

PUBLIC MEETING MINUTES

April 17, 2014

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 (Excused)
Wendi Ross, Deputy General Counsel
Shawn Cloughesy, Chief Administrative Law Judge
Mary Ann Aguayo, Chief Administrative Officer
Loretta van der Pol, Division Chief, 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 February 13, 2014, 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 February. Those were PERB Decision Nos. 2322a, 2354-M, 2355, 2356, 2357, 2358-C, 2359, 2360-M, 2361-M, 2362, 2363, 2364, 2365-H, 2366-H, 2367-M, 2368-M and 2369, and Order Nos. Ad-408-M, Ad-409-M and Ad-410-M. The following Request for Injunctive Relief (IR Request) was filed: No. 653 (*Service Employees International Union, Local 721 v. City of Hayward*), the request was denied; No. 654 (*Regents of the University of California v. AFSCME Local 3299 (EX & SX Units)*), the request was withdrawn; No. 655 (*Regents of the University of California v. AFSCME Local 3299 (EX & SX Units)*), the request was withdrawn; No. 656 (*Regents of the University of California v. AFSCME Local 3299 (EX Unit)*), the request was granted, in part; No. 657 (*Regents of the University of California v. AFSCME Local 3299 (EX Unit)*), the request was denied; and in No. 658 (*Sweetwater Union High School District v. Sweetwater Education Association*), 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 Banks and seconded by Member Huguenin, to close the February 13, 2014, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez adjourned the February 13, 2014 Public Meeting. She then opened and called to order the April 17, 2014 Public Meeting.

Minutes

Motion: Motion by Member Winslow and seconded by Member Huguenin that the Board adopt the minutes for the February 13, 2014, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Comments from Public Participants

None.

Staff Reports

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

A. Division of Administration

Mary Ann Aguayo, Chief Administrative Officer, reported on the following matters in Administration:

- i The authorization by the California Department of Human Resources (CalHR) for an excluded employee leave buy-back program for fiscal year 2013-14, subject to the availability of departmental funds. A determination regarding whether PERB could participate would be made within the next two weeks.
- i The budget change proposal for transferring funds from the PERB operating expense budget to fund four positions had made its way through the Senate Budget and Fiscal Review Sub 5 Committee. Due to the fact that the request was simply a transfer of funds, recruitment for the positions was under way. One position had been filled, and the remaining three were advertised and in various stages of recruitment.

- i The progression of the small facility expansion projects for PERB's Oakland and Glendale Regional Offices continues. Both were or soon to be at the lease negotiations stage. Oakland, the smaller project, could be completed as soon as July of this year. It was currently anticipated that the project at the Glendale Office would be complete in December 2014, but that date may vary due to additional changes required, such as bidding for a door entry/security system.

B. Office of General Counsel

In General Counsel Suzanne Murphy's absence, Deputy General Counsel Wendi Ross reported that the monthly activity and litigation reports were distributed to the Board Offices for its review. From those reports Ms. Ross highlighted activity since the Board's regular Public Meeting on February 13, 2014.

With regard to monthly activities in February and March 2014: during the past two months a total of 200 new cases of all types were filed with the Office of the General Counsel (GC Office) (down by 7 over the prior two-month period—from 207 to 200). During the same two month period, 216 case investigations were completed (up substantially over the prior two month period due to a larger than normal number of unfair practice charge (UPC) withdrawals in March [27 as compared with 17 and 14 in the prior two months] and also due to the fact that there are no vacancies in the GC Office attorney staff for the first time in many months producing substantial increases in March in the number of complaints issued [34 as compared to 22 and 17 in the prior two months], and charge dismissals [27 as compared to 17 and 10 in the prior two months]). That level of productivity made March 2014 only the second month since November 2012 that the GC Office had a positive clearance rate (i.e. where the number of cases closed was greater than the number of new cases filed, the only other month being March 2013).

Looking ahead, the GC Office continued to be on track for over 1,200 cases of all types for this fiscal year (as compared to 1,118 last fiscal year). For UPC filings alone, the GC Office continued to be on track for over 800 new charges this fiscal year not counting the University of California (UC) agency fee objector charges (as compared to 678 last fiscal year). The GC Office backlog of UPCs, excluding the UC agency fee objector cases, had steadily increased over the course of the current fiscal year (starting with an inventory of 398 UPCs at the end of the last fiscal year, which grew to 416 by the end of September 2013 and to 706 by the of March 2014). The primary reason for the growing backlog was due to the surge in litigation the GC Office continued to experience, diverting the regional attorneys from processing UPCs and slowed the completion of representation cases. The GC Office was still on pace for more than 200 litigation assignments for the current fiscal year (as compared to 146 last fiscal year and 139 the fiscal year prior to that).

During February-March 2014, Ms. Ross further reported that:

- i Mediation requests remained steady over the past six months and the GC Office was on pace for over 175 mediation requests for the current fiscal year (down from 215 the last fiscal year).

- i There was a drop in the number of factfinding requests (as compared to the prior two-month period). The GC Office was on pace for 92 factfinding requests for the current fiscal year (approximately the same as the prior fiscal year).
- i The number of representation petitions filed remained approximately the same as in the prior two-month period. The GC Office was on pace for 102 representation cases for the current fiscal year (continuing an upward trend over the past three fiscal years). Ms. Ross stated that there was a continued appearance of a related increase in the contentiousness and complexity of these representation matters.

As mentioned by the Chair, since the last Board meeting in February, the GC Office investigated six requests for injunctive relief as follows:

1. *SEIU Local 1021 v. City of Hayward*, IR Request No. 653 [Unfair Practice Charge No. SF-CE-1174-M], filed on February 21, 2014. This request was denied on February 28, 2014.
2. *Regents of UC v. AFSCME Local 3299*, IR Request No. 654 [Unfair Practice Charge No. SF-CO-197-H], filed on February 21, 2014. This request was withdrawn on February 28, 2014, after the UC and AFSCME reached a tentative agreement (TA) on a successor memorandum of understanding (MOU) for the SX Unit.
3. *Regents of UC v. AFSCME Local 3299*, IR Request No. 655 [Unfair Practice Charge No. SF-CO-198-H], filed on February 21, 2014. This request was withdrawn on February 28, 2014, after UC and AFSCME reached a TA on a successor MOU for the SX Unit.
4. *Regents of UC v. AFSCME Local 3299*, IR Request No. 656 [Unfair Practice Charge No. SF-CO-199-H], filed on March 14, 2014. This request was granted in part on March 20, 2014, as to the previously enjoined 49 employees plus a few additional employees stipulated by the parties to be essential. The GC Office proceeded to court on March 21, 2014, to obtain the injunctive relief approved by the Board, only to learn that the UC and AFSCME reached a TA for a successor MOU with the EX Unit late on Saturday, March 22, 2014.
5. *Regents of UC v. AFSCME Local 3299*, IR Request No. 657 [Unfair Practice Charge Nos. SF-CO-200-H and SF-CO-201-H], filed on March 14, 2014. This request was denied on March 20, 2014.
6. *Sweetwater Union High School District v. Sweetwater Education Association*, IR Request No. 658 [Unfair Practice Charge No. LA-CO-1612-E], filed on March 17, 2014. This request was denied on March 26, 2014.

In terms of court litigation, since the last regular Board meeting in February, one new matter was filed by or against PERB, as follows:

1. *County of Riverside v. PERB*, California Court of Appeal, Fourth Appellate District, Division Two, Case No. E060047; Riverside Superior Court Case No. RIC1305661

[PERB Case No. SF-CE-1028-M], PERB filed a notice of appeal from a ruling of the Superior Court on February 14, 2014, granting the County's request for \$15,000 in attorney fees under the anti-SLAPP statute.

As to case determinations since the last regular Public Meeting in February, PERB received no final court rulings from the California courts.

C. Legislative/Rulemaking

With regard to rulemaking Ms. Ross reported that the Board would be asked to give its final approval to regulations to implement the collective bargaining provisions of the In-Home Supportive Services Employer Employee Relations Act (IHSSEERA), which were approved as emergency regulations by the Board at a special meeting on November 14, 2013, and became effective on Friday, December 6, 2013, upon filing with the Secretary of State's Office. If approved by the Board today, it was the Agency's desire to secure additional approvals by the Office of Administrative Law (OAL) and Department of Finance, so the final rules would become effective in early June 2014.

Turning to legislative activity, Ms. Ross reported that:

- i AB 485 (Gomez), a significant update to IHSSEERA, had passed out of the Senate and returned to the Assembly for concurrence in Senate amendments that would give the Statewide Authority responsibility as the employer for collective bargaining purposes in *all 58 counties* as of January 1, 2015, not just the pilot program in the eight large counties that was expected to roll out by April 2014. This bill also effectively "de-links" the transition to State-level collective bargaining from the Coordinated Care Initiative (CCI), making the collective bargaining system permanent in California regardless of what happened with the CCI. Implementation of AB 485 was projected to cost in the tens to low hundreds of millions in ongoing costs to the General Fund if implemented due to likely increases in wages and benefits that would not be borne by the counties. Costs to CalHR alone to handle collective bargaining responsibilities on behalf of the Statewide Authority were estimated at over \$3.5 million in General Fund and an equal amount in federal funds.
- i AB 1536 (Olsen), identical to SB 423, was Senator Huff's bill to ban public transit strikes, which failed a key deadline and was dead for this session.
- i AB 1550 (Rendon) would amend section 3549.8 to: (1) extend PERB's deadline to approve Educational Employment Relations Act (EERA) mediation requests to 10 days (from 5); (2) require the employer, if the dispute was not settled within 30 days after issuance of the factfinding report, to give the exclusive representative written notice of the precise terms included in its last, best and final offer (LBFO); and (3) require the employer to provide the exclusive representative with written notice of a date certain for implementation of the terms included in the LBFO at least 30 days before implementation.
- i AB 1611 (Bonta) would amend EERA to require school districts to give reasonable written notice to a classified employee union of its intent to make a change to a matter

within the scope of representation. As written, the bill applies only to classified employee negotiations.

- i AB 2126 (Bonta & Beall) was the most significant pending legislation with potentially huge implications for PERB—both substantive and fiscal. As initially introduced this year, the bill included amendments to section 3505.2 that were cut out of AB 537 last year, which would establish mandatory mediation as an Meyers-Milias-Brown Act (MMBA) impasse procedure statewide, upon request by either the employee organization or the employer, and would require PERB to appoint a mediator in accordance with rules to be adopted by the Board. Taking the sponsors at their word that these proposed amendments are intended to align the MMBA with EERA, the Agency projected that, in addition to another round of MMBA rulemaking, the enactment of AB 2126 would yield at least 100 new MMBA mediation requests each year to be processed by the GC Office and, where the parties cannot agree on a mediator, an equally large number of new State Mediation and Conciliation Service (SMCS) mediation appointments in MMBA jurisdictions that do not currently provide for mediation by local rules. On March 26, 2014, AB 2126 was amended to incorporate amendments to section 3505.4 that would: (1) clarify the scope of AB 646 factfinding as extending to all disputes arising from negotiations over matters within the scope of representation (*not* just bargaining for a new or successor MOU); (2) clarify that only those factors listed in section 3505.4(d) that are deemed relevant by the factfinding panel must be considered when making their findings and recommendations; and (3) expressly provided that employee organizations may voluntarily waive factfinding. The current version of AB 2126 includes an express finding, in section 3, that the first and second amendments described above are “clarifying and declaratory of existing law,” and the bill analysis expressly states that those provisions are designed to legislatively overrule the trial court decisions in the *County of Riverside* and *San Diego Housing Commission* litigation.
- i AB 2325 (Perez) is the new version of CommuniCal, identical to AB 1263, which was vetoed last year. The bill would require the California Department of Health Care Services (DHCS), through a third party administrator, to provide and reimburse for medical interpretation services to Medi-Cal beneficiaries who are limited English proficient (LEP). It would require PERB to establish and administer a collective bargaining regime for 5,000+ certified medical interpreters in a single statewide unit, but who work in a wide variety of public and private healthcare settings. The bill expressly provides that CommuniCal interpreters would not be “public employees” or otherwise in an employer-employee relationship with the State for any purpose (including entitlement to health or pension benefits), but does provide for CalHR and DHCS to represent the State in the collective bargaining process and defines certain representation procedures and unfair practices as against the State.
- i SB 837 (Steinberg) would provide for universal transitional kindergarten for all four-year-olds, which the public schools do not currently have the capacity to handle. The bill would deem any private entity offering transitional kindergarten pursuant to a contract with a public school district or charter school that offered a kindergarten program to be a “public school employer” under section 3540.1, and subject generally to EERA.

- i SB 943 (Beall) would require PERB to review CSU contracts providing for the outsourcing of personal services, for compliance with factors enumerated in the Public Contract Code. This is a role that the State Personnel Board (SPB) had long played with respect to outsourcing contracts in the Executive Branch agencies that are subject to the Civil Service Act. This bill was outside of PERB's traditional jurisdiction under the Higher Education Employer-Employee Relations Act (HEERA) and faced resistance from SPB.
- i SB 979 (Beall & Torres) now contained the same amendments to the MMBA factfinding statutes as in AB 2126, but did not provide for mandatory mediation.

Member Winslow wanted to know the impetus for the CSU proposed legislation just reported. Ms. Ross stated that the GC Office had been given no additional information as to why PERB would be tasked with this role instead of SPB. Member Banks asked who was the author and the underlying sponsors. Ms. Ross stated that Beall was the author and that she would find out and later provide the information regarding sponsors of the bill.

Chair Martinez asked about the reported increase in representation cases. She wanted to know if it was primarily MMBA jurisdictions where there were no local rules or was it spread across the statutes. Ms. Ross replied that it was "pretty well spread" although the majority were within the MMBA jurisdictions where there had been a spike in especially contentious decertification cases. Chair Martinez asked whether there were no local rules regarding decertification. Ms. Ross stated "correct", and also that the GC Office was partnering with SMCS to assist with cases where there were local rules and SMCS was assisting the parties.

Member Huguenin thanked Ms. Ross and stated "excellent report."

D. Division of Administrative Law

Chief ALJ Cloughesy reported on the activities of the Division of Administrative Law and stated that the administrative law judge (ALJ) report had been distributed to the Board for its review. Mr. Cloughesy stated that in Sacramento the Division was currently scheduling cases for formal hearing two-three months from the date of informal conference and in the Oakland and Glendale Regional Offices cases were scheduled for hearing within three months. In comparison to last fiscal year, Mr. Cloughesy reported that the number of formal hearings was down, the number of days of hearing was down, proposed decisions issued were slightly down, whereas the number of assigned cases remained approximately the same. He stated that the downturn in numbers was most likely due to the number of cases settling just before hearing as compared to last year where such did not occur. The ratio of exceptions filed to ALJ proposed decisions was 45 percent (slightly up as compared to last fiscal year where it was 42 percent).

Mr. Cloughesy reported the Division's pleasure at its hire of Kent Morizawa as an ALJ. Mr. Morizawa would work at PERB's Glendale Regional Office and would preside over hearings beginning in May. Mr. Cloughesy stated that it was not easy to find judges in Southern California and with that region's caseload, the hire of a third ALJ for that office was cause for great celebration.

E. State Mediation and Conciliation Service

Loretta van der Pol, Division Chief, stated that SMCS's report was distributed to the Board. She reported that for the last two months the Division continued to see a slight drop in new cases. There was concern about what would happen after the Governor's May revise, stated Ms. van der Pol, and what the impact of the additional funding would be on the Division for the remainder of the current fiscal year and going into the next fiscal year. That said, in February of 2014, SMCS had 108 active cases at the end of the month, 79 cases were opened and 84 were closed. Of the active cases, 23 were PERB impasses (EERA and HEERA cases). In March SMCS had 112 active cases at the end of the month, 73 opened and 72 closed, and of those 18 were EERA and HEERA statute impasses, and MMBA impasses were approximately the same rate.

Ms. van der Pol reported that SMCS's Northern California residing conciliator, Steve Pearl, would retire at the end of September (his last work date would be May 16). A limited term vacancy was posted on April 4 and closed on April 11 for a seamless transition of the work, and a conditional offer had been extended. An announcement would be made at a later date after clearance was received from Human Resources to finalize the recruitment. That promotion had the possibility of becoming permanent after September 30 and if that were to happen it would create a vacancy in the conciliator rank and SMCS would then recruit to fill that position.

SMCS every year attends the Governor's May revise workshops at School Services and several staff members are expected to attend. Also, there were two staff members that would attend advanced mediation training, a certification program, at the Straus Institute. Participation in this training had been suspended over the last four years.

Tasks in the Division include:

- i A big project managed by Ms. van der Pol and SMCS's office technician was the preparation of invoices to be mailed for its arbitrator panel. There were approximately 120 arbitrators on that panel.
- i SMCS continued to work on its new MATS case management system. Glitches were encountered but it was anticipated that the issues would be resolved before the end of this month, tests could be ran, and the system would be fully operating by mid-summer.
- i Preparations for an outreach mailing, expected to be completed in May, which was to remind public sector employers and employee associations who SMCS is, SMCS's core mission, and inform them of new SMCS staff.
- i Completion of desk procedures—part of a laundry list of policies and procedures which needed to be updated.
- i SMCS was actively working with the Federal Mediation and Conciliation Service to reestablish (1) a relationship, and (2) the separate jurisdictions of each in the State.

Chair Martinez thanked Steve Pearl, who was in attendance at today's Public Meeting, for his service with SMCS.

"I have worked with Steve for many, many years. I worked with Steve when he was at the California School Employees Association. At State Mediation he became the person who led the charge on elections. And, being very near and dear to my heart, that whole representation process. I just want to thank you for everything that you have done for the Service and for your colleagues. And, on behalf of the Board, I want to wish you the absolute best. You will be missed—you will be very missed."

SMCS Conciliator Steve Pearl addressed the Board:

"If I could just take a moment to just respond. For nine years I've been with State Mediation has been the most compelling in my career and I appreciate all the opportunities that I have been offered over those nine years. I will certainly miss the comradery and the support that I have received from everybody that I have worked with, particularly starting with Paul Roose, who was the supervisor at that time, Annie Song-Hill and now Loretta. A person could not ask to have served under three more exceptional supervisors than I have had and I am very appreciative. Thank you."

Chair Martinez congratulated Kent Morizawa on his promotion to Administrative Law Judge.

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

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Public Hearing on Proposed Rulemaking

Chair Martinez opened the public hearing on proposed rulemaking to consider the proposed changes and additions to its regulations concerning IHSSEERA as described in the Notice of Proposed Rulemaking published in the February 28, 2014 California Regulatory Notice Register. According to the notice, written comments were to be submitted by 5:00 p.m., Monday, April 14, 2014. One comment had been received on Monday from CalHR. PERB staff today would comment regarding the proposed IHSSEERA rulemaking package, stated Chair Martinez, and immediately following that staff presentation, the public would then have the opportunity to appear before the Board and comment on the proposed regulations. She asked representatives from the GC Office to comment on the staff proposal regarding IHSSEERA.

Regional Attorney Jonathan Levy stated that as indicated by Chair Martinez and earlier by Ms. Ross, Board authorization was sought to continue with this rulemaking process. For consideration by the Board today was regulation text currently in place as a result of an emergency rulemaking process. That same text was the product of multiple interested-party

advisory meetings. No changes to the text as it currently exists in emergency form were being proposed today.

Chair Martinez called for public comment regarding the proposed IHSSEERA rulemaking package.

Jennifer Garten, Representative, CalHR, appeared before and thanked the Board for the opportunity to provide public comment. Given that CalHR had submitted written comments, Ms. Garten simply wanted to draw attention to a couple of matters from that correspondence.

First regarding the definition of who was the proper recipient for service of any filings related to IHSSEERA—PERB proposed regulation 32142(c)(8). During the Advisory Committee meetings and workgroups, stated Ms. Garten, CalHR and the Department of Social Services (DSS) had requested that both agencies be included as recipients of proper service. Considering at that time it was an emergency rulemaking procedure, and upon further reflection and having had more time to consider all of the rules, CalHR in its written comments was requesting that the proposed regulation be amended to provide for service only to the designated employer, which is the Statewide Authority. Other regulations under PERB’s jurisdiction only list the applicable employer and CalHR wanted consistency within the jurisdictions. As it was at CalHR’s initial request to have the two agencies added, it now wanted consideration to have them removed.

The second comment CalHR wanted to voice from its written correspondence was regarding proposed regulations 32602(a), 32610(g), 32611(e), and 32615(a)(4). These regulations have to do with rules and regulations the Statewide Authority is authorized to adopt under IHSSEERA (Government Code 11035). As set forth in the written comments, CalHR believed that the regulations were outside the scope of the statutory authority by permitting unfair practices to be processed for an alleged violation of a rule adopted by the Statewide Authority and that there is no statutory authority for this.

Chair Martinez called for a motion to close the public hearing on the proposed rulemaking regarding IHSSEERA.

Motion: Motion by Member Huguenin seconded by Member Banks to close the public hearing on proposed rulemaking concerning IHSSEERA.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Old Business

Chair Martinez stated that the public hearing regarding the proposed IHSSEERA regulations was now closed and no further public testimony would be taken at today’s meeting. The Board then considered the adoption and amendment of the regulations as described in the Notice of Proposed Rulemaking published in the February 28, 2014 California Regulatory Notice Register. If authorized by the Board, the rulemaking package would be forwarded to OAL for review and approval pursuant to the Administrative Procedures Act. Chair Martinez then asked if any Board member wished to comment on the staff proposal.

Member Huguenin had a question for the GC staff. He wanted to know the deadline in which the Board must act so there would not be a gap between the emergency regulations and the proposed final regulations.

Mr. Levy replied that the emergency regulations would expire on June 4 and if no final regulations were in place that would create a gap. He stated that as long as the Board had regulations filed before June 4, then those regulations would be in effect and permanent. He confirmed for Member Huguenin that such regulations would need approval at today's Public Meeting and explained that any changes that caused an impact to the substance of the regulation text would likely trigger a 45-day renewed comment period. The procedures thereafter would push outside the June 4 deadline, which would start a whole new process. Mr. Levy further confirmed in answer to Member Huguenin's and Chair Martinez's questions that any substantive changes, such as the changes earlier proposed by CalHR, would trigger either a new 15 or 45-day—to be justified and determined by OAL—written comment period. He confirmed that after the final regulations were in place, PERB could then go back and have them revised or amended. Any changes that were considered and approved today by the Board beyond those of a typographical nature, would disturb final regulations being in place by the June 4 deadline.

Chair Martinez then called for a motion to forward the proposed rulemaking package regarding IHSSEERA to OAL.

Motion: Motion by Member Banks and seconded by Member Winslow to submit the proposed IHSSEERA 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

Chair Martinez introduced a new program recently approved by the Board, the Superior Performance Recognition program. Managers in the following PERB divisions nominated employees and gave the reasons why such employee(s) were to be recognized under this program.

Wendi Ross stated that the GC Office had the following nomination:

“Under the new program that the Board adopted it specifically said either an individual or team and it is my great honor to nominate the ‘team’ basically who consist of our San Francisco Regional Office, and, that is Laura Davis, Daniel Trump and Joseph Eckhart. We nominate these three as team members due to their dedication, loyalty, insistence to make sure that when we had, at least, five essential employee strike matters coming out of the Oakland Office. Not only do we believe that they tried to institute our General Counsel's vision for assisting the constituents, work out the essential employee listing, but to also implement that big picture view of where we can assist the parties identify the

essential employees, where we can assist the constituent's figure out whose essential and who is not, as well as in those cases there are in fact essential employees that need to be prohibited from striking prepare the pleadings and assist in all court matters that it takes to get injunctive relief. The three of them have worked long days, nights, Mother's Day, weekends. They have been instrumental in trying to figure out, in a very complex, in a very tight timeline how to implement this vision. I have to say that I was skeptical coming in that we would be able to do it and as I said to the three of them, they did that which no one at PERB had ever done before them and that was figure out who was essential and who wasn't in this kind of format. And so I applaud their efforts and I recommend them highly.

Shawn Cloughesy stated that the Division of Administrative Law had the following nomination:

"The Division is nominating Administrative Law Judge Eric Cu for Superior Recognition. Last year and continuing into this year, he had written 23 proposed decisions, which by the way is the PERB record which he broke of Ron Blubaugh. So that gives him special status in my mind. This year he has continued that production. He is the highest producing as far as ALJ in a nonsupervisory level at the Administrative Law Division. He takes special responsibility in regards to his lead position. Really there he is the Administrative Law Judge II. He is always taking in a role in regard to the expansion of the Glendale Office, how it should look. Always taking responsibility with regard to the information technology in that aspect and is just you might say an all-around good guy. But, definitely a right hand person to have in the Glendale Office. He's also started, on his own initiative, I didn't ask him to do this, preparing an Administrative Law Judge manual, which we have some old versions, but he is starting that so that we would have a reference in that in the office. I am very glad to announce him as the Division's recommendation.

Loretta van der Pol stated that SMCS had the following nomination:

"The State Mediation and Conciliation Service nomination is Yu-Yee Woo. The circumstances of Yu-Yee's position with us during this fiscal year was a little bit unusual in that the first half of the fiscal year, for most of that first half of the fiscal year, she was working for us on a training and development assignment on loan from the Division of Worker's Compensation where she was an attorney. So she was working part-time and yet handling some very very significant cases and then she became our full-time regular mediator January 1st and so the nomination covers examples of her casework in both types of appointments because the level of, the amount of effort and her expertise and the level of her professionalism covering that whole span of time was just exceptional and it continues today even with a couple of very adversarial cases that we have that are getting ready to get started again on short notices as I'll describe, she's very good at taking these types of cases. What she did in her training and development assignment was that she took over with virtually no

notice in a large transit agency where there was a threatened strike and it was a very very contentious and hostile situation and there was a high level of political pressure as well being applied. She worked very long days, she worked nights, she was trying to balance what some of her deadlines were in her other job, her supervisor in her other position was very good about granting us some flexibility in the use of her time for this assignment. And she still had some lingering cases that she was attending to in her other division as well as in her regular SMCS part-time caseload. She ended up expending approximately 220 hours on just that one case alone working those very long days and she did achieve a tentative agreement in very dramatic fashion, very very late at night. There were a couple of junctures in the last week or so when she was working in that particular contract impasse where I was so concerned about her and her sanity that I really at one point recommended to her that she either withdraw or allow me to substitute somebody else, put somebody with her. But she stayed with it and then when we were able to start using her full-time, there was a strike situation that came up where we needed to scrabble over-night basically to put somebody in there and reallocate workload. She picked it up with very little experience in higher education and just did the same stellar level of work in that particular issue involved 600 employees. And there was a strike that was threatened within two days of when she was able to mediate an agreement there. We have seen that same level of work from her now, we have two similar situations right now where she has already in contact with the parties. I continue to be very impressed with the type of communications that she maintains, not only between the parties, but between the parties and me and any other mediators with whom she's having to coordinate work either on those assignments or who are taking over some of her cases. She has a very good instinct about who it is she needs to involve and she's very very good about seeking the counsel of her fellow mediators. So, I have not seen her make any major missteps, she's a pro already and has only been with us officially since January 1st although she was with us for two years before that in the training and development assignment. So I am very very pleased to nominate Yu-Yee Woo as our first nominee for this program.

Chair Martinez called for a motion to approve the nominations by PERB Division Managers under the Superior Performance Recognition program.

Motion: Motion by Member Huguenin and seconded by Member Winslow to approve the nominations for PERB's Superior Performance Recognition program.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

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 June 12, 2014, 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 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:

A. Eugene Huguenin, Member