

**A COMPARISON OF BASIC CHARACTERISTICS OF CALIFORNIA PUBLIC SECTOR
EMPLOYER/EMPLOYEE RELATIONS LAWS WITH THE NATIONAL LABOR RELATIONS ACT**

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SOURCE MATERIAL

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Laws Characteristics	National Labor Relations Act, 1947, as amended	Meyers-Milias-Brown Act, 1968, as amended	Brown Act 1961, as amended	Rodda Act, 1975 (effective July 1, 1976)
EMPLOYEES COVERED	<p>All employees whose employers are covered by the commerce clause of the U.S. Constitution (interstate commerce) <i>except</i>:</p> <ul style="list-style-type: none">agricultural laborers, domestic servants, independent contractors, supervisors, employees covered by Railway Labor Act, government employees (except U.S. Postal Service). <p style="text-align: center;">* * * *</p>	<p>Persons employed by all public agencies in the State of California, except employees of:</p> <ul style="list-style-type: none">1) school districts2) State of California3) certain transit districts <p>Also excluded are employees elected by popular vote or appointed by the Governor.</p> <p>A recent court decision indicates that employees of a community non-profit hospital are not covered.</p> <p style="text-align: center;">* * * *</p>	<p>All state employees, except those elected by popular vote or appointed to office by the Governor.</p> <p style="text-align: center;">* * * *</p>	<p>All public school employees K through 14, except:</p> <ul style="list-style-type: none">1) managerial and confidential employees;2) persons elected by popular vote or appointed by Governor. <p>(Supervisors, while defined as in N.L.R.A., are covered by the Act. See BARGAINING UNITS.)</p> <p style="text-align: center;">* * * *</p>
EMPLOYEE RIGHTS	<p>Employees have the right to self-organization; to form, join, or assist labor organizations; to bargain collectively through representatives of their own choosing; to engage in other concerted activities (strikes) for the purpose of collective bargaining or other mutual aid or protection; and shall also have the right to refrain from any and all such activities except to the extent that such right may be affected by an agreement requiring membership in (or equivalent dues payment -agency fee to) a labor organization as a condition of employment.</p> <p style="text-align: center;">* * * *</p>	<p>Employees have the right to form, join and participate in the activities of employee organizations of their own choosing. Employees also have the right to refrain from such activities.</p> <p>A recent court decision says that employees have the right to representation when they reasonably believe they may be subject to discipline for union-related activity.</p> <p>While only firefighters are by separate law specifically denied the right to strike, the silence of the Act on the right to strike issue has been held by the courts to make public employee strikes illegal.</p> <p style="text-align: center;">* * * *</p>	<p>Essentially same as N.L.R.A., except:</p> <ul style="list-style-type: none">1) no expressed right to strike;2) no possible obligation to pay dues. <p style="text-align: center;">* * * *</p>	<p>Identical in effect as N.L.R.A., except for right to strike.</p> <p style="text-align: center;">* * * *</p>

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UNION RIGHTS	<p style="text-align: center;">* * * *</p> <p>(1) Union, once designated or selected by majority of employees in appropriate bargaining unit, shall be the exclusive representative of all employees in the unit.</p> <p>Union has duty to represent equally and fairly all employees in the unit.</p> <p>(2) Union has the right to be present at any grievance meeting with an employee.</p> <p>(3) Union has a right to "relevant and necessary" information from the employer to bargain intelligently.</p> <p>(4) During term of a contract, the union retains right to bargain on issues not covered by contract unless right specifically waived in contract.</p> <p>(5) To seek representation election among employees it organizes, and if certified, to be protected for one year from another election by challenge from the employer or another union.</p> <p>(6) To be protected from a challenge to its exclusive representative status during the term of its contract up to 3 years, except for</p>	<p style="text-align: center;">* * * *</p> <p>An employee organization has the right to seek to become a recognized representative through formal acknowledgement by the employer. (The law does not provide exclusive representation except if an employer adopts rules and regulations setting forth a procedure among the employees to determine one.) No procedure for how "formal acknowledgement" comes about.</p> <p>A recognized employee organization has the following rights:</p> <ol style="list-style-type: none"> 1) "meet and confer" with the employer; 2) some of its employee members to have some time off with pay for "meet and confer" meetings; 3) consult with the employer over the development of rules and regulations for administering employer-employee relations;* 4) represent individual employees in grievances; 5) advance notice of proposed changes, rules and regulations, etc., except in emergencies. <p>*This right is shared with non-recognized employee organizations.</p>	<p style="text-align: center;">* * * *</p> <p>Any organization that has state employees as members can represent them. The law does not provide for exclusive recognition, nor for any distinction such as "formal acknowledgement."</p> <p>Employee representatives can use a reasonable amount of work time with pay for meeting and conferring.</p>	<p style="text-align: center;">* * * *</p> <p>Essentially the same as N.L.R.A., except no statement of right to strike.</p> <p>In addition, employee organizations have the right of access to work area, use of bulletin boards, mailboxes and meeting facilities, all within criterion of "reasonable." Right to dues checkoff to all organizations until exclusive representative determined, then only to exclusive representative.</p>

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EMPLOYER RIGHTS	<p>a brief period prior to the contract's expiration date.</p> <p style="text-align: center;">* * * *</p> <p>Employer has the right of "free speech" in which he may express his <i>opinion</i> as to advantages and disadvantages of labor organization representation by his employees.</p> <p>Employer has the right to lockout his employees for the purpose of strengthening his bargaining position with the union. (Counterpart to the union's right to strike.)</p> <p>Employer shall not be subject to a representation election for 12 months following the last valid N.L.R.B. election.</p>	<p style="text-align: center;">* * * *</p> <p>Employer has right, after consultation with recognized representative employee organization, to adopt reasonable rules and regulations for the administration of employer-employee relations under the Act.</p> <p>Employer may restrict confidential and managerial employees from representing employee organizations which represent other employees of the employer.</p> <p>Employer may prohibit "peace officers" from joining an organization with other employees, but may not prohibit "peace officers" from joining an organization composed solely of peace officers.</p>	<p style="text-align: center;">* * * *</p> <p>Employer has the following rights under the Act:</p> <ol style="list-style-type: none">1) set reasonable time limits on "meet and confer" meetings;2) establish or not establish administrative rules and regulations implementing the Act.	<p style="text-align: center;">* * * *</p> <p>Essentially the same as N.L.R.A., except no lockout of employees.</p>
UNFAIR LABOR PRACTICES	<p style="text-align: center;">* * * *</p> <p>Employer shall not:</p> <ol style="list-style-type: none">1) interfere with, restrain or coerce employees in the exercise of their rights guaranteed under law (see EMPLOYEE RIGHTS), or actively assist a union in organizing the employer's employees;2) threaten to close down plant if employees organize;3) question employees about their union activities or membership;4) spy on union gatherings;	<p style="text-align: center;">* * * *</p> <p>Not mentioned.</p> <p>(See EMPLOYEES/EMPLOYER/ UNION RIGHTS SECTIONS)</p>	<p style="text-align: center;">* * * *</p> <p>Not mentioned.</p> <p>(See EMPLOYEES/EMPLOYER/ UNION RIGHTS SECTIONS)</p>	<p style="text-align: center;">* * * *</p> <p>Specifically listed and essentially the same as N.L.R.A.</p> <p>NOTE: Under N.L.R.A., the National Labor Relations Board conducts the investigation of unfair labor practice charges, while under the administrative regulations adopted by E.E.R.B., the charging party has that responsibility unless there are "extenuating circumstances."</p>

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UNFAIR LABOR PRACTICES (continued)	<p>5) grant wage increases deliberately timed to defeat self-organizing among employees, or promise benefits if employees do not organize;</p> <p>6) discharge or discriminate against an employee for taking action against the employer under the Act (filing charges, testifying before the N.L.R.B.);</p> <p>7) refuse to bargain in good faith.</p> <p>Labor organization shall not:</p> <p>1) restrain or coerce employees in the exercise of their right to join or refrain from joining a labor organization as guaranteed under law (see EMPLOYEE RIGHTS);</p> <p>2) attempt to cause discrimination for union activities;</p> <p>3) refuse to bargain in good faith (see NEGOTIATING OBLIGATION);</p> <p>4) engage in secondary boycotts and certain types of strikes and picketing which attempt to force an employer to do or not do business with another employer, or interfere with another employer or the rights of other employees of other employers;</p>			

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BARGAINING UNITS	<p>5) charge excessive or discriminatory initiation fees;</p> <p>6) insist on wages for services not performed.</p> <p style="text-align: center;">* * * *</p> <p>An appropriate bargaining unit is a group of two or more employees who share common employment interests and conditions. The N.L.R.B. looks at bargaining history, desires of the employees, and the extent to which employees are organized. The unit may be: "employer unit, craft unit, plant unit or subdivision thereof." However, professional and nonprofessional employees shall not be mixed unless a majority of the professional unit involved vote to be included. Plant guards shall not be included in any unit including other plant employees.</p> <p style="text-align: center;">* * * *</p>	<p style="text-align: center;">* * * *</p> <p>The law offers no criteria for what constitutes an "appropriate unit." Practice varies considerably from public agency to public agency.</p> <p>The only areas that are clear in the law are the following:</p> <ol style="list-style-type: none"> 1) professional employees have the right to a separate unit; 2) peace officers have the right to a separate unit; 3) managerial and confidential employees may have a separate unit, although most public agencies have excluded them from coverage, but leaving supervisors as a separate unit. <p style="text-align: center;">* * * *</p>	<p style="text-align: center;">* * * *</p> <p>Not mentioned, except that:</p> <ol style="list-style-type: none"> 1) professional employees have the right to separate representation from non-professionals; 2) the State may separate into separate units the following: <ol style="list-style-type: none"> a) managerial and confidential b) peace officers <p style="text-align: center;">* * * *</p>	<p style="text-align: center;">* * * *</p> <p>The law provides for a minimum of three bargaining units: (1) all classroom teachers; (2) all supervisors; and (3) non-teaching classified employees.</p> <p>Only non-classroom employees may be further separated into one or more "appropriate" bargaining units. Where an issue of appropriate unit is raised, the following criteria apply:</p> <ol style="list-style-type: none"> 1) community of interest between and among the employees and their established practices including, among other things, the degree of organization; 2) size of the unit and its effect on efficient operation of the school district. <p style="text-align: center;">* * * *</p>

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DETERMINATION OF RECOGNIZED EMPLOYEE ORGANIZATION	<p>*****</p> <p>The employer must bargain with the representative selected by a majority of his employees of an appropriate bargaining unit. There is no requirement for an election so long as the representative is clearly the choice of a majority of the employees. Where the employer doubts the majority status of the union, and refuses to bargain with it, the union may petition the National Labor Relations Board for an election. With support of at least 30% of employees in the unit, the N.L.R.B. will conduct an election and will certify the union as the representative if it receives a majority of votes cast. The N.L.R.B. will, if a dispute exists, determine the appropriate bargaining unit (see BARGAINING UNITS). In addition to these representation determinations, the Act provides for elections for decertification of a union as an exclusive representative and deauthorization of a union shop clause in a contract. These elections are also conducted by the N.L.R.B.</p> <p>*****</p>	<p>*****</p> <p>The law only states that formal recognition must not be unreasonably withheld. The employer determines whether to grant exclusive recognition and may adopt rules governing the procedure for granting exclusive recognition which may be by secret ballot election. Procedures vary greatly among public agencies.</p> <p>*****</p>	<p>*****</p> <p>Not mentioned.</p> <p>*****</p>	<p>*****</p> <p>Same as N.L.R.A. in that an organization with proof of a majority of members in unit sought may get recognition without election unless employer demands election. Differs from N.L.R.A. in that: (1) rival organization needs 30% showing to force election and be on ballot; (2) where no organization has filed for exclusive representation, a majority of employees in the unit may petition for election; (3) an organization with less than a majority may not petition for an election.</p> <p>*****</p>

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PUBLIC NOTICE REQUIREMENTS	Not mentioned.	Not mentioned.	E.O. R-25-71 provides for public access to any memoranda prepared by Governor's representative describing matters where mutual agreement not reached.	All initial proposals of exclusive representative and of employer shall be presented at a public meeting of the employer and be made matters of public record.
	*****	*****	*****	*****
NEGOTIATING OBLIGATION	Requires employer and representative of employees to meet at reasonable times, to confer in good faith with respect to wages, hours and other terms or conditions of employment, and to put into writing any agreement reached if requested by either party. 60-day advance notice of proposed changes by either party prior to expiration of contract.	Requires employer and representative of employees to meet at reasonable times to confer in good faith, endeavor to reach an agreement, and to jointly prepare a memorandum of agreement to be presented to the governing body or its representative for determination. The law does not provide for a signed contract binding upon both parties. However, a recent State Supreme Court decision indicates that once a memorandum of understanding is accepted by the governing authority of a public agency, it cannot be rescinded by the authority itself. (City of Glendale, L.A. 30357, 10-3-75.)	Requires employer to meet and confer with representatives of employee organizations upon request. Executive Order R-25-71 describes the application of the above as follows: Employer shall consider as fully as he deems reasonable presentations by representatives of employee organizations prior to arriving at a determination of policy or course of action. Provides for written memorandum of understanding if mutual understanding is achieved by principal (Governor/cabinet members) as well as representatives.	Neither the initial position of the employer can be adopted nor can negotiations begin until the public, at a public meeting, has had an opportunity to express itself. Any new subject of bargaining must be made public within 24 hours. The same applies to any vote on a proposal by the employer. Same as N.L.R.A., including reduction of agreement to writing upon request and agreement shall be binding on both parties. Terms of agreement may be for a period not to exceed 3 years.

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NEGOTIATING OBLIGATION (continued)		Employer must also give prior written notice to, and meet and confer with, representative of employees before adopting new regulations or ordinances.	<p>Those issues not mutually agreed to shall be reduced to writing by the Governor's representative with a description of the areas and extent of differences. This report will be available to public.</p> <p>A subsequent memorandum (12-1-72) from Governor's representative (Agency Secretary, Agriculture and Services Agency) requires department directors to make a "good faith effort to reach a consensus" which will become a departmental directive but not a signed memorandum of understanding. The appointing authorities are required to:</p> <ol style="list-style-type: none">1) inform employee representative of proposed changes in writing in advance;2) give representative of employee organization opportunity to respond;3) provide opportunity for genuine participation in decisions affecting their conditions of employment. <p>E.O. B-7-75 rescinded E.O. R-25-71 and designated the Office of Employee Relations as the Governor's representative. The Director of the Office of Employee Relations has stated that the obligation under R-25-71 remains in effect.</p>	
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SCOPE OF NEGOTIATIONS	<p>While the law only uses the general terms “wages, hours and other terms and conditions of employment,” a series of U.S. Supreme Court decisions have extended mandatory bargaining to such subjects as: pensions for present employees; bonuses; group insurance; grievance procedure; safety practices; seniority; procedures for layoff and recall; discipline and discharge; and union security (checkoff, agency shop and union shop).</p> <p>Non-mandatory – but permissible by mutual consent – are the inclusion of supervisors in the bargaining unit and methods and materials used by employees in their work. [Other non-mandatory subjects include any matter not specifically illegal (see below).]</p> <p>Illegal subjects of bargaining are relatively few and by statute limited to: 1) certain types of union security proposals (see UNION SECURITY); 2) demands related to employees outside the bargaining unit; 3) demands for payment for work not performed; 4) assignment of work from another bargaining unit.</p> <p>Basically, the scope of negotiations has evolved through the relationships between the parties.</p> <p>*****</p>	<p>The law provides for a broad scope of negotiations by stating that it shall</p> <p>“...include, but not be limited to, wages, hours, and other terms and conditions of employment....”</p> <p>The restrictions of the scope of negotiations are set forth as follows:</p> <p>“Shall not include consideration of the merits, necessity or organization of any service or activity....”</p> <p>Through a series of court decisions, the scope of negotiations is growing and has come to include, at least in part, such issues as manning, personnel reduction, and work load, as well as the basic traditional areas, such as wages, hours, safety, grievance procedure and pensions.</p> <p>*****</p>	<p>Slightly broader than N.L.R.A.; however, Executive Order R-25-71 lists the following matters for “meet and confer” status: 1) general salary adjustments; 2) total amount of any special inequity salary adjustments; 3) general employee benefits.</p> <p>The following matters are <i>excluded</i>: 1) working conditions; 2) merit system and related matters; 3) classification plan and salary determination of classes; 4) mission, purposes, objectives and organization of the State; 5) facilities, methods, means, and the number of employees required to conduct State programs.</p> <p>A subsequent memorandum from Governor’s representative (Agency Secretary, Agriculture and Services Agency) requires department directors to consult, on request, regarding “salary matters and employee benefits limited to an organizational, occupational, professional, or other specific grouping of employees.”</p> <p>E.O. B-7-75 rescinded E.O. R-25-71. The Office of Employee Relations (Governor’s representative) says the scope of negotiations as described in E.O. R-25-71 and the memorandum concerning meet and confer responsibilities of department directors remain in effect.</p> <p>*****</p>	<p>The <i>mandatory</i> subjects of bargaining are wages, hours and other terms and conditions of employment. Terms and conditions of employment are defined to include specifically: 1) health and welfare benefits; 2) leave and transfer policies; 3) safety; 4) class size; 5) procedures used in employee evaluation; 6) grievance procedure; and 7) union security.</p> <p>In addition, for certificated employees (teachers) exclusive representative has right to consult with employer on following matters: 1) educational objectives; 2) content of courses and curriculum; and 3) textbooks.</p> <p>All other areas are prohibited unless initiated by employer and then only for consultation.</p> <p>*****</p>

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UNION SECURITY	<p style="text-align: center;">* * * *</p> <p>The labor organization has a right to propose, and employer must bargain on, a union shop proposal unless the state in which the employer is located has voted specifically to exempt itself from this provision.</p> <p>The union cannot propose, nor have a legal contract, that provides that a person must be a member before he may be hired by the employer, except in the building and construction industry. The union shop provision must contain a 30-day grace period before an employee is required to become and remain a member of the union as a condition of employment. The initiation fee must be "reasonable" and nondiscriminatory and the employee may only be required to pay periodic dues that are uniformly required.</p>	<p style="text-align: center;">* * * *</p> <p>Not mentioned in MMB.</p> <p>A Court of Appeal held that an agency shop clause negotiated in the City of Hayward was invalid because it is not specifically authorized by MMB and violates rights guaranteed to employees by Sections 3502 and 3506 of MMB. Decision of Appeal Court upheld by State Supreme Court.</p>	<p style="text-align: center;">* * * *</p> <p>Not mentioned.</p>	<p style="text-align: center;">* * * *</p> <p>Similar to N.L.R.A. Provides for maintenance of membership with escape period, or agency shop enforceable for first three years of any contract. Employer may demand separate ratification vote on organizational security clause. Majority of those voting in unit must approve.</p>
IMPASSE RESOLUTION	<p style="text-align: center;">* * * *</p> <p>The Act only provides for notice to the Federal Mediation and Conciliation Service 30 days prior to expiration of a contract, or prior to a lockout or strike, whichever date is later. Use of mediation is not mandatory. No provision for fact-finding or interest arbitration. (Different provisions for health care institutions.)</p> <p>Employer has the right to lockout employees and employees have the right to strike.</p>	<p style="text-align: center;">* * * *</p> <p>The law provides only that the parties <i>may</i> agree upon the appointment of a mediator if they fail to reach an agreement.</p> <p>Various local public agencies have adopted a wide variety of impasse procedures from voluntary mediation to mandatory mediation, mandatory fact-finding, and compulsory binding arbitration.</p> <p>With the exception of fire fighters, public employees are not by statute denied</p>	<p style="text-align: center;">* * * *</p> <p>Not mentioned.</p>	<p style="text-align: center;">* * * *</p> <p>Provides that either party may declare an impasse and request E.E.R.B. to appoint a mediator. If Board agrees impasse exists, then it sets in motion machinery that provides for mediation for 15 days and, upon request by either party, factfinding for up to 30 days after appointment of factfinding panel. Total possible time through mediation and factfinding is 80 days. The employer must make the report of 3-person factfinding panel public within ten days of receipt, unless all issues are resolved between the parties.</p>

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IMPASSE RESOLUTION (continued)	<p>Under extraordinary circumstances, the President may declare a national emergency and invoke an 80-day cooling-off period during which neither strike nor lockout is available to the parties.</p> <p>*****</p>	<p>the right to strike. Several court decisions have held that, in the absence of specific grant of right to strike, public employees do not have the right to strike.</p> <p>*****</p>	<p>*****</p>	<p>*****</p>
GRIEVANCE ARBITRATION	<p>Not mentioned. Only the duty to bargain (grieve) is provided for under the Act. A labor contract is recognized as a legally binding document and therefore enforceable in court. In absence of an agreement to arbitrate grievances and without a no-strike clause, the union is free to strike to attempt to settle a grievance.</p> <p>*****</p>	<p>Not mentioned.</p> <p>Many local agencies have established binding grievance arbitration by ordinance, charter amendment, or negotiated agreement.</p> <p>*****</p>	<p>Not mentioned.</p> <p>(E.O. R-25-71 adds an additional permissive review of certain types of grievances beyond the appointing authority.)</p> <p>*****</p>	<p>Allows for inclusion of final and binding arbitration of grievances in a negotiated agreement. Also provides for access to court by either party to force compliance of arbitration clause.</p> <p>*****</p>
ADMINISTRATION OF ACT	<p>The National Labor Relations Act is administered by the National Labor Relations Board. The Board consists of five members appointed by the President. In addition, a General Counsel is appointed to serve as the enforcement arm of the Board. Basically, the N.L.R.B. is charged with full responsibility for administering the Act in its decisions, and its judgment on the merits of a dispute brought before it is seldom successfully challenged in the courts. The N.L.R.B. is an almost autonomous agency of the federal government.</p> <p>NOTE: The N.L.R.B. only acts on request.</p> <p>*****</p>	<p>No neutral agency is provided for.</p> <p>Employers may set up their own administering board. Many local agencies have not established any administrative boards, in which case disputes often go to local superior courts, resulting in uneven development of case law.</p> <p>*****</p>	<p>State has option of adopting rules and regulations to implement Act.</p> <p>To date there have been two Executive Orders – E.O. R-25-71 and E.O. B-7-75 – and one memorandum from the Governor's representative dated 12-1-72.</p> <p>*****</p>	<p>Law provides for three-person Educational Employment Relations Board with basically the same authority and autonomy as the National Labor Relations Board: 1) conduct representation elections; 2) handle unfair labor practice charges; 3) establish own internal procedures; 4) determine appropriate units; 5) go to court to enforce decisions and awards; 6) decide issues related to employee organizations' rights, privileges and duties in the event of a merger, transfer or amalgamation between two or more employee organizations.</p> <p>(See UNFAIR LABOR PRACTICES regarding processing E.E.R.B. role in investigating charges.)</p> <p>*****</p>

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Laws Characteristics	National Labor Relations Act, 1947, as amended	Meyers-Milias-Brown Act, 1968, as amended	Brown Act 1961, as amended	Rodda Act, 1975 (effective July 1, 1976)
CONSULTATION ON ADMINISTRATION	<p>*****</p> <p>The Act does not require the N.L.R.B. to consult with either employers or labor organizations in the establishment, or revision, of its internal administrative procedures nor its rules and regulations related to its settlement of disputes between employers and employee organizations nor its conduct of elections for determining representation status of an employee organization.</p>	<p>*****</p> <p>Representatives of employee organizations have the right to consult with employer prior to adoption of rules and regulations governing employer-employee relations.</p>	<p>*****</p> <p>Not mentioned.</p>	<p>*****</p> <p>Same as the N.L.R.A.</p>
ENFORCEMENT OF ACT	<p>*****</p> <p>The decisions of the N.L.R.B. are enforced through the federal courts.</p> <p>*****</p>	<p>*****</p> <p>The law does not provide either a procedure or agency for enforcement, hence enforcement is left to the courts of California.</p> <p>*****</p>	<p>*****</p> <p>No separate agency, only the courts.</p> <p>*****</p>	<p>*****</p> <p>Same as the N.L.R.A.; E.E.R.B. may go to court to enforce decisions, etc.</p> <p>*****</p>