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PERB—THE AGENCY'S ROLE

James W. Tamm*

INTRODUCTION

The purpose of this article is not to give substantive information about public school collective bargaining, for the other articles in this symposium have done that. This article will attempt to provide an overview of the PERB's administrative structure and procedures.

During the decade prior to the establishment of the Educational Employment Relations Board,¹ employer-employee relations in public schools were governed by the Winton Act,² which was passed in 1965. The Winton Act required a public school employer to "meet and confer" with representatives of certificated and classified employees. On September 22, 1975, Senate Bill 160 of 1975 (the EERA) was signed into law,³ creating the Educational Employment Relations Board to administer the Act on a state-wide basis. The agency was given the responsibility to oversee collective negotiations for California public school employers and employees.

On June 30, 1977, the EERA was changed substantially when Senate Bill 839 (Dills) was enacted.⁴ The legislature renamed the EERB the Public Employment Relations Board (PERB). The State Employer-Employee Relations Act, as the legislation is known, adds state civil service employees to the jurisdiction of the agency.⁵ The statute covering state civil service employees is substantially different from the law covering school district employers and employees. As of this writing, however, implementation of the State Employer-Employee Relations Act is still in the initial stages.

On September 13, 1978, the Higher Education Employer-Employee Relations Act (HEEERA) was signed into law.⁶ The

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1. CAL. GOV'T CODE §§ 3540-3549.3 (West Supp. 1978).

2. 1965 Cal. Stats., ch. 2041, § 2, at 4660 (repealed 1975).

3. 1975 Cal. Stats., ch. 961, §§ 1-2, at 2247.

4. State Employer-Employee Relations Act, 1977 Cal. Legis. Serv., ch. 1159, at 3798-811.

5. *Id.* at 3798 (Legislative Counsel's Digest).

6. A.B. 1091 (Berman), 1977-78 Reg. Sess. (signed by Governor Brown on Sept. 13, 1978).

legislation, taking effect on July 1, 1979, gives PERB jurisdiction over the University of California system and the California State University and College system. Its implementation is in the planning stages at this time.

The PERB is a three member full-time board appointed by the Governor with headquarters in Sacramento. The executive director is the chief administrative officer of the board and is responsible for all representation matters, elections, personnel, budget, and staff coordination. The general counsel supervises the hearings in disputed cases and the processing of unfair practice charges. Unlike counsel of most other state agencies, the board's general counsel may, independently of the Attorney General, represent the board in any litigation to which the board is a party or is otherwise interested.

The board has regional offices in Sacramento, San Francisco and Los Angeles. The regional directors report to the executive director. The regional directors' staffs include regional representatives, usually non-attorneys, who handle most representation matters such as setting up and running elections, checking showing of interest, handling some representation hearings, impasse cases, public notice complaints, and compliance with board orders. Also located in the regional offices are the regional legal counsel on the general counsel staff. These attorneys are primarily concerned with unfair practice hearings and board litigation, although in the early stages of implementation of the Act they also spent an overwhelming amount of time on representation disputes. A support staff is also located in the Sacramento headquarters office. Each board member has a legal staff of two attorneys who assist the member in drafting decisions and generally advise the board member on carrying out his or her other duties.

The areas where the board assists the parties include representation matters, public notice procedures, impasse situations and unfair practice proceedings. The board also has a limited role in collecting financial reports of employee organizations and negotiated contracts of the parties.

REQUESTS FOR RECOGNITION

The first area of board involvement is usually in representation matters. The board is empowered to determine disputed units or to approve appropriate units for bargaining purposes.⁷

7. CAL. GOV'T CODE § 3541.3(a) (West Supp. 1978).

This process is triggered by a petition from an employee organization requesting that it be recognized as the exclusive representative of a group of employees. The original petition must include a showing of support from a majority of the employees in the proposed unit.⁸ Subsequent organizations may intervene on the original request with only a thirty percent showing of support. The showing may be in the form of current dues deductions authorizations, notarized membership lists, membership cards, or petitions signed by employees designating the organization as exclusive representative of the employee. All signatures must be dated and have been obtained within one year of filing the request. If an employee signs cards or petitions for more than one organization, the signature is counted toward the showing of support for both organizations.

Originally the statute required the showing of support to be sent to the employer for verification of sufficiency of support. Pursuant to rules adopted by the board on January 10, 1978, the showing of support is now sent to the PERB regional office for verification rather than to the district. When a request for recognition is received by the employer, the district is required to post a notice advising the employees and other organizations of the request. The notice must stay posted for a minimum of fifteen work days, during which time other organizations may file their interventions or competing claims. If there is only one employee organization and the parties agree on the unit description, the employer may grant voluntary recognition or may ask for a representation election. An election is automatic if more than one employee organization is vying for the same unit. "No Representation" also appears as a choice on the ballot. After the election the results are certified, and bargaining begins if an employee organization is selected. As of August 31, 1978, 1450 cases were settled by mutual agreement of the parties. The board has stressed this type of cooperation and has consistently offered the assistance of board agents to work with the parties for unit settlements.

If there is a dispute regarding the makeup of the unit for bargaining, a PERB hearing officer holds a unit determination hearing. Representation hearings in theory are more closely akin to an administrative investigation rather than to a formal hearing. Therefore, rules of evidence are not strictly followed. This distinction often exists only in theory, however, and the

8. *Id.* § 3544(a)-(b).

hearing is treated by the parties as a full-fledged adversarial hearing. At the hearing, evidence is taken regarding the community of interest of employees, the extent to which employees belong to the same employee organization, and the effect the size of the unit would have on efficient operation of the school district.⁹

The board's policy regarding unit settlements has just recently undergone a major change. During the initial implementation of the Act the board accepted stipulations of the parties regarding the appropriateness of the bargaining unit without question so long as the stipulations were not inconsistent with a clear and specific mandate of the Act.¹⁰ This was for two reasons; it expedited the representation process and because the board had not yet adopted any substantive guidelines regarding what units were appropriate.

The board's current policy, however, is that whenever there is a dispute as to the appropriateness of a unit, the stipulations of the parties will be examined to see if they are inconsistent with the board's policies regarding appropriate units.¹¹

After the unit is resolved, the district may grant voluntary recognition if there is only one employee organization; otherwise an election is held. As of August 31, 1978, 101 cases were decided by representation hearings.

Another method, used only once throughout the state for petitioning for recognition, was designed primarily for use in the community colleges where a single employee organization might have difficulty gaining a majority showing of support. The method provides that if by January 1 of any school year no organization has petitioned for recognition, a group of employees not aligned with a particular organization may file a petition requesting a representation election.¹² At that stage employee organizations could intervene and seek to be on the ballot. The benefit of this method is that it only takes a thirty percent showing of support to intervene to appear on a ballot.¹³ Thus, if several organizations were vying for recognition and none of them were able to get a majority showing of support,

9. *Id.* § 3545(a).

10. Tamalpais Union High School Dist., EERB Decision No. 1 (July 20, 1976) [1976-1977 Transfer Binder] 1 PUB. EMPL. REP. CAL. (LRP) 1.

11. Centinela Valley Union High School Dist., PERB Decision No. 62 (Aug. 7, 1978), [1978] 2 PUB. EMPL. REP. CAL. (LRP) 464.

12. CAL. GOV'T CODE § 3544.3 (West Supp. 1978).

13. *Id.* § 3544.1(b).

they could pool all their resources and file a majority petition as a request for an election. They could then individually seek to appear on the ballot with the easier thirty percent showing of interest. Again, as in other representation petitions, the showing of support of the employee organizations is sent to the regional office for determination of adequacy.

Judicial review of a unit determination decision by the board is limited to two instances: first, when the board agrees that the case is one of special importance and joins in the request for review; or second, when the issue is raised as a defense to an unfair practice complaint.

UNIT CLARIFICATIONS

The board is also involved with the parties when, after a unit is initially settled, one or both parties wants to make changes in the unit description.¹⁴ The board entertains a petition for a change in unit determination under two circumstances: where both the exclusive representative and the employer jointly file the petition or where there has been a change in the circumstances which existed at the time of the initial unit determination. If the differences cannot be settled informally with the aid of the board agent, a hearing is held and a decision rendered following the same principles applied to representation hearings. The board adopted this policy as the method of helping parties settle unit disputes to allow bargaining to continue for the major part of the unit despite a few minor unresolved matters.

Consider, for example, a district where the employee organization and the employer agree that all clerical employees belong in a single unit but are unable to agree whether a particular clerical employee should be excluded as a confidential employee or included in the unit. If the parties were agreeable, the employer could grant voluntary recognition to the employee organization for the clerical unit; simultaneously, the parties could jointly file a petition asking PERB to decide the remaining issues. During the initial stages of implementation of the Act it took many months to get to a representation hearing and several additional months to reach a decision. Therefore, if the parties had wanted to begin bargaining, they were free to do so without losing the opportunity for a hearing on the matter still in dispute.

14. *Id.* § 3541.3(e).

This procedure played a major role in speeding the implementation of collective bargaining in many districts. It is now declining in usefulness because the board's representation backlog is not as great as during the initial implementation of the Act. As of August 31, 1978, less than twenty-five representation cases were on the board docket, all of which had been appealed from hearing officer decisions. The board is currently considering rule revisions regarding changes in unit determinations; new procedures may be forthcoming.

DECERTIFICATIONS

An exclusive representative can be decertified by a group of employees or by another employee organization. The decertification petition must contain signatures of at least thirty percent of the employees in the unit indicating their support for another organization or lack of support of the incumbent.¹⁵ Any petition will be dismissed if there is a contract currently in effect, unless the petition is filed during a thirty day window period running from 120 days to 90 days prior to the expiration of the contract.¹⁶ The petition will also be dismissed if the exclusive representative was voluntarily recognized by the district or certified by the PERB within the twelve months immediately preceding filing of the petition.

If an outside organization seeks to gain recognition through this process, the organization must file the petition in the same unit that is currently being represented by the incumbent. Should the new organization wish to change the makeup of the negotiating unit, it would have to file a new request for recognition as described in the previous section. Such petition would have to be supported by a majority showing of support rather than the thirty percent showing required to decertify an organization in the existing unit.

ELECTIONS

If an election is necessary, a board agent meets with the parties to determine the date, hours, locations, and other terms of the election. The agent works to reach agreement among the parties regarding such details, but if agreement is not reached, the regional director has authority to establish the

15. *Id.* § 3544.5(d).

16. *Id.* § 3544.7(b).

terms unilaterally. In order to prevail, a choice must receive a majority of the valid votes cast. If no choice on the ballot receives a majority of the valid votes cast, a runoff election is conducted. The ballot for the runoff provides for a selection between the two choices receiving the largest and second largest number of valid votes cast in the original election.

From the implementation of the Act until August 31, 1978, there have been 460 representation elections covering about 185,000 employees. The turnout has generally been high, averaging approximately eighty percent. A PERB election officer is always present at the election and in control of the ballots. Both the employee organizations and the employer may choose to have observers present. In the experience of the board, the employee organizations have almost always had observers present. The public employers, unlike employers in the private sector, rarely have chosen to have observers present. The attitude of most public employers appears to be that the election is for the employees to decide which organization they wish to have represent them and not to decide whether they want to have an exclusive representative. The outcome of most elections supports this observation. Of the 460 elections run, "No Representation" received a majority of the votes only fourteen times. This result is substantially different from the private sector experience.

Another important difference between public sector labor relations and the private sector is the number of objections filed. The PERB has discarded the "laboratory conditions" approach followed by the National Labor Relations Board and has restricted the grounds for overturning an election. Objections are entertained on only two grounds: one, if the conduct complained of is tantamount to an unfair practice; or two, for serious irregularities in the conduct of the election. The first ground aims at actions of the parties; the second focuses primarily on actions not controlled by the parties, such as ballots lost prior to the count. As of August 31, 1978, objections have been filed to only nine elections and none of them were sustained by hearing officers. To date there has yet to be a single election overturned, an impressive record considering that most were multi-site elections, often spanning a number of days and often concerning hundreds or thousands of voters, where chances of problems increase exponentially.

ORGANIZATIONAL SECURITY ELECTIONS

Another type of election run by this agency is an organiza-

tional security election. The Act provides for three types of organizational security provisions: dues deductions, maintenance of membership, and agency shop.¹⁷ Dues deductions are a right granted subject to provisions of the Education Code.¹⁸ The maintenance of membership and agency shop provisions must be negotiated.¹⁹ When the issue is being negotiated the public school employer may require that the organizational security provision be severed from the remainder of the proposed contract, causing this provision to be voted on separately by all the members of the appropriate negotiating unit. 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 a vote neither ratifies nor defeats the remaining provisions of the proposed contract.²⁰ The PERB requires that the employer notify the exclusive representative of intent to have an election *after* the agreement has been reached on the organizational security arrangement but *prior* to the ratification of the entire proposed contract. Theoretically, this practice gives the members of the organization an opportunity to refuse to ratify the contract and go back to the table if the organizational security provision is defeated. This second chance possibly operates only in theory, however, because if the organizational security provisions were defeated, the employee organization would probably not be in a particularly strong bargaining position to make further demands of the employer.

An organizational security provision in a contract can be rescinded by a vote of the employees; the number of votes necessary to rescind an agreement, however, is different from the number necessary to ratify an agreement.²¹ Ratification requires an affirmative vote of a majority of employees voting in the election, but rescission requires an affirmative vote of *all* employees in the unit. For example, if there are 100 employees in the unit and only sixty of them vote, it would take an affirmative vote by thirty-one to ratify the agreement, while it would take an affirmative vote by fifty-one to rescind the agreement.

The board will dismiss any petition to rescind an existing organizational security agreement if a ratification vote has

17. *Id.* § 3540.1(i).

18. *Id.* § 3543.1(d).

19. *Id.* § 3543.

20. *Id.* § 3546(a).

21. *Id.* § 3546(a)-(b).

been held within twelve months immediately preceding the filing of the petition. As of August 31, 1978, the PERB had conducted only seventy organizational security elections, all of which were to ratify new agreements. Employees in all but eight of the elections voted to affirm the agreement.

PUBLIC NOTICE

The Act provides that the initial negotiating proposals of both the employer and the employee organization be presented at a public meeting of the school district governing board.²² Meeting and negotiating may not take place until members of the public have had a reasonable opportunity to express themselves regarding the proposals.²³ The Act further requires that any new subject of negotiations not included in the initial proposals must be made public within twenty-four hours, and if a vote is taken by the school board on such new subjects, the vote of each member must also be made public within twenty-four hours.²⁴

To date, the PERB has not issued any substantive rules or guidelines regarding what is reasonable opportunity for public input or what is a new subject of negotiations. However, on June 21, 1977, the board did adopt a complaint procedure.²⁵ The rules provide that a complaint may be filed by a resident of the school district involved in the complaint, a parent or guardian of a student in the district, or an adult student in the district. The complaint must be filed no later than thirty days after the date when the alleged violation became known or reasonably could have been discovered. When a complaint is filed a PERB agent is assigned to investigate the merits of the charge and to attempt settlement through informal conferences. If the charge states a prima facie violation and is not settled through informal methods, the regional director forwards a copy of the complaint to the employer and the employee organization and issues a notice of hearing. The hearing officer is required to prepare a decision no later than seven days after the close of the hearing. The purpose of the expedited process is to keep any disruption of negotiations as minimal as possible. Delays of several months for a decision could have a

22. *Id.* § 3547(a).

23. *Id.* § 3547(b).

24. *Id.* § 3547(d).

25. CAL. ADMIN. CODE tit. 8, §§ 37000-37100.

disastrous effect on negotiations if the parties know that any agreement reached could be voided as part of a remedy to the public notice complaint.

As of August 31, 1978, there has been negligible activity in this area of the law. In the San Francisco region there were three complaints, all from the same school district. The Los Angeles region also had only three complaints, and Sacramento had none. The three in San Francisco were settled voluntarily, one in Los Angeles was dismissed for lack of timeliness, one was withdrawn, and the other Los Angeles case was being processed. The board also encourages local employers to develop their own substantive rules and file them with the PERB.

IMPASSE PROCEDURE

The agency tries to assist the parties in reaching collective bargaining agreements, first through mediation, then through factfinding, should it be necessary.²⁶ If the parties are unable to come to an agreement during negotiations, either party may first declare an impasse to the other party and then to the regional office. The declaration of impasse requests the PERB to appoint a mediator. At that point a board agent talks with both parties to determine whether their differences are so substantial or prolonged that further meetings would be futile. In most cases both parties agreed that they were at an impasse and that mediation would be helpful. In cases where there is no agreement the PERB agent asks for information regarding the number and length of negotiating sessions, items that have been resolved and those that are still disputed, the number of proposals and counterproposals by each party, the history of bargaining and problems in bargaining, and any other similar information that would help assess both the problem and the likelihood that mediation would be helpful and productive.

The regional director must decide whether to appoint a mediator within five days of receipt of the declaration of impasse. The regional director's decision can be appealed to the board itself, but if the decision is to appoint a mediator, the mediation process will not be halted during the appeal period. As of August 31, 1978, only two of the regional directors' decisions had been appealed, neither of which were overruled by the board. The Act provides that it is an unfair practice for a

26. CAL. GOV'T CODE §§ 3548, 3548.1 (West Supp. 1978).

party to refuse to participate, in good faith, in any impasse proceedings.²⁷

In no case can the mediator be a PERB staff member. Therefore, on June 14, 1976, the PERB entered into an inter-agency agreement with the State Conciliation Service, whereby the State Conciliation Service provides mediators in PERB-declared impasses. Although permitted by the Act, it is the policy of both the PERB and the State Conciliation Service that the person serving as mediator will not be appointed to the factfinding panel. A mediator's effectiveness and neutrality would suffer if the mediator is asked to formalize his or her personal recommendations in writing at a later stage of the impasse proceedings.

The parties may jointly agree upon their own mediation procedure, but the cost of any such procedure must be borne equally by the parties.²⁸ To date, less than a half-dozen districts have chosen this procedure.

Once it is determined that an impasse exists, the regional director asks the State Conciliation Service to assign a mediator. The mediation process under the Act has been enormously successful largely because of the skill and dedication of the individual mediators. Of the approximately 600 impasses determined to exist as of August 31, 1978, all but 105 have been resolved without resorting to the factfinding process.

If, however, settlement is not reached during the mediation process, either party may, after a minimum of fifteen days, request that the factfinding process be implemented.²⁹ As a prerequisite to this process, the mediator must agree that factfinding is appropriate at that time. This procedure gives mediators another tool for their arsenal, and on several occasions the mediator has refused to certify a case to factfinding in the belief that more could be accomplished in the mediation process. If factfinding is certified as appropriate by the mediator, then each party selects a panel member to represent its interests. The regional director then sends out a list of potential factfinders to chair the tripartite panel. Generally, the parties strike names from the odd-numbered list and the remaining person is appointed by the PERB. On occasion other methods, such as unilateral selection of the chairperson by the regional director, have been used by mutual agreement of the parties.

27. *Id.* §§ 3543.5(e), 3543.6(d).

28. *Id.* § 3548.

29. *Id.* § 3548.1.

The cost of the chairperson is paid by the PERB. The expense of the other panel members is paid by their respective parties.

The panel has broad powers to issue subpoenas requiring attendance at any hearing, testimony of witnesses and the production of evidence. Great latitude is given to the panel regarding the structure of the factfinding process. Of the factfindings to date, a large number have resulted in settlements. If the dispute is not settled, the panel must make findings of fact and recommend terms of settlement. These recommendations are advisory only.³⁰ The employer is required to make the report public within ten days after its issuance. All factfinding reports are also kept on file at the PERB offices. The Act provides that mediation can continue throughout the factfinding process,³¹ and post-factfinding mediation has been utilized in several cases where the dispute was not settled during factfinding.

UNFAIR PRACTICES

As the representation issues are being settled, the unfair practice cases are comprising a larger percentage of the agency's work load. The area of unfair practice procedures is where agency structure differs most dramatically from the National Labor Relations Board. The structure is, however, consistent with most other public sector agencies. The PERB is a non-prosecutorial agency, and does not provide legal counsel to charging parties.

Under the PERB structure, charging parties provide their own representation, with one exception. If a charging party is unable to retain counsel or to demonstrate extenuating circumstances, a board agent may be assigned to assist the party to draft the charge or to gather evidence. To date only one charging party has asked for such assistance. After an investigation, it was determined that assistance was not warranted because the charging party had sufficient means for retaining their own counsel. The request was therefore denied.

When an unfair practice charge is filed, a hearing officer reviews the charge and determines whether or not the charge states a prima facie violation. If no prima facie case is found, the charge is dismissed by the general counsel. The charge will also be dismissed if it is based on an alleged unfair practice occurring more than six months prior to the filing of the charge.

30. *Id.* § 3548.3.

31. *Id.* § 3548.4.

If the charge is based on alleged conduct which is also prohibited by the provisions of a negotiated agreement between the parties, any grievance machinery should also be exhausted prior to the PERB taking action.

Although there are no formal discovery procedures provided in the board rules, the hearing officer may require particularization of any charge or answer prior to ruling on the sufficiency of a charge. This process may be required on the motion of either the hearing officers or a party. Any dismissal must also include a statement of the grounds for dismissal and may at the discretion of the general counsel allow leave to amend the charge within a period of time not to exceed twenty calendar days.

Upon receipt of an unfair practice charge in the regional office, the respondent is served a copy of the charge. At the same time, the hearing officer also issues a notice of informal conference. An answer must be filed by the respondent within twenty calendar days. If the respondent fails to file an answer, the board may find the failure constitutes an admission of truth and waiver of respondent's rights to a hearing.

The informal conference is conducted for the purpose of clarifying the issues and exploring the possibility of voluntary resolution and settlement of the charge. No record is made at the informal conference. There has been an excellent settlement rate at the informal stages—of the charges filed, approximately half were settled at the informal stages.

In some cases the hearing officer may, prior to the informal conference, feel settlement is not possible and may elect to proceed directly to the formal hearing. This is rarely done, however, because it is often very difficult to tell from the face of a charge just what the settlement possibilities are.

If the case is not settled at the informal conference, a formal hearing is set. A different hearing officer will generally be used at the formal hearing than was assigned to the informal conference. This practice helps avoid the possibility that the parties will withhold information at the informal conference out of concern that their case may be prejudiced if heard by the same hearing officer.

Before the commencement of a formal hearing, a party may file a motion which states any desired relief and the facts and arguments upon which the motion is based. A response to a motion may be filed by the respondent within seven calendar days after service of the motion. If the formal hearing has

commenced, motions may be made orally on the record. The party making the motion may object to any ruling of the hearing officer on the motion and may request a ruling by the three-member board itself. The board itself will hear the appeal only if it is certified to them by the hearing officer. The hearing officer will certify the appeal only if the issue involved is one of law and controlling in the case, and an immediate appeal will materially advance the resolution of the case. This procedure reduces the number of appeals which the board itself hears.

Although compliance with the technical rules of evidence is not required, the procedures in unfair practice cases are much more formal than the representation hearings. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but is not sufficient in itself to support a finding unless it would be admissible over objection in civil actions. Immaterial, irrelevant, unreliable, and unduly repetitious evidence may also be excluded as well as evidence of offers of settlement. The rules of privilege also apply. To prevail, the charging party must prove the charge by a preponderance of the evidence.

At the conclusion of the hearing, a transcript is prepared and briefs are often submitted by the parties. The hearing officer then issues a recommended decision containing a statement of the case, findings of fact, conclusions of law, and the order. If no objections are filed to the decision, it becomes final twenty days after it is served on all parties. If any objections are filed, the case is appealed to the three-member board itself. The appeal must include the specific issues to which the exception is taken, the page citation and portion of the record relied upon for each exception, and the grounds for each exception. Responses are allowed to the exceptions, and the board may allow oral arguments. After deliberation, the board may affirm, modify or reverse the recommended decision of the hearing officer, order the record reopened for the taking of further evidence, or take any other action it considers appropriate.

As of August 31, 1978, only approximately one-half of hearing officer proposed decisions in unfair practice cases had been appealed to the board. Of the hearing officer proposed decisions dismissing unfair practice charges prior to hearing, only about twenty-five percent have been appealed to the board.

Forms for filing unfair practice charges are available at the regional offices. Charges are, however, accepted even if they are not on the correct form, as long as they contain all the necessary information.

FINANCIAL DISCLOSURE

The Act requires every recognized or certified organization to keep an itemized record of its financial transactions, and the organization must annually make available to the board and to the organization's members a detailed written financial report in the form of a balance sheet and an operating statement.³² The report is due within sixty days after the end of the organization's fiscal year. The Act originally required that the report's accuracy be certified by a certified public accountant; that provision, however, has since been amended and now requires only that the report be signed and certified as to accuracy by the organization's president and treasurer (or corresponding principal officers).³³ On January 10, 1978, the board adopted rules establishing a procedure for employees to file complaints with the regional director if no report is made available by the exclusive representative. After a complaint is filed, the board agent then investigates, and in the event of a determination of noncompliance, the regional director notifies the exclusive representative, requiring it to submit its written financial report within fifteen days. In the case of a dispute about the regional director's determination, the matter is appealable to the board, and the board may issue a compliance order or take other appropriate action.

SUMMARY

The PERB is now confronted with the challenging task of implementing the State Employer-Employee Relations Act and the Higher Education Employer-Employee Relations Act while continuing to serve its existing jurisdiction. The board's experience to date has been that the EERA is working relatively well. Its work level for public schools is beginning to stabilize. The tremendous backlog of representation cases, created by the original filings for recognition, is tapering considerably. The impasse procedures appear to be successful, as evidenced by the large number of contracts being negotiated and filed in the regional offices. The unfair practice procedures also appear to be effective, as many charges are settled during the informal stages.

These successes are particularly significant during the

32. *Id.* § 3546.5.

33. *Id.* § 3546.5.

very difficult first few years of implementation of the Act, when new bargaining relationships are being developed. The author is confident that as the relationships between the parties change, the agency will be able to adapt, as necessary, to meet future challenges.