

## **PUBLIC MEETING MINUTES**

August 9, 2012

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

Chair Martinez called the meeting to order at 10:00 a.m.

### **Members Present**

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

### **Staff Present**

Suzanne Murphy, General Counsel  
Les Chisholm, Division Chief, Office of General Counsel  
Shawn Cloughesy, Chief Administrative Law Judge  
Annie Song-Hill, Interim Supervising Conciliator, State Mediation and Conciliation Service

### **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 June 14, 2012 Public Meeting. She reported that the Board met in continuous closed session to deliberate the 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 June. Those were PERB Decision Nos. 2249a-M, 2255a-H, 2267a-M, 2273, 2274, 2275, 2276-M, 2277-M and 2278, and PERB Order No. Ad-395. Member Dowdin Calvillo noted that for the first time in quite a while, there were no requests for injunctive relief that were filed since the last Public Meeting. Chair Martinez announced that a document containing a listing of the aforementioned decisions was made available at the meeting. And that a list containing the decisions is available on PERB's website.

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Huguenin, to close the June 14, 2012 Public Meeting.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

Without objection, Chair Martinez adjourned the June 14, 2012 Public Meeting. She then opened and called to order the August 9, 2012 Public Meeting. Member Dowdin Calvillo led in the Pledge of Allegiance to the Flag.

## Minutes

**Motion:** Motion by Member Huguenin and seconded by Member Dowdin Calvillo, that the Board adopt the minutes for the June 14, 2012 Public Meeting.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 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

In Chief Administrative Officer Eileen Potter's absence, Stephanie Gustin, Accounting Administrator, reported on behalf of the Division of Administration. Ms. Gustin reported that PERB's fiscal year 2011-2012 financial reports had been submitted and final balances had been provided to PERB Board Members. She stated that the lease for PERB's Sacramento headquarters office had been submitted to the lessors for review and signature. Once that lease has been finalized and signatures obtained, work would begin on the agreed upon tenant improvements. Staff would be notified when workers would be on site, although it is anticipated that most tenant improvements would be done after work hours. Ms. Gustin reported that, in addition, most hurdles had been cleared in negotiations for PERB's Oakland office and that the Department of General Services expected that lease to be signed by September. Confirming for Chair Martinez, Ms. Gustin stated that alterations in that office were also on track to be completed as requested by PERB.

### b. Legal Reports

Suzanne Murphy, General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Murphy reported the following information about activity since the Board's last Public Meeting in June: With respect to unfair practice charges during the months of June and July, 200 new cases were filed with the General Counsel's Office (the same number as the prior two-month period); 221 case investigations were completed (up by 18 over the prior period), and during the same period a total of 35 informal settlement conferences were conducted by staff (down by 26 from the prior period).

Ms. Murphy also reported on the total number of cases in the fiscal year just ended: 767 unfair practice charges (up by 24 over the same time last year); 77 representation cases (up by 7 over last year); 170 mediation or impasse requests (with large surges in May and June, up by 59); 44 factfinding requests (up by 4); and 19 compliance cases (up by 9).

Ms. Murphy also reported that the amount of time General Counsel Office staff has spent on

litigation has taken a quantum leap during this past fiscal year. Nevertheless, for all but one month last year, the General Counsel's Office has seen a decrease in the backlog of unfair practice charges and other cases, completing more investigations each month than the number of new charges coming into the office. She noted that it was even more encouraging to see that current unfair practice charge caseloads were lower overall and more evenly distributed among General Counsel Office Board agents. Ms. Murphy added that, as mentioned by Member Dowdin Calvillo, no requests for injunctive relief had been filed at PERB over the last two-month period.

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

1. *Glendale City Employees Association v. Public Employment Relations Board; City of Glendale*, Los Angeles Superior Court, Case No. BS137172. This case was filed in June and PERB filed a notice of appearance on July 18, 2012.

The other three new litigation matters arose from the *San Diego* litigation as to PERB Case No. LA-CE-746-M:

2. *City of San Diego v. Public Employment Relations Bd.*, California Supreme Court, Case No. S203478. This was a petition for review filed by the citizen proponents of the ballot measure at issue in PERB Case No. LA-CE-746-M. The Supreme Court denied the petition on July 11, 2012.
3. *City of San Diego v. Public Employment Relations Bd.*, California Supreme Court, Case No. S203952. This was a petition for review filed by the City of San Diego. The Supreme Court denied the petition on July 14, 2012.
4. *San Diego Municipal Employees Association v. Superior Court*, California Supreme Court, Case No. S204306, was filed on July 27, 2012. In this case, the City of San Diego filed a petition for review of the decision of the Court of Appeal for the Fourth Appellate District, in which that court granted a petition for writ of mandate by which the San Diego MEA sought to vacate and reverse an order of San Diego Superior Court staying PERB's administrative proceedings on the underlying unfair practice charge. That petition for review remains pending.

For case determinations since the last Public Meeting, PERB received final court rulings as follows:

1. In two of the new *City of San Diego* cases (item nos. 2 and 3 above), the California Supreme Court summarily denied petitions for review in both cases.
2. On June 12, 2012 in *Moore v. Public Employment Relations Bd.; Housing Authority of the County of Los Angeles & AFSCME, Council 36*, Case No. B240272, the Court of Appeal for the Second Appellate District dismissed the appeal based on findings that the appellant is a vexatious litigant.

3. On June 14, 2012, in *City of San Diego v. PERB; San Diego Municipal Employees Association*, Case No. D062090, the California Court of Appeal for the Fourth Appellate District summarily denied the city's petition for writ of mandate and request for an immediate stay of the PERB administrative proceedings on the unfair practice charge. This was the decision at issue in California Supreme Court Case Nos. S203478 and S203952.

Ms. Murphy concluded her report by announcing that in July 2012 Ronald Pearson was hired as a Senior Regional Attorney in the Sacramento headquarters office. Mr. Pearson comes to PERB with excellent credentials and had over six years of experience as a Labor Relations Counsel at the Department of Personnel Administration (now known as the California Department of Human Resources or CalHR).

In answer to Chair Martinez's questions, Ms. Murphy stated that in the above-mentioned *Glendale* case, PERB has used, as a viable strategy, the filing of a notice of appearance in a case unless or until it is invited to participate more fully by the court or one or more of the parties to the case seek that type of order from the court. She also confirmed that two of the *San Diego* cases had been disposed of by the California Supreme Court and that only one case, which was recently filed in July, remained pending in that Court.

Chief Administrative Law Judge 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 cases are continuing to be scheduled for formal hearing within three months from the date of the informal conference. He stated that the division had a record breaking year with regard to fiscal year totals: proposed decision issuance is up by 75 percent; the number of days of formal hearing is up by 55 percent; and the number of formal hearings completed is up by 150 percent. He stated the division's intent to focus on decreasing the backlog in cases which have submitted to proposed decision.

In conclusion, Chief ALJ Cloughesy announced the retirement of ALJ Thomas Allen in December. He commented about ALJ Allen's tenure at PERB, his exemplary skills with regard to cases heard and decision writing, that he was a team player and captain in Glendale, and that he would be missed as an anchor in that regional office.

With the announcement of ALJ Allen's impending retirement Member Huguenin inquired about staffing and whether the goal of setting hearings within three months of the informal conference could be kept. Mr. Cloughesy responded that because there is also a request for a one-month leave by another ALJ, there may be a period of time where keeping those goals would be a challenge for the division.

c. State Mediation and Conciliation Service (SMCS) Report

On behalf of the SMCS, Interim Supervising Conciliator Annie Song-Hill reported at the Public Meeting for the first time since that agency's transfer to PERB effective July 1 from the Department of Industrial Relations. Ms. Song-Hill utilized a power point presentation and provided background about SMCS and a description of services offered. She stated that SMCS was founded in 1947 under Labor Code 65 to promote sound labor-management relationships. Initially, SMCS mediated labor disputes primarily in the private sector. With public sector labor statutes enacted in the late 1960's and 1970's the emphasis began

to shift to the public sector. Currently, SMCS works primarily in the public sector, although its enabling legislation is broader. SMCS jurisdiction includes cities, counties, special districts, K-12 public schools, community colleges, California State and Regents of the University of California systems, trial courts, court interpreters, state bargaining units and public transit. She stated that there are approximately 1.85 million public sector workers with just over 50 percent represented by a union. Under federal and state statutes, Ms. Song-Hill stated that confidentiality is the cornerstone of mediation and that work under SMCS is considered as a settlement conference. Any information arising out of mediation is considered off the record and confidential.

Ms. Song-Hill commented on the Golden Gate Ferry Workers strike on May 25 as an example of the long hours worked and dedication shown by mediators at SMCS. She stated in that case, which ended in a settlement, SCMS' services were requested over the weekend; mediation was scheduled subsequent to the parties' request for a board of investigation; the Governor's Office made inquiries; and on the last day, two mediators participated in mediation that lasted 17 straight hours over two days. Ms. Song-Hill stated that in other mediation cases dates are scheduled, but may be cancelled by the parties. As is the nature of the work, the schedule is very irregular, however, whenever there is a threat of a strike, SMCS makes that case its first priority.

Ms. Song-Hill reported briefly on each of several other areas of work performed at SMCS, in addition to contract impasses: grievance mediation; representation and election services; panel of arbitrators; and training and facilitation. Ms. Song-Hill also informed the Board that, since July 2010, SMCS has charged a fee for some of its services, but not for mediation.

SMCS caseload statistics were then provided and there was discussion held regarding Ms. Song-Hill's presentation.

d. 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 there was very little on which to report at this time, and noted legislation previously reported which had been enacted and chaptered including the legislation putting SMCS under PERB, and the status of the In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA). He reported on pending legislation as follows:

Assembly Bill 1606 (Perea). Makes revisions to the MMBA with respect to factfinding. AB 1606 is pending a final vote in the Senate.

Assembly Bill 1659 (Butler). Would bring the City of Los Angeles and the County of Los Angeles under PERB's jurisdiction. This bill is also pending a final vote in the Senate.

Senate Bill 259 (Hancock) – Amends HEERA with respect to student employees and their coverage under the Act. SB 259 is in the Assembly Committee on Appropriations.

Mr. Chisholm next reported on rulemaking. With respect to the implementation of Assembly Bill 646 last year, as previously reported, the Certificate of Compliance was filed with the Office of Administrative Law and approved on July 30, 2012, thus completing the adoption of the regulations.

Regarding rulemaking, Mr. Chisholm continued stating that discussion had been held internally at PERB and at a June Advisory Committee meeting regarding possible changes to regulations over a broad array of subjects which might be presented to the Board. Within the next week, more information and a revised draft would be posted on PERB's website inviting further comment from stakeholders by month's end. PERB staff could then determine whether to submit finalized proposals on these various topics to the Board for consideration at its October Public Meeting, in order to begin the formal rulemaking process. If the Board so authorizes, a Notice of Proposed Rulemaking would be published in late October, with an opportunity for public comment between then and the December Public Meeting.

As part of the rulemaking package staff are reviewing the existing regulations regarding the transfer of the SMCS from the Department of Industrial Relations to PERB, since they are now deemed to be PERB regulations. Staff are reviewing the regulations and may propose substantive changes to the Board.. The proposed regulatory changes fall into two areas. (1) referred to earlier, the regulations that provide for SMCS to charge for certain services; and (2) the regulations that have to do with representation procedures under the various public transit acts where they are not subject to the MMBA and where PERB now through the SMCS is charged with administering various processes including unit determination and election processes.

Other rulemaking projects PERB staff are reviewing to present to the Board by year's end or early 2013 include the following:

1. With expressed legislative authorization for emergency rulemaking, regulations with regard to IHSSEERA could be accomplished by amending existing regulations to incorporate references to the statute, although there are areas that need to be addressed specifically, that is, representation procedures for any petitions for unrepresented units.
2. In 2006 the Board adopted a package of regulatory changes which deleted what were then standalone procedures for filing public notice and financial statement complaints. Those provisions were repealed and the unfair practice regulations amended to allow those types of issues to be filed as unfair practice charges. PERB staff are now contemplating undoing those regulatory changes, that is, to restore both the public notice complaint and the financial statement complaint as separate case types, and consequently amend them out of the unfair practice regulations. There was a general discussion regarding various aspects of this possible regulatory change.

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Huguenin that the Legal (including General Counsel and Chief Administrative Law Judge), Administrative, State Mediation and Conciliation Service, and Legislative Reports be accepted and filed.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

**Old Business**

None.

**New Business**

Although there was no new business at today’s Public Meeting, Member Huguenin took this time to announce that Priscilla Winslow had rejoined PERB staff as his Legal Advisor.

**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 October 11, 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 Dowdin Calvillo and seconded by Member Huguenin to recess the meeting to continuous closed session.

**Ayes:** Martinez, Dowdin Calvillo and Huguenin.

**Motion Adopted – 3 to 0.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Anita I. Martinez, Chair