

## Seventh Supplement to Memorandum 94-11

**Administrative Adjudication: Exemption Request of Public Employment Relations Board**

Attached is a letter from the Public Employment Relations Board requesting exemption from the proposed new Administrative Procedure Act. PERB is exempt from the APA under existing law. Also attached are selections from the voluminous statutes that apply to PERB.

PERB says its function is similar to the Agricultural Labor Relations Board. PERB deals with unfair labor practices, issues cease and desist orders, supervises employee representation elections, collects statistics on wages, benefits, and employment practices, mediates between employers and employees, and makes rules for binding arbitration. Gov't Code §§ 3541.3, 3541.5, 3544.5, 3544.7., 3545, 3548, 3548.1. According to PERB, in exempting PERB from the APA, the Legislature allowed the Board to adopt regulations like those of the National Labor Relations Board. This was based on the fact that labor disputes adjudicated by PERB are "identical in nature" to those adjudicated by the NLRB.

PERB says its ability to resolve disputes outside the APA is "essential to successful labor management relations." Timing and expeditiousness are important features of PERB's procedures. PERB says most advocates who appear before it are well-versed in labor law. Therefore to apply the APA to PERB would not have the same benefit as with agencies where advocates are often non-specialists.

In the Thirteenth Supplement to Memorandum 94-11, the staff recommended the Agricultural Labor Relations Board be exempted from the proposed new APA because its procedures were so similar to the National Labor Relations Board and because practitioners before the ALRB are usually experts in labor law. The same reasoning applies to PERB. Accordingly, the staff recommends that PERB be exempted from the APA:

**Gov't Code § 3523.7 (added). Exemption from Administrative Procedure Act**

3523.7. Part 4 (commencing with Section 641.110) of Division 3.3 does not apply to a proceeding under this chapter.

**Comment.** Section 3523.7 makes clear that the adjudicative provisions of the Administrative Procedure Act do not apply to proceedings by the Public Employment Relations Board under this chapter.

**Gov't Code § 3549.2 (added). Exemption from Administrative Procedure Act**

3549.2. Part 4 (commencing with Section 641.110) of Division 3.3 does not apply to a proceeding under this chapter.

**Comment.** Section 3549.2 makes clear that the adjudicative provisions of the Administrative Procedure Act do not apply to proceedings by the Public Employment Relations Board under this chapter.

**Gov't Code § 3596.5 (added). Exemption from Administrative Procedure Act**

3596.5. Part 4 (commencing with Section 641.110) of Division 3.3 does not apply to a proceeding under this chapter.

**Comment.** Section 3596.5 makes clear that the adjudicative provisions of the Administrative Procedure Act do not apply to proceedings by the Public Employment Relations Board under this chapter.

Respectfully submitted,

Robert J. Murphy  
Staff Counsel

## PUBLIC EMPLOYMENT RELATIONS BOARD



Board Office  
1031 18th Street  
Sacramento, CA 95814-4174  
(916) 323-8012



September 23, 1993

Mr. Nathaniel Sterling  
Executive Secretary  
California Law Revision  
Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, California 94303

Dear Mr. Sterling:

The Public Employment Relations Board (PERB or Board) has reviewed the Law Revision Commission's draft model Administrative Procedures Act (APA) and strongly wishes to remain exempt from the APA. We recognize the value of uniform procedures for most administrative agencies whose dispute resolution responsibilities are only incidental to their major program activities. However, a different conclusion is warranted for labor relations agencies, such as PERB and the Agricultural Labor Relations Board (ALRB), whose very purpose is to resolve disputes as a quasi-judicial substitute for the court system. PERB's current regulatory system is much better suited than the proposed APA to adjudicate and promote voluntary settlement of labor law disputes.<sup>1</sup>

The Legislature recognized this difference when it exempted PERB from the current APA. In 1976, when the Educational Employment Relations Act became law, the Legislature was familiar with the Administrative Procedures Act. It chose to exempt the Education Employment Relations Board, as PERB was initially known, from the APA. Rather, it allowed the Board to adopt regulations similar to the procedures of the National Labor Relations Board (NLRB). This choice was based on 40 years of successful adjudication by the NLRB of labor disputes; disputes identical in nature to those to be resolved by the Board. The

---

<sup>1</sup> Under current PERB procedures the parties to an unfair practice proceeding receive the proposed decision directly from the administrative law judge. The decision becomes final, though nonprecedential, if neither party files an appeal with the Board within 20 days. The model APA provides for a more involved process with considerable delay (section 649.110(b)).

Mr. Nathaniel Sterling  
September 23, 1993  
Page 2

Legislature took the same position regarding APA coverage when it created the ALRB in 1975 and when it added two additional statutes (the Ralph C. Dills Act covering State of California employees in 1977 and the Higher Education Employer-Employee Relations Act covering University of California and California State University employees in 1978) to PERB's jurisdiction.<sup>2</sup>

PERB's ability to resolve disputes outside the framework of the APA has proven essential to successful labor management relations. The foundation of labor relations is the right of employees to choose whether to be represented and, if they select a representative, for that entity to engage in collective bargaining with the employer. As with the NLRB, PERB's representation hearings are not subject to the APA. Establishing bargaining units, conducting elections, resolving challenged ballots and other election-related disputes are a central part of PERB's activities. These activities require timely action to make the collective bargaining process meaningful to the parties. Accordingly, many decisions made during the election process (e.g. election timing and mechanics) are not immediately appealable to the Board. Rather, an aggrieved party may only appeal them as an objection to the election after the election has been conducted. Under the APA these decisions would be subject to appeal immediately, significantly lengthening the time required to complete the election process. In labor relations, delay may well mean the difference between success and failure in protecting the rights of the parties. Delay defeats the very purpose of the statute, denying the benefits of collective bargaining to employees, employee organizations and employers.

Another problem is that the model APA provides for liberal discovery in comparison to that presently permitted before PERB. Unlike witnesses in most administrative matters adjudicated under the APA, witnesses in unfair labor practices are often employees of a party to the hearing. As employees, they are subject to pressures, both overt and subtle, from their employers and/or exclusive representatives, whose conduct is often the subject of the hearing. To protect witnesses, labor relations agencies such as the PERB, the ALRB and the NLRB have purposefully limited discovery. Requiring PERB to comply with discovery under the APA would expose witnesses to harassment, delay the completion of

---

<sup>2</sup> In fact, the decisions of one of these quasi-judicial boards influences others as labor law precedents tend to remain consistently applied across both the public and private sector.

Mr. Nathaniel Sterling  
September 23, 1993  
Page 3

hearings and force PERB into the business of protecting witnesses prior to the hearing. These activities would detract from PERB's mission of providing timely and fair resolution of labor disputes.

The model APA also contemplates agencies providing advisory opinions. Again, similar to the NLRB and the ALRB, PERB only acts on unfair practice charges once a party files a charge alleging a violation of the statute. While advisory opinions may be appropriate for other administrative agencies, it runs contrary to the scheme of collective bargaining that PERB oversees. That system provides for private negotiations between the parties operating with a minimum of government involvement. PERB functions not as the direct supervisor of the parties, but rather as a quasi-judicial body which resolves the most persistent disputes where all efforts at settlement between the parties have failed. This system has worked well for almost 60 years for the NLRB at the national level and for almost 20 years in California. To force PERB to now give advisory opinions would destroy this system.

Imposition of the model APA on PERB and its clients is unnecessary. The vast majority of the advocates before PERB are well-versed in the practice of labor law. Processing of election matters and unfair practice hearings is conducted under well understood and accepted regulations. Imposition of new rules under the APA will disrupt a system which has functioned smoothly for all parties for almost 20 years in the California public sector. Such dramatic change will divert scarce PERB resources to drafting new procedures, seeking regulatory relief and responding to court challenges when budget reductions have already seriously strained the agency's ability to perform its mission. The impact on the parties will be equally disruptive, with new procedures to learn and costs to absorb. Thus, any potential value to the affected parties of the new system would be greatly diminished.

PERB believes the exemption is justified and warranted. We have avoided a section-by-section analysis in our response, but are prepared to develop and furnish the Law Revision Commission a detailed list of changes necessary to accommodate the inclusion of labor law adjudication under the auspices of the model APA. We believe that such a change would defeat the original intent to update and make the APA more workable for the agencies who are currently subject to the act.

Mr. Nathaniel Sterling  
September 23, 1993  
Page 4

Should you have any questions, please contact Del Pierce of our staff.

Sincerely,

A handwritten signature in cursive script that reads "Sue Blair".

SUE BLAIR  
Chair

Exhibit

**Selected Statutes Applicable to Public Employment Relations Board**

**STATE EMPLOYER-EMPLOYEE RELATIONS**

**Gov't Code § 3514.5. Procedures for charges of unfair practices**

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. 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 such 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 such 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.

**Gov't Code § 3520. Judicial review of unit determination in unfair practice case**

3520. (a) Judicial review of a unit determination shall only be allowed: (1) when the board, in response to a petition from the state or an employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

**Gov't Code § 3520.5. Recognition of employee organizations; establishment of procedures**

3520.5. (a) The state shall grant exclusive recognition to employee organizations designated or selected pursuant to rules established by the board for employees of the state or an appropriate unit thereof, subject to the right of an employee to represent himself.

(b) The board shall establish reasonable procedures for petitions and for holding elections and determining appropriate units pursuant to subdivision (a).

(c) The board shall also establish procedures whereby recognition of employee organizations formally recognized as exclusive representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of such recognition.

**Gov't Code § 3521. Criteria in determining appropriate unit**

3521. (a) In determining an appropriate unit, the board shall be governed by the criteria in subdivision (b). However, the board shall not direct an election in a unit unless one or more of the employee organizations involved in the proceeding is seeking or agrees to an election in such a unit.

(b) In determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals; the history of employee representation in state government and in similar employment; the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements; and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account such factors as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the state government, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of state government and its employees to serve the public.

(4) The number of employees and classifications in a proposed unit and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employees or any proliferation of units among the employees of the employer.

(6) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a separate unit of representation based upon occupation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers.

(c) There shall be a presumption that professional employees and nonprofessional employees should not be included in the same unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (b) establishes.

**Gov't Code § 3521.7. Positions consisting primarily of enforcement of state laws**

3521.7. The board may, in accordance with reasonable standards, designate positions or classes of positions which have duties consisting primarily of the enforcement of state laws. Employees so designated shall not be denied the right to be in a unit composed solely of such employees.

**PUBLIC SCHOOL EMPLOYER-EMPLOYEE RELATIONS**

**Gov't Code § 3541. Public Employment Relations Board**

3541. (a) There is in state government the Public Employment Relations Board which shall be independent of any state agency and shall consist of five members. The members of the board shall be appointed by the Governor by and with the advice and consent of the Senate. One of the original members shall be chosen for a term of one year, one for a term of three years, and one for a term of five years. The first term for the two new members of the board resulting from the expansion of the board to five members shall be reduced by the Governor as necessary so that the term of only one member of the board shall expire in any given year. Thereafter terms shall be for a period of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he or she succeeds. Members of the board shall be eligible for reappointment. The Governor shall select one member to serve as chairperson. A member of the board may be removed by the Governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the commission, and three members of the board shall at all times constitute a quorum.

~~(c) The board may delegate its powers to any group of three or more board members. Nothing shall preclude any board member from participating in any case pending before the board.~~

(d) Members of the board shall hold no other public office in the state, and shall not receive any other compensation for services rendered.

(e) Each member of the board shall receive the salary provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2. In addition to his or her salary, each member of the board shall be reimbursed for all actual and necessary expenses incurred by him or her in the performance of his or her duties, subject to the rules of the State Board of Control relative to the payment of such expenses to state officers generally.

(f) The board shall appoint an executive director who shall be the chief administrative officer. The executive director shall appoint such other persons as may, from time to time, be deemed necessary for the performance of the board's administrative functions, prescribe their duties, fix their compensation, and provide for reimbursement of their expenses in the amounts made available therefor by appropriation. The executive director shall be a person familiar with employer-employee relations. The executive director shall be subject to removal at the pleasure of the board. The Governor shall appoint a general counsel, upon the recommendation of the board, to assist the board in the performance of its functions under this chapter. The general counsel shall serve at the pleasure of the board.

(g) The executive director and general counsel serving the board on December 31, 1977, shall become employees of the Public Employment Relations Board and shall continue to serve at the discretion of the board. A person so employed may, independently of the Attorney General, represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested.

(h) The Governor shall appoint one legal adviser for each member of the board upon the recommendation of that board member. Each appointee shall serve at the pleasure of the recommending board member and shall receive a salary as shall be fixed by the board with the approval of the Department of Personnel Administration .

(i) Attorneys serving the board on May 19, 1978, shall not be appointed as legal advisers to board members pursuant to subdivision (h) until such time as they have attained permanent civil service status.

(j) When the positions exempt from civil service which are authorized by this act are created, the Department of Finance shall delete the corresponding civil service positions in the board's 1978-79 budget.

(k) Notwithstanding subdivision (a), the member of the board appointed by the Governor for the term beginning on January 1, 1991, shall not be subject to the advice and consent of the Senate.

#### **Gov't Code § 3541.3. Powers and duties of board**

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 which 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.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(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 such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

**Gov't Code § 3541.4. Interference with activities of board as misdemeanor**

3541.4. Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000).

**Gov't Code § 3541.5. Unfair practices; procedures**

3541.5. 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. 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 the 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 the authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of any 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.

**Gov't Code § 3542. Review of unit determination**

3542. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition

from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

**Gov't Code § 3544. Request for recognition**

3544. (a) An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall be based upon majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive representative of the employees. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.

(b) The employee organization shall submit proof of majority support to the board. The information submitted to the board shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organization and the public school employer as to whether the proof of majority support is adequate.

**Gov't Code § 3544.3. Petition for representation election**

3544.3. If, by January 1 of any school year, no employee organization has made a claim of majority support in an appropriate unit pursuant to Section 3544, a majority of employees of an appropriate unit may submit to a public school employer a petition signed by at least a majority of the employees in the appropriate unit requesting a representation election. An employee may sign such a petition though not a member of any employee organization.

Upon the filing of such a petition, the public school employer shall immediately post a notice of such request upon all employee bulletin boards at each school or other facility in which members of the unit claimed to be appropriate are employed.

Any employee organization shall have the right to appear on the ballot if, within 15 workdays after the posting of such notice, it makes the showing of interest required by subdivision (b) of Section 3544.1.

Immediately upon expiration of the 15-workday period following the posting of the notice, the public school employer shall transmit to the board the petition and the names of all employee organizations that have the right to appear on the ballot.

**Gov't Code § 3544.5. Petition for investigation by board**

3544.5. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether

employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(a) A public school employer alleging that it doubts the appropriateness of the claimed unit; or

(b) An employee organization alleging that it has filed a request for recognition as an exclusive representative with a public school employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or

(c) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3544.1; or

(d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by evidence of support such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative. Such evidence of support shall be submitted to the board, and shall remain confidential and not be disclosed by the board. The board shall obtain from the employer the information necessary for it to carry out its responsibilities pursuant to this section and shall report to the employee organizations seeking recognition and to the public school employer as to the adequacy of the evidence of support.

**Gov't Code § 3544.7. Duties of board; election**

3544.7. (a) Upon receipt of a petition filed pursuant to Section 3544.3 or 3544.5, the board shall conduct inquiries and investigations or hold any hearings it deems necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearing. However, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation exists pursuant to subdivision (a) or (b) of Section 3544.1, it shall order that an election be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on each ballot the statement: "no representation." No voter shall record more than one choice on his or her ballot. Any ballot upon which there is recorded more than one choice shall be void and shall not be counted for any purpose. If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever either of the following exist:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any

employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement.

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

**Gov't Code § 3545. Standards for determination of appropriate unit**

3545. (a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers employed by the public school employer, except management employees, supervisory employees, and confidential employees.

(2) Except as provided in subdivision (c), a negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

(c) In the case of a district which employs 20 or more supervisory peace officer employees, a negotiating unit of supervisory employees shall be appropriate if it includes any of the following:

(1) All supervisory nonpeace officer employees employed by the district and all supervisory peace officer employees employed by the district.

(2) All supervisory nonpeace officer employees employed by the district, exclusively.

(3) All supervisory peace officer employees employed by the district, exclusively.

A negotiating unit of supervisory employees shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

**Gov't Code § 3546. Organizational security arrangements**

3546. Subject to the limitations set forth in this section, organizational security, as defined, shall be within the scope of representation.

(a) An organizational security arrangement, in order to be effective, must be agreed upon by both parties to the agreement. At the time the issue is being

negotiated, the public school employer may require that the organizational security provision be severed from the remainder of the proposed agreement and cause the organizational security provision to be voted upon separately by all members in the appropriate negotiating unit, in accordance with rules and regulations promulgated by the board. Upon such a vote, the organizational security provision will become effective only if a majority of those members of the negotiating unit voting approve the agreement. Such vote shall not be deemed to either ratify or defeat the remaining provisions of the proposed agreement.

(b) An organizational security arrangement which is in effect may be rescinded by majority vote of the employees in the negotiating unit covered by such arrangement in accordance with rules and regulations promulgated by the board.

**Gov't Code § 3547. Public presentation of proposals**

3547. (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

**Gov't Code § 3548. Appointment of mediator**

3548. Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he

may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

**Gov't Code § 3548.1. Submission to factfinding panel**

3548.1. (a) If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their 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 board shall, within five days after such selection, select a chairperson of the factfinding panel. The chairperson designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

(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.

**Gov't Code § 3548.2. Hearings by panel; criteria for findings and recommendations**

3548.2. (a) 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 as it may deem 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. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state, or any political subdivision or agency thereof, 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.

(b) 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) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the public school employer.

(4) 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 and with other employees generally in public school employment in comparable communities.

(5) The consumer price index for goods and services, commonly known as the cost of living.

(6) 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.

(7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

**Gov't Code § 3548.3. Findings and recommendations; costs**

3548.3. (a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public 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 borne by the board.

(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 and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's resume on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his 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 such 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 school employer and the exclusive representative. Any separately incurred costs for the panel member selected by each party, shall be borne by such party.

**Gov't Code § 3548.6. Binding arbitration pursuant to board rules**

3548.6. If the written agreement does not include procedures authorized by Section 3548.5, both parties to the agreement may agree to submit any disputes involving the interpretation, application, or violation of the agreement to final and binding arbitration pursuant to the rules of the board.

**HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS**

**Gov't Code § 3563. Public Employment Relations Board**

3563. 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 which 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 such 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 4.5 (commencing with Section 11371) 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.
- (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.
- (h) To investigate unfair practice charges or alleged violations of this chapter, and to take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.
- (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 such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

**Gov't Code § 3563.2. Unfair practices; procedure**

3563.2. 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. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board.

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that 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.

(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.

**Gov't Code § 3563.3. Cease and desist orders; reinstatement**

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.

**Gov't Code § 3564. Judicial review of unit determination or unfair practice case**

3564. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint. A board order directing an election shall not be stayed pending judicial review.

Upon receipt of a board order joining in the request for judicial review, a party to the case may petition for a writ of extraordinary relief from the unit determination decision or order.

(b) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not

to issue a complaint in such a case, may petition for a writ of extraordinary relief from such decision or order.

(c) Such petition shall be filed in the district court of appeal in the appellate district where the unit determination or unfair practice dispute occurred. The petition shall be filed within 30 days after issuance of the board's final order, order denying reconsideration, or order joining in the request for judicial review, as applicable. Upon the filing of such petition, the court shall cause notice to be served upon the board and thereupon shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless such time is extended by the court for good cause shown. The court shall have jurisdiction to grant to the board such temporary relief or restraining order it deems just and proper and in like manner to make and enter a decree enforcing, modifying, or setting aside the order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, are conclusive. The provisions of Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded herein, apply to proceedings pursuant to this section.

(d) If the time to petition for extraordinary relief from a board decision has expired, the board may seek enforcement of any final decision or order in a district court of appeal or a superior court in the district where the unit determination or unfair practice case occurred. If, after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce such order by writ of mandamus. The court shall not review the merits of the order.

**Gov't Code § 3575. Investigation by board of request for recognition**

3575. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(a) An employee organization alleging that it has filed a request for recognition as an exclusive representative with an employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or

(b) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3574; or

(c) An employee organization wishing to be certified by the board as the exclusive representative. Such petition for certification as the exclusive representative in an appropriate unit shall include proof of a 30-percent showing of interest designating the organization as the exclusive representative of the employees.

**Gov't Code § 3576. Investigation by board of request for decertification**

3576. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether the employees wish to decertify an exclusive representative or to reconsider the appropriateness of a unit. Such petition may allege that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by 30 percent of the employees in the unit indicating support for another organization or lack of support for the incumbent exclusive representative.

**Gov't Code § 3577. Request for recognition; election**

3577. (a) Upon receipt of a petition filed pursuant to Section 3575 the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition. The determination of the board may be based upon the evidence adduced in the inquiries, investigations, or hearings. If the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3574, it shall order that an election shall be conducted by secret ballot placing on the ballot all employee organizations evidencing support of at least 10 percent of the members of an appropriate unit, and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on the initial ballot the choice of "no representation." If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a memorandum of understanding between the employer and another employee organization recognized or certified as the exclusive representative of any employees included in the unit described in the petition, unless the petition is filed not more than 120 days and not less than 90 days prior to the expiration date of such memorandum, provided that if such memorandum has been in effect for three years or more, there shall be no restriction as to time of filing the petition; or

(2) Within the previous 12 months either an employee organization other than the petitioner has been lawfully recognized or certified as the exclusive representative of any employees included in the unit described in the petition, or a majority of the votes cast in a representation election held pursuant to subdivision (a) of Section 3577 were cast for "no representation."

**Gov't Code § 3579. Standards for determination of appropriate unit**

3579. (a) In each case where the appropriateness of a unit is an issue, in determining an appropriate unit, the board shall take into consideration all of the following criteria:

(1) The internal and occupational community of interest among the employees, including, but not limited to, the extent to which they perform functionally related services or work toward established common goals, the history of employee representation with the employer, the extent to which the employees belong to the same employee organization, the extent to which the employees have common skills, working conditions, job duties, or similar educational or training requirements, and the extent to which the employees have common supervision.

(2) The effect that the projected unit will have on the meet and confer relationships, emphasizing the availability and authority of employer representatives to deal effectively with employee organizations representing the unit, and taking into account factors such as work location, the numerical size of the unit, the relationship of the unit to organizational patterns of the higher education employer, and the effect on the existing classification structure or existing classification schematic of dividing a single class or single classification schematic among two or more units.

(3) The effect of the proposed unit on efficient operations of the employer and the compatibility of the unit with the responsibility of the higher education employer and its employees to serve students and the public.

(4) The number of employees and classifications in a proposed unit, and its effect on the operations of the employer, on the objectives of providing the employees the right to effective representation, and on the meet and confer relationship.

(5) The impact on the meet and confer relationship created by fragmentation of employee groups or any proliferation of units among the employees of the employer.

(b) There shall be a presumption that professional employees and nonprofessional employees shall not be included in the same representation unit. However, the presumption shall be rebuttable, depending upon what the evidence pertinent to the criteria set forth in subdivision (a) establishes.

(c) There shall be a presumption that all employees within an occupational group or groups shall be included within a single representation unit. However, the presumption shall be rebutted if there is a preponderance of evidence that a single representation unit is inconsistent with the criteria set forth in subdivision (a) or with the purposes of this chapter.

(d) Notwithstanding the foregoing provisions of this section, or any other provision of law, an appropriate group of skilled crafts employees shall have the right to be a single, separate unit of representation. Skilled crafts employees shall include, but not necessarily be limited to, employment categories such as carpenters, plumbers, electricians, painters, and operating engineers. The single

unit of representation shall include not less than all skilled crafts employees at a campus or at a Lawrence Laboratory.

(e) Notwithstanding the foregoing provisions of this section, the only appropriate representation units including members of the academic senate of the University of California shall be either a single statewide unit consisting of all eligible members of the senate, or divisional units consisting of all eligible members of a division of the senate. In addition to the limitations of subdivision (q) of Section 3562, the scope of representation of any divisional unit shall be limited to those matters which have customarily been determined on a division basis, but the employer shall consult with the exclusive representative of a division on matters which would be within the scope of representation or consultation of a statewide representative. When 35 percent of the eligible members of the academic senate are represented by an exclusive representative or representatives in divisional units, the board, on petition of a representative or of an organization comprised of those representatives, shall conduct an election to determine if the eligible members of the entire senate wish thereafter to be represented by a representative or organization in a single unit on all matters within the scope of representation. Any other exclusive representative or organization of representatives or any employee organization meeting the requirements of subdivision (a) of Section 3577 shall be entitled, on petition, to appear on the ballot, and in the event no choice receives a majority of the votes cast, the runoff provisions of subdivision (a) of Section 3577 shall be applicable.

(f) The board shall not determine that any unit is appropriate if it includes, together with other employees, employees who are defined as peace officers pursuant to subdivisions (c) and (d) of Section 830.2 of the Penal Code.

#### **Gov't Code § 3581.7. Rules and regulations**

3581.7. Subject to review by the board, the higher education employer may adopt reasonable rules and regulations for the administration of supervisory employee-employer relations under this article. Such rules and regulations may include provisions for:

(a) Verifying that an employee organization does in fact represent supervisory employees of the employer.

(b) Verifying the official status of employee organization officers and representatives.

(c) Access of employee organization officers and representatives to work locations.

(d) Use of official bulletin boards and other means of communication by employee organizations.

(e) Furnishing nonconfidential information pertaining to supervisory employee relations to employee organizations.

(f) Such other matters as are necessary to carry out the purposes of this article.

**Gov't Code § 3587. Financial records and reports**

3587. Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the president and treasurer or comparable officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

**Gov't Code § 3589. Binding and final arbitration**

3589. (a) An employer and an exclusive representative who enter into a written memorandum of understanding may agree to procedures for final and binding arbitration of disputes that may arise under the memorandum of understanding or between the parties.

(b) Where a party to a memorandum of understanding is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the memorandum, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such memorandum of understanding.

(c) An arbitration award made pursuant to this section shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(d) The board shall submit a list of names of arbitrators to employers and employee organizations upon their mutual request. Nothing in this subdivision shall preclude the parties from mutually agreeing to some other means of selecting an arbitrator. The board shall also, if mutually requested to do so, designate an arbitrator to hear and decide the rights dispute.

**Gov't Code § 3590. Appointment of mediator**

3590. Either an employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually

acceptable memorandum of understanding. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter. If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

**Gov't Code § 3591. Submission to factfinding panel**

3591. If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their 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 board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3590.

**Gov't Code § 3592. Hearings by panel; criteria for findings and recommendations**

3592. The panel shall, within 10 days after its appointment, meet with the parties or their representatives and consider their respective positions. The panel may make additional inquiries and investigations, hold hearings, and take other steps which it may deem appropriate. For the purpose of the hearings, investigations, and inquiries, the panel may issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The Regents of the University of California, the Directors of Hastings College of the Law, and the Trustees of the California State University 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, except for those records, books, and information which are confidential by statute.

**Gov't Code § 3593. Findings of fact and recommended terms of settlement**

3593. If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make such findings and recommendations public 10 days thereafter. During

this 10-day period, the parties are prohibited from making the panel's findings and recommendations public. The costs for the services of the panel chairman, including per diem fees, if any, and actual and necessary travel and subsistence expenses shall be borne by the board. Any other mutually incurred costs shall be borne equally by the employer and the exclusive representative. Any separately incurred costs for the panel member selected by each party, shall be borne by such party.

**Gov't Code § 3595. Public presentation of proposals**

3595. (a) All initial proposals of exclusive representatives and of higher education employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the higher education employer and thereafter shall be public records.

(b) Meeting and conferring shall not commence on an initial proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the higher education employer.

(c) After the public has had the opportunity to express itself, the higher education employer shall, at a meeting which is open to the public, adopt a proposal, including any changes to its initial proposal which the higher education employer deems appropriate based on the public's comments.

(d) New subjects of meeting and conferring arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the higher education employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being met and conferred upon and have full opportunity to express their views on the issues to the higher education employer, and to know of the positions of the higher education employer.