

## **PUBLIC MEETING MINUTES**

August 14, 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**

Wendi Ross, Acting 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 June 12, 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 June. Those were PERB Decision Nos. 2376, 2377-M, 2378, 2379, 2380-M, 2381, 2382, 2383-S, 2384-H, 2385, 2386-S, 2387-M, and 2388-M, and Order No. Ad-414-M. The following Requests for Injunctive Relief (IR Request) were filed: No. 662 (*Service Employees International Union, Local 1021 v. City of Fremont*), the request was denied; No. 663 (*International Association of Machinists & Aerospace Workers, District Lodge 947, Local 1930 v. City of Long Beach*), the request was withdrawn; No. 664 (*Los Rios Classified Employees Association v. Los Rios Community College District*), the request was denied; and No. 665 (*Long Beach Firefighters Association v. City of Long Beach*), 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 Winslow and seconded by Member Banks, to close the June 12, 2014, Public Meeting.

**Ayes:** Martinez, Huguenin, Winslow, and Banks.

**Motion Adopted – 4 to 0.**

Chair Martinez adjourned the June 12, 2014 Public Meeting. She then opened and called to order the August 14, 2014 Public Meeting.

### **Minutes**

**Motion:** Motion by Member Huguenin and seconded by Member Winslow that the Board adopt the minutes for the June 12, 2014, Public Meeting.

**Ayes:** Martinez, Huguenin, Winslow, and Banks.

**Motion Adopted – 4 to 0.**

### **Comments from Public Participants**

Greg Eddy, Field Representative, California Federation of Teachers, appeared before the Board:

“I just wanted to let the Board know that I am retiring at the end of this month and I am really looking forward to it, extremely forward to it. But I have come to your Board meetings for a number of years and I wanted to express my admiration for the Board and for the employees you serve as well as for your staff. You have done enormous work for the people of the State of California. It's deeply appreciated, although I suspect that you never hear that. But, it genuinely is. And, whether this is appropriate or not—I am going to do it anyway—I want to personally thank the Members of the current Board. *All* of the Members of the current Board. There were periods of time where relations were difficult because obviously we recognize that there was a political nature to the work that we all do. This Board, I think, has gone a very, very long way in restoring the idea of equity that should exist between employer organizations and employee organizations. And I know that my organization feels that very, very much and that I do personally. And that each of you should be applauded for that effort. So, I thank you very, very much. While I have enjoyed coming, I am really happy that I won't be in the future. So, thank you all.”

The Board individually congratulated Mr. Eddy on his impending retirement with Chair Martinez stating “I would like to thank you for attending our meetings, for always wanting to engage with the Board, I wish you, we wish you, the best in your retirement.” Member Winslow added “You are right, we don't hear that much and I appreciate it, good-bye and good luck,” while Member Banks stated that he would “miss seeing you and I am sure after working

in the union for as long as you have, retirement is well recognized and well deserved.” Member Huguenin concluded with “Enjoy it. You’ve earned it.”

## **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**

Chief Administrative Officer Mary Ann Aguayo gave a presentation on the State of California (State) budget process, including a recap on PERB’s budget using power point slides. She explained that PERB was a small, general funded agency that was a “people driven organization, we don’t build roads, we don’t transport water, we administer collective bargaining statutes and make decisions.” She provided information regarding the budget process in general and on PERB’s budget. Below is a summary of her presentation.

- It is currently budget season and the Department of Finance (DOF) is responsible for building the budget for the Governor and State agencies are currently building their budgets with DOF. From that process, the Governor issues a budget on January 10. The budget then goes through the Senate and Assembly for review. The Governor then issues the budget again in what is called the “May Revise.” There is more deliberation through the Legislature, and the goal thereafter is for the Governor to have a budget to sign by June 30 of every year.
- Within the Governor’s budget what was published for PERB for Fiscal Year 2014-2015: 57.1 positions, and \$8.756 million in operating funds. Those funds were allocated as follows:
  - 78 percent—Personal Services. As a human resources driven Agency there is not much leeway unless there were vacancies, then savings are accrued that can be used for other one-time expenditures.
  - 9 percent—Facilities Operations (Rents). It is anticipated that this will increase slightly due to the office expansions in Oakland, tentatively expected to become effective October 1, and also in Glendale, expected to become effective sometime later.
  - 6 percent—Information Technology/Communications. Another large piece of PERB’s budget is allocated to technical support (such as, communications, telephones, infrastructure on the website, case management system, etc.).
  - 7 percent—Other. This is the only category where the Agency has some flexibility with spending. But, the majority of this category is a fixed cost that covers travel, training, office supplies, library publications, and contracted services. Contracted services included movers, haulers, temporary help, fees for other State agency services (such as, the

Department of General Services facilitating the Agency's lease agreements and also its performance of PERB's human resources functions, services rendered to PERB by the Department of Justice and the California Highway Patrol).

- To arrive at the Governor's budget in January there were several schedules that are submitted to DOF. The only way to augment PERB's budget is through Budget Change Proposals (BCPs). BCPs can be one time or they can be ongoing expenses. There are three different types of BCPs:
  - Standard BCP. Request to augment budget due to an increase in work/caseload and due to DOF on September 10, 2014.
  - Through legislation. Additional funds request would be due to the passage of legislation which causes an increase in work.
  - "Spring Letters"—also a BCP. This BCP process begins in approximately January – March. The request to augment PERB's budget with a "Spring Letter" would result from unforeseen costs (for example, a large election).
- PERB has a responsibility to operate within its budget constraints or be subject to restrictions. There are processes in place, although possibly time consuming, that would account for emergency situations (such as, elections/strikes) that could take PERB beyond what is budgeted. With communication and assistance from the Board, and the required advance notice to the Labor Agency, the Governor's Office and DOF, these unexpected expenditures could be accounted for, all to keep operations at PERB running smoothly.
- The Department of Finance has a website with different publications and published budgets.

There were questions from Board Members and discussion held about the budget process in general and with regard to PERB's budget.

Member Huguenin thanked Ms. Aguayo for her presentation stating that the information regarding budgets is public. With a background heavy in local government accounting and finance, Member Huguenin stated that it was helpful to receive a breakdown on the State's budget processes and that the Board looks forward to regular reporting regarding PERB's budget.

#### B. Office of General Counsel

Acting General Counsel Wendi Ross added information regarding Ms. Aguayo's presentation on the budget process stating that in the "Other" category there were costs that are accrued when PERB pays for a factfinder under the Educational Employment Relations Act (EERA) and the Higher Education Employer-Employee Relations Act (HEERA). When the parties are unable to choose a factfinder, PERB assigns an individual to perform that task and they are paid \$100 a day, with a three-day maximum. They are also paid for

travel and other expenses. With that, Ms. Ross stated that when PERB assigns an individual to perform as a factfinder, essentially they work on a pro bono basis.

Ms. Ross continued by giving the report for the General Counsel's Office (GC Office) for the months of June and July 2014. She stated that the monthly activity and litigation reports were distributed to the Board Offices for its review and acknowledged errors in the report brought to her attention by Member Banks. Ms. Ross added that she would account for those errors while highlighting the activity since the Board's regular Public Meeting on June 12, 2014.

Ms. Ross reported that with regard to monthly activities during the past two months (June and July) a total of 202 new cases of all types were filed (remarkably down by only 1 case over the prior two-month period) with the GC Office. During the same two-month period, 182 case investigations were completed (down by 20 over the prior two-month period—due in part to litigation matters, injunctive relief requests, and various vacations and other personnel issues). The GC Office has worked on over 27 litigation assignments in the last two months. Mediation requests were up slightly (34), in the last two months. The GC Office saw a small drop in factfinding requests (6); and the number of representation petitions filed in June and July were significantly down (18)—a trend that was expected during the summer months. Ms. Ross stated that by the next Public Meeting it was the GC Office's intent to reformat, to account for all election results, and publish its elections chart.

As mentioned by the Chair, since the last Board meeting in June, the GC Office worked on four requests for injunctive relief.

In terms of new court litigation, since the Public Meeting in June, the following matters were filed by or against PERB:

- *San Diego Housing Commission v. PERB; SEIU Local 221*. This matter is currently at the California Court of Appeal, Fourth Appellate District, Division One, Case No. D066237; San Diego County Superior Court, Case No. 37-2012-00087278-CU-MC-CTL; Factfinding [PERB Case No. LA-IM-116-M]. PERB filed its appeal on July 7, 2014. The administrative record was currently being prepared.
- *County of Fresno v. PERB; SEIU Local 521*. This matter was filed in Fresno County Superior Court, Case No. 14 CE CG 02042, PERB Order No. Ad-414-M [UPC No. SA-IM-136-M]. On July 21, 2014, the petition was personally served on PERB. On July 23, 2014, the County sought ex parte relief from the Superior Court to stay further proceedings in the underlying factfinding matter (Case Number SA-IM-136-M) for an indefinite period. The court granted the stay in part for 90 days, until October 21, 2014. PERB's answer or demurrer was due to be filed on August 20, 2014.
- *Glendale City Employees Association v. PERB; City of Glendale*, California Supreme Court, Case No. S219922, California Court of Appeal, Second Appellate District, Division P, Case No. B246938; Los Angeles Superior Court Case No. BS137172; PERB Decision No. 2251 [UPC No. LA-CE-672-M]. The Association's Petition for Review

was filed on July 17, 2014. PERB's Answer was filed with the Supreme Court on August 6, 2014, and the City's Answer was filed on August 7, 2014.

- *Bellflower Unified School District v. PERB; CSEA Chap. 32*, California Court of Appeal, Second Appellate District, Division Two, Case No. B257852, PERB Decision No. 2385-E [UPC No. LA-CE-5508-E]. The District's Writ Petition was filed on July 29, 2014. On July 30, 2014, PERB requested an extension of time to file the Administrative Record, which was granted to September 8, 2014. PERB's Informal Response in Response to Petitioner's Request for Immediate Stay was filed on August 13, 2014.

There were two determinations since the last Public Meeting:

- *Glendale City Employees Assn. v. PERB; City of Glendale*, California Court of Appeal, Second Appellate District, Division P, Case No. B246938; Los Angeles Superior Court Case No. BS137172; PERB Decision No. 2251 [UPC No. LA-CE-672-M]. On June 13, 2014, the Court of Appeal issued a non-published decision affirming the superior's court ruling granting the City's demurrer. On July 3, 2014, PERB requested that the Court of Appeal's decision be published. On July 11, 2014, the Court of Appeal denied PERB's request, but still pending was a final determination by the Supreme Court to PERB's publication request.
- *San Diego Housing Commission v. PERB; SEIU Local 221*, San Diego Superior Court Case No. 37-2012-00087278-CU-MC-CTL; [PERB Case Nos. LA-IM-116-M]. The Commission set a motion for attorney fees under section 1021.5, to be heard on June 27, 2014. PERB's opposition to the motion for attorney fees is due June 16, 2014. The Commission also filed a memorandum of costs. PERB filed a motion to tax costs on June 4, 2014, to be heard on June 27, 2014. Oral argument was conducted on June 27, 2014. On June 27, 2014, the Court denied the Commission's motion for attorney fees and partially granted PERB's motion to tax costs, awarding the Commission approximately \$500.00 in costs.

### C. Legislative/Rulemaking

In terms of rulemaking and legislation since the last Public Meeting in June, Ms. Ross reported that the rulemaking effort with respect to the regulations for the In-Home Supportive Services Employer-Employee Relations Act (IHSSEERA) are complete. Ms. Ross stated that there had been a great deal of significant legislative activity and that there was impending action on the bills within the next 48 hours. She gave a recap as follows:

- AB 485 (Gomez), a significant update to IHSSEERA, 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. On August 5, the bill passed the Assembly Human Services Committee, and has now been re-referred to the Assembly Appropriations Committee suspense file.

- AB 1550 (Rendon) would amend section 3548, and add sections 3548.9 and 3548.91 to: (1) extend PERB’s deadline to approve EERA mediation requests to 10 days (from 5); (2) require the employer to provide the exclusive representative written notice of a date certain for implementation of the terms included in the last, best and final offer (LBFO) at least 30 days before that implementation; and (3) explicitly banning unilateral changes to terms and conditions of employment. On June 23, the bill passed the Senate Public Employment & Retirement Committee. On June 25, AB 1550 received an amendment to rewording the provision on unilateral changes. The bill is now in the Senate Appropriations Committee suspense file.
- AB 1611 (Bonta) would amend EERA to require school districts to give reasonable written notice to an employee union of its intent to make a change to a matter within the scope of representation. As originally written, the bill only applied to classified employees. On June 24, the bill passed the Senate Public Employment & Retirement Committee, and on August 4, it passed the Senate Appropriations Committee. It was being voted on today.
- AB 1834 (Williams) would amend HEERA’s definition of “employee” to include student employees whose employment is contingent on their status as students. The bill was in the Senate Appropriations suspense file.
- AB 2126 (Bonta & Beall), 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 MMBA impasse procedure statewide, upon request by either the employee organization or the employer following a written declaration of impasse, and would require PERB to appoint a mediator in accordance with rules to be adopted by the Board. AB 2126 also includes amendments to section 3505.4 that would: (1) clarify as existing law that the scope of AB 646 factfinding extends to all disputes arising from negotiations over matters within the scope of representation; (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 provide that employee organizations may voluntarily waive factfinding. The bill passed the Senate Public Employment & Retirement Committee on June 24, and was in the Senate Appropriations suspense file.
- AB 2325 (Perez), the new version of CommuniCal, identical to AB 1263 which was vetoed last year. CommuniCal passed the Senate Public Employment & Retirement Committee on June 19, and was now in the Senate Appropriations suspense file.

Ms. Ross stated that the legislation could be taken out of the suspense file and voted on or no action could be taken, which as two-year bills, answering Member Winslow’s question, would cause the legislation to die. Ms. Ross added that she would provide an update to the Board within the next couple of days as action was taken on the bills.

Ms. Ross next reported on the Backstretch Workers matter. This was regarding the horseracing industry. PERB had agreed with the Department of Industrial Relations that payroll audits would occur by December 31, 2014.

Personnel Matters. The GC Office welcomed Blaire Baily as a new Regional Attorney in PERB's Los Angeles Office.

Member Huguenin wanted clarification that the determination regarding the costs to be paid to the Commission in the *City of San Diego* litigation matter would be under the "Other" category within PERB's budget. Ms. Ross confirmed his understanding, stating that there had been very few cases in the past where PERB actually had to pay out costs from litigation.

#### 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 with just one month into the current fiscal year, he would not speculate any outcomes, but in the Division regarding the current calendar for formal hearings, cases are being scheduled within 3-4 months from the date of informal conference in Sacramento and Glendale, and approximately 3 months in Oakland. Also, proposed decision issuance was slightly down in the Division from the prior year, partly due to the push for issuance at the end of the prior fiscal year (11-12 proposed decisions in June). Mr. Clouseshy expected proposed decision issuance to increase as the ALJs now geared up with decision writing.

#### E. State Mediation and Conciliation Service

Loretta van der Pol, Division Chief, stated that SMCS's report had been distributed to the Board. Ms. van der Pol stated that as the Division was starting fresh with the new fiscal year, the report would be brief. In case processing, SMCS cases were down from the prior fiscal year, out of character from prior fiscal years; the Division was down approximately 100 cases over prior years' averages. Cases were on the uptick, stated Ms. van der Pol, and the Division had received "a flurry" of new impasse requests at the end of July. With that, the Division appeared to be on track for a normal number of cases. With the report on open, closed and ongoing cases, a report giving the Board details on SMCS-ran election was also included. That report showed the Division's internal tracking as the elections came to the Division in a variety of ways. SMCS had always performed detailed in-house tracking, but without issuance of a report because it had never been requested. Ms. van der Pol invited suggestions regarding information to be generated in the election report to which the Board had a variety of requests (including, with respect to card check—the bargaining unit size or eligible number of voters, results of the election, indicate the current exclusive representative, organization attempting decertification).

Ms. van der Pol reported on the following tasks within the Division:

- An announcement for a conciliator examination was in the process of being generated to create a new list. It was requested that the exam period be kept open for longer than two weeks to allow for more applicants as had been seen in the last couple of open examinations. The exam would be open for 30 days (basically four weeks). The posting of the exam was imminent. There was a meeting to finalize the exam itself, and

the Division had been informed that it would be ready in 1-2 weeks. The exam was expected to be conducted sometime in the last two weeks of October, a list would be generated in mid-November, and interviews possibly as early as December. December, January and February tend to be the Division's best months to bring new employees on board, if the slow period during the summer months were missed. It was difficult to train new employees when there were large caseloads and attempting to work around those timelines.

- Performance evaluations had been completed within SMCS. SMCS had an increase in the request for chargeable services for training in IBB and Joint LMC processes, as well as facilitation for those processes. There were a number of SMCS staff who had never performed conflict resolution in the workplace and in-house training would be conducted in Oakland on October 9 and 10. This was partly the result of reinstated contracts which were cancelled for ten months of the prior fiscal year due to short staffing. Another part was the result of the Federal Mediation and Conciliation Service no longer providing this service to public sector agencies. Therefore, those agencies were being referred back to SMCS for these services.
- Invoices had been generated for the arbitrator's panel. There were approximately 122 arbitrators that were currently active on that panel. Those payments were due not later than August 31. There is a yearly fee of \$150 to be listed on the arbitrator's panel.
- Development of a project to start tracking high profile and high impact collective bargaining issues in the State. This was so the Division could keep track of what the collective bargaining cycles were. It would help with planning or forecasting to know when a typically problematic area was forthcoming and the Division could staff around it in advance or anticipate and proffer services early.

Chair Martinez congratulated Mediator Tom Ruiz on his work performed and Ms. van der Pol echoed her congratulations stating that it was "fantastic." Mr. Ruiz, a fairly new Mediator at SMCS, was recently able to get the California Association of Professional Scientist into a tentative agreement after several mediation efforts. Although the agreement had not yet gone out for vote, the Division was keeping its fingers crossed for the agreement's ratification. Ms. van der Pol stated that it "was a monumental effort, many late nights."

**Motion:** Motion by Member Banks and seconded by Member Huguenin 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.**

### **Old Business**

None.

## New Business

David Lanier, Secretary, Labor and Workforce Development Agency, addressed the Board.

“I apologize for not being here earlier, I am pleasantly surprised to find out the Board hears from the public early on, I am accustomed to many years of waiting to the end of long City Council meetings to have an opportunity to speak. So, what a refreshing change that is. I won’t take a lot of your time, I am glad to have been here to hear a little bit of your proceedings today. I wanted to send greetings from the Governor. I did have two items I wanted to comment on to the Board Members.

One, that I don’t envy your task. You’ve got an immense landscape of responsibility and, maybe not unique, but certainly a challenging charge in terms of trying to balance the interests of employer and employee and their representatives across the State and across such a diverse collection of bargaining units and bodies of law. So, that having been said, I’m confident that the Governor would not have appointed you if he did not feel that you were up to that charge. So, I extend my empathy and my continued good wishes for that challenge. It’s a daunting one and I don’t know that the public and that your stakeholders always appreciate how challenging it is to be a body that maintains credibility to both sides when in every decision there is an unhappy party. So, my hat off to you, you have my support and condolences on an ongoing basis for that effort.

The second thing that I thought that I would just mention briefly is the changes to the Board. Obviously, very difficult few years for all State entities and PERB is no exception. And, hopefully we are on the cusp of better times. We certainly see some stability and some opportunity to move forward under not quite so difficult fiscal circumstances and I am optimistic that that will continue and we certainly in every corner of the Labor Agency are working to try to support and fuel the economic turnaround that we hope that we are in the midst of. There have been a lot of changes for the Board in that period of time, due to budget cuts, due to the Governor’s reorganization plans, it’s great to hear the successes that you have had in absorbing—absorbing is probably the wrong word—but, moving Mediation and Conciliation Services into the Board and their continued success and growth and contributions. I know there was some anxiety perhaps around the alignment of the Board under the Agency. I want to just comment on that and say that, to my observation, both in the Governor’s Office prior to my appointment as Secretary, and since my arrival in the Agency, I think it is going well. It was intended to bring out the strengths of both organizations. I look forward and have enjoyed a good working relationship with your Chair so far and finding opportunities where the Agency can support the Board in your efforts in dealing with other State agencies. I think that is one of the opportunities of that alignment. I have a great sensitivity to the independence of the Board and there is certainly no intention to change that independence. But, it is helpful to have the Board closer to the Agency and have those resources and expertise available. So, I approach the alignments in that spirit. That we can serve each other and help each other do a better job. And, I think that is going well so far and I remain open to adjustments if it is not. It has certainly been valuable to have your staff and yourselves available for assistance on proposed statutory changes. And, I have a role in advising the Governor

on those policies and its very helpful to have a direct relationship with the Board and to hear your insights, because you and your staff and your judges are on the ground in those matters and I lack in your 27 years of experience short of what my predecessor had. So, I appreciate the additional resources and support. With that, thanks for being here and thank you for affording me the time.”

Chair Martinez thanked and stated the Board’s appreciation of Mr. Lanier’s appearance at today’s meeting.

**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 9, 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 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,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Anita I. Martinez, Chair