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Public Law Group™

2012 Changes to Statutes Administered by PERB

A Public Law Group™ White Paper

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INTRODUCTION

The 2011-12 legislative session brought a variety of changes to statutes administered by the Public Employment Relations Board (PERB). The Legislature passed and the Governor signed several bills affecting the Ralph C. Dills Act (Dills Act), the Educational Employment Relations Act (EERA), the Higher Education Employer-Employee Relations Act (HEERA), the Meyers Miliias Brown Act (MMBA), the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA), and the Trial Court Employment Protection and Governance Act.

This document lists all the changes to the statutes administered by PERB. The changes were the result of the following bills:

- AB 117 (Committee on Budget) Criminal Justice Realignment
- AB 195 (Hernandez) Local Public Employee Organizations
- AB 501 (Campos) Public School Employment
- AB 646 (Atkins) Local Public Employee Organizations: Impasse Procedures
- SB 857 (Lieu) Public Employment: Unlawful Strike Damages

THE DILLS ACT

AB 857

[**Comments:** Section 3514.5 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 3514.5 of the Government Code is amended, to read:

3514.5. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.*** Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review a settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that the

settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

(c) 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.

AB 609

[**Comments:** Section 3520.8 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 3520.8 is added to the Government Code, to read:

3520.8. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

EDUCATIONAL EMPLOYMENT RELATIONS ACT

AB 501

[**Comments:** The amendments to section 3540.1 do three things: 1) define “public school employer” to include certain Joint Powers Agencies; 2) define “public school employer” to include certain auxiliary organizations; and 3) define the coverage of EERA to include all public school employees, not just certificated and classified employees. AB 501 overturns both *North Orange County Regional Occupational Program* (1990) PERB Decision No. 857-E and *San Jose Evergreen CCD* (2007) PERB Decision No. 1928, which held that JPA’s are not covered by EERA. AB 501 also overturns *Castaic Union School District* (2010) PERB Decision No. Ad-384, which held that EERA did not cover noon-duty aides, but rather only certificated and classified employees.]

Effective January 1, 2012, section 3540.1 of the Government Code is amended, to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means an employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information that is used to contribute significantly to the development of management positions.

(d) "Employee organization" means an organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person of the organization authorized to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of *public school employees, as "public school employee" is defined*

in subdivision (j), in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means an employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, is not subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, an arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the

agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means a person employed by a public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of *Section 47611.5 of the Education Code, an auxiliary organization established pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of Division 7 of Title 3 of the Education Code, except an auxiliary organization solely formed as or operating a student body association or student union, or a joint powers agency, except a joint powers agency established solely to provide services pursuant to Section 990.8, if all the following apply to the joint powers agency:*

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides educational services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of educational agencies.

(l) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means an employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Ab 857

[**Comments:** Section 3514.3 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 3541.3 of the Government Code is amended, to read:

3541.3. The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections that shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall these lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employer-employee relations, including the collection, analysis, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by October 15 of each year on its activities during the immediately preceding fiscal year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction.

Notwithstanding Section 11425.10, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 does not apply to a hearing by the board under this chapter, except a hearing to determine an unfair practice charge.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.***

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings, or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SB 609

[**Comments:** Section 3541.35 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 3541.35 is added to the Government Code, to read:

3541.35. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (k) of Section 3563 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

HIGHER EDUCATION EMPLOYER EMPLOYEE RELATIONS ACT

SB 609

[**Comments:** Section 3563.5 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 3563.5 is added to the Government Code, to read:

3563.5. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (k) of Section 3563 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

AB 857

[**Comments:** Section 3563.3 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 3563.3 of the Government Code is amended, to read:

SEC. 4. Section 3563.3 of the Government Code is amended to read:

3563.3. 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, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.***

MEYERS-MILIAS-BROWN ACT

AB 195

[**Comments:** Section 3506.5 was added by AB 195. Section 3506.5 largely codifies the unfair practices set forth in PERB Regulations 32603, with the exception that 3506.5 makes it an unfair practice to knowingly provide inaccurate financial information in response to an information request. This latter addition mirrors the language under EERA (Gov. Code, § 3543.5) and is consistent with existing PERB precedent.]

Effective January 1, 2012, section 3605.5 is added to the Government Code, to read:

3506.5. A public agency shall not do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations the rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization. For purposes of this subdivision, knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the public employer, whether or not in response to a request for information, constitutes a refusal or failure to meet and negotiate in good faith.

(d) Dominate or interfere with the formation or administration of any employee organization, contribute financial or other support to any employee organization, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in an applicable impasse procedure.

AB 646

[**Comments:** Sections 3505.4, 3505.5, and 3505.7 were added by AB 646. The language in these sections is largely taken from EERA. (See Gov. Code, §§ 3548.1, 3548.2, 3548.3.) A section requiring mediation, similar to Government Code section 3548 under EERA, was initially part of AB 646 but later eliminated. However, section 3505.4 still references “mediation.” Because of this ambiguity, it is unclear whether an employee organization is entitled to request factfinding if the parties have not participated in mediation. Unlike factfinding under EERA, the parties, not PERB, are responsible for paying the chair of the factfinding panel’s fee.]

Effective January 1, 2012, sections 3505.4, 3505.5, 3505.7 are added to the Government Code, to read:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

3505.7. After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

AB 857

[**Comments:** Section 3509 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 3509 of the Government Code is amended, to read:

(a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a public agency has no rule.

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.***

The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to

Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) Notwithstanding subdivisions (a) to (c), inclusive, consistent with, and pursuant to, the provisions of Sections 3500 and 3505.4, superior courts shall have exclusive jurisdiction over actions involving interest arbitration, as governed by Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, when the action involves an employee organization that represents firefighters, as defined in Section 3251.

(f) This section shall not apply to employees designated as management employees under Section 3507.5.

(g) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a public agency if that rule or regulation is itself in violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive.

SB 609

[**Comments:** Section 3509.3 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 3509.3 is added to the Government Code, to read:

3509.3. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY TRANSIT
EMPLOYER-EMPLOYEE RELATIONS ACT (TEERA)

AB 857

[**Comments:** Section 99561 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 99561 of the Public Utilities Code is amended, to read:

99561. This chapter shall be administered by the Public Employment Relations Board. In administering this chapter the board shall have all of the following rights, powers, duties, and responsibilities:

(a) To determine in disputed cases, or otherwise approve, appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for, and supervise, representation elections that shall be conducted by means of secret ballot elections, and to certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall the lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) To adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(g) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction, except for those records, books, or papers confidential under statute. Notwithstanding Section 11425.10 of the Government Code, Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to a hearing by the board under this section, except a hearing to determine an unfair practice charge.

(h) To investigate unfair practice charges or alleged violations of this chapter, and to take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.***

(i) To bring an action in a court of competent jurisdiction to enforce any of its orders, decisions, or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(j) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it, and except that a decision to refuse to issue a complaint shall require the approval of two board members.

(k) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(l) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(m) To take any other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

SB 609

[**Comments:** Section 99561.4 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 99561.4 is added to the Public Utilities Code, to read:

99561.4. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization as described in subdivision (k) of Section 99561 is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

TRIAL COURT EMPLOYMENT PROTECTION
AND GOVERNANCE ACT

AB 117

[**Comments:** Section 71622.5 was added by AB 117 and is part of the State's realignment plan for prisons. This bill contained appropriations related to the Budget Bill and therefore took effect immediately upon signing by the Governor on June 30, 2011.]

Effective June 30, 2011, section 71622.5 is added to the Government Code, to read:

71622.5. (a) The Legislature hereby declares that due to the need to implement the 2011 Realignment Legislation addressing public safety (Chapter 15 of the Statutes of 2011), it is the intent of the Legislature to afford the courts the maximum flexibility to manage the caseload in the manner that is most appropriate to each court.

(b) Notwithstanding Section 71622, the superior court of any county may appoint as many hearing officers as deemed necessary to conduct parole revocation hearings pursuant to Sections 3000.08 and 3000.09 of the Penal Code and to determine violations of conditions of postrelease supervision pursuant to Section 3455 of the Penal Code, and to perform related duties as authorized by the court. A hearing officer appointed pursuant to this section has the authority to conduct these hearings and to make determinations at those hearings pursuant to applicable law.

(c) (1) A person is eligible to be appointed a hearing officer pursuant to this section if the person meets one of the following criteria:

(A) He or she has been an active member of the State Bar of California for at least 10 years continuously prior to appointment.

(B) He or she is or was a judge of a court of record of California within the last five years, or is currently eligible for the assigned judge program.

(C) He or she is or was a commissioner, magistrate, referee, or hearing officer authorized to perform the duties of a subordinate judicial officer of a court of record of California within the last five years.

(2) The superior court may prescribe additional minimum qualifications for hearing officers appointed pursuant to this section and may prescribe mandatory training for those hearing officers in addition to any training and education that may be required as judges or employees of the superior court.

(d) The manner of appointment of a hearing officer pursuant to this section and compensation to be paid to a hearing officer shall be determined by the court. That compensation is within the definition of "court operations" pursuant to Section 77003 and California Rules of Court, rule 10.810.

(e) The superior courts of two or more counties may appoint the same person as a hearing officer under this section.

AB 857

[**Comments:** Section 71639.1 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 71639.1 of the Government Code is amended, to read:

71639.1. (a) As used in this article, "board" means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this article and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a trial court has no rule.

(c) A complaint alleging any violation of this article or of any rules and regulations adopted by a trial court pursuant to Section 71636 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this article, shall be a matter within the exclusive jurisdiction of the board, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.*** The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this article and Section 71639.3. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a trial court require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a trial court's remedy prior to filing an unfair practice charge, the six-month

limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a trial court concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees under Section 71637.1.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a trial court if that rule or regulation is itself in violation of this article.

SB 609

[**Comments:** Section 71639.15 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 71639.15 is added to the Government Code, to read:

71639.15. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.

TRIAL COURT INTERPRETER EMPLOYMENT
AND LABOR RELATIONS ACT

AB 857

[**Comments:** Section 71825 was amended by AB 857. The impetus for this legislation was PERB's decision in *California Nurses Association* (2010) PERB Decision No. 2094-H, which held that the California Nurses Association may be liable for damages suffered by the University of California because of a threatened strike. This legislation overturns the portion of the *California Nurses Association* case allowing for the recovery of damages for an unlawful strike. AB 857 also states that the amendment is declaratory of existing law, thus intending to give the amendment retroactive effect. Whether the amendment is in fact retroactive may be subject to litigation under *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467.]

Effective January 1, 2012, section 71825 of the Government Code is amended, to read:

71825. (a) As used in this section, "board" means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a regional court interpreter employment relations committee has no rule.

(c) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a regional court interpreter employment relations committee pursuant to Section 71823 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board, ***except that in an action to recover damages due to an unlawful strike, the board shall have no authority to award strike-preparation expenses as damages, and shall have no authority to award damages for costs, expenses, or revenue losses incurred during, or as a consequence of, an unlawful strike.*** The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter and subdivision (b) of Section 71826. The board shall not issue a complaint in respect of any charge based upon an alleged

unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a regional court interpreter employment relations committee require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a regional court interpreter employment relations committee's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subdivision shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a regional court interpreter employment relations committee concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a regional court interpreter employment relations committee if that rule or regulation is itself in violation of this chapter.

SB 609

[**Comments:** Section 71825.05 was added by SB 609. According to the bill's author, "When some aspect of a PERB representation petition is disputed, it has the effect of delaying, sometimes by several years, effectuation of employee free choice as to representation. Moreover, an employer that raises a dispute to an initial representation petition can avoid recognition and bargaining by years, by which time employees have become disillusioned and the employer unilaterally has been able to make significant changes in wages, benefits and working conditions without having to negotiate with the employee's chosen representative." What remains unclear is exactly which cases are subject to the 180-day rule. The legislation appears aimed at representation cases. However, representation issues often appear in unfair practice charge cases. Whether this legislation would also apply to unfair practice cases is unknown at this time. PERB is expected to consider this issue and potentially address it by promulgating regulations.]

Effective January 1, 2012, section 71825.05 is added to the Government Code, to read:

71825.05. Notwithstanding any other law, if a decision by an administrative law judge regarding the recognition or certification of an employee organization is appealed, the decision shall be deemed the final order of the board if the board does not issue a ruling that supersedes the decision on or before 180 days after the appeal is filed.



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