

PUBLIC MEETING MINUTES

August 13, 2009

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

Acting Chair Dowdin Calvillo called the meeting to order at 10:00 a.m.

Members Present

Alice Dowdin Calvillo, Acting Chair
Sally M. McKeag, Member
Karen L. Neuwald, Member
Robin W. Wesley, Member (Excused)

Staff Present

Tami Bogert, General Counsel (Excused)
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

After establishing that a quorum had been reached for the purposes of today's public meeting, Acting Chair Dowdin Calvillo called the Board to order for a return to the open session of the June 11, 2009 Board 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, and pending litigation, as appropriate.

Acting Chair Dowdin Calvillo read into the record the decisions that issued since the open session in June. Those were PERB Decision Nos. 2038-H, 2039-M, 2040, 2041-M, 2042-M, 2043-M, 2044-M, 2045-M, 2046, 2047, 2048, 2049-S, 2050-M, 2051-M, 2052-M, 2053-M and 2054, and Administrative Appeal Nos. Ad-379 and Ad-380. In request for injunctive relief (I.R.) No. 571 (*Jenai L. Solano v. San Bernardino City Unified School District*), the request was denied; and in I.R. No. 572 (*California Attorneys, Administrative Law Judges, and Hearing Officers in State Employment (CASE) v. State of California (Unemployment Insurance Appeals Board)*), the request was withdrawn. A document containing a listing of the aforementioned decisions was made available at the meeting.

Acting Chair Dowdin Calvillo adjourned the June 11, 2009 public meeting. She then opened and called to order the August 13, 2009 public meeting. Member McKeag led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member McKeag and seconded by Member Neuwald that the Board adopt the minutes for the June 11, 2009 public meeting.

Ayes: Dowdin Calvillo, McKeag, and Neuwald.

Motion Adopted – 3 to 0.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Chief Administrative Officer Eileen Potter reported that PERB's financial reports were timely filed with all State control agencies. She stated that she was honored to report that for the eighth consecutive year, PERB has received an award for achieving excellence in financial reporting. The major criteria for receiving this award is that the financial information in the reports must be comparable with the expenditure and revenue budgetary schedules submitted to the Department of Finance. Ms. Potter then recognized and applauded Paula Crouch, Senior Accounting Officer. She stated that PERB's receipt of this award is a direct result of Ms. Crouch's hard work and dedication.

Ms. Crouch addressed and thanked the Board for its acknowledgment. She stated that her accomplishments in financial reporting would not have been possible without the expert guidance and motivation of her manager, Eileen Potter. Ms. Crouch also thanked her co-workers, stating that she would not have been successful in this task without their cooperation.

Acting Chair Dowdin Calvillo thanked and congratulated Ms. Crouch and Ms. Potter stating that receipt of this award should be recognized as a significant accomplishment in that PERB is a small agency. She also congratulated all staff who assisted and participated in PERB's receipt of this award.

Ms. Potter concluded stating that work has begun on the Governor's 2010-2011 budget. At this time, such work for PERB consists of completion of various schedules.

b. Legal Report

Wendi Ross, Deputy General Counsel, reported on behalf of PERB's General Counsel, Tami Bogert, who was excused from today's public meeting. Ms. Ross reported that the monthly activity and litigation reports had been distributed to the Board. She highlighted several items in those reports, specifically since the Board's last public meeting in June, and also provided data for the fiscal year which ended June 30, 2009.

Ms. Ross reported that, with regard to monthly activities, during the months of June and July, 205 new cases were filed, 162 case investigations were completed and staff conducted 32 informal settlement conferences. She stated that new cases include unfair practice charges, representation cases, impasse related requests and compliance assignments. Ms. Ross continued that for purposes of comparison, the number is up for unfair practice charges. Likewise, the fiscal year-end numbers reflect PERB's increased workload.

In Fiscal Year 2008-2009, approximately 870 unfair practice charges were filed compared to 816 unfair practice charges filed in the previous fiscal year. She stated that the numbers for the last fiscal year are approximations and that final numbers, as well as comprehensive year-end data, would be reported in PERB's Annual Report to the Legislature in October. Ms. Ross concluded her report with regard to monthly activities stating that, as noted by Acting Chair Dowdin Calvillo, two requests for injunctive relief were filed during the months of June and July: one was considered and ultimately denied by the Board, and the other was withdrawn by the filing party. She stated that in Fiscal Year 2008-2009, approximately 19 requests for injunctive relief had been filed.

Ms. Ross next reported on litigation matters. She reported that the County of Sacramento has filed a judicial appeal in three separate cases challenging three PERB decisions in which the Board found that the County violated the Meyers-Milias-Brown Act (MMBA) by unilaterally changing retirement benefits of specified current employees. These appeals were filed in the Third District Court of Appeal. Essentially the County seeks for the appellate court to vacate PERB's decisions and award costs in these matters. Briefing is anticipated to begin at the end of the year or early 2010 in these cases. (*County of Sacramento v. PERB*; *Sacramento County Attorneys Association et al.*, California Court of Appeal, Third Appellate District, Case No. C062483; *County of Sacramento v. PERB*; *United Public Employees, Local 1*, California Court of Appeal, Third Appellate District, Case No. C062484; *County of Sacramento v. PERB*; *SEIU Local 1021*, California Court of Appeal, Third Appellate District, Case No. C062482.)

Ms. Ross then reported that the California Supreme Court granted review of the First District Court of Appeal's opinion in the Firefighters Local 188 case. In this case, the appellate court held that, in limited circumstances, some PERB decisions are subject to judicial review by way of traditional mandamus. Opening briefs are due in the Supreme Court next month. (*International Association of Fire Fighters Local 188 v. PERB*; *City of Richmond*, California Supreme Court Case No. S172377, California Court of Appeal, First Appellate District, Case No. A114959, Contra Costa County Superior Court Case No. N050232.)

In conclusion Ms. Ross briefly reported that since the Board's last public meeting, two summary denials/dismissals have issued by the appellate courts with respect to two different challenges brought against PERB decisions (PERB Decision No. 1990, the Deglow case, and PERB Decision No. 1876a-H, the CFA parking case). In light of these dismissals, the litigation is complete and the PERB decisions remain undisturbed. (*Annette Deglow v. PERB*; *Los Rios College Federation of Teachers Local 2279*, California Court of Appeal, Third Appellate District, Case No. C060717; *California Faculty Association*

(CFA) v. PERB; California State University, California Court of Appeal, Third Appellate District, Case No. C061905.)

Chief Administrative Law Judge McMonigle reported on the activities of the Division of Administrative Law. He stated that reports had been distributed to the Board; one for the month of June and end of the fiscal year information, and the other for the month of July. Mr. McMonigle highlighted information from the fiscal year report stating that essentially the division's caseload is increasing and the number of administrative law judges (ALJs) is decreasing. He reported that in Fiscal Year 2008-2009, 147 cases were assigned for formal hearing, compared to 83 cases that were assigned for formal hearing in the previous fiscal year.

At the beginning of Fiscal Year 2008-2009 the division had seven ALJs and 39 cases assigned for formal hearing. Currently, the division has six ALJs and 60 cases assigned for formal hearing. Mr. McMonigle reported that decision issuance for the division has increased. For the fiscal year just ended, the ALJs issued 52 proposed decisions. For most years, since PERB's jurisdiction over the MMBA took effect in 2000-2001, the number of decisions issued has been in the mid-40s. Mr. McMonigle concluded reporting that currently the division has six ALJs but announced that with ALJ Ann Weinman's retirement in March 2010, PERB will be down to five ALJs.

Member McKeag asked if there was any feedback given that ALJs are no longer conducting informal settlement conferences. Instead, the General Counsel's Office are scheduling these. Mr. McMonigle replied there has been no negative feedback. Member McKeag also recognized the exceptional teamwork between the Division of Administrative Law and the General Counsel's Office in this regard.

Mr. McMonigle also responded that in years past the ALJs conducted all of the informal settlement conferences. Informal settlement conferences were then conducted by both the ALJs and staff from the General Counsel's Office. Currently, because of the ALJ formal hearing caseload, informal settlement conferences are solely conducted by staff from the General Counsel's Office. He stated that unless there is an exceptional case or the General Counsel requests ALJ involvement, the ALJs do not participate in settlement conferences. He continued that the General Counsel staff do an excellent job, settle most of the cases, and the parties appear happy with the service received from the General Counsel's Office.

Mr. McMonigle responded to an inquiry by Acting Chair Dowdin Calvillo about formal hearings now being scheduled in November/December. He stated that information was correct and that most dates in November were gone, but there are dates in December which are still available.

Member Neuwald wanted to know, with formal hearings not being scheduled until November/December, if the parties were attending the settlement conferences because they recognize the delay in setting hearings.

Ms. Ross responded that the parties are definitely mindful and may request additional days of informal settlement conference to try and resolve matters in light of the delay in setting a date for formal hearing. She stated that she could not say conclusively that any settlements are necessarily reached because of this delay.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on legislation that affect matters within PERB's jurisdiction or are of interest. Mr. Chisholm stated that, at this time, there continues to be very little legislative activity on which to report. He briefly reported on one bill that PERB has been following, Senate Bill 656 (DeSaulnier). SB 656 would modify the MMBA with respect to PERB's jurisdiction over bargaining units that include peace officers. SB 656 is currently in the Assembly Appropriations Committee where PERB is monitoring to see what action is taken on this bill. This bill has previously been approved by the Senate.

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

Ayes: Dowdin Calvillo, McKeag, and Neuwald.

Motion Adopted – 3 to 0.

Old Business

None.

New Business

None.

General Discussion

Acting Chair Dowdin Calvillo 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 October 8, 2009, 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 Neuwald and seconded by Member McKeag to recess the meeting to continuous closed session.

Ayes: Dowdin Calvillo, McKeag, and Neuwald.

Motion Adopted – 3 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Alice Dowdin Calvillo, Acting Chair