

MEMORANDUM

1031 18th Street, Board Suite 204
Sacramento, CA 95811-4124

TO: Mark C. Gregersen, Chair
Eric R. Banks, Board Member
Priscilla S. Winslow, Board Member
Erich W. Shiners, Board Member
Arthur A. Krantz, Board Member

DATE: May 23, 2018

FROM: Felix De La Torre, General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Mary Ann Aguayo, Chief Administrative Officer
Loretta van der Pol, Chief, State Mediation and Conciliation Service

SUBJECT: Recommendations Regarding Process Improvement Suggestions

Background

The Board took public comment at meetings in Sacramento and Glendale in March regarding process improvement recommendations included in the Public Employment Relations Board (PERB) Case Processing Efficiency Initiative Report (Report). At the conclusion of the meeting in Glendale, the Board directed PERB's Division Managers to review the Report recommendations and prioritize those recommendations while considering both written and oral comments received at the public meetings from our constituents.

The Subject Matter Expert (SME) committee, composed of PERB Division Managers, met several times to prioritize the various recommendations that were included in the final Report. This Report contains the recommendations of the SME committee.

Analysis

The SME committee first put each of the 124 proposals into one of the following five categories¹.

Category Number Description

1 **Recommended:** This category includes all proposals that the committee believe the Board should consider adopting as priorities for implementation.

¹ A complete listing of the proposals and assigned category appears in Appendix A (attached).

- 2 **Immediate Implementation:** This category includes any item that should be immediately implemented because (1) the proposal does not require any additional authority, (2) there is either no cost or a nominal cost, (3) implementation is simple, and (4) it is a good idea.

- 3 **In Process:** This category is for proposals that PERB is in the process of implementing through other initiatives, or PERB has already been using this proposal.

- 4 **Inapposite Purpose:** This category is for proposals that are inappropriate for consideration through this process because (1) it is a matter the Board should address through its adjudicatory function, or (2) outside of PERB jurisdiction.

- 5 **Excluded:** This category contains the remainder proposals which represent the items that the committee determined should not be pursued through this initiative.

The SME committee next looked at all of the 56 proposals assigned to Category 1 with the goal of coming up with the top 10 recommended proposals in ranked order of priority. Comments of the speakers at our public meetings were reviewed and taken into consideration in the development of the priority list of proposals. The top 10 proposals and linked proposals in ranked order of priority follow.²

Priority ³	Num.	Top 10 Recommended and Linked Proposals	Cost Estimate
1	A.8.03	Create and fill an information technology position at PERB.	Ongoing personnel costs of \$212,000 and \$200,000 of IT Costs
2	A.4.04	Review the processes around what is deemed precedential v. non-precedential.	One time cost of \$40,000 to change regulations

² The SME committee’s supporting rationale for each proposal appears in Appendix B (attached).

³ Proposals are listed in priority order with Priority 1 being the highest priority. The letters “a”, “b” following the priority number indicates proposals linked to the main proposal because there was a logical relationship between the priority and linked proposals or where there was overlap between the proposals.

Priority	Num.	Top 10 Recommended and Linked Proposals	Cost Estimate
2a	A.4.09	Increase the number of Board counsels to support its members.	Ongoing personnel costs of \$267,000
3	A.1.03	Change regulations to make electronic filing mandatory and allow e-signature.	Costs reported in Priority 1
3a	B.4.01	Review exceptions detail and documentation process and implementation plan and impose word limits	One time cost of \$40,000 to change regulations
3b	A.3.03	Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent.	One time cost of \$40,000 to change regulations
4	A.3.08	Revise expedited decisions process.	One time cost of \$93,000 to change regulations
4a	A.1.09	Setup an expedited process for charges based on the level of complexity of the charge.	Ongoing personnel costs of \$500,000
5	A.3.01	Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are administered.	One time cost of \$93,000 to change regulations
6	A.3.06	Institute filing periods for motions.	One time cost of \$40,000 to change regulations
7	A.2.01	Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.	One time cost of \$40,000 to change regulations
7a	A.3.02	Add a regulation setting forth ramifications for a party's failure to appear.	One time cost of \$40,000 to change regulations

Priority	Num.	Top 10 Recommended and Linked Proposals	Cost Estimate
8	A.1.08	Provide additional training and information to guide pro per charging parties.	One time cost of \$66,400 to change regulations
8a	A.1.13	Improve PERB website to clearly guide pro pers - create training embedded training videos on the website to assist pro pers.	One time cost of \$66,400 to change regulations
9	A.7.01	PERB needs more mediators given the size of the State.	Ongoing cost of \$235,000 per year per additional mediator
10	A.3.12	Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.	One time cost of \$40,000 to change regulations

The SME committee was also directed to estimate the implementation costs of the various recommendations. The cost estimate is included in the table listed above.

Attachments

APPENDIX A

**PERB CASE PROCESSING EFFICIENCY INITIATIVE
RECOMMENDATIONS**

<u>Key</u>	
<u>Category</u>	<u>Info</u>
1=Recommended	C=Recommendation involve some cost
2=Immediate Implementation	AR=Authorization require Outside of PERB
3=In Process	* =Already in process
4=Inapposite Purpose	
5=Excluded	

Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.03	Change regulations to make electronic filing mandatory and allow e-signature: exceptions should also be set forth for such a regulation.	C, AR	1
A.1.05	Reinstitute the labor relations analyst/specialist classifications: utilize these non-legal classifications to assist constituents, without burdening the attorneys/mediators.	C, AR	1
A.1.07	Implement page restrictions on the unfair practice charge and supporting documentation: reducing the number of long charges which have to be carefully analyzed by regional attorneys. Currently, each allegation must be addressed either by including it in a complaint, or by explaining to the party through the issuance of Warning Letters and Dismissals stating why the allegations fail to state a prima facie case. Most violations would not require more than 15 pages to set forth sufficient facts to establish a prima facie case, excluding exhibits.	C, AR	1
A.1.08	Provide additional training and information to guide pro per charging parties: update literature and materials to provide guidance and provide training workshops and training videos on the unfair practice charge process (this is currently already done for attorneys for MCLE credits). This training would be specifically targeted for pro per charging parties.	C	1

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.09	<p>Setup an expedited process for charges based on the level of complexity of the charge: revise expedited processing regulation. The current regulation is vaguely written and allows only PERB to determine if a charge is eligible for expedited treatment. Consider adding detail both in the regulation and on the unfair practice charge form to select categories. Examples:</p> <ul style="list-style-type: none"> • Anything arising in a new organizing context (first time unionization) • Retaliation against union activities • Strikes • Novel issues which have not been addressed by the Board • Backpay or economic liability • Bad faith bargaining on important issues (wage, health, etc.) • Joint employer cases • A school year is ending and the issue would become moot during the summer. <p>Refusal to furnish information (if not done soon in the bargaining process, renders the remedy moot).</p>	C, AR	1
A.1.13	<p>Improve PERB website to clearly guide pro pers - create training embedded training videos on the website to assist pro pers.</p>	C	1
B.1.02	<p>Set a brighter line for the response time to requests for information: adopt a regulation setting forth that documents are to be provided in “x” number of days before a second request for information is made. This would provide certainty and reduce related litigation.</p>	C, AR	1
C.1.01	<p>Increase the number of remedies to force cooperation and compliance. There is a lack of remedies to force cooperation and compliance. Examples could include: attorney's fees, having PERB communicate directly to unit employees the notice/posting, or require employer to do so more effectively. Look to the ALRB and NLRB for ideas.</p>		1
C.1.04	<p>Provide more guidance and training for PERB attorneys.</p>	C	1

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.06	Streamline the process for rewriting a charge into a complaint: have the parties submit a draft of the complaint to speed up the process for the board agent’s review. Add a complaint form for the charging party to submit a “proposed complaint.” (This would require a change in regulation.)	AR	1
C.1.09	Regulatory rules could be instituted to help facilitate charge process: including, requiring parties to two-hole punch charges and documents and other aspects regarding requirements for format.	C, AR	1
C.1.12	Create a written acknowledgement for the charging parties that they are restricted from addressing items not set forth in the written complaint.		1
A.1.10	Review similar organizations, such as the National Labor Relations Board (NLRB), State Personnel Board (SPB), and the Agricultural Labor Relations Board (ALRB) for best practices in overall case processing: review and compare with other agency’s processes and best practices, although different, would be a good overall approach.	C	2
B.1.03	Add to the unfair practice charge form, "will you go to mediation?" (early informal settlement conference): give parties the opportunity to mediate their disputes at the earliest stage possible.		2
C.1.05	Develop checklists for more standardized processes among attorneys. Each office writes their own headnotes to summarize decisions – quality of which varies widely and information should be improved. Consider the creation of desk manuals or guides to help new staff or temps and clarify process.	C	2
C.1.08	Set forth in the introductory letter expectations of the board agent to better inform parties of the applicable standard surrounding the investigation:		2

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.01	Empower board agents in the General Counsel's office to engage parties informally: allow board agents to informally discuss issues rather than be restricted to formal communications. Board agents would set timelines for communications in order to enable quick fixes and resolutions of questions.	*	3
A.1.04	Utilize more non-attorney staff in areas that do not require attorney skills: have non-legal case management staff guide pro pers and take calls from the public. This is very time consuming and most constituent questions do not need to be answered by an attorney. If there isn't a possibility of dedicating non-legal staff for this assignment, an "officer of the day" could be assigned that handles constituent calls which rotate among the attorneys. Additionally, mediation staff in the mediation unit could handle elections because they have similar experience.	C, AR	3
A.1.06	Simplify the unfair practice charge form: create different forms based upon the nature of the charge or enable the parties to better describe the charge. Place other controls over what charging parties can provide, i.e., use a simple form for case initiation, and then have the charge investigator meet with the pro per charging party to direct the pro per as to what documentation is needed.	*	3
A.1.12	Revisit website (including the State Mediation and Conciliation Service (SMCS)) and redesign in conjunction with the new Case Management System: seek out the best practices of similar organizations to make the website easy to navigate and to obtain information.	C, *	3
A.1.15	Add a triage process, which assigns charges to regional attorneys, by the new Case Management System in Summer 2018: create an online portal which allows for categorization of their charge (discrimination, etc.).	*	3

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
A.1.16	Use the recommendations from this case processing efficiency initiative to develop the new Case Management System.	*	3
A.1.17	Implement an electronic document management system: allow regional attorneys to access electronic documentation, similar to ProLaw. Currently, hard copies are still maintained and technology is not being fully utilized.	C, AR	3
B.1.04	Clarify complaint naming convention for respondents with multiple entities: identify the individually specified department, institution, or campus of respondent named in the charge, as well as the type of claim (ex. retaliation). Currently, the name of the respondent agency is named without such individualized specification. (“Trustees of the California State University,” instead of “Trustees of the California State University (Cal Poly Pomona)”).	*	3
C.1.02	Review the manner in which the Board uses Warning Letters (WL). The Warning Letters can be too lengthy. Non-precedential Board decisions may need less time to create than a WL that is adopted as precedential. More guidance on WL detail would be helpful and could save time. Currently, WLs are longer than necessary, because a regional attorney believes that a WL should be written to Board’s standards. The Board needs to clearly identify what standards are required for a WL.	C	3
C.1.10	Develop a better structured warning letter that is more helpful to the pro per, less legal, and more specific (like a list of what to provide). There are only five types of claims that a pro per can bring, so PERB should be able to provide guidance for each of those type of claims. PERB should contact the charging party before they create the warning letter, when it strikes the board agent as an opportunity to amend quickly or it is fatal and can be withdrawn prior to the warning letter being written. Example: With the NLRB, the board agent reaches out in an informal way first to resolve issues at the lowest level. Parties then ask for more time to respond to the warning letter.	*, C, AR	3

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.13	Scan charge documents into searchable PDF so the board agent can cut and paste language into the Agenda Memo. Allow for charge that is under five pages long and well-written to be used in place of rewriting the facts and limit the Agenda Memo to analyzing the strengths/weaknesses of the charge. Cut and paste all the facts and perform the analysis (not allow for the rewriting of the case into Agenda Memo). Create regulations (currently there are none) and General Counsel guidelines for Agenda Memos.	*	3
C.1.15	Improve process for calculating time elapsed for cases/abeyance. Some of the delays experienced are due to a party asking for time to work with other party on settlement. Parties approaching settlement ask staff not to take action. This delays the processing of those cases. Implement clear mechanisms to “stop the clock” on some of those cases, so it doesn’t skew processing times. At the appeals level, a final date is not placed for an abeyance and perhaps the General Counsel can copy this model. Keep the parties working toward settlement. Such a mechanism could allow for an extension of time or an end to the abeyance.	*, C, AR	3
A.1.11	Restrict unalleged violations from coming up later in the process: make parties adhere to the allegations of the complaint issued. The parties come to an agreement on the statement of issue. Many times not every aspect of the case is addressed by the issuance of a dismissal letter or a complaint. Such practices leave the parties in limbo regarding some charges.		4

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.03	Create a division of the agency to assist those that are indigent: including having a board agent advocate on an indigent’s behalf, and review the indigents’ filing in their presence. This is likely to require a change in regulation and statute. One model of pro per assistance is family court, where assistance is provided, but the person is not their attorney. This may be a helpful in-between step. This could be done with a regulatory change.	C, AR	4
C.1.07	Review practices regarding "sufficient facts" alleged so that they are clearly and concisely stated. In some instances, an allegation from the charge is not addressed in the complaint or a dismissal letter and therefore it may still be raised later in the process. This may lead to confusion at the informal settlement conference and subsequent disputes. A “clear and concise statement of facts” needs to be a standard that is enforced (this standard already exists, but regulations may be amended to further define "clear and concise statement of facts").		4
A.1.02	Expedite a “vexatious litigants” process: establish a process for vexatious litigants (those who file the same charge more than three times) by putting a limit on the amount of amendments a litigant can file or impose attorney fees to dissuade repeated unfair practice charge filers.	C, AR	5
B.1.01	Give General Counsel the authority to issue Advice Memos to guide parties, like the NLRB does: review the NLRB’s regulations to determine the authority that the General Counsel would need to implement. PERB does not have an Advice Division like the NLRB.	C, AR	5

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
B.1.05	<p>Set up an unfair practice charge team and assign attorneys to work on it on a rotational basis as done in law firms: create a triage system for allocating unfair practice charges to regional attorneys. Charges are currently assigned on a rotation, not based on complexity or importance, which leads to workload distribution issues. Consider triage assignment based upon: complexity, source of charge, history, importance, parties, themes among employers, consolidation of similar issues. Often an individual charge will contain multiple claims. As such, the task of performing the initial review of a charge (and, actually, rendering a decision at the Administrative Law Judge (ALJ) and Board levels) can vary widely depending on the number of claims contained within it. PERB's usual practice is to divide work and assess workload according to the raw number of charges filed. That sort of analysis blurs over the fact that an individual charge can in scope be equal in scope to multiple ones.</p>		5
B.1.06	<p>Address backlog of charges in a targeted approach by creating a task force or committee to focus on reducing the backlog of charges. For example: three regional attorneys on rotation focus on processing charges three days a month and consider setting a quota of 10 charges investigated per task force meeting – resulting in 120 charges processed per year. Select a senior regional attorney to review these.</p> <p>Prioritized work (litigation, election, etc.) currently interferes with regional attorneys' ability to process unfair practice charges. Litigation and election work takes precedence over charges. However, attorneys enjoy the mixture and exposure to different assignments. To control the backlog build up, at the end of fiscal year or every six months, revisit the oldest charges and redistribute them in the same task force manner to close them.</p>	C	5
C.1.11	<p>Have all charges filed at the Sacramento Headquarters Office and have a clerk distribute the charges to the regional offices.</p>		5

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Num.	1.0 Unfair Practice Charge Processing	Info	SME Category
C.1.14	Consider allowing the ALJs to have access to the Agenda Memos: trust ALJs to filter the information accordingly.		5

Num.	2.0 Dispute Resolutions and Settlements	Info	SME Category
A.2.01	Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.	C, AR	1
A.2.02	Provide ongoing training to PERB board agents on mediation techniques and strategies. Mediation staff could be a resource for some of this training.	C, *	1
B.2.01	Have ALJs perform informal settlement conferences. The ALJs can provide a formality to the process and tell parties the direction the case is headed. PERB may need to increase the number of ALJs on their staff (SPB has many more ALJs and they also travel), especially if this precludes the settlement ALJ from handling that case. Implement this change as a pilot program to see if there is a change in the settlement rate.	C	1
B.2.02	Have mediators mediate informal settlement conferences. The staff in the Office of the General Counsel and the Office of Administrative Law are attorneys first. SMCS mediators are mediators first in the area of collective bargaining and grievance resolution. Consider having SMCS mediators conduct the informal settlement conferences. Some mediators are also attorneys. Mediation staff could help as both: 1) loaned staff to the General Counsel, and 2) early in the process (if parties are interested in mediation even before a complaint is filed).	C	1
B.2.05	Ask parties to meet with each other before the informal settlement conference and come to the conference with an informal settlement conference statement.	C, AR	1

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Num.	2.0 Dispute Resolutions and Settlements	Info	SME Category
B.2.08	Establish a mechanism to ensure that both parties have someone in authority to settle present at the informal settlement conference.	C, AR	1
C.2.02	Bring in outside volunteer attorneys to act as an informal judge/board agent to assist with settlement. PERB would need to create training, standards, and principles, to use non-employee resources (especially retirees, like judges who would be appointed by Board subcommittee with a \$100 a day stipend). The courts have a similar program.	C, AR	1
C.2.04	Consider additional criteria to allow bypassing the informal settlement conference stage, if parties know they will not settle.	C, AR	1
B.2.03	Enhance informal settlement conference. Institute a pro per pre-informal settlement conference over the phone to help parties settle even before the informal settlement conference.	*	2
B.2.06	Create a complaint letter that clearly directs the parties regarding PERB's expectations for informal settlement conference preparation.		2
B.2.07	Explore how to better communicate that the informal settlement conference option/facilitation is available at every stage of the process.		2
B.2.04	Institute a pre-informal settlement conference brief. SPB has such a process in which statements are submitted 10 days prior to conference so parties must review, prepare, and consider what a settlement could look like.	C, AR	5
C.2.01	Allow for parties to get together for an abbreviated formal hearing to dispense with those cases quickly. This would be a radical change from the current practice.	C, AR	5
C.2.03	Consider having the informal settlement conference conclude and begin with the formal hearing, if parties are not prepared.	C, AR	5

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Num.	3.0 Administrative Adjudication	Info	SME Category
A.3.01	Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are administered. For example, subpoena duces tecum regulations should be changed to require a production response in advance of hearing (and the resolution of any related issues before the formal hearing). Add additional regulations regarding documentation production in advance of hearings. The process would still allow for objections. Add deadlines for both sides to provide some certainty. Potentially, have PERB set other limits on the amount of documents to be produced (ex. reams of paper).	C, AR	1
A.3.02	Add a regulation setting forth ramifications for a party's failure to appear.	C, AR	1
A.3.03	Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent. Many times PERB gets contact information that is invalid (resulting in documents having to be provided in writing and mailed). This adds time and delays.	C, AR	1
A.3.04	Add a new regulation setting a timeline in which a party must have a first day of hearing after the complaint has been issued (with "good cause" for exceptions).	C, AR	1
A.3.06	Institute filing periods for motions.	C, AR	1
A.3.08	Revise expedited decisions process. Not all complaints are equal, but there are no set guidelines for an expedited process. Include limited issues, one-day hearings, no transcripts, etc. Look at SPB and other courts for guidance as to the type of cases which are placed on an expedited track.	C, AR	1
A.3.09	Speed up the decision process. Cases languish at PERB for years (the biggest complaint from the parties). Parties want input from judges to encourage settlement or to create realistic expectations as to the potential of the case. Another idea: can decisions be emailed to the counsel of record upon issuance?	C, AR	1
A.3.10	In lieu of briefs, the parties could be ordered to give an oral closing argument.	C, AR	1

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Num.	3.0 Administrative Adjudication	Info	SME Category
A.3.11	Indicate to the parties that they may move for a bench decision. This would require a waiver of any option to appeal. The ALJ would not be required to entertain the request if the parties are unprepared to decide, but where the parties are agreeable it would dispense with what could be hundreds of extra hours of work. This option should be communicated at the informal settlement conference and at the conclusion of the hearing.	AR	1
A.3.12	Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.	*	1
B.3.01	Review process for travel and implement video conferencing for witness testimony.	C, AR	1
B.3.02	The ALJ could issue a tentative decision, either on the record or within a few days after the close of the formal hearing or hold a second informal settlement conference afterward.	C, AR	1
C.3.01	Assign/hire a support staff for ALJs. There is just one person statewide, located in Sacramento. Hole-punching, indexing, scheduling, etc. are now done by judges (a poor use of their time). This could be a shared support resource or part-time, but support staff should be located physically in each office.	C, AR	1
C.3.03	Shorten the amount of time it takes ALJs to write a proposed decision. Parties seeking expedited cases must agree to submit to a truncated hearing process that could include any number of time-saving features. For example: parties agree to submit a stipulated hearing record resolving all authenticity issues prior to the hearing; parties agree to waive written briefs and submit oral closing arguments on the record; and the ALJ places a page limit on closing briefs. Adopt procedures allowing the parties to submit to a one-day hearing after which the ALJ issues a statement of decision on the record in lieu of written findings.	C, AR	1

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Num.	3.0 Administrative Adjudication	Info	SME Category
A.3.13	Implement a shared electronic management/knowledge management tool. Create a shared research library to consolidate all of the knowledge of the staff and offices – sharable by topic. This could allow for an easier consolidation of case information involving the same parties.	*	3
A.3.14	Allow access to case documentation via the public website. Public, web-based (possibly app-based) portal to allow people access to their case status and possibly documents. This may reduce the number of status inquiry calls PERB gets and will also improve PERB's public appearance as a transparent entity serving the public.	C	3
C.3.02	Enhance informal settlement conference memo. It would be helpful to know who is representing a party in a meeting without having to look it up in the Case Management System to assist with contacting the parties regarding scheduling.	*	3
A.3.05	Introduce a limited discovery process for complex cases.	C, AR	5
A.3.07	Setup a Prehearing Disclosure Process. Require the ALJ to call the parties or have a prehearing conference to guide the parties and set expectations for the formal hearing, documentation, etc. Consider a "trial readiness" conference and make it mandatory. For example, if a trial readiness conference is set a month before trial, it could help lead to settlement.	C, AR	5
C.3.04	Implement a software system for transcripts rather than sending recordings to a third party to transcribe. The software "dirty version" would be helpful to ALJs for their quick review and refreshing their recollection of what occurred during the formal hearing, or to resolve disputes during the hearing (ALJs don't have this ability currently).	C	5
C.3.05	Compile records on local rules, as they are the law. Create and use a database of local rules and case law which interpret them.	C	5

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Num.	4.0 Board Decisions	Info	SME Category
A.4.01	<p>Create time limits for the issuance of decisions for ALJs and Board. In other courts (Art 6, Sec 19), the deadline is 90 days to issue a pending decision (and the judge won't get paid if they miss the deadline). Possibly create a regulation that if after x number of days from the proposed decision being appealed to the board, the ALJ's proposed decision becomes a final decision of the Board if no action taken. The largest backlog appears to be at the Board level. As the backlog is relieved at the General Counsel and ALJ levels, the backlog is shifted to the Board and sits there. What is the purpose of PERB, if it takes longer than the courts? There seems to be inconsistencies in why some cases take longer and no one knows why.</p>	C, AR	1
A.4.02	<p>Limit the written length of Board decisions. Place page limits on Board decisions, exceptions, and briefs with justification for an allowance to exceed the limit. Can the decision be shortened and stay on the issues (not procedural history, party positions, etc.)? Decisions do not need to be re-summarized if it is upholding the ALJ decision. When the Board adds 40 pages to a 70-page ALJ proposed decision, it can be really confusing to Board staff and the parties with respect to understanding what was upheld and what was not.</p>	C, AR	1
A.4.03	<p>Have PERB and Board staff collaborate together to develop standards and guidelines for written Board decisions, exceptions, and briefs. Place the standards and guidelines in a regulation to enforce current and future Board member use.</p>	C, AR	1

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Num.	4.0 Board Decisions	Info	SME Category
A.4.04	<p>Review the processes around what is deemed precedential v. non-precedential. For example, appeals from dismissal letters do not need to be precedential. Allow PERB to summarily affirm dismissal letters that are non-precedential decisions – this could save time. There is no need for a full blown decision on these issues. Consider a summary disposition in non-precedential cases. Expand the use of non-precedential affirmation/decisions. Just say “the Board agrees with the ALJ’s proposed decision.” Could also allow this in precedential instances, if the ALJ decision is complete. The Board’s upholding or reversing and remanding a General Counsel’s dismissal does not have to be precedential. Consider expanding non-precedential decision to the Board’s review of an ALJ’s proposed decisions. Reserve the right of appeal on Board cases only to novel areas of law or complex/important issues.</p>	C	1
A.4.05	<p>Change the way exceptions are taken up by the Board. The Board should have the option to review; it isn’t a right to get a review. The Board can deny such review in a simple one-line document. Right now there is nothing to lose for parties to file exceptions.</p>	C, AR	1
A.4.09	<p>Increase the number of Board counsels to support its members. It appears there is minimal number of Board counsel to support Board members, and it is burdensome to those who do provide it. Institute the approach of employing a “bullpen” of attorneys to help Board members write board decisions. Increasing the number of Board counsel as part of a “bullpen” would help focus the Board on deciding complex cases.</p>	C, AR, *	1
A.4.10	<p>Fill the Executive Officer position that exists in statute.</p> <p>There is a lot of distraction placed upon Board Members regarding administrative issues. The Executive Officer position exists in statute, but is vacant now.</p>	C	1
B.4.01	<p>Review exceptions detail and documentation process and implementation plan. Impose word limits. Publish examples and clarification guidelines (how to file exceptions). The Board can add delineation to its decision writing process (format for headings).</p>	C, AR	1

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Num.	4.0 Board Decisions	Info	SME Category
C.4.02	Institute an informal settlement conference after the ALJ’s proposed decision, but prior to the Board receiving the case. A proposed decision helps the parties understand their case and may encourage the parties toward settlement.	C, AR	1
A.4.08	Create a collaborative team culture at PERB. There are no set team meetings between all of the divisions of PERB employees. There are rare exchanges between all staff and divisions. Give the staff space to talk about what is and is not helpful and important, etc. Institute “all staff” meetings.	C, *	2
C.4.03	Increase transparency of the Board process via the website. The Board’s docket is online, but it would be helpful to see the case, issues, timeframe, etc. (like an appellate body might). For example, what is the briefing in the case (as well as providing a link to them), etc.	C, *	2
A.4.06	Review and update statutes and regulations for PERB. Several regulations are out of date and need to be reviewed/revamped. They need to be streamlined to match today's technology. Clean up some of the regulations and the code. For example, there is a Public Utilities Code (PUC) that takes some disputes to SMCS (Mediation) for adjudication – and they are appealable to the Board even though the PUC entities are not under the Board’s jurisdiction. This law needs to be fixed and taken out of the regulations. Another example concerns auditing the horse racing board (statutory change).	C, AR	3
C.4.01	Fill Board vacancies. (Governor controls.)	AR	4
A.4.07	Reassess the culture and practices of the Board. The Board should be focused on novel and complex issues. Board should not “cherry-pick cases.” The culture of the Board impacts the entire organization. Re-evaluate the level of scrutiny and interpretation so that the entire organization does not over-analyze or invite vexatious litigants at the cost of those with real problems.		5

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Num.	5.0 Appeals and Litigation	Info	SME Category
B.5.01	Clarify and streamline appeal deadline/date received rule. The five-day mail rule applies if a fax is received, but not to an e-mail (seems odd to be different from fax).	C, AR	1
B.5.02	Add PERB case number to PERB Decision Bank on PERB’s Website. This would make locating the correct decision easier for constituents.		1
B.5.03	Update Decision Name to include the campus. For all California State University and University of California cases, add the campus to the name of the decision so it is easier to locate the correct decision. Also for Cities and Counties where the case is department specific (similar to the way it is done for the State of California).		1
C.5.02	Create a regulation or rule of court requiring the parties to notify PERB if it is filing in superior court, appellate court, or the supreme court.	C, AR	1
A.5.01	Ensure the new Case Management System can accommodate charge number and case number tracking. The current system does not allow for charge number and case number tracking, resulting in multiple reference numbers and confusion. Separating case numbers for litigation would be helpful. The caption for a PERB case is different than a litigation case.	*	3
C.5.04	Review the role of the Appeals Assistant. Provide the Appeals Assistant access to legal advice from the General Counsel – timelines and granting extensions to the parties, etc. This person is the gate keeper for the Board, but does not provide legal advice and lacks the ability to seek legal advice on case law or regulations.		3
C.5.05	Reduce resources spent defending Board decisions in court. Review and address the amount of time spent in appellate work. The General Counsel’s policy is to have early interaction with General Counsel staff and Board Counsel so they know what the Board is looking for when it files in appellate court.	C, AR	3
C.5.01	Change regulations or practices to prevent parties from gaming the system by filing requests for Injunctive Relief (IR). Review the IR process.	C, AR	5

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Num.	5.0 Appeals and Litigation	Info	SME Category
C.5.03	Change the statute or rule of court to change the requirement for PERB to file a brief on all appeals.	C, AR	5

Num.	6.0 Representation Activity	Info	SME Category
B.6.01	Review regulations for representation activity so that it is not handled under the jurisdiction of a local rule. Representation activity should not be handled by local rule. This requirement costs public agencies because they have to engage the services of an attorney to review the application of the rule. The MMBA gives public agencies the statutory right to administer its local rules, but PERB would do a better job. This would increase the number of cases going to PERB. Update the regulations for MMBA regarding jurisdictional issues. Currently, PERB must spend time determining jurisdiction.	C, AR	1
B.6.03	Reinstate Labor Relations classifications for the General Counsel’s office and assign representation cases to staff members who specialize/focus on representation matters. This could be a new non-attorney position or an annual rotation among General Counsel staff, one per office.	C, AR	1
B.6.05	Enforce current regulatory timelines. PERB must communicate and enforce its timeline and process representation petitions faster. Representation takes too long and is time sensitive. Look to the NLRB for direction on a good process that is fast and efficient.	*	1
B.6.02	Use Mediation staff in some representation cases (ex. election work).	C	2
C.6.03	Communicate plan for the outcome of <i>Janus v. AFSCME</i>. What will happen if there isn’t enough staff?	C	3

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Num.	6.0 Representation Activity	Info	SME Category
C.6.04	Update form letters to provide a more robust analysis. For example, if the entity follows local rules, consider requiring it to be submitted to PERB electronically. Normalize agreements and standard letters for cases that have been helpful and have improved a consistent approach and process.	C, *	3
C.6.01	Overrule <i>City of Fremont</i> Case. When a party signs an election agreement with state mediation, that party waives the right to block a decertification due to unfair labor practices – this practice is not done by ALRB/NLRB.		4
C.6.02	Use more "Gap Filling Powers." PERB should more aggressively use its “gap filling powers” (under <i>Siskiyou</i> and <i>Amador</i>) in joint employer issues.		4
B.6.04	Review the process regarding consent election agreement. SMCS is currently restricted to conducting only consent elections. It was helpful to charge for elections and to allow mediation to go out into the field of elections (SMCS and constituents want to see this practice continued).	C, AR	5

Num.	7.0 Mediation/Fact Finding/Arbitration	Info	SME Category
A.7.01	PERB needs more mediators given the size of the State. Even though the workload is sporadic, there are only eight mediators statewide. They are required to travel around the State.	C, AR	1

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Num.	7.0 Mediation/Fact Finding/Arbitration	Info	SME Category
A.7.02	<p>Replace MATS, the case management system for SMCS mediation, or combine with the new Case Management System for PERB. MATS is an antiquated system with little value or efficiency for those staff who use it. For example, one cannot currently scan through cases and identify where mediators will be, so they can schedule cases more efficiently (example: multiple meetings in different areas, with different staff) resulting in a duplication of effort. Cases are assigned by division chief, through use of a spreadsheet. Additional desirable functionality would be reporting, and a remote access app.</p>	C	1
B.7.01	<p>Harmonize statutes combining SMCS and PERB. Since being transferred to PERB, the Department of Industrial Relations is still referenced in the statute, and other items may be out of date. Review statute of limitation problems. For example, HEERA has a six-month statute of limitations – even though some issues may be 10 years old – it’s not reasonable or enforced.</p>	C, AR	3
C.7.03	<p>Continue the model that the same mediator addresses the same parties/issues. The fact that the same mediator addresses the same parties/issues is very helpful to the parties and the hope is to continue this model. Mediator and arbitrator processes seem to work well.</p>	*	3
C.7.01	<p>Change the statutory processing deadline (currently 30 days) to better align with reality. The process takes longer than the 30-day statutory period to coordinate due to the mediator’s and the parties’ schedules. The case load ebbs and flows because most of the work is with the school districts (EERA/HEERA) and they don’t want to schedule mediations during the summer and holidays.</p>	C, AR	5

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Num.	7.0 Mediation/Fact Finding/Arbitration	Info	SME Category
C.7.02	<p>Open up factfinding duties to non-mediation and non-legal staff. It is mostly about process as much of the work does not require mediators or attorneys to perform. The statute requires priority over the processing of charges. Some attorneys are doing clerical work to contact parties to initiate factfinding identification (when parties do not agree to one) and communicate by sending letters to the parties.</p>		5

Num.	8.0 Administration	Info	SME Category
A.8.03	<p>Create and fill an information technology position at PERB. The network has gone down which caused major problems and slowed the process for lengthy periods of time. There needs to be information technology staff at PERB. Need to analyze the management of information technology for PERB.</p>	C	1
A.8.09	<p>Implement a scheduling system online for PERB staff and parties similar to other state agency online scheduling systems.</p>	C	1
B.8.01	<p>Analyze the imposition of fees on parties. Consider implementing a Formal Hearing Fee or an Appeal Fee. Even assessing the parties a nominal fee will change the way they think about the process. Cost equates to value and currently, there is no cost associated with filing a charge and pursuing it, even if it is unmeritorious or serves no functional purpose for the charging party. Fairness and how to go about collecting the fees will need to be addressed.</p>	C	1

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Num.	8.0 Administration	Info	SME Category
C.8.01	Consider reassigning administrative positions to Glendale and Oakland offices. As it stands, professional and legal staff make copies, juggle calendars, handle office supplies, visitors, and tag surplus equipment all in the middle of litigation deadlines. Judges are also testing server equipment.	C, AR	1
A.8.04	Conduct a review of resource allocation, both administrative and legal.	C	3
A.8.05	Take into account the impact of any proposed change taken as a result of this improvement process upon PERB's current staff and budgetary allotment. Additionally, take into consideration the time and costs of improvement recommendations on PERB administrative staff and services.	C	3
A.8.06	Accept credit cards for arbitration payment. Payment is only available by checks and money orders (it takes parties a long time to do this) and requests cannot be processed until payment is made. (Note: the Department of General Services has a master contract for credit card services that PERB could utilize.)	*	3
A.8.07	Implement an Interactive Voice Response (IVR) System: create an IVR system to answer FAQs, route calls to the appropriate board agent, provide constituents basic information to access the website, redirect calls, and refer callers to appropriate organization, etc.	C, *	3
A.8.08	Digitize documents as they come into the office. Additionally, scan permanent representation files that are old and degrading (this should be the #1 priority to scan).	C	3

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Num.	8.0 Administration	Info	SME Category
A.8.10	<p>Assess and improve network capabilities: remedy network issues that cause major problems and slow the process for lengthy periods of time. The system is so slow in some locations that it impacts work and communication with the public.</p>	C	3
A.8.01	<p>Provide uniform classification and compensation among administrative support positions, regardless of the regional office in which they are employed. All positions should have the same training/pay/abilities. The Supervising Secretary would have to be on a higher pay scale, but the other positions should be equal. If the proposed Charge Clerk or Calendaring Clerk positions do not justify a 1.0 Full Time Equivalent position, the duties can be added on to another position.</p>	C, AR	5
A.8.02	<p>Designate administrative staff in Sacramento to support offices in Glendale and Oakland. Assign a single contact for each office. Assign an equivalent contact person in each office who is familiar with the capabilities and limitations of that office's staff, calendars, etc. Possibly create an office manager position to coordinate the work of the administrative support staff throughout all offices and divisions, but the other positions should be equal. The perception outside of Sacramento is that the administrative office has changed significantly in the past 2-3 years and it is hard for those in satellite offices to understand who should be contacted for various administrative needs. Request improved communication and encourage use of intranet and an information technology helpline or use the new Case Management System/E-court system for contact information, announcements, etc. Bring it up at staff meetings and provide a tour of the intranet.</p>	C, AR	5

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Num.	8.0 Administration	Info	SME Category
B.8.02	<p>Create a new Charge Clerk position assigned to the Sacramento Regional Office. A Charge Clerk would be responsible for all Case Management System functions and file transfers from the point of filing until the closure of assignment or transfer to the Board, and for maintaining proper rotation for new charges and informal settlement conference assignments. Location of documents and case files would be more carefully accounted for, and noted in the Case Management System.</p>	C, AR	5
B.8.03	<p>Create a Calendaring Clerk for the scheduling of formal hearings and informal settlement conferences. Currently, each ALJ and attorney calendars their own appearances subject to their own schedule and the parties' availability. A calendaring clerk would take this work away from the ALJ/attorney, freeing up their time for other tasks.</p>	C, AR	5

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Supporting Rationale for Priority Recommendations Regarding Process Improvement Suggestions

Priority 1: H.8.03 – Create and fill an information technology position at PERB.

Rationale: Currently, PERB has no dedicated information technology (IT) staffing and so relies on its Chief Administrative Officer to multitask and manage technology needs. PERB maintains its technology infrastructure through a contract. This leaves a significant gap in technology needs. PERB's existing business model provides for no dedicated IT staff that can understand the increasingly advanced technical complexities of both existing and emerging technologies, risks, and security requirements to reduce risks inherent with technology applications and lead PERB in high-level decision making that is critical to achieving its mission. There is also no dedicated staff to coordinate projects needed to address those operational inefficiencies that may benefit through an application of current technology. In contrast, similarly-sized State departments have from one to six IT staff, with one dedicated high level staff serving as their Chief Information Officer and one other serving as the Information Security Officer.

Frequently, IT solutions are used to facilitate an organization's process improvements. Having dedicated IT staff with this capacity would help better ensure PERB's adherence to best practices and conformance to emerging new technologies and requirements necessary to maintain an efficient and reliable infrastructure that is essential to PERB's continued productivity and protection of client/attorney privilege, and reduce the potential costly consequences from information breaches or delays caused by avoidable outages. Enhanced IT capabilities are also integral to many of the other recommendations brought forth in this process improvement process, such as e-signature and e-filing, improved website, increased transparency of the Board's process via the webpage including access to case documentation, document digitization, implementation of software systems for transcripts, and video conferencing for witness testimony. In addition to meeting this identified staffing need PERB would also require an ability to fund procurements necessary to maintain current infrastructure. To date, PERB has managed to maintain an acceptable, yet substandard, infrastructure by utilizing salary savings for more costly replacements and updates—not a best practice.

Priority 2: A.4.04 – Review the processes around what is deemed precedential v. non-precedential.

Rationale: Under PERB's current regulations, every decision issued by the Board is precedential, with one exception: the Board may issue a non-precedential decision only on an appeal from the Office of the General Counsel's dismissal of an unfair practice charge. This system requires the Board to spend considerable time ensuring that each decision is thoroughly explained and

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precisely worded—even if the decision adds nothing significant to PERB’s body of law.

With discretion to designate decisions as precedential or non-precedential, the Board could devote more of its resources to cases that truly raise precedential issues, while simultaneously allowing it to rule more quickly on the remainder of the cases on its docket. Such a system would preserve the Board’s error-correction function while easing the current burden of writing a precedential decision in most cases. It also would reduce the number of Board decisions constituents would need to digest to stay current with PERB precedent.

Priority 2a: A.4.09 – Increase the number of Board counsels to support its members.

Rationale: Currently, each Board member has one Board counsel to advise and assist the member with drafting and reviewing pending Board decisions. Because of the attorney-client relationship between each Board member and his/her counsel, the ability of Board counsel to assist other members is limited. When Board counsel is disqualified from participating in a case, the member typically seeks assistance on that case from an attorney in the General Counsel’s Office, which in turn reduces the General Counsel’s ability to process unfair practice charges and other matters. Additionally, there is no central mechanism for the Board to triage cases and assign them a priority.

Having additional attorneys who work for the entire Board, not just a single Board member, would provide several advantages. For one, a pool attorney could be drafting a decision for a member at the same time that member’s Board counsel is working on a different case. This would allow the Board to issue decisions more quickly. Second, when a Board counsel is disqualified, a pool attorney could step in for that case, eliminating the need to borrow an attorney from the General Counsel’s Office. Finally, if the Board had discretion to designate decisions as non-precedential, the pool attorneys could conduct initial review of cases as they are placed on the Board’s docket and recommend whether the decision should be precedential or not. This would allow the Board to more expeditiously resolve less complex cases and devote more resources to cases that will contribute significantly to PERB’s body of law.

Priority 3: A.1.03 - Change regulations to make electronic filing mandatory and allow e-signature.

Priority 3b: A.3.03 - Require parties to provide a valid e-mail address that infers a legal presumption that the parties have been served when the e-mail has been sent.

Rationale: The availability and advancement of case management software has led most judicial systems to adopt e-filing processes as the preferred method of filing. Case management software automates processes and workflow, reducing errors in case processing and creating audit trails. The software digitizes records, and allows PERB to better manage information. Data is stored securely in the

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cloud, reducing the need for paper storage, document retrieval, and photocopying costs. This would allow PERB staff to access documents from any location 24/7, and would reduce the time spent responding to California Public Records Act requests.

The use of e-signatures and e-service works hand-in-hand with e-filing. E-service eliminates the need for late night drives to the post office to meet deadlines; the costs of printing and postage; and the need for couriers may be entirely alleviated. Parties can also be sure that they will receive the correct documents. E-service also allows constituents to receive notices, order, and decisions from PERB electronically.

Priority 3a: B.4.01 – Review exceptions detail and documentation process and implementation plan and impose word limits.

Rationale: PERB's current regulations governing exceptions to a proposed decision often result in a party filing dozens of individual exceptions, which take considerable time for the Board to consider and address in a decision. Revising PERB's regulations to provide for more streamlined appeal filings would make it easier for the Board to render decisions while saving parties time and money drafting their appeals. Alternatively, the Board could instruct parties, perhaps on its website, on how to file concise but adequate exceptions under the current regulations.

Additionally, because PERB regulations set no page or word limit on briefs in support of exceptions, parties often file unnecessarily lengthy briefs. Adopting a word limit like the California courts of appeal impose on briefs would force parties to argue their appeals concisely and focus only on those points that truly matter in their case. Of course, because some cases are more complex than others, the Board should have discretion to allow a party to file a longer brief upon showing good cause.

Priority 4: A.3.08 - Revise expedited decisions process.

Priority 4a: A.1.09 - Setup an expedited process for charges based on the level of complexity of the charge.

Rationale: When granted, a request to expedite moves the case atop the queue of cases awaiting investigation or adjudication. The reasons for the request must be sufficiently compelling to justify moving the case to the head of the line. Depending on the criteria for expediting a case, the benefits may include: (1) an improved likelihood of settlement; (2) a more suitable remedy—particularly in charges involving active collective bargaining or unilateral changes; (3) averting a larger labor dispute that could significantly consume additional PERB resources; or (4) serve as a deterrent for misconduct when a party could be compelled to answer for its actions immediately.

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Priority 5: A.3.01 - Review regulations for subpoena duces tecum, document production, and deadlines and the manner in which hearings are to be administered.

Rationale: Currently there is no requirement for a party to produce documents prior to the first day of hearing. This can lead to formal hearing time being used to review large document productions. Giving the Administrative Law Judge express discretion and authority to order alternate production dates would assist the parties to be more prepared for the first formal hearing day and maximize the use of hearing time for testimonial evidence.

Priority 6: A.3.06 - Institute filing periods for motions.

Rationale: Current regulations have deadlines for responding to motions, but do not set a cut-off date for filing motions before the hearing. This can lead to parties spending the days immediately before a hearing filing and responding to motions instead of preparing for the hearing. A regulation setting filing deadlines for pre-hearing motion(s) would give the Administrative Law Judge sufficient time to consider and rule on the motions before the hearing, and allow the parties to spend the days leading up to the hearing preparing their cases.

Priority 7: A.2.01 - Change regulations to enforce appearance, preparation, and settlements for informal settlement conferences.

Priority 7a: A.3.02 - Add a regulation setting forth ramifications for a party's failure to appear.

Priority 10: A.3.12 - Establish the informal settlement conference on the calendaring schedule closer in time to the formal hearing.

Rationale: The settlement of labor disputes is one of PERB's major purposes. Yet parties currently are under no obligation to appear or prepare for the informal settlement conference. Further, the settlement conference usually occurs about 30 days after issuance of the complaint, often before the advocates have interviewed witnesses, located and collected the needed evidence, or conducted legal research on the questions of law important to the case. When parties are unprepared, they do not understand the strengths and weaknesses of their cases. Settlement then becomes a significant challenge since a strong understanding of the merits (or lack thereof) of a case is necessary for an informed decision on settlement terms. Requiring the parties to appear at informal settlement conferences and be prepared to make informed decisions about settlement, when coupled with giving parties additional time to assess their cases, should result in more cases settling before being set for a formal hearing. This reduction in case load would, in turn, reduce the time it takes PERB to hold hearings and issue decisions.

Additionally, current regulations do not address the ramifications of a party's failure to appear at a formal hearing. Although PERB decisional law addresses this issue to some extent, a regulation would give parties (especially pro per

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litigants) clear notice of the consequences of their failure to appear at a scheduled formal hearing. This would prevent non-appearing parties from consuming additional PERB resources by having the matter constantly rescheduled.

Priority 8: A.1.08 - Provide additional training and information to guide pro per charging parties.

Priority 8a: A.1.13 - Improve PERB website to clearly guide pro pers - create embedded training videos on the website to assist pro pers.

Rationale: By far, pro per cases require the highest time commitment from Regional Attorneys and ALJs. Generally, pro per litigants are unfamiliar with PERB's regulations and legal processes. As a result, they often have missteps that delay the adjudication of their cases. For example, unfair practice charges filed by pro per litigants often leave out important facts, which results in multiple phone calls, warning letters and amendments. At the other extreme, pro pers often submit far more information or documents than necessary, requiring the Regional Attorney or ALJ to pore over numerous documents to find those relevant to the case.

The delays and unnecessary time spent addressing the issues often associated with pro per litigants can be reduced significantly by providing information and resources that educate and guide them through PERB's processes. This will allow Regional Attorneys and ALJs to use their time more efficiently to reduce the various backlogs and the extraordinarily long time it takes to move cases through each division.

Priority 9: A.7.01 - PERB needs more mediators given the size of the State.

Rationale: Mediators work directly with parties at their own work sites, making their practical experience and knowledge of how employment and working conditions are impacted by external forces invaluable to the SMCS division's overall base of knowledge for subsequent disputes. This experience short-cuts the time needed by private practitioners to become familiar with funding mechanisms, changing technology, changes in the labor/management landscape, and other emerging issues.

The amount of time needed for travel for work assignments reduces available mediation days among the existing mediators. With its current staffing, SMCS cannot meet statutory timelines under the HEERA, EERA, or MMBA for initiating mediation, which extends the amount of time the parties are in a status that precludes a return to normalcy. This delay increases the likelihood of unfair practice charges being filed, or that the parties will engage in other forms of litigation and/or serious job actions.

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SMCS's ability to resolve many labor/management disputes through mutual settlement is a significant economic benefit to the State because: (1) strikes and other job actions disrupt local economies; (2) parents, caregivers, and students are severely impacted by disruptions in school schedules and activities; (3) dispute resolutions that are forced-upon one party or the other create relationship problems that can survive decades into the future, resulting in chronic labor disputes; and (4) unresolved disputes that result in unfair practice charges impact the workload throughout PERB.