

PUBLIC MEETING MINUTES

June 13, 2013

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

Chair Martinez called the meeting to order at 10:02 a.m.

Members Present

Anita I. Martinez, Chair
A. Eugene Huguenin, Member
Priscilla S. Winslow, Member
Eric R. Banks, Member

Staff Present

Suzanne Murphy, General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Loretta van der Pol, Supervising Conciliator, State Mediation & Conciliation Service (Excused)

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 April 11, 2013 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 April. Those were PERB Decision Nos. 2315-M and 2316-M, and Order Nos. Ad-399-M and IR-56-H. The following Requests for Injunctive Relief (IR Request) were filed and/or pending: No. 633 (*Service Employees International Union Local 1021 v. City of Fremont*), the request was granted; No. 634 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*), the request was denied (see PERB Order No. IR-56-H); No. 635 (*Regents of the University of California v. AFSCME Local 3299*), the request was granted, in part; No. 636 (*Regents of the University of California v. UPTe Local 9119*), the request was granted, in part; No. 637 (*Regents of the University of California v. AFSCME Local 3299*), the request was denied; and in No. 638 (*Ramona Teachers Association v. Ramona Unified School District*), the request was withdrawn. Chair Martinez announced that a document containing a listing of the

aforementioned decisions was made available at the meeting, and that the decisions were available on PERB's website.

Motion: Motion by Member Huguenin and seconded by Member Banks, to close the April 11, 2013 Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez adjourned the April 11, 2013 Public Meeting. She then opened and called to order the June 13, 2013 Public Meeting.

Minutes

Motion: Motion by Member Winslow and seconded by Member Banks, that the Board adopt the minutes for the April 11, 2013 Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Comments From Public Participants

Wenjiu Liu, representing himself, appeared before the Board. This is Mr. Liu's third appearance at a PERB Public Meeting. He thanked the Board for the opportunity to appear and expressed that he was "glad to see that the Board [had] two more Members" and that he had been "working with the Board for 622 days." Mr. Liu briefly provided background on his former employment as a Professor of Finance at the California State University (CSU), and also as a union member and a department representative where he participated in the removal of a dean. Mr. Liu was denied tenure, suspended, and ultimately terminated in retaliation for his representation activities, he stated. Mr. Liu informed the Board that he worked with the union as a department representative, worked with other faculty members in that capacity, filed 43 grievances and, finally, was escorted off the CSU campus at the same time he filed an unfair practice charge at PERB. Mr. Liu expressed his appreciation for the assistance and "very difficult" decisions made in an expeditious manner by PERB staff regarding his cases. He also expressed his thought that the workload for the Administrative Law Judges was "too high." He stated that he believed

"the Board best to defend the Higher Education Act. But, due to the high working load, the judge tried his best to refer me to grievance hearings and arbitration. I do not agree with him because I know there was a case, *North Shore Publishing Co. (1973)*, it says, an employee was fired for fighting grievances should not be deferred back to grievances. And I also read a past case that PERB had an opinion that someone was retired from working with fighting grievance at the Board should not be deferred to arbitration. The National Labor Relations Board said if you retaliate anyone for working with National Labor Relations Board the case should not be deferred to arbitration."

Mr. Liu provided each of the Board Members with documents, then briefly discussed his appearance at the PERB formal hearing in his case.

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 stated that her report would include the following: an update on the construction project in the Oakland Office; the possible expansion of the suite in the Glendale Office; an update on the security project in the Sacramento Headquarters Office; and a report on the status of PERB's 2013-2014 budget.

Construction Project in Oakland Office: Ms. Potter stated that last week construction had begun in PERB's Oakland Office. In the additional space acquired for that office, the tenant improvements included a new room where formal hearings are to be held, a waiting room and an associated office for the administrative law judge. From information received from the Department of General Services (DGS), she reported an anticipated move-in date of June 30. At that time, within the newly improved office suite, employees would relocate offices and the remaining State Conciliation and Mediation Service (SCMS) employee would move-in from the Elihu Harris State Building.

Additional Space in Glendale Office: Ms. Potter reported that inquiries had been made to the building manager regarding the vacant space immediately adjacent to PERB's office in Glendale. Plans had been submitted by the building manager and forwarded to DGS for review. She would keep the Board informed about DGS's response regarding an amendment to PERB's current lease and if it was feasible. Ms. Potter stated that the additional space would be welcomed in that office.

Security Plans in PERB's Headquarters Office in Sacramento: Ms. Potter stated that to complete the project for employees and staff office suites, DGS and the building manager were currently in discussions regarding plans to enclose the second floor hallway. It is anticipated that an agreement would be forthcoming and the work schedule set.

Budget: The Legislature and the Governor have reached a budget agreement, but were working on a myriad of trailer bills. With the exception of small increases for benefit adjustments, reported Ms. Potter, at this time PERB's budget appropriation remained the same as it was in the 2012-2013 fiscal year. She stated that any changes to the agency's budget based on trailer bills would be promptly reported to the Board.

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 provided the following information about activity since the Board's last Public Meeting in April. With

respect to unfair practice charges during the months of April and May 2013, 213 new cases were filed with the General Counsel's (GC) Office (up by 32 over the prior two-month period). With a total of 131 unfair practice charges filed, Ms. Murphy noted the sharp increase for that two-month period, especially in the month of May where 75 new charges were filed. The number of mediation and factfinding requests also rose during that period by a total of 13. Reporting on a notable representation matter, Ms. Murphy informed the Board that the certificated staff (403 teachers) at the Brentwood Union School District voted in favor of representation by the Brentwood Teachers Association. Continuing with activity in the GC office, Ms. Murphy reported that during the months of April and May, 176 case investigations were completed (down by 14), and 39 days of informal settlement conference were conducted by GC staff.

Ms. Murphy provided information regarding the IR Requests that had been filed and/or remained pending before the Board since the Public Meeting in April as follows:

- IR Request No. 633 (*Service Employees International Union Local 1021 v. City of Fremont*). The issue was whether the city should be enjoined from withdrawing recognition and refusing to bargain with SEIU following a disaffiliation election conducted by an individual city employee without authorization by the board of the exclusive representative. The request was granted on April 15, 2013. There was litigation as a result of this IR Request.
- IR Request No. 634 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*). This request was denied on June 7, 2013, in a written Board decision. PERB Order No. IR-56-H is the first IR decision the Board has issued since 2001 and provided the GC Office with appreciated guidance on how to deal with injunctive relief requests.
- IR Request No. 635 (*Regents of the University of California v. AFSCME Local 3299*); No. 636 (*Regents of the University of California v. UPTE Local 9119*); No. 637 (*Regents of the University of California v. AFSCME Local 3299*). The issue in these IR Requests was whether the unions should be enjoined from calling one- or two-day strikes in the Patient Care Technical (EX) unit, and sympathy strikes in the Health Care Professionals (HX) and Service (SX) units at UC Medical Centers. The IR Requests with regard to AFSCME Local 3299 and UPTE for the strikes in the HX and EX units were granted, in part. The IR Request with regard to the strike in the SX unit was denied. These IR Requests are discussed in detail later in the GC report as there was resultant litigation.
- IR Request No. 638 (*Ramona Teachers Association v. Ramona Unified School District*). The issue was whether the district should be enjoined from imposing a last, best and final offer based on allegations of bad faith bargaining on the part of both parties. This IR Request was withdrawn after a 14-hour informal conference conducted in PERB's Glendale Office on May 29 by Regional Attorney Ellen Wu. At the informal conference, tentative agreement was reached by the parties on a two-year collective bargaining agreement. The agreement was ratified by the union on June 5 and by the district on June 6. The case is now complete and the three related unfair practice charges withdrawn.

In terms of litigation relating to PERB since the Public Meeting in April, Ms. Murphy reported that most notable is that some cases, especially regarding the IR litigation matters, were staffed with as many as five or more Attorneys (there are a total of 13 Attorneys in the GC Office). She summarized litigation matters as follows:

- *PERB v. City of Fremont*. Litigation as a result of IR Request No. 633. In this case PERB's ex parte application for a temporary restraining order (TRO) and order to show cause (OSC) regarding a preliminary injunction was heard on May 6 and granted, in part. After a hearing on May 28, PERB's request for a preliminary injunction and SEIU's motion to intervene in the action were granted in full. Litigation resulting from the appeal of the preliminary injunction is now in the First District Court of Appeal.
- *County of Riverside and PERB; SEIU Local 721*. Filed on May 13, this litigation matter is the agency's fourth challenge to a factfinding determination by the GC Office under Assembly Bill 646. This case involves a constitutional challenge in total to Assembly Bill 646, as well as a claim that the GC Office misinterpreted the factfinding provisions of the Meyers-Milias-Brown Act (MMBA) as applying to an impasse and bargaining over the effects of a new policy requiring criminal background checks for county IT professionals. PERB filed an answer to the petition on June 12. A hearing on the merits of the petition and other motions is set for July 29, 2013.
- *PERB v. AFSCME Local 3299 & UPTE-CWA Local 9119 (University of California)*. Litigation as a result of IR Request Nos. 635 and 636. PERB had granted the university's IR Requests, in part, and only to the extent the university clearly demonstrated that the members of the relevant units were "essential." That is, they were employees whose job duties could not be covered for the duration of a two-day strike by supervisors or other university employees or qualified replacements from local registries or national striker replacement companies, and whose absence from work during the strike would create a substantial and imminent threat to the health and safety of the public. The issue in this litigation was whether the unions should be enjoined from calling strikes in the relevant units because such would entail a work stoppage by "essential" employees within the meaning of *County Sanitation Dist. No. 2 v. Los Angeles County Employees Ass'n* (1985) 38 Cal.3d 564. A complaint for injunctive relief was filed in Sacramento Superior Court on May 17, 2013. PERB's ex parte application for a TRO/OSC heard on May 20, 2013, was granted in substantial part and, at the request of the union, a few more categories of essential employees were eliminated. PERB's request for preliminary injunction was set to be heard today in Sacramento Superior Court. Yesterday, PERB received a tentative ruling proposing to grant its request for a preliminary injunction. That preliminary injunction would continue the TRO for a 90-day period substantially in the same form as initially issued.
- *County of Riverside v. PERB; SEIU Local 721*. Filed on May 24, 2013, in Los Angeles Superior Court, the issue in this case is whether PERB's hearing on the underlying retaliation charge, scheduled to begin on May 28, should be enjoined because the termination of a union activist, who was the subject of the unfair practice charge, also had a pending disciplinary appeal which was set to be heard by an arbitrator in August 2013. At a May 28 ex parte hearing, the Court urged the parties to meet and confer. The parties

thereafter settled the dispute and agreed that the PERB hearing would go forward and the discipline appeal was placed in abeyance.

Regarding case determinations since the last Public Meeting, PERB received one final court ruling.

County of Los Angeles v. Los Angeles County Employee Relations Commission; SEIU Local 721. On May 30 the California Supreme Court issued its unanimous decision in a case in which PERB filed an amicus brief, together with other amici. The Supreme Court reversed the decision of the Court of Appeal holding that union rights of access to employee contact information for purposes of fulfilling their representational duties generally outweigh employee privacy interests. The Supreme Court further held that the Court of Appeal exceeded its authority by attempting to impose specific procedures on the parties where the employer could withhold contact information regarding employees.

Ms. Murphy reported regarding personnel matters in the GC Office. She announced that Kent Morizawa joined PERB's Glendale Office as a Regional Attorney. On June 3, Michelle Stump, from the Department of Corrections, also joined the GC staff in the Sacramento Headquarters Office. Ms. Stump would be sharing her time working as an Office Technician in the GC Office and the Administrative Division.

Member Winslow commended the GC Office for "hitting home runs" since PERB's Public Meeting in April, GC staff's hard work and the positive results as heard from the litigation report. Chair Martinez joined congratulating the GC Office for its hard work on behalf of the full Board.

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. Mr. Cloughesy reported that cases are currently being scheduled for formal hearing within 3-1/2 months from the date of informal settlement conference in the Sacramento Office, within 3-1/2 to 4 months in the Oakland Office, and 4 to 4-1/2 months in Glendale Office. With regard to proposed decisions, the Division had issued 70 as of today. Mr. Cloughesy stated that was the highest number of proposed decisions issued in 25 years. The ratio of proposed decisions excepted to the Board itself is 36 percent.

Mr. Cloughesy announced a new hire. Alicia Clement, Regional Attorney from the GC Office, had joined the Division as an Administrative Law Judge in PERB's Oakland Office.

Chair Martinez commended the Division of Administrative Law for the reported 25-year record in proposed decisions issued.

c. State Mediation and Conciliation

In Supervising Conciliator Loretta van der Pol's absence, Steve Pearl, Presiding Conciliator, reported to the Board for SMCS stating that the report had been distributed to the Board for its review. He expressed on behalf of Ms. van der Pol her regretted absence due to a prior commitment. Reporting to the Board, Mr. Pearl stated that SMCS staff were currently

working on the Mediator's Activity Tracking System ("MATS") with the hopes of soon providing detailed and more robust reports. For the month of May, SMCS received 103 new mediation cases, 134 cases worked and closed (which includes new and existing cases), and 138 cases were carried over into June. There is a calculated average of approximately 13 hours of mediator time per case. Currently, SMCS is well in excess of 1,000 cases for the current fiscal year.

Reporting on personnel matters, Mr. Pearl stated that on May 9, 2013, Ms. van der Pol was appointed to the Supervisor position and that SMCS has 6.4 active mediators. SMCS has two long-term absences with one to return in September; the unknown return of the second absence had created a heavy impact on the workload of the remaining mediators. There is one vacant position in SMCS and the recruitment process has begun. Mr. Pearl and Ms. van der Pol have been working with CalHR to develop a test, and hope to have the process completed and an expected hire in August. SMCS has two clerical staff, including one long-term absence and the second, as reported earlier, would relocate to the PERB Oakland Office. After the relocation, SMCS would evaluate that position's workload for integration with PERB staff and a possible adjustment in classification and/or salary.

Current Issues Facing SMCS:

- A change in the local control funding formula, included in the state budget recently passed, is expected to have a major effect on bargaining in school districts. As a result, SMCS anticipates receiving more cases as districts apply the new funding formula and the shift of money to lower paid districts. Mediators are to be provided orientation and training in July regarding this formula.
- Changes under the MMBA are likely to spike SMCS workload at an earlier time in the year. Jurisdictions under the MMBA generally gear towards resolution by July 1, absent any bargaining and/or budget developments. Therefore, due to changes in law, SMCS anticipates receipt of cases under the MMBA in April and May.
- SMCS was contacted by the management representative at BART. BART and the unions (ATU and SEIU) were currently in the bargaining process for successor agreements. Mr. Pearl stated that he would lead SMCS efforts, together with Mediator Ken Glenn, and that both had cleared their calendars to focus and assist the parties for a resolution by June 30. SMCS had set a first meeting with the parties for Monday. Mr. Pearl had been periodically contacting the various unions and the management representative for status updates on the negotiations. The AFSCME bargaining unit was to use an interest-based approach this year and was optimistic about the resolution of issues, with ratification being the only questionable issue. Therefore, in these negotiations SMCS believed the AFSCME bargaining unit would require very little attention. It is anticipated that the ATU and SEIU units are where SMCS assistance would more likely be needed.

d. Legislative Report

General Counsel Murphy provided the Board with a report regarding pending legislation that may affect PERB's jurisdiction or are of interest to the Board and its agents. She reported on the following four key bills:

- Assembly Bill 537 (Bonta) — This bill requires significant amendments to the MMBA. If passed, among other things, the bill would require mandatory mediation for all impasse disputes. It also establishes that mediation and factfinding procedures apply to disputes in negotiations over local rules, which will be subject to, for the first time, a solid meet and confer standard of bargaining as opposed to the current consultation and good faith standard.
- Assembly Bill 616 (Bocanegra) — This bill, related to Assembly Bill 537, adjusts the timeline for the Assembly Bill 646 factfinding process.
- Assembly Bill 641 (Rendon) — Entitled “Child care: family child care providers,” this bill would grant family child care providers who provide services to low income families throughout California with the right to be represented by establishing a system of collective bargaining.
- Assembly Bill 1263 (Perez) — Entitled “Medi-Cal/ComuniCal,” this bill provides collective bargaining rights for medical interpreters who provide services in the Medi-Cal program.

Ms. Murphy reported that in late May all four of the above bills had passed out of their house of origin with healthy margins and had moved to the Senate awaiting assignment to a policy committee.

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

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Public Hearing on Proposed Rulemakings

Chair Martinez opened the hearing on proposed rulemaking for consideration of the adoption and amendment to various PERB regulations as described in Notices of Proposed Rulemaking published in the April 26, 2013 California Regulatory Notice Register. Immediately following the staff presentation on each of the rulemaking packages, the public would have the opportunity to comment on the proposed changes to the regulations.

The first package, the MMBA factfinding rulemaking package, included proposed changes concerning the appealability of a Board agent's determination of the sufficiency of a factfinding request made pursuant to the MMBA. The change would delete the regulation text that prohibits an appeal of a determination of the sufficiency of a factfinding request made

pursuant to the MMBA to the Board. Chair Martinez directed PERB's Division Chief, Les Chisholm, to comment on the staff proposal.

The MMBA factfinding package, Mr. Chisholm stated, would make factfinding determinations made by a Board agent appealable to the Board. The proposed changes also designate such appeals as appropriate to be expedited.

Mr. Chisholm explained that the rationale for the MMBA factfinding regulatory package was two-fold.

The first had to do with distinguishing these type of impasse determinations from other types of determinations made by Board agents. Determinations are made by Board agents under the Educational Employment Relations Act (EERA), the Higher Education Employer-Employee Relations Act (HEERA) and the Ralph C. Dills Act (Dills Act) with respect to whether it is appropriate to appoint a mediator to assist parties in their negotiations, explained Mr. Chisholm. Determinations under these Acts were at one time appealable to the Board. There are Board decisions, both upholding and reversing Board agent determinations, that help clarify what the rules were or how the Board would interpret the provisions of the Act and regulations. Determinations under these Acts were made not appealable in the late 1980s, the Board finding that they could get to the underlying issue through an unfair practice charge.

The distinction to be made, continued Mr. Chisholm, is when a Board agent approves or denies a request for the appointment of a mediator, that is not the end of the matter. If the Board agent approves the request, the parties move on to mediation. Under two of the Acts, the parties are also required to complete factfinding. More significantly, explained Mr. Chisholm, if the Board agent denies the impasse request, the party seeking the appointment of a mediator can come back at any time to make an argument as to why a mediator should be appointed. Under MMBA factfinding, determinations are made regarding the sufficiency of the request. Again, if the Board agent approves the request, then the matter moves forward. If the Board agent finds that the request is untimely or for any other reason does not approve the request, the matter is closed. The union then has no recourse to the Board other than to find an indirect route (by challenging a unilateral implementation or arguing that there was not a true impasse), rather than stating the real issue with respect to factfinding, which is was the request appropriate, timely, and sufficiently filed. This distinction, stated Mr. Chisholm, warrants treating these requests differently than the Board treats other impasse determinations.

Second, having the opportunity for the Board to hear these appeals also allows the Board to apply its expertise and develop case law and precedence that can then guide future determinations by Board agents and serves to inform the parties as what to expect.

For the above two reasons, staff is recommending the proposed changes to the MMBA factfinding regulatory package, stated Mr. Chisholm.

Mr. Chisholm commented regarding the one written statement received concerning this proposal which advocated, as an alternative, that the Board consider further regulation changes. Specifically, the written comment recommended that the regulations address additional subjects rather than resolving any issues or disputes through case law.

Mr. Chisholm suggested that this recommendation be considered by the Board at some time in

the future and also that PERB constituents propose to the Board specific changes in this regard. Mr. Chisholm concluded that the written recommendation did not interrupt or cancel the proposed regulatory changes to be considered by the Board today which allow factfinding requests made pursuant to the MMBA be appealed to the Board itself.

There were no persons, after Chair Martinez's invitation to the public, who appeared before the Board to comment on the MMBA factfinding proposed rulemaking package.

Motion: Motion by Member Huguenin and seconded by Member Winslow to close the public hearing regarding the MMBA factfinding rulemaking package.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

The second package to be considered include the proposed adoption of regulations providing for and describing election services, and processes related thereto, for representation and agency shop elections conducted by SMCS pursuant to the local rules of an MMBA, Trial Court Employment Protection and Governance Act (Trial Court Act) or Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) employer. These proposed regulations define parties, describe ballots and provide for stays of an election, notice requirements, voter list requirements, voter eligibility requirements, challenge processes, tallying of ballots, resolution of challenges, objection processes, hearings on objections and challenges and filing of exceptions to decisions on objections and challenges. Chair Martinez directed Mr. Chisholm to comment on the staff proposal.

Mr. Chisholm stated that there had been confusion regarding elections conducted by SMCS and the relationship of their conduct under PERB. This has been true since 2001 when PERB was first granted jurisdiction over the MMBA, in particular, explained Mr. Chisholm. PERB has declined to take up issues that arise from such elections, particularly objections to an election. The confusion became greater once SMCS became a division under PERB. The underlying issue is those elections that are conducted pursuant to local agency rules and not conducted pursuant to PERB regulations. With respect to issues such as resolution of challenged ballots or objections to an election, it has continued to be the practice that those issues are resolved under local rules. If a party wanted to get an issue before PERB, it had to be done through an unfair practice charge. The goal with the proposed regulations is to provide clarity for the parties, SMCS and PERB staff. The proposed regulations clarify, in part, that these regulations apply when SMCS conducts a representation or agency shop election pursuant to an employer's local rules and a consent election agreement. That is, all parties involved in the case would have entered into either a consent election agreement that spells out all details or authorizes SMCS to establish the details of the election. With the consent election agreement in place, the parties could then file and have a Board agent adjudicate any issues, thus providing clarity to the whole process. Mr. Chisholm stated that extensive discussion was held at the April 11 Public Meeting and also prior to that discussions were held at two Advisory Committee meetings regarding this proposed rulemaking package.

There were no persons, after Chair Martinez's invitation to the public, who appeared before the Board to comment on the MMBA factfinding proposed rulemaking package.

Motion: Motion by Member Winslow and seconded by Member Huguenin to close the public hearing regarding the SMCS elections rulemaking package.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Old Business

Chair Martinez closed the public hearing stating that no further public testimony regarding the MMBA factfinding and SMCS election proposed rulemaking packages would be taken at today's meeting. The Board considered the adoption and amendment of regulations as described in the Notices of Proposed Rulemaking published in the April 26, 2013 California Regulatory Notice Register. If authorized by the Board, the rulemaking packages would be forwarded to the Office of Administrative Law for review and approval pursuant to the Administrative Procedures Act.

Chair Martinez invited PERB Board Members to comment on the staff proposals.

Member Huguenin commented that part of the difficulty or ambiguity came about in July 2012 when SMCS became a division under PERB and the proposed regulatory changes provide guidance regarding the conduct of elections where SMCS mediators are serving as election officers. Upon arrival at the local jurisdiction to conduct the election, and when negotiating the consent agreement with the parties, mediators would have in their hands procedures, including matters related to voter lists and eligibility requirements, and challenges, etc. Mr. Huguenin stated the proposed regulation changes were an important clarification for the parties dealing with mediators as election officers and understanding what the rules would be in conducting the election.

Motion: Motion by Member Huguenin and seconded by Member Winslow to forward the MMBA factfinding rulemaking package to OAL for review and approval pursuant to the Administrative Procedures Act.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez then invited a motion regarding the SMCS elections rulemaking package.

Motion: Motion by Member Huguenin and seconded by Member Winslow to forward the SMCS elections rulemaking package to OAL for review and approval pursuant to the Administrative Procedures Act.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

New Business

Member Huguenin announced the appointment of Max Garde who will work with him as Legal Advisor.

Member Banks announced the appointment of his Legal Advisor Scott Miller who would work with him and work out of PERB's Glendale Office.

Understanding that today's Public Meeting would be the last attended, due to retirement, for PERB Division Chief Les Chisholm, Greg Eddy, representative, California Federation of Teachers, appeared before the Board. He stated his acquaintance with Mr. Chisholm for approximately 18 years, and that Mr. Chisholm had been "enormously helpful, he is full of information, he is one of the most knowledgeable people that I know. He has a history of PERB that is, with the possible exception of Anita, I don't think there is anybody that has that background and knowledge that he has had. He has been an invaluable resource, he's always been fair, he's always been thoughtful and I want to wish him the best in retirement." He congratulated and thanked Mr. Chisholm for work done in his tenure at PERB.

Oral Argument

Oral Argument in the following case convened at 2:00 p.m.

City of Lompoc v. Lompoc Police Officers Association; Lompoc Police Officers Association v. City of Lompoc (Unfair Practice Charge Nos. LA-CO-100-M, LA-CE-555-M, LA-CE-564-M, LA-CE-585-M)

Persons participating:

On Behalf of Lompoc Police Officers Association:

Michael A. Morguess, Attorney
Lackie, Dammeier & McGill
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Zachery A. Lopes, Attorney
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On Behalf of City of Lompoc:

Adrianna E. Guzman, Attorney
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Action: Submitted

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 August 8, 2013, 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)).

Commendations to Les Chisholm

Chair Martinez:

“On behalf of myself, Les, I just want to say thank you very, very much for everything you have done for this Agency, for helping the parties the way that you always have, for being just an incredible neutral, for conducting and counting tons and tons of ballots over the years, and just personally, for being a friend and just a great advisor and a peer. I really have appreciated always working with you. You're the ultimate professional, and I really want to thank you for that and wish you the best.”

Member Banks:

“So, coming from the labor side, depending on the year or the time this Agency has held in different levels of regard, but I know from my time, your name had always been discussed and you, Les, were always held in high regard.

And so when the Governor -- I was appointed by the Governor -- there were a few people that said I would have, how lucky I was to have the opportunity to actually work with you. And of course I get here and find out you're retiring. So, I'm going to say I know from many, many folks out there, you're going to be missed for what you brought to the Agency, your stability, and just your extreme knowledge. You'll be missed.”

Member Huguenin:

“I can recall telephone conversations 15 and 20 years ago when I was an advocate trying to convince you to issue complaints. And at the time, it was a little frustrating, but I understand and agree that the appropriate posture of the Agency at the time was the one you took, meaning, we've got to have a prima facie case, and you've really got to convince me that it's there.

Since I've been on the Board the last couple of years, I've come to see you in a different perspective, operating within the Agency, within the General Counsel's office. I've come very much to appreciate your advice and your ability to sort of continuously ride

that third rail of neutrality, which is a difficult thing, I know as a former unionist myself. And we're going to miss you. We're going to miss you."

Member Winslow:

"Yes, I would echo what everybody else has already said about you. And at your birthday party last week, I was fondly remembering -- I don't know when the first time I ever had dealings with you in the early 80s it would be, or the mid 80s, whenever you came to PERB. And I always appreciated your measured response and analysis to virtually everything I could throw at you. I will certainly miss -- well, I can say this: In my past life as an advocate, I miss sparring with you. And now in my elevated state as a neutral, I know I will miss you in the future, but wish you all the best in this next phase of your life."

Mr. Chisholm:

". . . I've been here almost 26 years. I've worked with Anita, obviously, all 26 years because she has been here even longer than I. But you know, the only thing I wanted to say is, the thing I remember and, you know, will always carry with me, most clearly etched in my mind about working with Anita, dates back to a very early time when I began as a Regional Director, and we had three Regional Directors and really a division of representation, those people minus me had begun working on, you know, policy and training materials for staff. And I sort of got thrown into the meetings that they were having, a series of meetings, trying to develop these things. And it took me a little while to get my legs or get a handle on everything. And then I began trying to contribute.

And I won't say who the General Counsel was at the time or who else was in the room at the time, but I didn't really feel like I was being heard. But I continued, you know, making suggestions or, you know, making interjections and trying to contribute from time to time. And it was Anita who finally said to the rest of the group, would you just stop and listen because I think he has something to say or something to contribute. And they did. Because, listen to Anita. And throughout most of my career, I won't say every day, but most of my days at PERB, I do feel like, when I had something to contribute from time to time, that people would listen, and I certainly appreciate that. And when I think about working for 26 years with Anita that's, you know, a lot of other stuff happened in between, but that's actually the one memory that I come back to, that she was the first to say, hey, listen to this guy.

So, sometimes Board members did listen to me, sometimes they didn't, sometimes perhaps they shouldn't have. But as I said at the so-called birthday party last week, that I really appreciate everyone's involvement in and durations, too. I really enjoyed working at PERB, and work that I like doing, and by and large, it's been doing it with people that I liked working with. And so I appreciate that.

But to be wicked, quote unquote, for a moment, after almost 41 years in labor relations, I've decided it's time to stop studying strife and learn to live the unexamined life. And

that's what I look forward to doing and I thank all of you, the way you've enriched my life over the last 26 years. So thank you."

Motion to Adjourn Open Session

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

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair