

PUBLIC MEETING MINUTES

October 10, 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

Suzanne Murphy, General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Loretta van der Pol, Supervising Conciliator, State Mediation & 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 August 8, 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 August. Those were PERB Decision Nos. 2323-S, 2324-C, 2325-M, 2326, 2327, 2328-M, 2329, 2330, 2331, 2332, 2333, and Order No. Ad-401. The following Requests for Injunctive Relief (IR Request) were filed and/or pending: No. 640 (*City of Hayward v. Service Employees International Union, Local 1021*), the request was granted, in part; No. 642 (*Petaluma Federation of Teachers v. Petaluma City Elementary School District*), the request was denied; and No. 643 (*Wenjiu Liu v. Trustees of the California State University (East Bay)*), the request was denied. Chair Martinez announced that a document containing a listing of the aforementioned decisions was 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 August 8, 2013, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez adjourned the August 8, 2013 Public Meeting. She then opened and called to order the October 10, 2013 Public Meeting.

Minutes

Motion: Motion by Member Winslow and seconded by Member Banks, that the Board adopt the minutes for the August 8, 2013, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Comments From Public Participants

Romero Maratea appeared before the Board on behalf of the California Teachers Association. He stated that he is a teacher at the Escondido Union School District and the president of his local, the Escondido Elementary Educators Association. He recalled his first appearance before the Board one year ago where he spoke on behalf of Propositions 30 and 32. He also recalled that at that time the District was trying interest-based bargaining for the first time and in full-swing negotiations; stating that obviously this was before Proposition 30, therefore, all the discussions were about how cuts could be taken as a bargaining unit. He continued stating that at one point in the middle of about 14 negotiation sessions last year, there were 17-1/2 furlough days on the table, and conversations were held about how to mix and match other cuts so that students would not have to miss almost three weeks of school. Currently, and since the passage of Proposition 30, Mr. Maratea stated that the District is a high receiver, according to the local control funding formula, of students who get supplemental and concentration funds. The union is currently in negotiations with the District, and “barely in the middle of our third scheduled negotiation session, the District handed us their best and final.” Mr. Maratea stated that last year with 14 negotiation sessions held, the parties kept coming back to the table where concessions were made and employees took furlough days and health benefit cuts. In current negotiations, with the passage of Proposition 30, the union was attempting to get back some of that compensation. The District was not willing to even meet for three full sessions, stated Mr. Maratea and “Right now [the union is] currently appealing to our school board to give [the union] one more shot.” There is a “school board meeting actually today, [and the parties] are scheduled to meet tomorrow . . . and maybe we may be at impasse as soon as tomorrow.” Mr. Maratea wanted to make the Board aware of this trend where “districts are coming to the table really quickly and giving their best and final and saying . . . take it or leave it.” After all the years of cuts, stated Mr. Maratea, many districts are sitting on large reserves. He stated his belief that “the average elementary district in the state has somewhere between 20 and 25 percent reserves and the state law is 3.” Specifically, Mr. Maratea stated that he “wanted to bring to the Board, and staff at these districts, as I foresee districts are going to be playing this kind of tactic of quick with the last and final, that the Board and staff encourage these districts, whether they are appealing for impasse or not, to go back to the table and negotiate in good faith.”

Ari Krantz appeared before the Board on behalf of AFSCME Local 3299 and UPTE-CWA Local 9119. Mr. Krantz stated that a request for rulemaking had been submitted several weeks ago suggesting that where public hospital operations provide the same type of medical services as private hospitals, such hospitals should have the same rule regarding strikes.

Specifically, stated Mr. Krantz, all employee groups can strike, provided that 10-day notice of the strike is given. Mr. Krantz continued:

In California and throughout our country our healthcare system is predominately private. In California, there are of course, some public hospitals but they are definitely a minority. Add in the fact that they move back and forth between the private and public sector quite often, this might surprise you, but in just a 10-year period there were 31 transitions of that sort. The hospital went back and forth from PERB jurisdiction to NLRB jurisdiction or the other way around. On the date that those hospitals went public or went private, there was not one change in the services that they provided to the public. Prior to January 2012 when Riverside Regional Medical Center asked the PERB for injunctive relief, I am not aware of any agency anywhere that had ever sought to go classification-by-classification and determine whether there are any healthcare employees who are so essential and so not replaceable by supervisors or replacements that they are not permitted to strike. Of course, we don't have that in the private sector because in 1974 Congress and President Nixon extended the right to strike to all hospital employees, provided that 10-day notice of the strike is given. This will provide certainty, it has worked for 40 years, hospital administrators throughout California are familiar with it and follow it regularly as there are many many hospital strikes every single year in California. If PERB were to adopt this approach for the public sector, the public would be protected to the same degree. Under the approach that we suggest, PERB's regular injunctive relief procedures would still be available, if and only if, a hospital could show that it provides medical services that are fundamentally different in some way than what is provided in the private sector. Maybe there is a locked ward for inmates that's different in some way, maybe a hospital, like the University of California, has a pharmacist staffing a poison control hotline that private hospitals don't provide. That would be different and we would use normal procedures. This approach is actually required under current law by *County Sanitation*. In *County Sanitation* the Supreme Court noted that many public sector employees, if they were to strike, it would not cause any more risk to the public than private sector employees. And the Court specifically highlighted healthcare as one example of that. The Court found that it would be arbitrary and unreasonable to bar certain employees from striking merely because they happen to be public employees when there are comparable private employees who can strike.

If PERB continues to go case-by-case instead it creates a whole host of problems. I am just going to highlight two of them as my final two points. (1) It creates a whole host of perverse incentives for employers to seek to claim, for instance, that there are not replacements available, when in fact, there might be. And it is very difficult for PERB to unpack that in a short period of time. For instance, we saw that in Riverside Regional Medical Center where the employer claimed exactly that. But, as is in the record before the PERB, subsequent Public Records Act requests to Riverside Regional Medical Center showed that they had contacted more than a half dozen of these national strike and replacement companies that exist to fly in replacements from all over the country and these companies had indicated that they could staff the strike, but Riverside had simply not contracted with them. We saw it again in the University of California Medical Center strike where the University contracted with only a single one of these strike and replacement companies. Whereas private hospitals, we know, will contract

with a second, a third, a fourth, a fifth, until they have as many replacements as they need. In that way, what the incentive has created is that public sector hospitals to try and essentially use PERB as their strike and replacement company. Would this still exist under the approach that I am advocating for here? Yes, but to a much more limited extent. The same problem would exist but only for those operations that are different from what's provided in the private sector and that is a much more narrow problem for the PERB to attack.

Mr. Krantz stated his last point:

If the PERB continues to go case-by-case, it makes the public less safe. For instance, in 2004 we saw Alameda County Medical Center sought an injunction on a Friday for a Monday strike. The injunction was completely denied and luckily there was an intervening weekend where they could staff up, and they did staff up, hiring on that Saturday a national strike and replacement company. More recently in the University of California strike, and this is my last point, the strike was on a Tuesday and a Wednesday, so the court injunction hearing was on a Monday. At that court injunction hearing, the court, of course, did not grant the injunction sought by PERB instead signing the proposed injunction that was proposed by the unions which had fewer employees enjoined. At that point there was five business hours left before the strike, 15 total hours left before the strike and we know from the record that the University was counting on getting at least the injunctive relief that PERB had sought, which it did not get. At that point had very limited time in which to rearrange its staffing.

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 expansion of space in PERB's Glendale and Oakland Offices stating that progress had been made in both of those projects. Specifically, in the Glendale Office floor plans had been submitted to the building manager for architectural and American with Disabilities Act (ADA) evaluations and pricing, an important step in the lease negotiations. The cost of tenant improvements had to be determined before market rates per square foot could be evaluated. In the Oakland Office, the project had been assigned back to the leasing agent who had completed the last upgrade in that office, which allowed a smooth transition as that leasing agent had established a good working relationship with the building management.

Ms. Potter reported that PERB's year-end statements had been successfully submitted and accepted by the State Controller's Office and the Department of Finance. As no small undertaking and requiring a tremendous amount of time by PERB's Accounting Administrator, Stephanie Gustin, the transition of PERB's accounting records from a previous organizational code to a new code under the Labor Workforce and Development Agency had been successfully completed. Preparation of the 2014-15 Governor's Budget

continued, stated Ms. Potter, involving many schedules and drills. All of PERB's such schedules and completed drills had been submitted and accepted by the Department of Finance.

The Agency is currently fixing or upgrading the display on the website for the decision bank as it relates to precedential decisions, reported Ms. Potter. Also as no small undertaking, this project is a work in progress, as well as a piece of the application that would allow the public to request on-line a copy of non-precedential decisions via email, making the whole process transparent and there would be no PERB staff involved in filling those requests.

In answer to Member Winslow's question, Ms. Potter stated that the expansion project in PERB's Oakland Office, barring any architectural or ADA issues, should be completed in six months to one year. She confirmed Member Huguenin's clarification that this was a second project for the Oakland Office, and stated that the Agency was acquiring an additional 770 square feet which had become available for that office.

b. Legal Reports

General Counsel Suzanne Murphy reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Murphy reported on the following information about activity since the Board's last Public Meeting in August. With regard to monthly activities for the months of August and September 2013, a total of 196 new cases were filed with the Office of the General Counsel (GC Office) (down by 8 from the prior two-month period). Unfair practice charge (UPC) filings for that same two-month period was 137 (up by 10). During the same period there was a sharp drop in the number of mediation requests, from 41 to 21, over the last period, and a smaller drop in factfinding requests, from 16 to 12. Alternatively, there was a substantial increase in representation petitions, a total of 24, as compared to the prior two-month period where there were 7. This returns the Agency to a level of spikes that was reported earlier this year in February, March, April, and May. During the same two-month period, 163 case investigations were completed (down by 25), most likely due to the fact that the GC Office was down by three attorneys for much of that period, and also had a continuing flood of litigation which takes priority because of deadlines imposed by the courts and the parties. As a result, the GC Office's current investigation caseload increased by a similar amount, 27 cases, to a total of 491 as compared to the prior two-month period where the caseload was reported as 464. Although the GC Office has since filled one its vacant attorney positions, it will have another attorney out on leave for most of October. The GC Office has received 68 UPCs just in the past week, which is more than the number filed in all of September. The number of days of informal settlement conferences conducted by GC Office staff held steady at 48 (equal to the prior two-month period).

In terms of litigation relating to PERB since the Public Meeting in August, Ms. Murphy stated that three new matters were filed by or against PERB as follows:

- ***CDF Firefighters v. State of California (Department of Forestry & State Personnel Board)***, Sacramento Superior Court Case No. 34-2013-80001607, PERB Decision No. 2317-S [UPC No. SA-CE-1896-S], filed August 26, 2013. The issue in this case is whether the Board erred in Decision No. 2317-S by affirming a Board agent's

dismissal of a charge filed by CDFP, alleging that the State Personnel Board (SPB) violated the Dills Act by unilaterally amending the regulations under which SPB conducts disciplinary proceedings for employees represented by CDFP, without meeting and conferring in good faith. The Board held that the charge was properly dismissed by the Board agent because SPB does not have a duty to meet and confer with exclusive representatives of non-SPB employees. PERB filed its answer to CDFP's petition for writ of mandate on September 25, 2013. A hearing on the merits in this case is expected to be set for some time in the next three months.

- ***PERB v. Superior Court (City of Fremont & SEIU Local 1021)***, California Court of Appeal, First Appellate District, Division Four, Case No. A138888; Alameda Superior Court Case No. RG 13677821; IR Request No. 633 [UPC No. SF-CE-1028-M], petition for writ of supersedeas/mandamus was filed August 23, 2013. The issue in this case is whether a writ should issue directing the Superior Court to set aside an order of July 23, 2013, by which it denied SEIU's ex parte application to enforce the preliminary injunction issued on May 28, 2013, and motion for sanctions for contempt based on the City's ongoing refusal to bargain with SEIU as required by the preliminary injunction. The Superior Court apparently denied SEIU's application and motion because it believed the preliminary injunction is a mandatory injunction subject to the automatic stay of Code of Civil Procedure section 916, subdivision (a), which was triggered by the City's filing of an appeal from the preliminary injunction on June 5, 2013. In this case, PERB sought a determination that the preliminary injunction obtained from the Alameda Superior Court in May 2013, requiring the City of Fremont to maintain the status quo pending completion of PERB's administrative proceedings, is in fact a prohibitory injunction and, thus, not subject to the automatic stay of Code of Civil Procedure section 916, subdivision (a), or, in the alternative, that the stay should be lifted. The Court of Appeal denied PERB's petition on September 5, 2013, and that litigation is ongoing.
- ***PERB v. SEIU Local 1021 (City of Hayward)***, Alameda Superior Court Case No. RG 13691249; IR Request No. 640 [UPC No. SF-CO-320-M], filed August 9, 2013. The issue in this case is whether SEIU should be enjoined from calling for and conducting a strike beginning on August 12, 2013, based on the City's allegations that it would be an unlawful pre-impasse strike involving "essential" employees, whereas the Union has filed numerous UPCs and claims the strike would be a lawful UPC strike and that all statutory impasse procedures have been exhausted. After extensive negotiations with the parties, including two informal conferences to discuss the issue of any "essential employees" who should not be permitted to strike, the Board granted the City's IR Request in part, and directed the General Counsel's office to proceed to court to obtain an injunction based on the parties' stipulation as to the essentiality of certain classifications of City employees. On August 13, 2013, the Superior Court granted PERB's ex parte application for a TRO against a strike by a limited number of "essential" City employees, as designated in the parties' stipulation and a three-day strike ensued by the remaining employees. The case remains pending.

As to case determinations since the last Board meeting in August, PERB received two final court rulings both from the California Court of Appeal for the First Appellate District, which: (1) denied PERB's petition for writ of supersedeas in the *PERB v. City of Fremont (SEIU*

Local 1021) litigation, First District Case No. A138888; and (2) denied the petition for writ of extraordinary relief filed by the University of California as to PERB Decision No. 2300-H, involving leafleting by AFSCME Local 3299 at the University of California, San Francisco Medical Center.

Member Winslow asked about whether the increase in representation cases was under the Educational Employment Relations Act (EERA) or the Meyers-Milias-Brown Act (MMBA). Ms. Murphy responded that the increase in cases was fairly evenly split between EERA and the MMBA. She stated that the Agency has had a fair number of decertification petitions and elections during the last six months, some being very complicated cases, and that the GC Office would be announcing the results at future Public Meetings. Member Winslow then asked Ms. Murphy if she could provide, in future reports, a breakdown of UPCs by jurisdiction.

Ms. Murphy next reported on legislation and rulemaking since the last Board meeting in August. Regarding rulemaking, Ms. Murphy reported that two regulatory packages that had been approved by the Board in June 2013 (factfinding appeals and SMCS election procedures), had been approved by the Office of Administrative Law (OAL) and published, and became effective on October 1, 2013. Final text for both of those rulemaking packages is available on the PERB website.

Ms. Murphy reported that an “emergency” rulemaking package to implement the provisions of the In-Home Supportive Services Employer Employee Relations Act (IHSSEERA) creates a new jurisdiction and workload for PERB. So that it will be in place by the end of this calendar year, the GC Office will present to the Board a regulatory package at a special Public Meeting on November 14, 2013. Advisory Committee Meetings were held in Sacramento on January 17, 2013, and in Glendale on February 28, 2013, to discuss PERB’s role in the new “hybrid” collective bargaining system established by IHSSEERA. PERB would be vetting the proposed regulations with a working group of interested parties and experts on October 24, 2013. Ms. Murphy stated that a notice would be posted on the PERB website regarding that working group meeting inviting the participation of all PERB constituents.

Regarding legislation, Ms. Murphy stated that legislative reports had been distributed and then reported on the following two bills, which were of significant interest to PERB, that were on the Governor’s desk for signature or veto:

- i **AB 537 (Bonta)** — Provides that MMBA governing bodies must approve or reject a tentative agreement reached with an employee organization within 30 days after it is first considered at a duly noticed public meeting. Also allows court proceedings to compel arbitration of UPCs that are subject to deferral to binding arbitration under an MOU between the parties. AB 537 was enrolled and presented to the Governor on September 25, 2013.
- i **AB 1263 (Pérez)** — Establishes a hybrid form of collective bargaining for medical interpreters who serve low-income, Limited English Proficiency patients who receive health care services under Medi-Cal, in a new “Medi-Cal Patient-Centered Communication program,” a/k/a “CommuniCal,” to be established by the California

Department of Health Care Services. If signed into law, PERB would be required to administer an expedited certification process for an exclusive representative of a statewide unit of as many as 7,000 CommuniCal interpreters.

Ms. Murphy also reported on two bills the Agency had been closely tracking—AB 616 (Bocanegra), another MMBA set of amendments, and AB 641 (Rendon), the childcare bill. Both of these bills failed their deadlines to make it out of the fiscal committees, and are now two-year bills.

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, as an improvement, cases had been scheduled for formal hearing within three months from the date of the informal settlement conference. Previously formal hearings had been scheduled from three and one-half to four months from the date of informal, especially in PERB's Glendale Office. Additionally, reported Mr. Cloughesy, the division's number of days of formal hearings completed this fiscal year, as well as the number of proposed decisions issued, is approximately the same as last year. The number of proposed decisions excepted to the Board is currently about 37.5 percent, but since the MMBA came under PERB's jurisdiction, it has been approximately 48 percent. With only three months into the fiscal year it was difficult to predict trends and as time passed he could more accurately predict how numbers this fiscal year would progress stated Mr. Cloughesy.

c. State Mediation and Conciliation

Supervising Conciliator Loretta van der Pol reported that the State Mediation and Conciliation Service (SMCS) Division report had been distributed to the Board. In August SMCS opened 70 new cases (new requests for mediation) and there were 93 cases closed. SMCS breaks impasses down as (1) general, and (2) what are known as PERB impasses (EERA and HEERA impasses, which have stricter timelines and a different role for mediators). During the month of August SMCS had 20 PERB impasses, unusual for the month of August. SMCS ended the month of August with a total of 117 active cases, and started the month of September with 18 active PERB impasses, which were probably the bulk received. In September, SMCS opened an additional 59 cases and closed 67. SMCS ended the month of September with 115 active cases in its inventory including contract impasses, PERB impasses, grievances and elections.

SMCS's biggest challenge continued to be personnel administration, stated Ms. van der Pol. SMCS has been functioning with six mediators for nearly six months and is in the process of filling vacant positions. Presiding Conciliator Annie Song-Hill will be retiring effective December 31. SMCS does have an active eligibility list for presiding conciliators and would be able to fill that position, but that would create another vacancy in the conciliator rank. SMCS does have an active eligibility list for conciliator as well, and had initiated that recruitment based on the two vacancies that existed before Ms. Song-Hill announced her retirement. Michelle Keith will also retire December 31, as well as the possibility of another retirement that may occur December 31 or June 30 (SMCS hopes that this retirement will be the latter date). The division was expecting to conduct interviews to fill the conciliator vacancies by the end of this month. SMCS did not expect a huge spike in PERB impasses

prior to Thanksgiving, but expected to see a very large number of PERB impasses in the spring and would like to have experienced conciliators on board.

Ms. van der Pol stated that other than anecdotal information carried around by SMCS mediators regarding post-recession work, and how workflow actually goes up rather than down when money is restored, SMCS expected to be kept busy for a while.

Member Winslow also asked of SMCS a breakdown of cases by jurisdiction when reports are provided to the Board. Ms. van der Pol responded that, especially after January 1 when SMCS would fully be under PERB's Case Management System, there should be no problem with providing this information.

Motion: Motion by Member Huguenin and seconded by Member Winslow that the Administrative, Office of the General Counsel, Legislative, Division of Administrative Law, and SMCS Reports be accepted and filed.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

Chair Martinez introduced four items for discussion and possible adoption at today's Public Meeting. The reason for the introduction of these items was to provide transparency because the Board wanted PERB constituents to know the policies being considered and/or adopted by the Board. The introduction of such policies is new for constituents, stated Chair Martinez, but was considered to be a good future trend to displaying the transparency of the Board. Chair Martinez stated that copies of the four items for discussion were available as a hand-out at today's Public Meeting.

Member Winslow lead the discussion regarding the first item: PERB Organizational Chart.

Member Winslow introduced the PERB Organizational Chart which had one change to its prior structure: it moved a box entitled "Regional Offices" from one line directly led from the GC Office to a middle space where it would have two lines, one leading from the Division of Administrative Law and the other from the GC Office. The revised chart would more accurately reflect the shared occupancy of the regional offices which include staff from both the Division of Administrative Law and the GC Office, and now more regularly Board Members themselves. The chart is not intended to alter personnel responsibilities of the divisions or change reporting lines of authority, stated Member Winslow, it simply and more accurately reflected the occupancy of the regional offices.

Member Huguenin stated that there had been casual discussion regarding the Organizational Chart with today being the first time he had seen the chart with the revised structure. He believed that making the chart available at today's Public Meeting was a good idea, but

believed that formal action should be deferred until December. Member Huguenin stated that many boards adopt policies and provisions more frequently than PERB. There is a first and second reading of those matters, primarily to give interested parties, other than the public notice, to allow them to consider the matter before final action is taken. Member Huguenin stated that this would be a healthy and very transparent model to follow with respect to the adoption of policy matters or changes and encouraged the Board to do so with respect to the adoption to this chart. Member Huguenin asked that the Board not take action at today's Public Meeting on this item and that action be taken at the December Public Meeting.

Member Winslow stated that because the chart did not necessarily represent a policy change, but rather was an administrative matter and an item to be included in PERB's Annual Report due to the Legislature this month, and therefore moved for adoption of the PERB Organizational Chart as revised.

Member Banks agreed that the revised PERB Organizational Chart more accurately reflected the diversity of the staff in the regional offices. If kept at its prior structure it would appear that the regional offices were under one division's jurisdiction. In reality, stated Member Banks, staff from the Division of Administrative Law as well as the GC Office and now also Board Members take residence in each of the regional offices.

Motion: Motion by Member Winslow and seconded by Member Banks to adopt the revised PERB Organizational Chart.

Ayes: Martinez, Winslow, and Banks.

Nay: Huguenin

Motion Adopted – 3 to 1.

Second item for consideration: Nepotism Policy.

General Counsel Murphy lead the discussion regarding this item stating that it was an issue that had not been problematic at PERB, although some temporary employees for the agency had been friends and family of staff. The employment of temporary employees has been a strategy for the Agency to manage workload where there are no positions or there had been a position vacant for a lengthy period of time. The Nepotism Policy considered at today's Public Meeting had been modeled closely from a policy adopted by the Department of General Services, PERB's human resources advisor. Ms. Murphy stated that the policy was important to promote the agency's transparency and the fairness of the State civil service system. There would be fair competition for all members of the public who are qualified for positions at PERB and also no particular inside track for family members or others in relationships as defined in the policy.

Member Winslow wanted to know if the policy applied to temporary employees. Ms. Murphy stated that technically, persons employed temporarily are not employees of PERB, but are employees of the agencies from whom the Agency contracts. She stated that in the spirit of the policy, she had decided not to employ temporary personnel who would be covered by this policy, but ultimately that is a matter to be decided by each manager. There had been times, in an emergency situation, when temporary personnel known to PERB staff were the most readily available and had been employed for a limited period of time.

Member Banks stated that the Nepotism Policy was a responsible policy and thanked the GC Office for drafting and bringing the policy to the Agency's attention.

Motion: Motion by Member Banks and seconded by Member Winslow to adopt the Nepotism Policy.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Third policy for discussion: Job Descriptions (General Counsel, Chief Administrative Law Judge, Chief Administrative Officer and Chief of State Mediation and Conciliation Service).

Member Huguenin informed that job descriptions for division managers at PERB had been undertaken for review. The Agency is currently in the review process to update and change as necessary job descriptions for managers at PERB, some of which were quite old. Current managers have been asked to review and provide recommendations to the job descriptions for changes that may be appropriate or necessary. It is anticipated that revised job descriptions would be considered for adoption at the December meeting of the Board.

Fourth policy for discussion: Board Docket on the PERB website.

Chair Martinez stated that for the first time the Board Docket would immediately be posted on the PERB website. The docket lists the names of the cases that are pending, the case numbers and the date that the filing was complete. As a matter of interest to PERB constituents the docket will also show the total number of cases, its jurisdiction and what type of case (representation, exception to proposed decision or appeal of a dismissal, etc.) is to be decided by the Board itself.

Chair Martinez then made two announcements regarding: (1) A special Public Meeting on November 14, 2013, regarding consideration of the IHSSEERA emergency regulations, and also an Advisory Committee Meeting to be held that same day; and (2) a meeting to be led by PERB's GC Office on October 24, 2013.

Member Winslow asked for details regarding the meetings and General Counsel Murphy provided detail regarding the meeting to be held on October 24. She stated that the current plan was to illicit input from interested parties that could result in minor changes to draft regulations prepared by PERB staff regarding IHSSEERA, and to have a final draft to post on the PERB website and noticed for consideration at a November 14 Public Meeting. Ms. Murphy stated that the emergency rulemaking was not governed by the ordinary Administrative Procedures Act (APA) and OAL procedures. It is a special emergency rulemaking authority that PERB was given by the Legislature when adopting IHSSEERA. Because PERB's emergency rulemaking authority expires at the end of the calendar year, the agency's ultimate goal is to have the regulations in effect by that time, with the intent to follow the structure of an emergency rulemaking under the APA. Therefore, the Agency had called the special Public Meeting on November 14, 2013, and if necessary, the December 10, 2013, Public Meeting for consideration of this emergency rulemaking.

In response to Member Banks' question, Ms. Murphy explained the timeframe for meeting the 180-day deadline for the regular rulemaking and PERB's desire to complete such process by the end of the fiscal year. There was general discussion regarding the times for the meetings on November 14, 2013.

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 December 12, 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 Banks 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