

PUBLIC MEETING MINUTES

August 8, 2013

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
A. Eugene Huguenin, Member
Priscilla S. Winslow, Member
Eric R. Banks, Member

Staff Present

Wendi Ross, Deputy 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 June 13, 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 June. Those were PERB Decision Nos. 2316a-M, 2317-S, 2318-M, 2319, 2320, 2321-M, 2322, and Order No. Ad-400. The following Requests for Injunctive Relief (IR Request) were filed and/or pending: No. 639 (*East Bay Regional Park District v. AFSCME Local 2428*), the request was withdrawn; No. 640 (*City of Hayward v. Service Employees International Union Local 1021*), the request was pending; No. 641 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*), the request was denied; No. 642 (*Petaluma Federation of Teachers v. Petaluma City Elementary School District*), the request was pending. 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 June 13, 2013, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez adjourned the June 13, 2013 Public Meeting. She then opened and called to order the August 8, 2013 Public Meeting.

Minutes

Motion: Motion by Member Winslow and seconded by Member Huguenin, that the Board adopt the minutes for the May 3, 2013, and June 13, 2013, Public Meetings.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Marty Morgenstern, Secretary, California Labor & Workforce Development Agency (Labor Workforce Agency) was invited and appeared before the Board. Mr. Morgenstern welcomed PERB, on behalf of Governor Jerry Brown, as an agency under the Labor Workforce Agency along with other labor-related agencies within State government. He acknowledged the importance of labor relations work. Mr. Morgenstern stated that although PERB was now under the Labor Workforce Agency it would continue to operate as an independent quasi-judicial board. He further acknowledged PERB's great assistance in labor relations and Chair Martinez, in particular, related to her assistance in the BART dispute, and asked PERB to remain vigilant in those efforts.

In his capacity as Secretary, Mr. Morgenstern appeared before the Board to provide information and assurances regarding PERB's independence. As a quasi-judicial board, decisions by PERB would continue to be unbiased and not influenced in any way by the Labor Workforce Agency. Secretary Morgenstern stated that any interference by the Labor Workforce Agency would constitute a violation of the law. With many agencies within State government, it was the intent of the Governor in bringing PERB under the Labor Workforce Agency to streamline reporting lines.

Mr. Morgenstern stated the Labor Workforce Agency's intent to offer improvements and support to departments, agencies, commissions or boards now under the Labor Workforce Agency. One program which the Labor Workforce Agency has instituted, Mr. Morgenstern continued, is to offer small agencies or boards such as PERB, the ability to borrow employees from other larger departments, such as the Employment Development Department (EDD), when needed. The loan, or temporary exchange, of employees would assist with improvements in the department's administration. As an example, Mr. Morgenstern talked about the Agricultural Labor Relations Board's (ALRB), as a small board now also under the Labor Workforce Agency, inability to attract qualified candidates in administrative areas. Through the Labor Workforce Agency's inter-agency exchange program, EDD employees assisted the ALRB until candidates with the necessary level of skills could be hired. The program is envisioned to provide assistance in all areas, where all agencies with labor expertise can work together with regard to legal issues (including the exchange of ALJs and such other employees). Departments have authority to operate under this program, but any work performed under the exchange would continue to be independent from the Labor Workforce Agency, stated Mr. Morgenstern. Under the inter-agency exchange program, an agency in need of assistance would be able to borrow an ALJ from another department or agency. Having just been informed of this program, he was unaware of PERB's interest, but stated that this was an example of the type of improvements the Labor Workforce Agency had in mind to

increase efficiency for all departments, agencies, commissions and boards that have mutual concerns and duties, with the knowledge that, stated Mr. Morgenstern, the Labor Workforce Agency would have no authority over such institution's constitutional or legislative authority.

Member Winslow inquired regarding the interagency exchange program. She stated her belief that PERB ALJs had particular expertise in the collective bargaining statutes administered by PERB and wanted confirmation that PERB would not be brought into the program without our consent. Mr. Morgenstern confirmed her statement.

Comments From Public Participants

Wenjiu Liu, representing himself, appeared before the Board. This is Mr. Liu's fourth appearance at a PERB Public Meeting. He thanked the Board for the opportunity to appear noting that he was the subject of the request for injunctive relief which was earlier read into the record as denied. Mr. Liu inquired regarding the status of two other cases he had pending before the Board, a request for reconsideration of a Board decision and exceptions filed to an ALJ's proposed decision. He stated appreciation if the Board would expedite the review of his cases as he has had a "loss of income for a very long time."

Chair Martinez informed Mr. Liu that expeditious treatment of all cases before the Board is always its goal. Mr. Liu's cases are among those cases that would be decided as soon as possible.

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 first reported on the status of the new leases with PERB's regional offices in Oakland and Glendale. Ms. Potter stated that although we've experienced many delays of time, the project in Oakland, which added a hearing room, an ALJ office and another office, was finally coming to a close. Tenant improvements in that office are complete, and have passed Fire Marshall review and sign-off. There is no expected timeframe for completion of the final piece to this project, the City Inspector's sign-off on the permit for the building manager.

As reported at the last Public Meeting, Ms. Potter stated that the agency had been exploring options to add additional space to PERB's Glendale Office. The agency had recently been notified that its request to add an adjacent space, Suite 205, had been approved by Real Estate and Design Services, and assigned to a leasing agent and space planner. The tenant improvements would not be major or disruptive to staff, therefore the agency is anticipating that this project should move quickly. Chair Martinez inquired about the amount of time it would take to furnish the newly acquired space and if furniture could be ordered in advance. Ms. Potter provided details about the purchase of furniture and the project in general. Discussion was held regarding the length of time for completion of the entire project.

Ms. Potter reported that the agency was in the process of building the Governor's 2014 budget beginning now through mid-September. At this time, the agency was preparing preliminary schedules, gathering information and completing year-end reports. She stated that she would update the Board immediately should there be any major legislation impacting PERB's appropriation.

Ms. Potter noted her experiences as explained by Mr. Morgenstern regarding departments under the Labor Workforce Agency exchange of personnel. Down a couple of employees, the Administrative Division had borrowed personnel from EDD and the Labor Agency for assistance with various projects to meet deadlines. Ms. Potter stated her experiences with this program had been tremendous, and that responses to any PERB inquiries had been expeditious and generous.

b. Legal Reports

In General Counsel Suzanne Murphy's absence, Wendi Ross, Deputy General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Ross provided the following information about activity since the Board's last Public Meeting in June.

Ms. Ross first provided a brief report on the 2012-2013 fiscal year. She stated that the GC Office ended the fiscal year with 678 new unfair practice charge (UPC) filings (down by 89 from the last fiscal year). In addition, there were 99 new representation cases (up by 22 over the last fiscal year), 215 new mediation/impasse requests (up by 45), 94 new factfinding requests (which is approximately twice the number compared to last fiscal year), and 32 new compliance cases (up by 13 over the last fiscal year). That equaled a total of 1,118 new cases for fiscal year 2012-2013 (up by a total of 41 new cases over the previous fiscal year, notwithstanding the drop in UPCs). Due to an increase in litigation and staff turnover, the GC Office ended fiscal year 2012-2013 with only a small net positive clearance rate as to UPCs (i.e., 678 new UPCs were filed and 681 UPC investigations were completed, as compared to 767 new UPCs and 867 UPC investigations completed in the prior fiscal year).

Ms. Ross stated that progress in whittling down the backlog of UPCs and other cases since May 11 in the GC Office has slowed since November 2012 and that only one month, March 2013, had shown a positive clearance rate. Also, while there was a total of 408 UPCs pending at the end of fiscal year 2010-2011, and a total of 356 UPCs pending at the end of the 2011-2012, there was a total of 398 UPCs pending at the end of the current fiscal year (2012-2013). This trend was not surprising given the surge of other types of cases that take priority. More encouraging for the GC Office was the fact that current UPC caseloads for individual attorneys remain lower overall and currently are more evenly distributed than in the past two fiscal years. At the end of the fiscal year 2012-2013, the number of pending UPCs ranged from a low of 15 to a high of 51, with an average of 35 pending cases per attorney.

With regard to monthly activities for the months of June and July 2013, a total of 204 new cases were filed with the GC Office (down by approximately 7 from the prior two-month period). UPC filings remained steady—130 (127 for the previous two-month period), as did the number of mediations—42 (41 previously), and factfinding—18 (16 previously).

There was a drop in representation petitions to 7 (after spikes in February/March—22, April/May—19). During the same two-month period, 185 case investigations were completed (up by 7 over the prior two-month period), such that the GC Office's current investigation caseload dropped slightly from 468 to 464. The number of days of informal settlement conferences conducted by GC Office staff was 48 (up by 9 over the prior two-month period).

As mentioned by the chair, since the last Board meeting in June, 4 requests for injunctive were filed.

- IR Request No. 639 (*East Bay Regional Park District v. AFSCME Local 2428*). This request was withdrawn after a SMCS mediator assisted the parties in reaching a tentative agreement for a successor contract on July 2, 2013. The case was now complete.
- IR Request No. 640 (*City of Hayward v. Service Employees International Union Local 1021*). The request was pending.
- IR Request No. 641 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*). The request was denied on August 7, 2013.
- IR Request No. 642 (*Petaluma Federation of Teachers v. Petaluma City School District*). The request was pending.

In terms of litigation relating to PERB since the Public Meeting in June, Ms. Ross stated that no new matters were filed.

Regarding case determinations since the last Public Meeting, PERB received one final court ruling from the United States Supreme Court denying Patricia Woods's petition for re-hearing of its denial of her petition for writ of certiorari on June 17, 2013, as to PERB Decision No. 2136-S. It was PERB's understanding that the Supreme Court had also rejected Woods's second petition for re-hearing filed on or about July 17, 2013.

Ms. Ross concluded the GC Office report stating that PERB's regulatory packages pending at the Office of Administrative Law (OAL) were on track to become final by October 1, 2013. She confirmed for Member Huguenin that to her knowledge there were no comments or objections submitted to OAL.

Member Banks wanted to know if most of the increases in factfinding inquiries were under the MMBA to which Ms. Ross responded affirmatively. He also inquired about the drop in UPCs and Ms. Ross offered as one explanation the use of the grievance arbitration process where parties have collective bargaining agreements.

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 on the highlights of the division's monthly and fiscal year end statistics. Currently, from the date of the informal settlement conference, the division was scheduling cases for formal hearing within 3.5 months in Sacramento and Oakland, and

4 months in Glendale. With regard to fiscal year 2012-2013, 76 proposed decisions were issued and this number was as high as compared to fiscal year 1986-87 when the division had more judges. The division completed formal hearings in 86 cases. The ratio of exceptions to proposed decision was 42 percent for fiscal year 2012-2013 and the average since the MMBA came under PERB jurisdiction was approximately 48 percent. In the current fiscal year, the division was having a similar start as seen in the 2012-2013 fiscal year with regard to case dispositions.

c. State Mediation and Conciliation

In Chief Conciliator Loretta van der Pol's absence, Chair Martinez commented regarding the SMCS. Ms. van der Pol's absence was due to her participation in the BART negotiations. Chair Martinez first highly commended Conciliator Yu-Yee Wu for her assistance in the just completed AC Transit negotiations. AC Transit is the bus transportation system in the East Bay which provides transportation into San Francisco and for months had been on the verge of a strike. Ms. Wu is on assignment 60 percent to SMCS and 40 percent to Worker's Compensation, stated Chair Martinez. The negotiations in the AC Transit dispute required an ultimate commitment by Ms. Wu who was able to assist the parties with a tentative agreement for a new contract. Chair Martinez then acknowledged and commended Ms. van der Pol for her role in the BART dispute. Chair Martinez and Ms. van der Pol were brought into the dispute when employees went out on strike and, after three days, were able to assist the parties in returning employees back to work. Ms. van der Pol has continued to assist employees with negotiations in the BART dispute.

d. Legislative Report

Ms. Ross provided the report on legislation as follows:

- Assembly Bill 537 (Bonta) — This bill now provides that if the governing body of an MMBA jurisdiction does not reject a tentative agreement within 30 day of its presentation, it shall be deemed adopted.
- Assembly Bill 616 (Bocanegra) — This bill provides a 30-day factfinding window. If either party disputes that a genuine impasse, as defined, has been reached, the issue of whether an impasse exists may be submitted to PERB for resolution before the dispute is submitted to a factfinding panel. As with other Acts within its jurisdiction, if this bill passes, PERB will now make those determinations.

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.

Old Business

None.

New Business

Commendations to Appeals Assistant, Teresa Stewart:

Member Huguenin:

“Well, it’s not new business, but I will call it a matter of personal privilege and request an opportunity to address it. This Board operates as a judicial, or at least a quasi-judicial entity, most of the time. Most of what we do is deal with cases and most of the time we do that in a close session under the Bagley-Keene Act. And, we have some folks who help us with that, one of whom is going to be leaving us before we have another Public Meeting. So, what I wanted to do today is acknowledge the service that Teresa Stewart has given to the Public Employment Relations Board over the many years of her service. Teresa’s name was one I used to hear and even correspond with from time to time when I was representing unions and employees in front this agency 30 years ago, I believe. And, so we are going to miss her. She is the encyclopedia of Board procedure and keeps us well corralled, most of the time, and also very well defended, all of the time against folks who either don’t know or don’t care about what our rules are about things like ex parte communications and sending things to us in a form that isn’t ready for our consideration. We are going to miss her and we want to acknowledge today her great service to us. Thank you Teresa.”

Chair Martinez:

“I would also like to build on that. I have known Teresa since we both started working at PERB a long long time ago. And, Teresa, you do provide just an invaluable service to all the Board Members and like [Member Huguenin] said, you protect us quite a bit and we really appreciate all your work. I’m at a loss as how someone is going to pick up that office, because you do so much and do it so well. So, on behalf of the Board, along with [Member Huguenin], thank you.”

Member Winslow:

“And I too have to chime in. Because I too have known you forever Teresa, when I was a Legal Advisor starting in 1979 when I had first came to this agency, that’s when we first met. And, when I learned of your retirement, I thought, if it was possible for me to reject that, I would. I know it’s not, and so I wish you the best in retirement and in the next chapter of your life. But, so sorry to see you go.”

Member Banks:

“I have not known you forever, but in the last five months I have. I do want to say every issue that my office has brought to you has been handled quickly and with the utmost professionalism. And, I want to acknowledge that in your capacity in many ways I see you as the gatekeeper to the Board. You handle a lot of difficult calls and difficult communications on our behalf, and I know that some days that’s not easy. In many ways you have made it much easier for us to do our work. So, thank you and good luck in your moving on.”

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 10, 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)).

Motion: Motion by Member Huguenin and seconded by Member Winslow 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