2024

California

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CALIFORNIA
POLICE & NON-POLICE COLLECTIVE BARGAINING
FACT SHEET

SUMMARY

In general, California may be the most hospitable state to public sector collective bargaining. The basic rules are far more favorable to placing matters within the scope of mandatory subjects than any other state. There are, however, serious differences in how police and non-police bargaining is treated.

- **Choice of Forum for Police**. Under California's public sector collective bargaining law, most unions and employers must resolve their conflicts about the scope of bargaining through California's Public Employment Relations Board (PERB). For police only, however, the parties can also bring the disputes to court.
- **Los Angeles Labor Relations**. The scope of bargaining for employees of the City of Los Angeles is governed by a unique city ordinance and enforcement agency. This leads to diffusion of rules, difficulty in finding the decisions, and potential conflicts with state law.
- **Interest Arbitration for Police**. In 2000, the California legislature enacted a statute requiring interest arbitration for the resolution of any impasses in police and fire departments. In 2003 that statute was declared unconstitutional. Nevertheless, many charter cities continue to require interest arbitration.
- **LOEBOR**. California has a robust Law Enforcement Officers Bill of Rights statute providing protections in discipline investigations; these matters that are left to bargaining for every other type of employee.
- **Oversight Common Law Different for Police**. The PERB decisions on the implementation of outside oversight are more favorable to bargaining in the police context than in the non-police context. In addition, PERB is more accommodating of police bargaining on oversight than the California Courts.
- **Transfer of Work Common Law is Different for Police**. PERB's decisions in this area are slightly more favorable to police bargaining than non-police.

STATUTORY AUTHORITY

Coverage.

There are two general statutes governing collective bargaining in California. The Meyers Milias Brown Act, often referred to as MMBA, governs collective bargaining between employee organizations (unions) and cities, towns, counties, and other governmental subdivisions.[1] The MMBA does not, however, cover school districts, which have their own collective bargaining statute, the Educational Employee Relations Act (EERA).[2] The second general statute, commonly known as the Dills Act, regulates the relationship between employee organizations and the state of California.[3] Certain state employees are excluded under this act but covered by their own statutes, including faculty, staff, and student employees of state universities, [4] state funded childcare workers,[5] supervisory and other "excluded" state employees,[6] and employees of the judicial council[7]. Peace officers, police departments, and their representatives are covered under both statutes.[8]

Scope of Bargaining.

Under both general statutes, there is no statutory difference in the duty to bargain between police and non-police bargaining units. Both statutes require the employer to "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of such recognized employee organizations . . . and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action."[9] And, both statutes make it an unfair labor practice to fail to do so, using slightly different language (which appeared to make no difference in the Board cases interpreting the two laws).[10] Importantly, both statutes use "the scope of representation" to describe those matters over which the parties have a duty to bargain.

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[1] CAL. GOV'T CODE, § 3501(c) (defining a public agency as "every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and county and municipal corporation, whether incorporated or not and whether chartered or not").
[2] CAL. GOV'T CODE §3501(c); *see also* the Educational Employee Relations Act, CAL. GOV'T CODE § 3540 *et seq*. The statute also excludes
3 CAL. GOV'T CODE §3513(j) (defining the state employer as "the Governor or his or her designated representatives.")
4 CAL. GOV'T CODE § 3562 ("any employee, including student employees whose employment is contingent on their status as students, of the Regents of the University of California, the Board of Directors of the college named in Section 92200 of the Education Code, or the Trustees of the California State University.")
5 CAL. GOV'T. CODE, § 3540 *et seq*.
6 CAL. GOV'T CODE §3525 *et seq*.
7 CAL. GOV'T CODE §3524.50 *et seq*.
8 CAL. GOV'T CODE §§ 3300–13, 3500–24
[9] CAL. GOV'T CODE §3505; CAL. GOV'T CODE § 3517.
[10] *Compare* CAL. GOV'T CODE § 3506.5 ("Refuse or fail to meet and negotiate in good faith with a recognized employee organization") (emphasis added) *with* CAL. GOV'T CODE § 3519(c) ("Refuse or fail to meet and confer in good faith with a recognized employee organization.") (emphasis added).

That term is defined more expansively under the MMBA than the Dills Act. The MMBA defines that duty as follows:

> The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.[11]

The Dills Act omits the "all matters relating" language, defining the scope of representation as "limited to wages, hours, and other terms and conditions of employment."[12] Though this suggested a more constrained scope of representation for state employees, it appears to make little difference to the Board's decision-making.

Unfair Labor Practices.

The MMBA gives police a choice of forum for resolving unfair labor practices that is not available to non-police unions. Section 3509 gives PERB the exclusive jurisdiction over unfair labor practices between unions and employers.[13] However, "disputes relating to peace officers" are excluded from this exclusive jurisdiction.[14] This means that disputes about police bargaining can be resolved either through a PERB action or through a "writ of mandate" in state court.[15] Practically, this means that parties to the police bargaining relationship can choose either forum, setting up conflicts between the judicial and administrative holdings. In addition, the statute allows the City of Los Angeles to adjudicate its own unfair labor practices through its local agency.[16]

Section 3508 of the MMBA grants certain peace officers the right to be represented by a group composed entirely of other peace officers.[17]

Impasse Procedures

For non-police unions, the impasse procedures under the MMBA and the Dills Act are limited. Under both statutes, if the parties cannot reach an agreement, they have the option to appoint a mediator to assist.[18] Whether or not the parties elect to engage a mediator, for agencies covered by the MMBA, PERB can appoint neutral fact finding panel consisting of one member appointed by the employer, one appointed by the union, and one neutral member selected by

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[11] CAL. GOV'T CODE §3504.
[12] CAL GOV'T CODE §3516.
[13] CAL. GOV'T CODE §3509.
[14] CAL. GOV'T COD §3511.
[15] *See* El Dorado Cnty. Deputy Sheriff's Assn. v. Cnty. of El Dorado, 244 Cal. App. 4th 950, 953, n.1, 198 Cal. Rptr. 3d 502, 505 (2016)(holding "labor disputes relating to peace officers, such as this dispute, are not subject to PERB jurisdiction. (Gov. Code, § 3511.)").
[16] CAL. GOV'T CODE §3509(d).
[17] CAL. GOV'T CODE § 3508; San Bernardino Cnty. Sheriff's etc. Assn. v. Bd. of Supervisors, 7 Cal. App. 4th 602, 609, 8 Cal. Rptr. 2d 658, 661 (1992), *reh'g denied and opinion modified* (June 30, 1992)
[18] CAL. GOV'T CODE §3505.2 and §3518.

PERB.[19] If no agreement is reached after the appointment of the panel, the panel is empowered to convene a hearing where the panel can make "a determination of policy or course of action."[20] If no agreement is reached after the issuance of the decision, the agency "may . . . implement its last, best and final offer."[21] The panel's fact finding decision, therefore, is not binding on either party.[22] The section exempts from this process any locality with "a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration . . . ."[23]

For police and firefighter bargaining units, the California legislature created a mandatory interest arbitration process in 2000, which the California Supreme Court ruled unconstitutional in 2003. That statute was intended "to govern the resolution of impasses reached in collective bargaining between public employers and employee organizations representing firefighters and law enforcement officers over economic issues that remain in dispute over their respective interests."[24] In 2003, however, the California Supreme Court held the interest arbitration requirement unconstitutional. Relying on the state constitutional provision reserving the decision to set compensation to each county, the court concluded that interest arbitration transforms the County from the decision maker to "just another party in arbitration" and therefore improperly delegates the county's constitutionally granted power.[25] In 2008, the legislature attempted to fix the problem by giving the local governing body the power to reject an interest arbitrator's decision.[26] However, the Supreme Court again struck the law down.[27]

While police therefore are no longer able to take advantage of a statewide interest arbitration requirement, many charter-based localities still allow interest arbitration through amendment to their own charters.[28] The following charter cities and counites require interest

[19] CAL. GOV'T CODE §3505.4(a).
[20] CAL. GOV'T CODE §3505.5.
[21] CAL. GOV'T CODE §3505.7.
[22] Cnty. of Riverside v. Pub. Emp. Rels. Bd., 246 Cal. App. 4th 20, 29, 200 Cal. Rptr. 3d 573 (2016) (holding that "[u]nlike the *County of Riverside* case, the Act's factfinding provisions do not result in a binding decision.")
[23] CAL. GOV'T CODE §3505.5(e).
[24] Cal. Civ. Proc. Code §§ 1299 to 1299.9 (also setting out the procedure to be followed for hearing and allowed the neutral arbitrator to issue a final and binding decision setting the terms and conditions of the parties' collective bargaining agreement).
[25] County of Riverside v. Superior Court, 30 Cal. 4th 278, 285, 66 P.2d 718 (2003).
[26] S.B. 440, 2003–2004 Legis. Sess. (Cal. 2003).
[27] *See generally* County of Sonoma v. Superior Court, 173 Cal. App. 4th 322, 93 Cal. Rptr. 3d 39 (2009).
[28] *See* Bagley v. City of Manhattan Beach, 18 Cal. 3d 22, 26, 132 Cal. Rptr. 668 (1976).

arbitration for police: Gilroy,[29] Modesto,[30] Monterey,[31] Napa,[32] Oakland,[33] Oroville,[34] Petaluma[35], Redwood City[36], Sacramento[37], Salinas[38], San Francisco[39], San Jose[40], San Leandro[41], Santa Rosa[42], and the County of Sacramento[43] provide for interest arbitration in their charters. In addition, at least three California cities—Stockton, Vallejo, and San Luis Obispo[44]—have repealed binding arbitration for police in recent years.[45]

Other Statutes

[29] GILROY, CAL., CHARTER OF THE CITY OF GILROY art. X, § 1004(b)(4) (2023), https://www.codepublishing.com/CA/Gilroy/html/GilroyCH.html (last visited June 21, 2024) (applying to both police and fire).
[30] MODESTO, CAL., CHARTER art. XII, § 1206 (1998), https://library.municode.com/ca/modesto/codes/code_of_ordinances?nodeId=CHTR_ARTXIIPESY_S1206IMARPOFIDEEMDI (last visited June 21, 2024) (applying to both police and fire).
[31] MONTEREY, CAL., MONTEREY CHARTER art. V, § 5.4 (2002) https://monterey.municipal.codes/Charter/5.4 (last visited June 21, 2024) (applying to both police and fire).
[32] Napa, Cal., Charter of the City of Napa, § 80 (2024), https://ecode360.com/attachment/NA4976/NA4976-CHA.pdf (last visited June 21, 2024) (applying to public safety employees).
[33] OAKLAND, CAL., OAKLAND CITY CHARTER art. IX, § 910 (1988) https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA_ARTIXPEAD (last visited June 21, 2024) (applying to both police and fire).
[34] OROVILLE, CAL., THE CHARTER art XXXII, § 1, (2004) https://ecode360.com/44183986?highlight=arbitration,arbitrator,arbitrators&searchId=27042991833776414 (last visited June 21, 2024) (applying to fire only).
[35] PETALUMA, CAL., PETALUMA CHARTER art. XV, § 82 (1990), https://petaluma.municipal.codes/search?q=arbitration&doc%5B%5D=Charter (last visited June 21, 2024) (applying to both police and fire).
[36] REDWOOD CITY, CAL., CITY CHARTER § 96, (1987) https://www.redwoodcity.org/home/showpublisheddocument/26148/638114540615470000 (last visited June 21, 2024) (applying to both police and fire).
[37] SACRAMENTO, CAL., CHARTER arts. XVII & XIX, (1996, 1998) https://codelibrary.amlegal.com/codes/sacramentoca/latest/sacramento_ca/0-0-0-10 (last visited June 21, 2024) (applying to police and fire respectively).
[38] SALINAS, CAL., CHARTER OF SALINAS art. XVIII, § 18.4 (2016), https://librarystage.municode.com/ca/salinas/codes/code_of_ordinances?nodeId=PTITHCH_CHTR_SALINAS_ART18COSAMI_S18.4IMARFIDEEMDI (last visited June 21, 2024) (applying to fire only).
[39] S.F., CAL., THE CHARTER § A8.590-5 (2009), https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_charter/0-0-0-3308 (last visited June 21, 2024) (applying to both police and fire).
[40] SAN JOSE, CAL., CITY CHARTER art. XI, § 1111 (2022), https://www.sanjoseca.gov/home/showpublisheddocument/95973/638158605833270000 (last visited June 21, 2024) (applying to both police and fire).
[41] San Leandro City Charter art. IV, § 450 (2014), https://ecode360.com/44291227?highlight=arbitration,arbitrator&searchId=27043772815146155#44291227 (last visited June 21, 2024) (applying to both police and fire).
[42] SANTA ROSA, CAL., CITY CHARTER § 56 (2023), https://www.srcity.org/152/City-Charter (last visited June 21, 2024) (applying to both police and fire).
[43] SACRAMENTO COUNTY, CAL., SACRAMENTO CNTY. CHARTER art. XVIII, § 94 (2009), https://ecode360.com/44039382#44039402 (last visited June 21, 2024) (applying to police only).
[44] This has been highly controversial, passing in 2000 by initiative supported by police and firefighter unions and subsequent revocation in 2011 also by initiative supported by city council. However, the police union brought a challenge to the city placing the initiative on the ballot without bargaining with the union. PERB ALJ agreed and then the full board disagreed. [**cites**] It appears that the Calif Appeals court reversed, though I cannot find that case.
[45] 1 California Public Sector Labor Relations § 10.40 (2024)

Law Enforcement Officers Bill of Rights.

California has a robust Law Enforcement Officers Bill of Rights (LEOBOR), the purpose language of which reads remarkably similarly to the MMBA and the Dills Act:

> [E]ffective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state . . . .[46]

The law provides comprehensive protections in discipline investigations, matters that are left to bargaining for every other type of employee. For example, the statute requires investigative meetings be held at reasonable times and for reasonable durations; that the officer must be informed in advance of the "interrogating officers" as well as the nature of the investigation; that statements made during the investigation will be inadmissible in any subsequent judicial proceeding; that the officer is entitled to any recordings or notes taken during the interview; and that the officer may be represented by the "individual of the officer's choice" at the meeting.[47] In addition, officers cannot be required to submitted to a lie detector test,[48] cannot be required to make financial disclosures,[49] and cannot have their lockers searched involuntarily.[50] In every other type of bargaining unit, these provisions are negotiable subjects, but they are not set by statutes, so most agreements do not contain these protections.[51] Additionally, in the event that the investigation results in a decision to discipline, the officer is entitled to an "administrative appeal", which includes an evidentiary hearing, *before* the imposition of that discipline.[52] For every other type of public employee, there is a right to a limited "hearing" prior to an employer's decision to implement discipline, often called a Loudermill hearing after the Supreme Court decision announcing this procedural due process right.[53]

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[46] CAL. GOV'T CODE § 3301; *cf.* Cal. Gov't Code § 3500 (declaring the purpose "to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California"); Cal. Gov't Code § 3512 (declaring "the purpose of this chapter [is] to promote the improvement of personnel management and employer-employee relations within the State of California").
[47] CAL. GOV'T CODE § 3303.
[48] CAL. GOV'T CODE § 3307.
[49] CAL. GOV'T CODE § 3308.
[50] CAL. GOV'T CODE § 3309.
[51] While the presence or absence of union representation is clearly a mandatory subject of bargaining in California, there is some question as to whether other investigative processes such as those required by LEOBOR are bargainable. *Compare* Los Rios Community College District (2019) PERB Dec. No. 2713E [43 PERC ¶ 146] (finding no ULP where District implemented a new policy manual governing the investigation of claims of discrimination against employees) *with* County of San Bernadino (2013) PERB Dec. No. 2423-M [37 PERC ¶ 199] (finding that the Public Defender imposing a rule that public defenders could not be represented by District Attorney employees in investigatory meetings was a unilateral change).
[52] CAL. GOV'T CODE § 3304(b); *see also* Gordon v. Horsley, 86 Cal. App. 4th 336, 347, 102 Cal. Rptr. 2d 910 (2001) (holding "[a]t minimum, section 3304 requires that a peace officer receive an evidentiary hearing before a neutral fact finder to challenge the punitive action.").
[53] Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985).

The provisions of California's LEOBOR are enforceable through a civil action in which the plaintiff may be awarded an injunction, damages, and fines up to $25,000 if the violation was "malicious."[54]

Calls for Reform.

Following the murder of George Floyd in 2020, a group of prominent academics in California called for reform of the public sector collective bargaining law.[55] No legislative action has been taken on these proposals.

AGENCY

California Public Employees Relations Commission ("PERB")

- **Statute**: Cal. Gov't Code §3509; Cal Gov't Code §
- **Website**: https://perb.ca.gov

The Board is comprised of five members appointed by the Governor and confirmed by the State Senate.[56] Members serve full time and receive a salary.[57] Each Board member is assisted by a staff attorney.[58] There is no requirement that members of the Board have any qualifications or that they are equally divided between those who have represented labor or management.

Board Members (6/11/24) [59]:

Eric Banks: Formerly president of Service Employees International Union, Local 221, representing public employees in San Diego and Imperial Counties. First appointed in 2022; term expires December 2026.

Arthur A. Krantz. attorney at Leonard Carder (union-side firm) for 20 years. Appointed 2018, expires 2025.

Lou Paulson. Former president of the California Professional Firefighters and as Vice President of the California Labor Federation. Appointed 2019, expires 2028.

Adrin Nazarian. Democratic California State Assemblymember from 2012 to 2022. He was Chief of Staff for Los Angeles City Councilmember Paul Krekorian (also Democrat) from 2010 to 2012 and Chief of Staff for Assemblymember Paul Krekorian in the California State Assembly from 2006 to 2010. Currently running for LA City Council. Appointed 2023, expires 2027.

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[54] CAL. GOV'T CODE §3309.5.
[55] Joseph Grodin, Thelton Henderson, John True, Barry Winograd, Ronald Yank, Catherine Fisk, *Reforming Law Enforcement Labor Relations*, CALIF. L. REV. BLOG (August 2020), https://www.californialawreview.org/online/reforming-law-enforcement-labor-relations.
[56] CAL. GOV'T CODE §3541(a).
[57] CAL. GOV'T CODE §3541(e)
[58] CAL. GOV'T CODE §3541(h).
[59] *Members*, CAL. PUB. EMPL. RELS. BD., https://perb.ca.gov/the-board/members/ (last visited June 24, 2024).

ULP Process:

After the charge is filed, the Board staff investigates to determine if the complaint states a prima facie claim for an unfair labor practice.[60] If the complaint is found sufficient, the Board agent will issue a complaint, beginning the process of setting a hearing. That hearing is set before an agency Administrative Law Judge, who has the power to decide pre-hearing motion, issue subpoenas and conduct the hearing itself.[61] The ALJ then issues a recommended decision, which is confirmed by the Board unless one of the parties files exceptions to the decision. In that case, the Board will review the decision de novo.[62]

[60] CAL. GOV'T CODE § 3514.5 (The Dills Act makes this an explicit requirement, but the MMBA does not. Agency regulations confirm this is required).
[61] 8 CA ADC § 32170.
[62] City of Palo Alto v. Pub. Empl. Rels. Bd., 5 Cal. App. 5th 1271, 1288, 211 Cal. Rptr. 3d 287 (2016);

MANDATORY SUBJECTS

In General

A unilateral change to a matter within the scope of representation is a per se violation of the respondent's duty to bargain in good faith.[63] To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party union that exclusively represents a bargaining unit must prove:

> (1) the employer . . . deviated from the status quo; (2) the . . . deviation concerned a matter within the scope of representation; (3) the . . . deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (3) the employer reached its decision without first providing . . . [the union] notice . . . and bargaining in good faith [to either agreement or impasse] . . . .[64]

Most cases turn on whether the matter was within the scope of representation, a concept very similar to "mandatory subject of bargaining". A recent California Supreme Court decision set forth a three-part test for determining whether a particular subject is within the scope of representation:

1. Does the management action have a significant and adverse effect on the wages, hours, or working conditions of the bargaining-unit employees? If not, the employer no duty to meet and confer.
2. Does the significant and adverse effect arise "from the implementation of a fundamental managerial or policy decision"? If not, then the meet and confer requirement applies.
3. If both factors are present, the Board uses a balancing test.[65]

Discipline and Oversight.

Oversight

In the non-police context, PERB does not generally find the terms of internal or external oversight to be within the scope of bargaining. For example, where a consent decree mandated an outside assessment of the performance of prison physicians, PERB found the subject outside the scope of bargaining because it "directly affect[s] the quality and nature of public services"

[63] Stockton Unified School District (1980) PERB Decision No. 143 [4 PERC ¶ 11189, p. 22].
[64] Bellflower Unified School District (2021) PERB Decision No. 2796 [46 PERC § 9, p. 9] (citing County of Merced (2020) PERB Decision No. 2740-M [45 PERC § 29, pp. 8–9]).
[65] Claremont Police Officers Assn. v. City of Claremont, 39 Cal. 4th 623, 638, 47 Cal. Rptr. 3d 69 (2006) (The action is within the scope of representation only if the employer' s need for unencumbered decision-making in managing its operations is outweighed by the benefit to employer-employee relations of bargaining about the action challenged).

and was therefore a management prerogative not subject to bargaining.[66] In a 2019 case, PERB found that a community college's implementation of a manual governing investigation of student claims of discrimination or harassment was not an unfair labor practice holding that the manual was merely "guidelines" and therefore did not represent a change.[67] However, where changes in policies affect employee's ability to involve their unions in the investigative or disciplinary process are within the scope of bargaining, PERB will find a duty to bargain. [68]

In the police context, PERB is much more apt to find oversight to be within the scope of bargaining, in spite of California judicial precedent to the contrary. California courts have held a decision to allow a citizens' police review commission member to attend police department hearings was determined to be within management's discretion.[69] Additionally, an employer's so-called " anti-huddling" policy, which prevented multiple officers involved in a shooting to discuss the incident amongst themselves prior to being interviewed by the employer, did not have a " significant and adverse" effect on employment because the policy preserved the right to meet individually with counsel.[70]

In contrast, in its most recent decision, PERB demonstrated a firm conviction that oversight is subject to bargaining, despite holdings of the California courts. In August 2020, the Sonoma County Commission placed an initiative on the ballot granting the "Independent Office of Law Enforcement Review and Outreach" (IOLERO) the ability to conduct independent investigations of officer misconduct.[71] The Sonoma County Sheriff's Association filed a charge with PERB contending that placing this initiative on the ballot was an unlawful unilateral change.[72] PERB agreed, finding that the enhanced authority given to IORELO was within the scope of bargaining because it "establish a parallel investigative scheme for County peace officers."[73] The Court of

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[66] State of California (Department of Corrections) (2008) PERB Decision No. 1967-S [32 PERC ¶ 109] (affirming ALJ decision, holding performance evaluation process for prison physicians was not in the scope of negotiation where "the level of health care for inmates had fallen below constitutionally accepted standards and that inmate deaths had occurred as a result." (*see generally* State of California (Department of Corrections) (2006) [30 PERC ¶ 142] [2006 WL 6823462])).

[67] Los Rios Community College District (2019) PERB Dec. No. 2713E [43 PERC ¶ 146]; *see also* State of California (Department of Forestry & Fire Protection, State Personnel Board) (2014) PERB Dec. No. 2317a-S [39 PERC ¶ 80] (holding that where the State Personnel Board changed regulations governing disciplinary appeal and hearing procedures, it was not a unilateral change because SPB was not acting as an employer but as a regulator); *cf* Los Angeles Unified S.D. (2017) PERB Dec. No. 2518 [41 PERC ¶ 146]; (a new four-level, classroom observation evaluation was within the scope of bargaining because it related to the process for evaluation and not the assessment itself, which would be management prerogative).

[68] Regents of the University of California (University of California Davis Medical Center) (2021) PERB Dec. No. HO-U-1698-H [46 PERC ¶ 57] (finding under HEERA access to a room commonly used for union business was within the scope of bargaining); County of San Bernardino (Office of the Public Defender) (2015) PERB Dec. No. 2423-M [39 PERC ¶ 165] (upholding ALJ decision on appeal that a rule that public defenders could not be represented by District Attorney employees in investigatory meetings was a unilateral change (*see* County of San Bernardino (2013) [37 PERC ¶ 199] [2013 WL 1775163])).

[69] *See* Berkeley Police Ass'n v. City of Berkeley, 76 Cal. App. 3d 931, 937, 143 Cal. Rptr. 255 (1977).

[70] Ass'n for L.A. Deputy Sheriffs v. County of Los Angeles, 166 Cal. App. 4th 1625, 1643, 83 Cal. Rptr. 3d 494 (2008).

[71] Matt Brown, *Sheriff Watchdog Seeks Boost from Measure P*, PETALUMA ARGUS COURIER (October 22, 2020), https://www.petaluma360.com/article/news/sheriff-watchdog-seeks-boost-from-measure-p/; *See also* Sonoma County (2021) PERB Dec. No. 2772-M [46 PERC ¶ 8, pp. 1–2].

[72] Sonoma County, *supra*, note 71, at p. 2.

[73] *Id.* at pp. 61–63.

Appeals reversed and remanded holding that PERB failed to find that the proposed changes significantly and adversely affected the sheriffs' terms and condition of employment.[74] On remand, PERB stuck with its original decision, finding the initiative provisions significantly and adversely affected sheriff's deputies "by creating a second, independent investigatory path."[75]

Disciplinary Rules

All of the PERB cases in our sample related to disciplinary rules come from non-police units. In those cases, PERB will find "rules of conduct which subject employees to disciplinary action are subject to negotiation both as to criteria for discipline and as to procedure to be followed."[76] However, the type of rule seems to matter: those with a connection to safety or violence will often be outside the scope of bargaining[77] and more prosaic rules will be inside.[78] PERB also finds that rules that limit a union or union member's ability to engage in concerted activity are within the scope of bargaining.[79]

Any reported police cases in this area generally arise as the result of a petition for a writ of mandate to California Superior Court. Most of those decision are not reported, but a few are. There, courts follow roughly the same pattern.[80]

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[74] Cnty. of Sonoma, Petitioner, v. Public Employment Relations Board, Respondent, 80 Cal. App. 5th 167, 180–85, 295 Cal. Rptr. 3d 605 (2022).

[75] County of Sonoma (2023) PERB Dec. No. 2772a-M [47 PERC ¶ 127]; *cf.* Orange County (2019) PERB Dec. No. 2657-M [44 PERC ¶ 30] (holding enhanced authority of Outside review entity to advise the Sheriff as to discipline was not within the scope of bargaining because the connection was so attenuated from the employment relationship as to bring outside the scope.); State of California (Office of Inspector General) (2019) PERB Dec. No. 2660-S [44 PERC ¶ 48], (affirming ALJ decision ([43 PERC ¶ 72] (2018)) allowing state's Office of Inspector General to investigate claims of use of force against inmates was not within the scope of bargaining); Oakdale Police Officers Assn. v. City of Oakdale (2019) [44 PERC ¶ 99] (finding a violation of the act where the city required interviewees in an investigation of possible systemic racism to keep the interview confidential).

[76] Los Angeles Unified School District (Apr. 18, 2016, No. LA-CE-6021-E) [40 PERC ¶ 165, p. *15] [2016 WL 2641548].

[77] Sutter In-Home Supportive Services Public Authority (2005) [29 PERC ¶ 114] (healthcare worker drug testing); Academic Professionals of California v. Trustees of the California State University (2014) [39 PERC ¶ 36] (employees in higher education athletics designated as mandatory reporters); Trustees of the California State University (2005) PERB No. 1751-H [29 PERC ¶ 91] (implementation of violence prevention program).

[78] Los Angeles Unified School District (2016) [40 PERC ¶ 165] (Absence policy); El Camino Healthcare District (2023) PERB Dec. No. 2868-M [48 PERC ¶ 36] (requirement to wear scrubs); Trustees of the California State University (2004) [28 PERC ¶ 228] (computer use policy).

[79] *See, e.g.*, City and County of San Francisco (2023) PERB Dec. No. 2867-M [48 PERC ¶ 30] (holding that an initiative that prohibited public employees in San Francisco—except police—from striking and required discharge of anyone who engaged in a strike was within the scope of bargaining and could not be implemented); Regents of the University of California (2012) PERB Dec. No. 2300-H [37 PERC ¶ 141] (rules limiting leafletting were within the scope of bargaining); Regents of the University of California (Santa Barbara) (2017) [41 PERC ¶ 174] (employer's unilateral restriction of existing picketing policy was unilateral change, "an employer's access rules are mandatory subjects of bargaining under HEERA." *Id.* at *11 [2017 WL 2544945]).

[80] County of Riverside (2016) [41 PERC ¶ 7] (finding a rule restricting outside employment not to be bargainable because there is no showing of adverse consequences to bargaining unit officers); San Jose Police Officer's Ass'n v. City of San Jose, 78 Cal. App. 3d 935, 144 Cal. Rptr. 638 (1978) (reasoning that a policy limiting the use of deadly force by police officers on criminal suspects was considered primarily an aspect of the city's public services); Claremont Police Officers Ass'n v. City of Claremont, 39 Cal. 4th 623, 47 Cal. Rptr. 3d 69 (2006) (holding no duty

Surveillance

In both police and non-police units, PERB will find the implementation of a system of surveillance to be a mandatory subject of bargaining.[81] In a recent decision, PERB may have signaled a tightening of its view in the police context.[82]

Duties

PERB will find the assignment of new duties to a bargaining unit employees to be within the scope of bargaining, except that if the duties changes are "reasonably comprehended within the existing job duties," an assignment of such duties, even if never performed before, is not a violation.[83] There are no police cases in our sample that challenged a department's decision to assign new duties to bargaining unit member. This may mean that the police unions are challenging those decisions in another forum, such as grievance arbitration or writs of mandate in Superior Court. There are, however, two cases potentially relevant to the effort to assign police new or different duties. In 2022, PERB held a new requirement that prison physicians treat opioid addiction was *not* within the scope of bargaining because it "directly affect[ed] the quality and nature of public services . . . ."[84] On the other hand, PERB has found that a library's imposing new duties on staff to deal with escalating patron misbehavior was subject to bargaining because "Safety and health stand with wages as one of the more fundamental areas of concern in a collective bargaining relationship."[85]

to bargain over requirement of officers to record race of individuals they stop because the union could show no adverse effects on its members).

[81] Non-police: Sanitation Districts of Los Angeles County (2021) PERB Dec. No. 2798-M [46 PERC ¶ 88] (finding the use of existing GPS recorders in trucks for disciplinary purposes was a unilateral change because there was no clear past practice of having used these systems for disciplinary purposes); Rio Hondo Community College District (2013) PERB Dec. No. 2313 [37 PERC ¶ 197, p.17] (holding "security surveillance cameras in areas where employees work or take breaks has reasonably foreseeable effects on discipline and performance evaluations, both matters within the scope of representation."). Police: San Bernardino Community College (2018) PERB Dec. No. 2599 [43 PERC ¶ 85] (finding a ULP by employer relying on data collected through a GPS system over which it never bargained); County of Riverside (2017) [42 PERC ¶ 35] (requiring bargaining over the implementation of an "automatic vehicle locator" system because such a system could be used to impose discipline).

[82] County of Santa Clara (2021) PERB Dec. No. 2799-M [46 PERC ¶ 3] (finding the County of Santa Clara's surveillance ordinance requiring council approval before engaging in certain surveillance technology and making it a misdemeanor to inappropriately use such technology did not require bargaining because the county's need for unencumbered decision-making was substantial and there was little benefit that could be derived from bargaining).

[83] Rio Hondo Community College District (1982) PERB Dec. No. 279 [7 PERC ¶ 14036, p. 17].

[84] Union of American Physicians & Dentists v. California Dept. of Corrections (2022) [46 PERC ¶ 126, p. *10] [2022 WL 838317].

[85] County of Contra Costa (2015) [40 PERC ¶ 96, p. *7] [2015 WL 9686889].

Reassignment.

In general, the transfer of work from bargaining unit to non-bargaining unit positions is negotiable where the non-bargaining unit employee begins performing duties that were previously performed exclusively by bargaining unit workers.[86]

In the non-police setting, where the employer transfers some duties out of the unit, PERB's decision will follow this rule. If the work transferred was formerly shared, no matter what the proportion, PERB will hold the transfer is not subject to bargaining.[87] On the other hand, in the police context PERB largely ignores this rule. It is likely to find decisions to transfer work out of a police bargaining unit to be subject to bargaining without examining whether the work transferred had previously been performed exclusively by bargaining unit workers.[88]

Subcontracting.

In general, PERB holds a decision to replace existing employees with those of a contractor to do the same work under similar conditions is within the scope of bargaining, unless the decision is a "core restructuring" of services.[89] In most cases in our sample, PERB found a duty to bargain the decision to contract out work formerly performed by bargaining unit workers.[90] In the police context, this included cases where the city sought to contract with the county to provide police services,[91] where a community college sought to contract with a local

[86] The Accelerated Schools (2022) [47 PERC ¶ 52] (exceptions filed on other grounds. *See* The Accelerated Schools (2023) PERB Dec. No. 2855 [47 PERC ¶ 139]).
[87] *Compare* College of Siskiyous (2016) [41 PERC ¶ 114] [2016 WL 8118563] (2016) (finding no unilateral change when the college assigned athletic trainer to a non-bargaining unit position because "the traditional duties of the athletic trainer positions overlapped with the duties of the faculty athletic trainer." *Id.* at *1) *with* South Monterey County Joint High School (2012) [37 PERC ¶ 35] [2012 WL 3578130] (assigning counselor duties to new non-unit coordinator positions and laying off counselors was within the scope of representation and therefore a unilateral change).
[88] City of Escondido (2016) PERB Dec. No. 2311a-M [40 PERC ¶ 178] (decision to transfer code enforcement officer work to a non-bargaining unit position was within the scope of bargaining); State of Calif (Dept. of Parks & Recreation) (2003) PERB Dec. No. 1566-S [28 PERC ¶ 31] (transferring work of dispatcher to supervisor was "clearly within the scope of representation." *Id.* at 6).
[89] Long Beach Community College District (2008) PERB No. 1941 [32 PERC ¶ 37, pp. 11–13].
[90] City of Stockton (2023) [48 PERC ¶ 20] [2023 WL 4926245] (Holding contracting out crack sealing work was within the scope of negotiation despite the city's argument that its reasons were non-economic and therefore non-amenable to bargaining); City of Glendale (2021) PERB Dec. No. 2694-M [44 PERC ¶ 135] (Disagreeing with city's factual assertion that it made the decision to lay off a group of employees before deciding to engage a contractor to perform the work, the Board found a unilateral change); City of Sonoma (2006) [31 PERC ¶ 13] [2006 WL 6823548] (holding the decision to contract out the duties non-sworn employees of police department was within the scope and not a "core restructuring"); *cf.* Regents of the University of California (2018) PERB Dec. No. 2610-H [43 PERC ¶ 100] (finding UC Berkeley's decision to close its Young Musician's Program, transfer its funding to a new non-profit which then hired the existing employees was not within the scope of bargaining because it had a legitimate reason to do so, including the program's disproportionate impact on the DEI budget).
91 Rialto Police Benefit Assn. v. City of Rialto, 155 Cal. App. 4th 1295, 1309, 66 Cal. Rptr. 3d 714, 725 (2007) (finding a duty to bargain pursuant to a writ of mandate).

department to provide on campus security,[92] or where a school district sought to replace its in house police with city police.[93]

[92] *College Dist. Police Officers Assn*., PERB Dec. No. 1941 [32 PERC ¶ 37] (2008).
[93] Oakland School Dist., PERB Dec. No. 1770, 29 PERC ¶ 143] (2005)