

PUBLIC MEETING MINUTES

December 9, 2010

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

Chair Dowdin Calvillo called the meeting to order at 10:05 a.m.

Members Present

Alice Dowdin Calvillo, Chair
Sally M. McKeag, Member
Robin W. Wesley, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Christine Bologna, Acting Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

After establishing that a quorum had been reached, Chair Dowdin Calvillo called the Public Employment Relations Board (PERB or Board) to order for a return to the open session of the October 14, 2010 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.

Chair Dowdin Calvillo read into the record the decisions that issued since the open session in August. Those were PERB Decision Nos. 2137-H, 2138-M, 2139-M, 2140-H, 2141-M, 2142-M, 2143-M, 2144-M, 2145-M, 2146-M; Administrative Appeal Nos. Ad-385, Ad-386-M, Ad-387-M, Ad-388 and Judicial Review No. JR-25. In request for injunctive relief (I.R.) No. 591 (*Kern County Probation Officers' Association v. County of Kern*), the request was denied; and I.R. No. 592 (*Siskiyou County Employees Association/AFSCME v. Siskiyou County Superior Court*), the request was denied. A document containing a listing of the aforementioned decisions was made available at the meeting.

Without objection, Chair Dowdin Calvillo adjourned the October 14, 2010 public meeting. She then opened and called to order the December 9, 2010 public meeting. Without objection, Chair Dowdin Calvillo substituted the previous roll call for the purposes of declaring a

quorum. Hearing no objection, the order was made. Member Wesley led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Wesley and seconded by Member McKeag, that the Board adopt the minutes for the October 14, 2010 public meeting.

Ayes: McKeag, Wesley, and Dowdin Calvillo.

Motion Adopted – 3 to 0.

Comments From Public Participants

Kevin Colburn, liaison for the California Teachers Association, wished the PERB staff a happy holiday.

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 that all schedules necessary for the submission of PERB's budget were submitted on time. These are the schedules used by the Department of Finance to finalize the Governor's 2011-2012 budget which is due out on January 10, 2011. Member Wesley inquired if the PERB schedules for the current year were submitted as budgeted, without changes. Ms. Potter responded the following changes were made to the schedules: a workforce cap, an IT reduction, an OE & E reduction, a reduction for the contract issues for the one day of PLP and a 3 percent increase for retirement, etc. She stated that some of the cuts will be effective this year and some will become effective next year.

b. **Legal Report**

Ms. Bogert reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports, Ms. Bogert recapped, in particular since the Board's last public meeting in October, the following information. In regards to monthly activities, Ms. Bogert reported that during the months of October and November, 148 new cases were filed with the General Counsel's office; 156 case investigations were completed; and a total of 59 informal settlement conferences were conducted by staff. During the same two-month period, as Chair Dowdin Calvillo mentioned earlier, 2 requests for injunctive relief were filed; both were denied by the Board.

In terms of litigation, Ms. Bogert first reported on the case, *CCPOA v. PERB; State of California (DPA)*, in which CCPOA seeks to overturn PERB Decision No. 2130-S (pertaining to the State's LBFO implementation in 2007). The case is pending in the Third District Court of Appeal and PERB will, later this month, file the administrative record with the court. Thereafter, a briefing schedule will be in place.

Secondly, Ms. Bogert reported that oral argument occurred in the Sixth District Court of Appeal in the case of *PERB v. SEIU Local 521* (pertaining to an injunction obtained by PERB to prohibit certain employees from striking against the City of Palo Alto last year). A major issue on appeal is the applicability of Labor Code section 1138. Following oral argument, the appellate court sought supplemental briefing; the supplemental briefs are due later this month from the parties.

Lastly, Ms. Bogert stated that PERB also presented oral argument in the California Supreme Court in the case of *IAFF Local 188 v. PERB; City of Richmond*, in which the union seeks to overturn PERB Decision No. 1720-M. A major issue in this litigation is whether decisions by PERB not to issue a complaint in unfair practice cases are subject to judicial review. The Court's decision is anticipated within the next couple of months. Ms. Bogert recognized and extended special thanks to Deputy General Counsel Wendi Ross who worked around the clock diligently to prepare for and present the oral arguments on PERB's behalf on the two aforementioned oral argument cases.

On behalf of the Board members, Member McKeag thanked the General Counsel's Office for their continued hard work in litigation matters.

Acting Chief Administrative Law Judge (ALJ) Christine Bologna 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. Ms. Bologna reported that 14 new cases were assigned for hearing to PERB's 5 ALJs. She further reported there are 73 hearings assigned to the ALJs and 22 cases have been submitted for decisions to be written. For this fiscal year, there were approximately 11 days of hearings held per ALJ. There were 5 formal hearings completed in November and 19 formal hearings have been completed to date for the fiscal year. She was also proud to report that the Division closed nearly 50 cases this fiscal year.

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 reported that he had received one inquiry relating to a possible change to the Education Code with respect to the scope of representation. He will keep the Board apprised of any future developments.

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

Ayes: McKeag, Wesley and Dowdin Calvillo.

Motion Adopted – 3 to 0.

Old Business

None.

New Business

None.

General Discussion

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 February 10, 2011 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 Wesley and seconded by Member McKeag to recess the meeting to continuous closed session.

Ayes: McKeag, Wesley and Dowdin Calvillo.

Motion Adopted – 3 to 0.

Respectfully submitted,

Chris Wong, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Alice Dowdin Calvillo, Chair