Filed 12/9/03

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

COACHELLA VALLEY MOSQUITO AND VECTOR CONTROL DISTRICT, Plaintiff and Appellant, v. CALIFORNIA PUBLIC EMPLOYMENT RELATIONS BOARD, Defendant and Respondent; CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION et al., Real Parties in Interest and Respondents.	E031527 (Super.Ct.No. INC 26814) O P I N I O N

APPEAL from the Superior Court of Riverside County. Charles Everett Stafford, Jr., Judge. Affirmed.

Lisa Garvin Copeland for Plaintiff and Appellant.

* Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts A and B of the Discussion.

Jack L. White, City Attorney, and Carol J. Flynn, Assistant City Attorney, for the Cities of Anaheim, Carlsbad, Indian Wells, Monterey, Redlands, San Buenaventura, San Luis Obispo, San Pablo, Santa Paula, and Walnut Creek, the California Association of Sanitation Agencies, the Orange County Vector Control District, and the Sunline Transit Agency as Amici Curiae on behalf of Plaintiff and Appellant.

Ben Allamano for Mosquito & Vector Control Assn. of Calif. as Amicus Curiae on behalf of Plaintiff and Appellant.

Robert Thompson and Kristin L. Rosi for Defendant and Respondent.

Michael R. Clancy and Sonja Woodward for Real Party in Interest and Respondent California School Employees Association.

No appearances for Real Parties in Interest and Respondents Ramon C. Gonzalez, Mike Martinez, Jeffrey Garcia, and Virginia Sanchez.

INTRODUCTION

The Coachella Valley Mosquito and Vector Control District (District) appeals from a judgment denying its petition for a writ of prohibition or mandate directing the Public Employment Relations Board (PERB) to dismiss a complaint the PERB issued on behalf of the California School Employees Association (CSEA) and against the District for unfair practices in violation of the Myers-Milias-Brown Act (MMBA). (Gov. Code, §§ 3500-3511.)[1] We affirm.

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[1] All further statutory references are to the Government Code unless otherwise indicated.

The principal issue on this appeal is whether a six-month or three-year limitations period applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001, the effective date of Senate Bill No. 739 (1999-2000 Reg. Sess.). Senate Bill No. 739 transferred initial exclusive jurisdiction over MMBA unfair practices claims from the courts to the PERB, effective July 1, 2001 (§ 3509, subd. (b)), but did not expressly address what limitations period applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001.

The District contends that the six-month limitations period of section 3514.5 of the Educational Employment Relations Act (EERA) (§§ 3540-3549.3) applies to all MMBA unfair practices charges filed with the PERB on or after July 1, 2001. On this basis, the District argues that the PERB is without jurisdiction to issue a complaint or take any action on unfair practices charges occurring before July 1, 2001, because Senate Bill No. 739 was not intended to apply retroactively.

The CSEA and the PERB contend that a three-year limitations period applies, and that the PERB therefore had jurisdiction to adjudicate the CSEA's present unfair practices charges against the District. The parties agree that a three-year period applied when MMBA unfair practices charges were adjudicated in the courts. (Code Civ. Proc., § 338, subd. (a); see *Giffin v. United Transportation Union* (1987) 190 Cal.App.3d 1359, 1365 (*Giffin*).) The CSEA and the PERB argue that Senate Bill No. 739 merely changed the forum for adjudicating MMBA unfair practices charges, and was not intended to change the limitations period for filing such charges.

We conclude that the six-month limitations period of section 3514.5 applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001. This shortened limitations period is not to be retroactively applied, however. Charges based on unfair practices occurring before July 1, 2001, are timely if filed with the PERB on or before December 31, 2001, provided the charges were not barred by the prior three-year limitations period on the date filed. Additionally, the PERB's issuance of a complaint based on unfair practices occurring before July 1, 2001, is not a retroactive application of Senate Bill No. 739.

The District and the CSEA agree that this appeal is moot because they have settled the CSEA's unfair practices charges, and the PERB's complaint against the District has been dismissed. Nevertheless, the parties urge us to consider the merits of this appeal, because it presents questions of statewide import that are likely to recur. In the unpublished portion of this opinion, we explain why we exercise our inherent discretion to consider the merits of this appeal. In sum, we agree that this appeal presents issues of broad public concern that are likely to recur and that tend to evade review.

The PERB contends that this appeal must be dismissed, because the District failed to exhaust its administrative remedies before it filed its writ petition in the trial court. In the unpublished portion of this opinion, we conclude that the District is excused from exhausting its administrative remedies with the PERB, under the futility exception to the exhaustion doctrine.

THE AMICI CURAIE

By leave of court, two organizations have filed amicus curiae briefs supporting the District's position on this appeal. (Cal. Rules of Court, rule 13(c).) These are the Mosquito & Vector Control Assn. of Calif. (MVCAC Amicus) and certain California cities, special districts, and agencies (Cities Amicus). Cities Amicus is comprised of the cities of Anaheim, Carlsbad, Indian Wells, Monterey, Redlands, San Buenaventura, San Luis Obispo, San Pablo, Santa Paula, and Walnut Creek, and the California Association of Sanitation Agencies, the Orange County Vector Control District, and the Sunline Transit Agency.

REQUESTS FOR JUDICIAL NOTICE

All parties and amici curaie have requested that this court take judicial notice of various documents comprising portions of the legislative history of Senate Bill No. 739, the MMBA, the EERA, and the PERB, and records of courts of this state. These requests are hereby granted. (Evid. Code, § 452.)

FACTS AND PROCEDURAL HISTORY

The MMBA governs employment relations between cities, counties, and special districts, their employees, and employee organizations. (§§ 3500-3511.) The District is a public agency and special district subject to the MMBA. The CSEA is an exclusively recognized employee organization which represents a bargaining unit of the District's employees.

On June 29, 2001, the CSEA filed an unfair practices charge with the PERB alleging that the District had engaged in unfair practices in violation of the MMBA. The charge was withdrawn on July 2, 2001, refiled on July 5, 2001, and amended on August 29, 2001. The original charge alleged that the District unlawfully discriminated against several of the District's union employees based on the employees' protected activity. The original charge was based on events occurring as early as 1999. The amended charge added an allegation that the District committed an unfair practice by recommending the dismissal of District employee Ramon C. Gonzalez on July 3, 2001. The amended charge was filed two days before the District's governing board upheld Mr. Gonzalez's termination.

On October 24, 2001, the PERB issued a complaint based on the CSEA's charges, alleging that the District engaged in unfair practices in violation of the MMBA. The District moved to dismiss the complaint. It argued that the PERB lacked jurisdiction to adjudicate MMBA unfair practices charges based on events occurring before July 1, 2001, and that Senate Bill No. 739 reduced the limitations period on charges filed after July 1, 2001, to six months. The District also argued that the PERB should defer to the parties' grievance resolution process as set forth in their Memorandum of Understanding. The PERB's board agent denied the District's motion to dismiss.

On December 13, 2001, the District appealed the board agent's order denying its motion to dismiss to the full PERB board, and requested that the board agent join in the

appeal, pursuant to California Code of Regulations, title 8, section 32200.[2] In a written order, the board agent refused to join the District's appeal. The board agent reasoned that an immediate appeal would not materially advance the resolution of the case.

On January 9, 2002, before further administrative proceedings were conducted, the District filed a petition for a writ of prohibition or mandate in the trial court, asking the court to direct the PERB to dismiss its complaint against the District. The PERB and the CSEA opposed the petition. On February 21, 2002, the trial court entered judgment on the petition in favor of the PERB.

In a statement of decision, the trial court concluded that the District was not required to exhaust its administrative remedies before challenging the PERB's jurisdiction in the trial court. It also ruled that the PERB had jurisdiction to adjudicate alleged violations of the MMBA occurring before July 1, 2001. It reasoned that Senate Bill No. 739 "merely changed the forum for the enforcement of existing statutory rights and responsibilities" under the MMBA, and that a three-year limitations period applied to MMBA unfair practices charges filed with the PERB on and after July 1, 2001.

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[2] California Code of Regulations, title 8, section 32200 provides, in pertinent part, that "[a] party may object to a Board agent's interlocutory order or ruling on a motion and request a ruling by the Board itself. The request shall be in writing to the Board agent and a copy shall be sent to the Board itself. . . . The Board agent may refuse the request, or may join in the request and certify the matter to the Board. The Board itself will not accept the request unless the Board agent joins in the request. The Board agent may join in the request only where all of the following apply: [¶] (a) The issue involved is one of law; [¶] (b) The issue involved is controlling in the case; [¶] (c) An immediate appeal will materially advance the resolution of the case."

On April 12, 2002, the District appealed from the trial court's judgment. In May 2002, the parties settled the CSEA's unfair practices charges, and the pending litigation was dismissed with prejudice.

DISCUSSION

A. *Mootness*

As noted, after the District filed its notice of appeal, the District and the CSEA settled and dismissed the charges and the complaint with prejudice. The parties agree, however, that the issues presented on this appeal are of broad public concern and are likely to recur, not only between the District and the CSEA but between other public entities and their employees. Cities Amicus and MVCAC Amicus reiterate this concern. We are therefore urged to consider the merits of this appeal.

"A case is moot when the decision of the reviewing court 'can have no practical impact or provide the parties effectual relief. [Citation.]' [Citations.] 'When no effective relief can be granted, an appeal is moot and will be dismissed.' [Citations.]" (*MHC Operating Limited Partnership v. City of San Jose* (2003) 106 Cal.App.4th 204, 214.) """[But] [i]f a pending case poses an issue of broad public interest that is likely to recur, the court may exercise an inherent discretion to resolve that issue even though an event occurring during its pendency would normally render the matter moot."""" (*Edelstein v. City and County of San Francisco* (2002) 29 Cal.4th 164, 172, quoting *In re William M.* (1970) 3 Cal.3d 16, 23.) This discretion extends to matters that "tend to evade review." (*White v. Davis* (2003) 30 Cal.4th 538, 537.)

Although moot, the present appeal presents an important issue of first impression concerning the limitations period that applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001. We agree these issues are likely to recur until finally adjudicated in the courts. Additionally, the controverted status of the limitations period issue should not discourage settlements. We therefore consider the merits of this appeal.

B. *Exhaustion of Administrative Remedies*

We next consider the PERB's contention that the trial court improperly assumed jurisdiction in this matter, because the District failed to exhaust its administrative remedies with the PERB before the District petitioned the trial court for a writ of mandate or prohibition directing the PERB to dismiss the complaint. The PERB argues that the District was required to await the full board's final ruling on the limitations period and retroactive issues before seeking a writ of administrative mandamus. (Code Civ. Proc., § 1094.5.)

The District maintains that it was not required to exhaust its administrative remedies. It argues that it did not have to engage "in the futile and costly expense of a contested adversarial proceeding [by pursuing its appeal to the PERB board] where, as here, the issues are purely legal in nature." The District further submits that its petition for a writ of prohibition or mandate was proper, because the PERB threatened to act in excess of its jurisdiction on the charges in question. We conclude that the District is

excused from exhausting its administrative remedies under the futility exception to the exhaustion doctrine.

"[W]here an administrative remedy is provided by statute, relief must be sought from the administrative body and this remedy exhausted before the courts will act." "This is the doctrine of 'exhaustion of administrative remedies.'" (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 292 (*Abelleira*).) The exhaustion doctrine is "a fundamental rule of procedure" and "a jurisdictional prerequisite to resort to the courts." (*Id*. at p. 293.) If a court assumes jurisdiction in a matter where administrative proceedings have not become final, the court acts in excess of its jurisdiction and is subject to restraint by a higher court's writ of prohibition. (*Id*. at pp. 295, 303-306.)

In *Abelleira*, our state Supreme Court issued a writ of prohibition restraining the district court from enforcing a writ of mandate and temporary restraining order that the district court issued against the California Employment Commission, restraining the payment of unemployment benefits to longshoremen. The district court's writ and order were issued while an appeal of an administrative referee's findings and decision favoring the longshoremen was pending before the commission. (*Abelleira, supra,* 17 Cal.2d at pp. 305-306.)

The *Abelleira* court held that the exhaustion doctrine required the district court to refrain from assuming jurisdiction or interfering in the matter before the administrative proceedings became final. (*Abelleira, supra,* 17 Cal.2d at pp. 305-306.) Thus, where, as here, the PERB has exclusive initial jurisdiction to determine whether an alleged unfair

labor practice or MMBA violation is justified and, if so, what remedy is appropriate (§ 3509), the exhaustion doctrine requires the courts to refrain from assuming jurisdiction in the matter until all available administrative remedies have been exhausted with the PERB. (See *Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155, 167-168 (*Department of Personnel Administration*).)

The *Abelleira* court described the policies underlying the exhaustion doctrine: "The courts have repeatedly recognized the necessity of placing the numerous and complex problems arising under statutes of the type involved herein in the hands of expert bodies, familiar with the subject matter through long experience. They have pointed out that to permit the initial consideration of these matters by the courts would not only preclude the efficient operation of the acts, but would overwhelm the courts with cases of a technical, specialized character, and seriously impair their capacity to handle their normal work." (*Abelleira, supra,* 17 Cal.2d at p. 306.)

The exhaustion doctrine also facilitates the development of a complete factual record prior to resort to the courts. The exhaustion doctrine also "fulfills separation of powers concerns" because administrative procedure is part of the legislative process. (*Department of Personnel Administration, supra,* 5 Cal.App.4th at p. 168.) As the *Abelleira* court noted, "a curtailment of administrative jurisdiction usually means an enlargement of the duties of the courts in a field in which the courts traditionally are reluctant to enter." (*Abelleira, supra,* 17 Cal.2d at p. 286.)

There are, however, exceptions to the exhaustion doctrine. These include cases "where the agency indulges in unreasonable delay [citation], when the subject matter lies outside the administrative agency's jurisdiction, when pursuit of an administrative remedy would result in irreparable harm, when the agency is incapable of granting an adequate remedy, and when resort to the administrative process would be futile because it is clear what the agency's decision would be." (*Department of Personnel Administration, supra,* 5 Cal.App.4th at p. 169.) "Application of these exceptions may require a 'qualitative analysis on a case-by-case basis with concentration on whether a [p]aramount need for agency expertise outweighs other factors.'" (*Green v. City of Oceanside* (1987) 194 Cal.App.3d 212, 222.)

Here, the futility exception applies. The District has requested that this court take judicial notice of the PERB's ruling in *Veltruski v. City of Huntington Park* (2002) PERB Decision No. 1485-M (26 PERC ¶ 33081) (*City of Huntington Park*). There, the PERB held that all MMBA unfair practices charges filed with the PERB on and after July 1, 2001, are subject to the three-year limitations period of Code of Civil Procedure section 338. The PERB reached the same conclusion in *International Brotherhood of Electrical Workers, Local 47 v. City of Anaheim* (2003) PERB Decision No. AD-321 (27 PERC ¶ 53) (*City of Anaheim*). In *City of Anaheim*, the PERB also ruled that that Senate Bill No. 739 was not retroactive but merely changed the forum for adjudicating MMBA unfair practices charges from the superior courts to the PERB, effective July 1, 2001.

We note that *City of Huntington Park* and *City of Anaheim* were decided after the District filed its writ petition in the trial court. Thus, when the writ petition was filed, it was not clear how the full PERB board would rule on the limitations period and retroactivity issues. Nevertheless, the board agent's refusal to join the District's appeal of the board agent's order denying the District's motion to dismiss unreasonably delayed a decision on the issues.

Moreover, the policies underlying the exhaustion doctrine would not be served by applying it in the present case. The issues presented are legal, and may be decided based on the allegations of the complaint and the applicable law. There is therefore no need to conduct a hearing or develop an administrative record. Further, the issues are not within the particular technical expertise of the PERB. Rather, they are legal issues of first impression.

Accordingly, the District is excused from exhausting its administrative remedies with the PERB under the futility exception to the exhaustion doctrine. We therefore proceed to determine the limitations period and retroactivity issues presented on this appeal.

C. *The Limitations Period and Retroactivity Issues*

1. Standard of Review

The issues presented turn on questions of legislative intent and statutory interpretation. These are questions of law, subject to independent review. (*Murray v. Oceanside Unified School Dist.* (2000) 79 Cal.App.4th 1338, 1348.)

2. Principles of Statutory Construction

"The goal of statutory construction is to ascertain and effectuate the intent of the Legislature. [Citation.] Ordinarily, the words of the statute provide the most reliable indication of legislative intent. [Citation.] When the statutory language is ambiguous, [we] may examine the context in which the language appears, adopting the construction that best harmonizes the statute internally and with related statutes." (*Pacific Gas & Electric Co. v. County of Stanislaus* (1997) 16 Cal.4th 1143, 1152.)

"In such circumstances, we '"select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]'" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) We may consider the objects to be achieved, the legislative history, and the wider historical circumstances of the statute's enactment. (*Ibid*.; *Pacific Gas & Electric Co. v. County of Stanislaus, supra,* 16 Cal.4th at p. 1153.) We may also consider public policy and the statutory scheme of which the statute is a part. (*Golden State Homebuilding Associates v. City of Modesto* (1994) 26 Cal.App.4th 601, 608; accord, *People v. Woodhead* (1987) 43 Cal.3d. 1002, 1007-1008.)

We assume that the Legislature is aware of existing judicial constructions. (*White v. Ultramar, Inc.* (1999) 21 Cal.4th 563, 572.) We also assume that the Legislature is aware of existing, related laws and intends to maintain a consistent body of rules. We do not presume an intention to overthrow long-established principles of law unless such

intention is clearly expressed or necessarily implied. (*People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 199.) And, "[w]ithout the most cogent and convincing evidence, a court will never attribute to the Legislature the intent to disregard or overturn a sound rule of public policy. [Citation.]" (*Interinsurance Exchange v. Ohio Cas. Ins. Co.* (1962) 58 Cal.2d 142, 152.)

"[I]t is well settled that the statutes and codes blend into each other, and are to be regarded as constituting but a single statute. [Citation.] One should seek to consider the statutes not as antagonistic laws but as parts of the whole system which must be harmonized and effect given to every section. [Citations.]" (*Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 59 Cal.App.3d 959, 965; accord, *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 122 [harmonizing objectives common to two statutory schemes "to the fullest extent the language of the statutes fairly permits"].) "A statute that is modeled on another, and that shares the same legislative purpose is in pari materia with the other, and should be interpreted consistently to effectuate [legislative] intent." (*American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1129.)

"Ultimately, the interpretation of a statute is an exercise of the judicial power the Constitution assigns to the courts. [Citations.]" (*Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 244.) But the enactment of a statute of limitation is a legislative function. A court does not have authority to create a statute of limitation.

(*Giffin, supra,* 190 Cal.App.3d at p. 1364; accord, *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 396.)

3. The Legislative History of the MMBA, EERA, Dills Act, and HEERA

California has followed a piecemeal approach to regulating public sector labor relations. The earliest legislative enactments, adopted in the 1950's, were limited to prescribed groups of employees. (Zerger et al., Cal. Public Sector Labor Relations (2002) Historical Development, §§ 1.01-1.02, pp. 1-2 & 1-3 (Zerger).)

In 1968, the Legislature adopted the MMBA. The MMBA governs employee relations between California cities, counties, and special districts, and their employees and employee organizations. When the MMBA was adopted, no administrative agency was charged with its administration or enforcement. (Zerger, *supra*, at § 1.05, p. 1-5.)

When the MMBA was adopted, employee relations within the University of California and California State University systems were governed by the George M. Brown Act, adopted in 1961. Employee relations within school districts and community colleges were governed by the Winston Act, adopted in 1965. (Zerger, *supra*, at § 1.05, p. 1-5.)

In the early 1970's, California's public sector labor relations laws were described as a "statutory melange produc[ing] curious results," with "amendment superimposed upon amendment without apparent attention either to careful drafting or to the development of a coherent philosophy." (Zerger, *supra*, at § 1.07[1], pp. 1-6 & 1-7.)

Nevertheless, bills designed to place all California public employers and employees under a single regulatory system were defeated in the Legislature. (*Ibid*.)

Then, in 1975, the Legislature adopted the Educational Employee Relations Act (EERA). (§ 3540 et. seq.) The EERA governs relations within the K-12 public school system and community colleges, and established the Educational Employment Relations Board (the EERB), the precursor to the PERB. (§§ 3541-3541.5.) The EERB was an "expert, quasi-judicial administrative agency modeled after the National Labor Relations Board" with authority to adjudicate unfair labor practices charges arising under the EERA. (Zerger, *supra*, at § 1.07[2], pp. 1-7 & 1-8.)

In section 3540 of the EERA, the Legislature declared its intention that "*any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible.*" (Italics added.) Section 3540 further declares "an advantageous and desirable state policy to expand the jurisdiction of the [EERB] to cover other public employers and their employees, in the event that this legislation is enacted . . . the name of the [EERB] shall be changed to the [PERB]." (See Zerger, *supra*, at § 1.07[2], pp. 1-7 & 1-8.)

In 1977, the State Employer-Employee Relations Act (the Dills Act) (§ 3512 et. seq.) was enacted to govern labor relations between the State of California, certain state employees, and employee organizations. The Dills Act changed the name of the EERB to the Public Employment Relations Board or PERB (§ 3513, subd. (h)), and expanded

the PERB's jurisdiction to encompass unfair practices charges arising under the Dills Act. (§ 3514.5.) (Zerger, *supra*, at § 1.07[3], pp. 1-8 & 1-9.)

Section 3541.3 of the EERA describes the "powers and duties" of the PERB. These include the power "(i) To investigate unfair practice charges or alleged violations of this chapter, and take any action and make any determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter." Section 3541.5 of the EERA provides that the PERB shall not issue a complaint based on an alleged unfair practice occurring more than six months before the filing of the charge. (§ 3541.5, subd. (a)(1).)

Section 3513, subdivision (h) of the Dills Act provides that "[t]he powers and duties of the [PERB] described in Section 3541.3 [of the EERA] shall also apply, as appropriate, to this chapter." Section 3514.5 of the Dills Act provides that the PERB shall not issue a complaint based on any unfair practices charges occurring more than six months before the filing of a charge. (§ 3514.5, subd. (b).) Thus, section 3514.5 of the Dills Act is substantially similar to section 3541.5 of the EERA.

The Higher Education Employer-Employee Relations Act (HEERA) (§ 3560 et. seq.) was adopted in 1978, and the PERB's jurisdiction was then expanded to encompass unfair practices charges arising under the HEERA. (§§ 3563-3563.3.) The HEERA governs labor relations within the University of California, Hastings College of Law, and the California State University. (Zerger, *supra*, at § 1.07[4], p. 1-9.)

Section 3563 of the HEERA describes the "rights, powers, duties and responsibilities" of the PERB in administering the HEERA, and is substantially similar to section 3541.3 of the EERA. Unlike the Dills Act, the HEERA does not incorporate the powers and duties of the PERB described in section 3541.3. (§ 3513, subd. (h).) But section 3563.2 of the HEERA, like section 3514.5 of the Dills Act and section 3541.5 of the EERA, prescribes a six-month limitations period on unfair practices complaints issued by the PERB.

The MMBA, EERA, Dills Act, and HEERA are designed to address the specific needs and problems of the public employment sectors they cover. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 177.) As discussed above, the statutes were enacted at different times and regulate different public employment sectors. They were written by different legislators, responding to the pressures of differing constituencies. (Zerger, *supra*, Overview of Statutes, § 2.10, p. 2-6.)

But the basic purpose of the MMBA, EERA, Dills Act, and HEERA is the same. It is "to promote improved labor relations by providing a uniform basis for recognizing the right of employees of various public agencies to join organizations of their own choice and to be represented by those organizations in employment relationships." (Zerger, *supra*, Employee Rights, § 15.10[1], pp. 15-46 & 15-47; see §§ 3500 (MMBA), 3512 (Dills Act), 3540 (EERA), and 3560, subd. (e) (HEERA).)

The MMBA does not enumerate specific "unfair practices" similar to those listed in the EERA, Dills Act, or HEERA. (See, e.g., §§ 3543.5, 3543.6 (EERA), 3519, 3519.5

(Dills Act).) However, PERB regulations provide that the same unfair practices listed in the EERA, Dills Act, and HEERA are similarly prohibited under the MMBA. (Cal. Code Regs., tit. 8, §§ 32602-32604.)

4. Senate Bill No. 739

On September 29, 2000, the Legislature enacted Senate Bill No. 739 which amended various provisions of the MMBA. Section 3500 of the MMBA was amended to provide, in part, that "(a) It is the purpose of this chapter to promote full communication between public employers and their employees by providing a *reasonable method* of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations." (Italics added.)

Senate Bill No. 739 introduced the term "Board" to the MMBA, and defined it as "the Public Employment Relations Board established pursuant to Section 3541." (§ 3501, subd. (f).) Section 3509 was amended to read, in pertinent part, that "(a) The powers and duties of the board described in Section 3541.3 [of the EERA] shall also apply, as appropriate, to this chapter . . . . [¶] (b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair

labor practices consistent with existing judicial interpretations of this chapter." The section 3509 amendments became effective on July 1, 2001. (§ 3509, subd. (g).)

5. The Six-Month Limitations Period of Section 3541.5 Applies to MMBA Unfair Practices Charges Filed with the PERB on and after July 1, 2001

The District contends that the six-month limitations period of section 3514.5 of the EERA is effectively incorporated into section 3509 of the MMBA. It argues that section 3541.5 is a necessary continuation of section 3541.3, and a limitation on the powers and duties of the PERB set forth in section 3541.3. It relies on the language of the statutes, and on the legislative history of the MMBA, EERA, Dills Act, HEERA, and Senate Bill No. 739.

Cities Amicus argues it was not necessary for the Legislature to expressly incorporate section 3541.5 into the MMBA, because this limitation on the PERB's jurisdiction to issue unfair practices complaints was in place for 25 years before Senate Bill No. 739 expanded the PERB's jurisdiction to encompass MMBA unfair practices charges. In other words, the PERB's jurisdiction to issue MMBA unfair practices complaints is no greater under the MMBA than it ever has been or was when Senate Bill No. 739 was enacted. Cities Amicus also notes that the language of sections 3540 and 3541.5 is not limited to public school employers and employers subject to the EERA, but encompass all public employment sectors.

The CSEA and the PERB argue that the three-year limitations period of Code of Civil Procedure section 338 applies, because MMBA unfair practices charges are

statutory liabilities. They note that section 3509 expressly incorporates section 3541.3, but not section 3541.5. They also rely on *Giffin, supra,* 190 Cal.App.3d at page 1365, and the third sentence of section 3509, subdivision (b), which directs the PERB to "apply and interpret unfair labor practices consistent with *existing judicial interpretations* of [the MMBA]." (Italics added.)

We agree with the District and Cities Amicus that the six-month limitations period of section 3541.5 applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001. Our conclusion is based on the plain language of the statutes, and the legislative history, wider historical circumstances, and public policies reflected in Senate Bill No. 739, the MMBA, EERA, Dills Act, and HEERA.

As noted above, section 3501 was initially enacted in 1961 as part of the MMBA. Senate Bill No. 739, subdivision (f) was added, to state "Board means the Public Employment Relations Board established pursuant to Section 3541." Section 3541 is part of the EERA. As part of the same Senate Bill, section 3509, subdivision (a) was enacted. It provides that "[t]he powers and duties of the [PERB] described in section 3541.3 shall also apply, as appropriate, to this chapter . . . ." Section 3541.3 describes *what* powers and duties the PERB has in administering and enforcing the EERA. These include the power and duty "[t]o investigate unfair practice charges or alleged violations . . . and *take any action and make any determinations* in respect of these charges or alleged violations . . . ." (§ 3541.3, subd. (i), italics added.) Without question, the power

to investigate, take action, and make determinations regarding unfair practices charges is appropriately incorporated into the MMBA.

Section 3509, subdivision (b) provides that "[a] complaint alleging any violation of this chapter . . . shall be *processed as an unfair practice charge by the board*." The power to *process* an unfair practices charge necessarily includes the power to investigate, take action, and make determinations regarding the charge. Section 3541.5 describes how the PERB's powers and duties shall and shall not be exercised. It sets forth the process by which an unfair practice is to be investigated, heard, and decided by the PERB. Section 3541.5 states, "The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. *Procedures* for investigating, hearing, and deciding these cases shall be devised and promulgated by the board *and shall include all of the following*: [¶] (a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board *shall not do . . . the following*: [¶] (1) Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." (Italics added.).

Section 3541.5 expressly limits the PERB's power to issue unfair practices complaints to those based on unfair practices occurring within six months of the filing of a charge. (§ 3541.5, subd. (a)(1).) And, as Cities Amicus notes, the PERB's powers and duties have always been subject to section 3541.5's six-month limitations period, and

remained so limited when the PERB's jurisdiction was expanded to encompass MMBA unfair practices charges through Senate Bill No. 739.

Additionally, section 3541.5 authorizes the PERB to promulgate procedures for "investigating, hearing, and deciding" unfair practices charges. These "shall include" procedures for filing unfair practices charges with the PERB. (§ 3541.5.) No procedures for filing or processing unfair practices charges are listed in section 3541.3 nor anywhere else in the MMBA. The PERB's power and duty to investigate, hear, and determine MMBA unfair practices charges would be meaningless if the PERB did not have authority to promulgate procedures for filing and processing the charges.

Accordingly, we conclude that the six-month limitations period of section 3541.5 applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001, the effective date of section 3509. (§ 3509, subd. (g).)

Our conclusion promotes rather than defeats the common purposes of the MMBA, EERA, Dills Act, and HEERA. Without question, the statutes are in pari materia, and should be interpreted consistently with each other to the extent possible. The PERB has always enjoyed substantially the same powers, duties, and authority to promulgate procedures in enforcing unfair practices charges under the EERA, Dills Act, and HEERA. (§§ 3513, subd. (h), 3514.5, 3541.3, 3541.5, 3563, 3563.2.) And, the PERB's jurisdiction to issue unfair practices complaints under each of these statutes has always been subject to a six-month limitations period. (§§ 3514.5, 3541.5, 3563.2.)

These common features reflect the Legislature's long standing policy of promptly resolving public employment labor disputes by limiting the PERB's jurisdiction to issue unfair practices complaints to a six-month limitations period. Nothing in Senate Bill No. 739 indicates that the Legislature intended to abandon this policy when it expanded the PERB's jurisdiction to encompass MMBA unfair practices charges.

Indeed, since 1975, the Legislature's stated intention has been to incorporate into the EERA, "to the extent possible," legislation concerning public employment labor relations. (§ 3540.) Senate Bill No. 739 indicates that the Legislature intended to model the MMBA on the EERA, in the same manner as the Dills Act and HEERA were modeled on the EERA.

The legislative history of Senate Bill No. 739 also shows that the Legislature intended that the PERB would administer and enforce the MMBA "in the same manner" as the EERA, Dills Act, and HEERA. We have taken judicial notice of "[m]aterial from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill [No.] 739." These materials state that "[Senate Bill No.] 739 transfers jurisdiction for enforcement of the [MMBA] and resolution of unfair labor practice allegations to the PERB. Under current law, an aggrieved party must file a writ of mandate with the Superior Court for resolution of a dispute. [¶] PERB would become the enforcing administrative agency for local government labor relations *in the same manner* as exists for schools, colleges, universities and the state. There is *one major exception*, local agencies can continue to

adopt local rules and procedures to implement and govern their local labor relations . . . ." (Italics added.)

These materials indicate that MMBA unfair practices charges were intended to be processed "in the same manner" as they had been under the EERA, Dills Act, and HEERA, that is, subject to a six-month limitations period. A three-year limitations period would be a "major exception" to existing procedure, but it was not mentioned in the materials as the "one major exception."

We have also taken judicial notice of the Legislative Council's Digest for Senate Bill No. 739. It states that "[e]xisting law establishes the [PERB] in state government as a means of resolving disputes and enforcing the statutory duties and rights of employers and employees under the [EERA, Dills Act, and HEERA]. [¶] This bill would expand the jurisdiction of the [PERB] to include resolving disputes and enforcing the statutory duties and rights of employers and employees under the [MMBA] . . . ." This language also indicates that the Legislature intended the PERB to enforce the MMBA "in the same manner" as the EERA, Dills Act, and HEERA.

We next address the CSEA's and the PERB's argument that the three-year limitations period of Code of Civil Procedure section 338, subdivision (a) applies to MMBA unfair practices charges under the PERB's jurisdiction. The CSEA and PERB rely on *Giffin, supra,* 190 Cal.App.3d at page 1365, and the third and final sentence of section 3509, subdivision (b).

Code of Civil Procedure section 338, subdivision (a) sets a three-year limitations period on statutory liabilities. In 1987, the *Giffin* court held that former Code of Civil Procedure section 338, subdivision (1), now subdivision (a), applied to an employee's action against his labor union for breach of the labor union's duty of good faith representation, because the union's liability was a creature of statute. (*Giffin, supra,* 190 Cal.App.3d at pp. 1361, 1365.)

The final sentence of section 3509, subdivision (b) states that "[t]he board shall apply and interpret unfair labor practices consistent with *existing judicial interpretations* of this chapter." (Italics added.) Thus, the CSEA and the PERB argue that the Legislature intended that the three-year limitations period of Code of Civil Procedure section 338, subdivision (a), and the rule of *Giffin* would apply to MMBA unfair practices charges filed with the PERB on and after July 1, 2001. We disagree.

First, Code of Civil Procedure section 338 applies to "actions." (Code Civ. Proc., § 335.) An "action" is "an ordinary proceeding in a court of justice . . . ." (*Id.* at § 22.) It is settled that "'general and special statutes of limitation referring to actions . . . are applicable only to judicial proceedings; they do not apply to administrative proceedings.'" (*City of Oakland v. Public Employees' Retirement System* (2002) 95 Cal.App.4th 29, 48.) Thus, Code of Civil Procedure section 338 does not apply to the charges filed with nor complaints issued by the PERB, because these do not constitute actions.

Second, *Giffin* applied former Code of Civil Procedure section 338, subdivision (1) to a civil action, and did not address what limitations period applied to an administrative agency's enforcement authority. Indeed, the *Giffin* court limited its holding by noting, "[W]e do not have authority to create a statute of limitation. Enactment of statutes of limitations is a legislative function. We are limited to determining the existing state statute of limitations applicable to this cause of action." (*Giffin, supra,* 190 Cal.App.3d at p. 1364.)

Third, as discussed above, the first two sentences of section 3509, subdivision (b) concern the manner in which MMBA unfair practices charges are to be processed. The third and final sentence of section 3509, subdivision (b) does not concern procedure. Rather, it concerns the substantive issue of what constitutes an unfair labor practice, and directs the PERB to follow "existing judicial interpretations" in determining whether a charge constitutes an unfair labor practice under the MMBA.

Lastly, Code of Civil Procedure section 338, subdivision (a) is a general limitations provision that applies to actions based on statutes. Section 3541.5 is a specific limitations provision that applies to the PERB's jurisdiction to issue a complaint based on an unfair labor practice. A specific provision applies over a more general one where the two are inconsistent. (Code Civ. Proc., § 1859.)

Accordingly, we reject the CSEA's and the PERB's contention that the three-year limitations period of Code of Civil Procedure section 338, subdivision (a) applies to MMBA unfair practices charges filed with the PERB on and after July 1, 2001.

6. The Shortened Six-Month Limitations Period of Section 3541.5 Does Not Operate Retroactively; MMBA Claimants Had Six Months, Until December 31, 2001, to File Charges with the PERB Based on Unfair Practices Occurring Before July 1, 2001, Provided the Charges Were Not Barred by the Prior Three-Year Limitations Period of Code of Civil Procedure Section 338, Subdivision (a) When Filed

The parties and this court agree that Code of Civil Procedure section 338, subdivision (a) applied to MMBA claims filed as court actions before July 1, 2001. (See *Giffin, supra,* 190 Cal.App.3d at p. 1365.) And, as we have explained, Senate Bill No. 739 shortened the limitations period to six months on MMBA unfair practices charges filed with the PERB on and after July 1, 2001. (§ 3541.5.)

This does not mean, however, that all MMBA unfair practices charges filed with the PERB on or after July 1, 2001, are subject to the six-month limitations period. As we shall explain, claimants had six months, until December 31, 2001, to file charges accrued before July 1, 2001, provided the charges were not barred by the prior three-year limitations period on the date filed.

"It is well settled that a legislative authority may validly shorten the time within which an action may be commenced, providing the claimant is allowed by the new statute a *reasonable time* after the effective date of the new limitation within which to bring action on an accrued cause not already barred by the former statute [of limitations]." (*Baldwin v. City of San Diego* (1961) 195 Cal.App.2d 236, 240 (*Baldwin*), italics added; accord, *Rosefield Packing Co. v. Superior Court* (1935) 4 Cal.2d 120, 122; *Scheas v.*

Robertson (1951) 38 Cal.2d 119, 125; *Carlson v. Blatt* (2001) 87 Cal.App.4th 646, 650-651.)

The retroactive application of a statute shortening a limitations period cuts off the right to enforce an accrued cause of action that is not barred by the then applicable limitations period. This constitutes an unconstitutional deprivation of a vested property right without due process of law. To avoid this unconstitutional effect, shortened limitations periods have been applied prospectively, and the claimant allowed a reasonable time to proceed with his or her cause of action. (See, e.g., *Niagara Fire Ins. Co. v. Cole* (1965) 235 Cal.App.2d 40, 43; *Baldwin, supra,* 195 Cal.App.2d at pp. 240-241; *Olivas v. Weiner* (1954) 127 Cal.App.2d 597, 600.) What constitutes a reasonable time is "primarily a legislative matter." Ninety days has been held to be a reasonable time. (*Baldwin, supra,* at p. 241.)

More generally, "[a] statute is presumed to act prospectively unless it expressly or by necessary implication declares to the contrary." (*Baldwin, supra,* 195 Cal.App.2d at p. 241.) Where two alternative statutory interpretations are presented, one unconstitutional and the other constitutional, the court will choose the construction that upholds the validity of the statute. (*Id*. at pp. 241-242.) "'[A] statute must be construed, if possible, to avoid constitutional issues.'" (*Guardianship of Stephen G.* (1995) 40 Cal.App.4th 1418, 1425.)

As we have explained, the Legislature transferred jurisdiction to enforce MMBA unfair practices charges from the courts to the PERB effective July 1, 2001. (§ 3509.)

On the same date, a six-month limitations period commenced to run on such charges. (§ 3541.5.) Before July 1, 2001, MMBA unfair practices charges prosecuted as court actions were subject to the three-year limitations period of Code of Civil Procedure section 338, subdivision (a). (See *Giffin, supra,* 190 Cal.App.3d at p. 1365.)

In order to avoid an unconstitutional, retroactive application of section 3514.5, we conclude that claimants had until December 31, 2001, six months after July 1, 2001, to file charges with the PERB based on MMBA unfair practices occurring before July 1, 2001, provided the charges were not barred by the three-year limitations period on the date the charges were filed. Six months is a reasonable time to allow charges that accrued before July 1, 2001, to be filed with the PERB. In contrast, charges accruing after July 1, 2001, are subject to the six-month limitations period.

In the present case, the CSEA's original charges, filed on July 5, 2001, accrued before July 1, 2001. As of July 5, 2001, none of these charges were barred by the three-year limitations period, because the events underlying the charges occurred no earlier than 1999. These charges were therefore timely filed. The CSEA's amended charges, filed on August 29, 2001, added a charge based on the termination of Gonzalez after July 1, 2001. This charge was also timely filed, because it was filed within six months of the date it accrued.

7. The PERB's Issuance of a Complaint Based on Unfair Practices Occurring Before July 1, 2001, is Not a Retroactive Application of Senate Bill No. 739

The District contends that the PERB lacks jurisdiction to adjudicate any MMBA unfair practices charges based on facts occurring before July 1, 2001, because Senate Bill No. 739 was not intended to be retroactively applied. The CSEA and the PERB argue that Senate Bill No. 739 is not retroactive because it merely changed the forum for adjudicating MMBA unfair practices charges, through section 3509, subdivision (b). We agree with the CSEA and the PERB.

"[A] retroactive or retrospective law '"is one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute."' [Citations.] . . . '"[E]very statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past, must be deemed retrospective."' [Citation.] Phrased another way, a statute that operates to 'increase a party's liability for past conduct' is retroactive." (*Myers v. Philip Morris Companies, Inc.* (2002) 28 Cal.4th 828, 839.)

The District notes that Senate Bill No. 739 changed employer-employee relations in several respects. For example, it provided for the establishment of an agency shop agreement based upon a signed petition of 30 percent of applicable bargaining unit employees, provided for PERB review of local rules and regulations adopted by MMBA

employers, and requires that unit determination disputes be submitted to the Department of Industrial Relations.

These changes operate prospectively, however, and do not increase any party's past or accrued liability for unfair practices, based on facts occurring before July 1, 2001. Thus, Senate Bill No. 739 is not retroactive. Section 3509 merely changed the forum for adjudicating MMBA unfair practices charges.

The District's reliance on *Rosasco v. Commission on Judicial Performance* (2000) 82 Cal.App.4th 315 (*Rosasco*) is misplaced. There, the court held that a constitutional amendment expanding the commission's jurisdiction, effective March 1, 1995, to include retired judges (Cal. Const., art. VI, § 18), did not allow the commission to investigate allegations made in 1997 against a judge who retired in 1993. The court reasoned that the amendment was "presumptively prospective" because there was no indication the voters intended it to apply retroactively. (*Rosasco, supra,* at pp. 317-318, 320-322.)

The *Rosasco* court also observed that expanding the commission's jurisdiction to investigate the retired judge would have constituted a retroactive application of the amendment, because it would have changed the "legal effects of past events." (*Rosasco, supra,* 82 Cal.App.4th at p. 322.) Here, in contrast, Senate Bill No. 739 is not retroactive in relation to unfair practices charges because it does not change the conduct that constituted an unfair labor practice before July 1, 2001.

We note that the District's contention means that parties aggrieved by MMBA unfair practices occurring before July 1, 2001, would have no right of action or remedy,

because the PERB has exclusive, initial jurisdiction to adjudicate unfair practices claims on and after July 1, 2001. (§ 3509, subd. (b).) There is no indication anywhere in Senate Bill No. 739 or its legislative history that the Legislature intended to deprive MMBA unfair practices claimants of their antecedent rights, by transferring jurisdiction to adjudicate such claims from the superior courts to the PERB.

Lastly, the District argues that the delayed operative date of section 3509, from January 1, 2001, to July 1, 2001 (§ 3509, subd. (g)) shows that the Legislature intended the statute would not be retroactively applied. This argument is misplaced, because Senate Bill No. 739 is not retroactive in relation to unfair practices charges. Moreover, the delayed operative date has nothing to do with retroactivity. The Legislative Counsel's Digest indicates that the statute's effective date was delayed to allow time to modify the PERB's annual budget to accommodate the PERB's anticipated increased caseload.

DISPOSITION

The judgment is affirmed. The parties shall bear their respective costs.

CERTIFIED FOR PARTIAL PUBLICATION

/s/ King
J.

We concur:

/s/ McKinster
Acting P.J.

/s/ Ward
J.