

PUBLIC MEETING MINUTES

February 9, 2012

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Martinez called the meeting to order at 10:01 a.m.

Members Present

Anita I. Martinez, Chair
Alice Dowdin Calvillo, Member
Sally M. McKeag, Member
A. Eugene Huguenin, Member

Staff Present

Wendi L. Ross, Deputy General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

After establishing that a quorum had been reached, Chair Martinez called the meeting to order for a return to the open session of the December 8, 2011 Public Meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Martinez read into the record the decisions that issued since the open session in December. Those were PERB Decision Nos. 2203a-M, 2211a-M, 2226-C, 2227-M, 2228-M, 2229-M, 2230-M, 2231-M, 2232, 2233-M, 2234-S, 2235, 2236-M, and 2237-S, and PERB Order No. Ad-392-M. In Request for Injunctive Relief (IR Request) No. 611 (*San Mateo County Firefighters, IAFF Local 2400 v. Menlo Park Fire Protection District*), the request was denied, IR Request No. 612 (*SEIU Local 521 v. County of Fresno*), the request was denied, IR Request No. 613 (*California Nurses Association/National Nurses United v. County of Fresno*), the request was denied, and in IR Request No. 614 (*County of Riverside v. SEIU Local 721*), the request was granted. The following IR Requests were filed and are pending the Board's determination pursuant to PERB Regulation 32465: IR Request No. 615 (*San Diego Municipal Employees Association v. City of San Diego*), and IR Request No. 616 (*Calexico Unified School District v. Associated Calexico Teachers*). A document containing a listing of the aforementioned decisions was made available at the meeting. A list containing the decisions is available on PERB's website.

Motion: Motion by Member McKeag and seconded by Member Huguenin, to close the December 8, 2011 Public Meeting.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Without objection, Chair Martinez adjourned the December 8, 2011 Public Meeting. She then opened and called to order the February 9, 2012 Public Meeting. Member McKeag led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Dowdin Calvillo and seconded by Member McKeag, that the Board adopt the minutes for the December 8, 2011 Public Meeting.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Comments From Public Participants

None.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

a. Administrative Report

Chief Administrative Officer Eileen Potter reported on lease negotiations for PERB's Headquarters Office in Sacramento and the Oakland Regional Office. In Sacramento, final tenant improvement plans were ready for distribution to the landlord who would then seek bids to complete the work. After selection of a contractor, rent negotiations would resume. The term of the lease at the Headquarters Office in Sacramento will end September 30, 2012, and would then become month-to-month. PERB has been assured by the Department of General Services that lease negotiations should be completed on time.

Lease negotiations in Oakland are continuing with the landlord. The Department of General Services (American with Disabilities Act Committee), and the landlord are discussing ADA issues in the space. Ms. Potter reported that, while market rates are low, PERB is also exploring the option to acquire additional space in that office without an increase to expenditures. The term of lease for the Oakland Regional Office will expire July 31, and would continue on a month-on-month basis pending agreement on a new lease.

Ms. Potter reported on personnel issues. She welcomed Stephanie Gustin to PERB's Division of Administrative Services. Prior to joining PERB, Ms. Gustin worked at the Department of Finance and has 28 years of State accounting experience, including supervisory and training. Ms. Potter concluded that PERB had advertised to fill vacancies in its Office of the General Counsel for three Staff Counsel III Specialists positions; one for each of the Regional Offices, and the third Staff Counsel position to be filled statewide.

b. Legal Reports

Wendi Ross, Deputy General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Ross recapped the following information since the Board's last Public Meeting in December. With respect to unfair practice charges during the months of December and January, 155 new cases were filed with the General Counsel's Office (down slightly by 15 from the prior two-month period where the number of cases filed was 170); 188 case investigations were completed (down by 24 cases over the prior period of 212). Ms. Ross noted that for the past year, the General Counsel's Office has continued to dispose of more cases each month than cases that are filed. She continued reporting that in the two-month period since the last Public Meeting, a total of 55 informal settlement conferences were conducted by staff (up by 13 over the prior period of 42). As mentioned by the Chair, since the last Board meeting in December, six requests for injunctive relief were filed as follows:

- *San Mateo Firefighters, IAFF Local 2400 v. Menlo Park Fire Protection District*, IR Request No. 611
- *SEIU Local 521 v. County of Fresno*, IR Request No. 612
- *California Nurses Ass'n (CNA) v. County of Fresno*, IR Request No. 613
- *County of Riverside v. SEIU Local 721*, IR Request No. 614
- *San Diego Municipal Employees Association (MEA) v. City of San Diego*, IR Request No. 615
- *Calexico Unified School District v. Association of Calexico Teachers (ACT)*, IR Request No. 616

In terms of litigation relating to PERB, since the December Public Meeting, four new litigation matters were filed:

- *Baprawski v. PERB; Los Angeles Community College District*, Second Appellate District. The issue in this case was whether PERB erred in Decision No. 2219, by affirming a proposed decision in which the administrative law judge (ALJ) dismissed a charge and complaint alleging that the LACCD violated EERA by relocating the office in which Ms. Baprawski worked as a counselor in 2009, in retaliation for filing a grievance and two PERB charges in 2004-2006.

- ***County of Riverside v. PERB; County of Riverside***, U.S. Supreme Court. The issue in this case was whether PERB violated the First Amendment rights of County Supervisors in deciding PERB Decision No. 2119-M.
- ***City of Palmdale v. PERB; Teamsters Local 911***, Second Appellate District, Division Four. The issue in this case was whether PERB erred in Decision Nos. 2203 and 2203a by affirming a Board Agent’s decision granting, in part, a petition for certification by which the Teamsters sought to become the exclusive representative of certain lead employees in the traffic and maintenance divisions of the City’s Department of Public Works.
- ***PERB v. SEIU Local 721; County of Riverside***, Riverside County Superior Court. The issue in this case was whether registered nurses and other employees of the Riverside County Regional Medical Center and County detention and psychiatric facilities, all of whom are represented by SEIU 721, should be deemed “essential employees,” and be enjoined from engaging in a one-day strike.

Regarding case determinations during the time period since the last Public Meeting, PERB received 13 final court rulings which were either decided in PERB’s favor or settled. Briefly, those cases are as follows:

- ***California Correctional Peace Officers Association (CCPOA) v. PERB; Department of Personnel Administration (DPA)***, Alameda County Superior Court
- ***City of Redding v. PERB; SEIU Local 1021***, California Court of Appeal, Third Appellate District
- ***Police Officers Assoc. Victor Valley CCD v. PERB; Victor Valley CCD***, San Bernardino County Superior Court
- ***Dion Salas v. PERB; City of Alhambra***, California Court of Appeal, Second Appellate District
- ***Darrell J. Moore v. PERB; HACLA, AFSCME, Council 36***, Los Angeles County Superior Court
- ***Fallbrook Elementary Teachers Association v. PERB; Fallbrook Elementary School District***, California Court of Appeal, Fourth Appellate District
- ***CSEA, Chapter 401 v. PERB; Castaic Union School District***, California Court of Appeal, Second Appellate District
- ***Association of Building, Mechanical and Electrical Inspectors v. PERB; City of San Jose***, California Court of Appeal, Sixth Appellate District

- *Santa Clara Co. Correctional Peace Officers' Association v. PERB; County of Santa Clara*, California Court of Appeal, Sixth Appellate District (Two Decisions)
- *Santa Clara County Registered Nurses Professional Association v. PERB; County of Santa Clara*, California Court of Appeal, Sixth Appellate District (Two Decisions)
- *Coalition of University Employees, Teamsters Local 2010, IBT v. PERB; Regents of the University of California (UC)*, California Court of Appeal, Third Appellate District

Chair Martinez congratulated the Office of the General Counsel. She stated that with limited resources, the General Counsel's Office undertakes many tasks and noted that especially with regard to IR Requests, staff are required to quickly assemble a team from PERB offices statewide to meet the request. Chair Martinez also acknowledged the 13 litigation case determinations reported above.

Chief ALJ Shawn Cloughesy reported on the activities of the Division of Administrative Law and stated that the ALJ report had been distributed to the Board for its review. He reported that the Division is setting cases for formal hearing within three months from the date of informal. Chief ALJ Cloughesy reported that from the prior year: (1) the number of days of formal hearing is up 41 percent; (2) the number of formal hearings completed is up 100 percent (noting that the disparity came from cases with stipulated records or less days of hearing); (3) the number of proposed decisions written is up 47 percent; and (4) the total number of cases closed is up 26 percent. With the timely scheduling of cases, Chief ALJ Cloughesy stated that the focus would now turn towards proposed decision writing, and with that, the Division would be caught up in all categories.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported that the Legislative Report was circulated to the Board for its review. He stated that one new bill had been introduced that affects PERB's jurisdiction. If enacted, that bill, a proposed amendment to the new factfinding provisions to the Meyer-Milias Brown Act (MMBA), would clarify the intent of the original legislation.

Mr. Chisholm provided detail regarding PERB's first two requests for factfinding under the MMBA. The first request from the Union of American Physicians & Dentists involved bargaining with the County of Santa Cruz and has been placed in abeyance by agreement of the parties. The parties agreed to mediation, but had not yet met with the mediator. The request was filed by the union to meet PERB regulatory timelines for factfinding requests. The second request was by the Amalgamated Transit Union for a unit in the City of Fresno. The parties did not participate in mediation, but the city agreed that the request was properly filed. PERB has submitted a list of seven names to the parties and is waiting for their selection or action in terms of factfinding.

Mr. Chisholm reported on carryover legislation that affects PERB jurisdiction. He stated that Senate Bill 259 is the only legislation that had any activity. SB 259 would amend the

Higher Education Employer-Employee Relations Act with regard to coverage of student employees. That bill has passed the Senate and is awaiting committee assignment in the Assembly.

Motion: Motion by Member Huguenin and seconded by Member McKeag that the Legal (including General Counsel and Chief Administrative Law Judge), Administrative, and Legislative Reports be accepted and filed.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

Chair Martinez stated that the Board would now consider the staff proposal for the adoption of proposed regulation changes without regulatory effort. If authorized by the Board, the proposed regulation changes without regulatory effect package would be forwarded to the Office of Administrative Law for review and approval pursuant to the Administrative Procedures Act.

Division Chief Les Chisholm explained that, together with Regional Attorneys Jonathan Levy and Katharine Nyman, changes were identified that could be made under the Administrative Procedures Act without public notice or comment. The changes identified would not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any provision of existing regulations. Most of the changes proposed relate to Item No. 1, Assembly Bill 195 which was enacted last year, but also include two minor proposed changes as follows:

- 1) AB 195 added section 3506.5 to the Ralph C. Dills Act defining certain unfair practices by a public agency employer. With regard to unfair practices under the MMBA, Section 3506.5 would be added as a section when referenced in regulations.
- 2) Correction of subdivision reference in PERB Regulation 32603(d).
- 3) Correction of minor typographical error in PERB Regulation 61360(a).

Motion: Motion by Member Huguenin and seconded by Member McKeag to forward the proposed regulation changes without regulatory effect package to the Office of Administrative Law for review and approval.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Throughout the Public Meeting, staff acknowledged Member McKeag's tenure at PERB, expressed appreciation at having worked with her for the past seven years and wished her well. Chair Martinez echoed those sentiments and stated that she was honored to have worked with Member McKeag and thanked her for her years of service.

Member Dowdin Calvillo stated that, with her four-year tenure at PERB, it had been a pleasure working with Member McKeag and acknowledged their many case-related discussions. She also acknowledged Member McKeag's continued work in the advocacy for canines and wished her well.

Member McKeag expressed appreciation and gratitude for the sentiments and well wishes from fellow Board Members, PERB staff and constituents in attendance at today's Public Meeting.

General Discussion

Chair Martinez announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through April 12, 2012 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code, sec. 11126(c)(3)), personnel (Gov. Code, sec. 11126(a)), pending litigation (Gov. Code, sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code, sec. 11126(e)(2)(c)).

Motion: Motion by Member McKeag and seconded by Member Huguenin to recess the meeting to continuous closed session.

Ayes: Martinez, McKeag, Dowdin Calvillo and Huguenin.

Motion Adopted – 4 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair