to information than members of the general public.”

## Post-COVID Cases

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[City and County of San Francisco \(2022\) PERB Decision No. 2846-M](#)

[Regents of the University of California \(2021\) PERB Decision No. 2783-H](#)

## Bargaining Statutes Under PERB's Jurisdiction

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- The **Educational Employment Relations Act (EERA)**: public school (K-12) and community college employees
- The **State Employer-Employee Relations Act (Dills Act)**: state government employees
- The **Higher Education Employer-Employee Relations Act (HEERA)**: California State University System, the University of California System and UC College of the Law, San Francisco
- The **Meyers-Milias-Brown Act (MMBA)**: municipal, county, and local special district employees
- The **Court Interpreter Act and Trial Court Act**: court interpreters and trial court employees
- The **Judicial Council Employer-Employee Relations Act (JCEERA)**: Judicial Council employees
- The **Building a Better Early Care and Education System Act (CCPA)**: family childcare providers who participate in a state-funded early care and education program

## Bargaining Statutes Under PERB's Jurisdiction

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- The **Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA)**: supervisory employees at the transit agency
- The **Orange County Transit Act (OCTDA)**: Orange County Transportation Authority employees
- The **San Francisco Bay Area Rapid Transit Act (SFBART Act)**: San Francisco Bay Area Regional Transit District employees
- The **Sacramento Regional Transit District Act (SacRTD Act)**: Sacramento Regional Transit District employees
- Employer-employee relations at the **Santa Cruz Metropolitan District**
- Employer-employee relations at the **Santa Clara Valley Transportation Authority**

## Bargaining Statutes Under PERB's Jurisdiction

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- The **Public Employee Communication Chapter (PECC)**: gives exclusive representatives of California's public employees specific rights designed to provide them with meaningful access to, and the ability to effectively communicate with their represented members
- The **Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD)**: makes it unlawful for public employers to deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization.



# Public Employees' Right to Strike

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## [Fresno County In-Home Supportive Services Public Authority \(2015\) PERB Decision No. 2418-M](#)

- “[W]e hold that public employees enjoy a statutorily-protected right to strike under the MMBA and other PERB-administered statutes.”

## [County Sanitation Dist. No. 2 v. Los Angeles County Employees Assn. \(1985\) 38 Cal.3d 564](#)

- “[S]trikes by public employees are not unlawful at common law unless or until it is clearly demonstrated that such a strike creates a substantial and imminent threat to the health or safety of the public.”

# Questions?

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