

PUBLIC MEETING MINUTES

October 12, 2006

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95814

Chairman Duncan called the meeting to order at 10:00 a.m.

Members Present

John C. Duncan, Chairman
Lilian S. Shek, Member
Sally M. McKeag, Member
Karen L. Neuwald, Member

Staff Present

Robin Wesley, Acting General Counsel
Fred D'Orazio, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Les Chisholm, Regional Director

Call to Order

Chairman Duncan called the Board to order for the continuous open session of the August 10, 2006, Board meeting. He reported that the Board met in continuous closed session to deliberate on cases pending on the Board's docket.

Since that open session in August, the Board has issued PERB Decision Nos. 1849-M, 1850, 1851-H, 1852, 1853-H, 1854-H, 1855-H, 1856-M, 1857-M, 1858, 1859, 1860, 1861, 1862-S and Administrative Appeal Decision No. Ad-356-M. Requests for injunctive relief in I.R. No. 508 (Alhambra Firefighters Association, Local 1578 v. City of Alhambra) and I.R. No. 509 (Alhambra Firefighters Association, Local 1578 v. City of Alhambra) were denied by PERB. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Before commencing the October meeting, Chairman Duncan thanked the PERB staff responsible for making the PERB 30th Anniversary Conference a great success. Acknowledgements and thanks were also extended to PERB's conference co-sponsor, CPER Director Carol Vendrillo. The conference was held on Thursday, September 21, 2006 and attracted a large and diverse constituent attendance from across all parts of the public sector. Chairman Duncan stated, "It was a testament to the continuing vitality and importance of PERB's role in labor relations, 30 years later in today's California." In reflecting back on the success of the conference, Chairman Duncan indicated that a repeat forum will be conducted

sometime in the near future in Southern California. Member Shek acknowledged and thanked Chairman Duncan for his foresight and vision in initiating and conducting such an important conference for the PERB constituents. She also echoed Chairman Duncan's comments and thanked everyone involved in making the conference a great success.

Motion: Motion by Member McKeag and seconded by Member Shek to close the August 10, 2006, public meeting.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Chairman Duncan opened the meeting of October 12, 2006 and Member McKeag led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Neuwald and seconded by Member Shek that the Board adopt the minutes of the Public Meeting of PERB for August 10, 2006.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Administrative Officer Eileen Potter reported that the final filing date for both the PERB Chief Administrative Law Judge (CALJ) and the Staff Counsel positions was on October 6, 2006. The applications for the Staff Counsel position are being reviewed and interviews will be scheduled. The examination process for qualified CALJ candidates will occur on October 18, 2006. A list of qualified applicants will follow the exam and be made available to the Board members for their review and potential interview scheduling.

Ms. Potter reported that PERB is in the midst of budget preparation drills and schedules for the fiscal year 2007-2008 Governor's Budget.

b. Legal Report

Acting General Counsel Robin Wesley reported the case processing and litigation reports were distributed to the Board for their review. During the month of September, 60 new unfair practice charges were filed and the General Counsel staff completed investigations on 59 charges. In the area of litigation, two Board decisions were appealed: 1) In PERB

Decision No. 1823 California Faculty Association v. CSU, the University filed an appeal and the opening brief was filed on July 28, 2006. PERB filed its response on October 10, 2006; and 2) On October 25, 2006 the Board filed an administrative record in PERB Decision No. 1852 Paul Pitner v. Contra Costa Community College District.

Ms. Wesley also reported that since June 2006, there was a series of cases involving strikes. Three of the cases are currently in the Court of Appeal involving the City of San Jose and Contra Costa County. These cases are in the briefing stages and no final matter has been brought before the Court of Appeal for a decision. Two additional cases involving strikes by county employees and PERB's jurisdiction are Sacramento County and Santa Clara County. PERB attended the trial court proceedings and intervened in these matters.

In the area of General Counsel personnel, Ms. Wesley reported that Carolyn Kubish will be leaving PERB to take on another position in State government. Her diligent work in the area of charge processing, litigation, injunctive relief and all other aspects of the General Counsel's Office will be greatly missed. Ms. Wesley and the Board members wished her well in her new position.

Chief Administrative Law Judge Fred D'Orazio reported that the Administrative Law Division report was distributed to the Board for their review. He indicated that there was a recent flurry of big cases regarding bargaining, discrimination, strike issues, etc. which may bottleneck the caseload when it comes down to the time to write them.

Mr. D'Orazio reported that he was pleased with the outcome of the PERB conference and indicated that positive feedback was received from PERB constituents. Member Neuwald also commended all individuals involved for their efforts in making the PERB conference a success. She commended the General Counsel staff for consistently maintaining their work products while at the same time experiencing a high volume of litigation and being understaffed.

c. Legislative Report

Regional Director Les Chisholm reported that Senate Bill 697, a bill that would have provided organizational rights to child care providers in the State of California was passed, but vetoed by the Governor on September 29, 2006. PERB's role would have been limited to checking the proof of support and conducting elections where appropriate. Had the bill been chaptered, the costs of the activities would have been reimbursed, but staff resources, time and availability to work on other matters would have been affected. Another bill that was vetoed would have amended provisions of the Trial Court Act. Assembly Bill 1995 was chaptered and made some changes in the Trial Court Act with respect to an employee's right to inspect personnel files. This bill would not likely have a major impact on PERB's workload. Another bill approved and chaptered was the annual maintenance of the Codes Legislation. Included among the sections that were amended in technical, non-substantive ways were provisions of the EERA, HEERA and the Ralph C. Dills Act. The PERB statutes will be updated accordingly.

Senate Bill 1655 adds a new section to the Education Code and will take effect on January 1, 2007. It does not affect EERA directly, but amends the Education Code. This bill addresses the rights of transfer of teachers and what may be negotiated in that respect. It may be possible in the future to see cases come before PERB that deals with the ramifications of that legislation.

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

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

Old Business

None.

New Business

Chairman Duncan requested that PERB's Office of the General Counsel give a short briefing on their proposed changes to the Board's agency fee regulations. He further stated that after the presentation and any discussion, the Board will take a vote as to whether or not to send the proposed package forward to the Office of Administrative Law in order to initiate the formal rulemaking process. Should the Board act upon this action at the meeting today, it will not constitute endorsement of the particular package, but reflect the desire by the Board to initiate rulemaking in this particular subject area.

Mr. Chisholm gave the following background regarding agency fee regulations. He stated that although the regulations have been revisited from time to time since 1989 to make various clean-up changes as new jurisdictions were added to PERB, no substantive changes have been made since that time. In 2004, PERB received a request from the California Teachers Association and a number of other unions asking that PERB consider making substantial changes to the agency fee regulations. In response to various requests, PERB held a workshop in 2005 where interested parties were invited to discuss with staff, and one another, their concerns. In May 2006, PERB held a second workshop for interested parties and provided a staff draft of possible changes to the agency fee regulations. Following the receipt of written comments, as well as meaningful discussions with constituents, PERB prepared another staff draft of possible changes to the agency fee regulations.

Mr. Chisholm indicated that one goal of the proposed changes is to better define and clarify two distinct types of actors in the agency fee process: 1) An agency fee objector (someone objecting to paying for costs determined to be non-chargeable under case law); and 2) An agency fee challenger (someone disputing whether the exclusive representative has properly calculated what is chargeable and non-chargeable). There is also an attempt to update the regulations consistent with the case law that has evolved and developed since 1989, both in the Courts and before PERB itself. Also, the proposals attempt to clarify and refine in the area of

notice requirements imposed upon the exclusive representative and the escrow requirement and rights provided to agency fee objectors and challengers. In summary, the aforementioned statements are the primary goals and focus of the General Counsel staff, and at this time, they are seeking the authority to submit the proposed package through the formal rulemaking process. If the Board votes to approve, PERB staff will prepare a notice of proposed rulemaking and other appropriate documents to submit to the Office of Administrative Law for publication of the notice. PERB is to provide at least 45 to 60 days notice to interested parties through publication in the notice register, PERB constituent mailing, PERB website (showing that the Board is considering proposed changes), the date public hearing will be held and deadline for submission of written comments. If substantial and sufficiently related revisions are made by the Board as a result of comments, there is an additional 15-day notice requirement to interested parties. The Board is not required to hold another public hearing and has up to a year from the time the process begins until the time that final action is taken to adopt or not adopt the proposed regulations.

Chairman Duncan thanked Mr. Chisholm for his presentation. Member McKeag also thanked Mr. Chisholm and the General Counsel staff for their hard work that led up to the completion of the package of proposed changes to agency fee regulations to be forwarded to the Office of Administrative Law.

Motion: Motion by Member Neuwald and seconded by Member McKeag to forward the proposed changes to agency fee regulations to the Office of Administrative Law in order to initiate the formal rulemaking process.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through December 14, 2006 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 Shek that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

Respectfully submitted,

Chris Wong, Executive Assistant

APPROVED AT THE PUBLIC MEETING OF:

John C. Duncan, Chairman