

PUBLIC MEETING MINUTES

December 11, 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 October 30, 2014, Public Meeting regarding Oral Argument. 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 October. Those were PERB Decision Nos. 2380a-M, 2393-M, 2394-C, 2395, 2396-M, 2397, 2398-H, 2399-M and 2400-H, and Order Nos. Ad-418-M and Ad-419-M. The following Requests for Injunctive Relief (IR Request) were filed: No. 672 (*Lori E. Edwards v. Lake Elsinore Unified School District*), the request was denied; No. 673 (*San Francisco Superior Court v. Service Employees International Union, Local 1021*), the request was denied; No. 674 (*Service Employees International Union, Local 1021 v. City of Fremont*), the request was denied; and No. 675 (*County of San Bernardino v. California Nurses Association*), the request was granted, in part. 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 Winslow, to close the October 30, 2014, Public Meeting.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Chair Martinez adjourned the October 30, 2014 Public Meeting. She then opened and called to order the December 11, 2014 Public Meeting.

Minutes

Motion: Motion by Member Winslow and seconded by Member Banks that the Board adopt the minutes for the October 9, 2014, and October 30, 2014, Public Meetings.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Comments from Public Participants

Bill Cavanaugh, Liaison to PERB on behalf of the California Teachers Association (CTA), appeared before the Board:

“Good morning. This is just by way of introduction. My name is Bill Cavanaugh, I am a teacher, U.S. History, an AP U.S. History teacher in Lake Elsinore. I am also President of the Lake Elsinore Teachers Association and I was just recently appointed the CTA Liaison to PERB. So, that is my role that I am performing here. I just wanted, by way of introduction, have been involved in some PERB decisions and you just mentioned one. So, I have been on the other side of this process and I am looking forward to the opportunity to see and investigate how things are ran and operate here as well as report back to CTA. . . .”

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 reported the following:

Budget

- i The Division had been in the process of building the fiscal year 2015-2016 budget through the Department of Finance (DOF). The State of California (State) is establishing a new operating system called Fi\$Cal. DOF will transition in Wave 1, the State Controller’s Office in Wave 2, and PERB will transition in Wave 4, which is two years from now. Due to the transition into this new Fi\$Cal system, completion of budget building galleys took more time. The Fi\$Cal system establishes entirely new accounting codes including a term called “Hyperion” and, therefore, there is all new language to be learned. It is anticipated that the Controller’s Office transition in Wave 2 will impact PERB’s accounting functions this coming fiscal year. The budget process for 2015-2016 has been completed and the final budget galley that will be printed in the Governor’s January budget was submitted last week.

- i Preparation for a meeting with the California Workforce and Development Labor Agency where it requested information on PERB's budget. This will be PERB's first time participating in this quarterly review process. A firm date for this meeting has not been set.
- i PERB's budget has been reconciled for the first five months of the fiscal year, is on track and healthy. PERB currently has five vacancies. If these vacancies were filled in January or February, it is projected that 100 percent of PERB's budget in personnel services would be expended and a surplus in this area would not be maintained as in prior years.

Facilities

- i Work continued with the Department of General Services (DGS) regarding the expansions at PERB's Oakland and Glendale offices. The Oakland office expansion has been delayed due to local building code permits and State Fire Marshall secondary reviews. The best estimate for completion is March. In the Glendale office expansion it is anticipated that a lease would be in place by January 1 for a small suite of approximately 900 square feet which would be used as a hearing room. This is an interim measure because the suite that PERB currently occupies, or the entire building, is not ADA compliant. As a result, DGS was *allowing* PERB to stay in this building until the soft term of the lease expires in 2017. However, the agency is moving forward with a plan to move at this time as it is assumed that it would take approximately 12 months to go through the moving process and lease rates are likely to be more favorable at this time than they would be in 2017.

There were questions from Board Members and discussion held about the expansions in both the Oakland and Glendale offices, and the anticipated move from the Glendale office.

Personnel

Ms. Aguayo introduced two new employees:

- i Taji Jordan, Staff Services Manager I. Mr. Jordan will assist in Administration operations in general, and specifically with the Fi\$Cal and DGS processes.
- i Noemy Alvarado. Ms. Alvarado will perform PERB's accounting functions in replacement of Stephanie Gustin who is soon to retire.

Member Winslow inquired regarding Ms. Aguayo's reporting about staff vacancies at PERB. She wanted to know if that included the fifth Board Member and his or her counsel.

Ms. Aguayo responded that the above reported staff vacancies included one Board Member, one Legal Advisor, a General Counsel, and two Conciliators.

Ms. Aguayo responded in the affirmative regarding Member Bank's inquiry about whether DOF's Wave 1 transition and the State Controller's Office Wave 2 transition into Fi\$Cal would make PERB's Wave 4 transition into the new system easier.

B. Office of General Counsel

Acting General Counsel Wendi Ross gave the report for the Office of the General Counsel (GC Office) for the months of October and November 2014. She stated that the monthly activity and litigation reports were distributed to the Board Offices for its review. She highlighted the activity since the Board's regular Public Meeting on October 9, 2014.

Ms. Ross reported that with regard to monthly activities during the past two months (October and November) a total of 178 new cases of all types were filed with the GC Office (compared to 166 over the prior two-month period). She reported that the GC Office made a concerted attempt to address its backlog of cases of all types by completing 239 case investigations (compared to 142 over the prior two-month period, equating to an increase of approximately 100). The GC Office worked on 11 litigation assignments for the prior two-month period (compared to 26 for the prior two months). This was likely one of the reasons the GC Office was able to make progress with respect to case investigations. Mediation requests were up—24 (compared to 13 from the prior two-month period), there was also an increase in factfinding requests—13 (10 in the prior two-month period), and the number of representation petitions filed increased slightly—18 (from 14 for the prior two-month period).

As mentioned by the Chair, since the last Public meeting in October, the GC Office had investigated four requests for injunctive relief.

There were no new court litigation matters filed by or against PERB in October or November 2014.

There was one determination since the last Public Meeting: *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]. On October 15, 2014, the Court granted CDFFF's Writ Petition and ordered that PERB Decision No. 2317-S be set aside and reissued. Although the Writ appeared on the Court's docket that it had issued, PERB had not yet been officially served.

C. Legislative/Rulemaking

There was no legislative or rulemaking report.

D. Division of Administrative Law

Chief Administrative Law Judge Shawn Cloughesy reported on the activities in the Division of Administrative Law and stated that the Administrative Law Judge (ALJ) report had been distributed to the Board for its review. He stated that he would report on important highlights and could also provide fair predictions on trends as it was six months into the current fiscal year.

- i In PERB's Sacramento Headquarters office cases were being set for formal hearing approximately 3-1/2 months from the date of informal settlement conference. In Oakland cases were being set within 3 months, and in Glendale, 4 months (most likely to increase to 4-1/2 months by the end of this month or January).

- i There has been an increase in the number of cases assigned for formal hearing. The Division currently has 81 assignments, as compared to last year—75. With the current number of cases set for informal conference, a significant increase in this number was anticipated.
- i The total number of days of hearing is significantly up at 95 days, as compared to last year—76. This increase was most likely due to three cases with 15+ days of hearing. The number of days of hearing is expected to increase as with the anticipated increase in the number of cases assigned.
- i The number cases where the formal hearing has been completed was approximately the same as last year.
- i The number of proposed decisions issued is slightly down from last year, but the Division is quickly gaining ground in this area.

Mr. Cloughesy reported his expectation of an increased caseload fairly soon, especially focused in the Glendale office. He stated his recent calculations, and as consistently true, that 55 percent of the workload is in the Glendale office. The remaining percentage can be divided equally between the Sacramento and Oakland offices.

- i The exceptions ratio of proposed decisions appealed to the Board itself increased to approximately 41 percent. The exceptions ratio has been consistent, but some of the more interesting cases are pending and it is anticipated that PERB constituents would exercise their right to file exceptions on those matters.

Mr. Cloughesy concluded his report stating that the extra hearing room in PERB's Glendale office would allow additional hearings to be scheduled. ALJ's from the Sacramento and Oakland offices would travel to that office to preside over hearings and assist with the overflow of cases.

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 the Division started the month of December with approximately 25 percent more cases than this same time last year and, as reported by Ms. Aguayo, two positions were vacant. The Division had two open positions at this same time last year that were filled, but there are now two new vacancies. Also, at this same time last year the Division had an unusual lower caseload, but currently was experiencing its average caseload trend.

Ms. van der Pol reported on a problem with the SMCS elections report. It was discovered that there was a problem with the report, kept by the elections coordinator, for consent elections when work is vetted and with the way one of the mediators tracked some of that work in the Division's case management system. The report will be reconciled and an update will be provided to the Board by the next Public Meeting .

In the last couple of weeks, SMCS had been working with the California State University System and its negotiations with the California State University Employees Union (CSUEU). There was a change made in the parties contract language which has the potential to significantly increase the Division's workload. In the past, with five bargaining units involved, SMCS had not mediated many grievances with these particular units because there was a provision in the parties' old contract that called for a process which Ms. van der Pol described as "Med-Arb." There were cases where SMCS took the work, but then had to mediate an agreement as mediators and not as arbitrators for a handful of the more serious cases. Generally, the parties would then decline to go forward because SMCS would not comply with providing an arbitrator-type decision at the end of the process. In discussions with both parties prior to their negotiations starting last year, SMCS described what its functions were intended to accomplish and asked that the parties take a look at modifying this language; to which the parties agreed. As a result there are now very good guidelines in the parties' contracts. In two different provisions there are two types of complaint processes. One is the standard grievance process for articles in the collective bargaining agreement and there also is a bargained complaint process for administrative complaints. There is now mediation language in both articles that promotes the use of mediation and the language is similar to what is in the statute. The parties now have the ability to go to a panel and share the cost of a private mediator, or the default is to come to SMCS. The offer is made on the consent of both parties to mediate at any level of the grievance process, including the informal. That language is replicated in the administrative complaint process as well. Therefore, it is conceivable that SMCS could mediate at the informal, not get to a settlement, and then a couple of months later, find that SMCS is being requested to come back at Step 2 or Step 3, etc. There was no track record with these units to predict what the impact could be, but within the training that was provided statewide to all department-heads on the new language, there was a big push to make use of mediation to attempt and resolve disputes at the lowest possible level. Ms. van der Pol stated that she would be tracking this work separately to attempt to forecast what the impact was going to be. Although the language was still the tentative agreement language, as it has not been converted over to permanent language, it was ratified by the units roughly two weeks ago.

Providing details regarding SMCS's two vacancies, Ms. van der Pol stated that she had previously reported that the Division had one vacancy, and then had another Conciliator resign. The Division has now completed the exam process to fill these positions and a certified eligibility list of 10 candidates has been established. She had also previously reported that the results of the recruitment were dismal. Originally there were 33 applicants (25 were invited to test; 17 participated; 10 ultimately passed the exam process). The Division would next prepare to conduct interviews sometime in January.

SMCS recently held a one day staff meeting (cut down from two days). The meeting was very productive, especially for its two recently hired mediators, where a good amount of training tips were exchanged.

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

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

The Board considered the approval of policies/plans proposed by PERB staff: the Emergency Action Policy and Procedure for the Sacramento Office only; and the Injury and Illness Prevention Plan. Ms. Aguayo provided details regarding the policy and plan.

- i Emergency Action Policy and Procedure for the Sacramento Office only. Ms. Aguayo stated that before the Board today for approval is the actual Policy and Procedure (the first two pages). The additional documents provided with this policy are for reference (including the actual plan, maps, and forms). This policy is mandated and therefore currently throughout PERB's Sacramento office drafts are taped onto the walls at the exits. For compliance purposes, a drill would be performed before the end of the year, and mandatory safety vests and a whistle would be purchased. The Sacramento office currently does not have a fire alarm.
- i Injury and Illness Prevention Plan. Not a policy, but a mandated plan which PERB is required to post and administer. This plan is to prevent injuries and train employees to ensure, to the extent possible, an illness and injury-free workplace.

As the policy and plan were mandated, Chair Martinez wanted to know whether any reporting or filings with any other State agencies are required.

Blair Gollihur, who assisted with the preparation of the policy/plan, replied that PERB is simply required to have the policy and plan on record, to show that staff has been trained, and that staff is familiar with the three procedures involved in the Emergency Action Policy.

There was discussion regarding some information on the policy and plan, including specifically the Emergency Action Policy's incorrect reference to an exit on "L" Street rather than "K" Street. The policy is to be corrected/appended. Ms. Aguayo asked that any further errors or inconsistencies in the policy and plan be pointed out for correction. She confirmed for Member Huguenin that it was the first two pages of the Emergency Action Policy that are being considered today. She further confirmed that as the policy and plan are required and mandated, adoption by the Board of both would be appropriate.

The policy and plan were considered separately for adoption by the Board.

Emergency Action Policy and Procedure for the Sacramento Office only.

Motion: Motion by Member Huguenin and seconded by Member Winslow that the Emergency Action Policy and Procedure for the Sacramento Office only, including the appended plan, be adopted.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Injury and Illness Prevention Plan.

Motion: Motion by Member Huguenin and seconded by Member Banks that the Injury and Illness Prevention Plan be adopted.

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 February 12, 2015, 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 Winslow and seconded by Member Huguenin to recess the meeting to continuous closed session.

Ayes: Martinez, Huguenin, Winslow, and Banks.

Motion Adopted – 4 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair

The Board commended Stephanie Gustin on her impending retirement from PERB's Accounting Department:

Chair Martinez:

“Stephanie, on behalf of the Board, and I know that each of the Board Members would like to say something to you at this Public Meeting. We really, really, really appreciate everything that you have done for PERB during your tenure. You have gone above and beyond your job duties, your job classification to do anything and everything that is requested of you. And personally, I want to thank you so much, especially when the prior Chief Administrative Officer retired and came back on a part-time basis, you basically stepped up and did that job along with doing your accounting job. And, without you, this place could not have functioned in those duties. Personally I want to thank you so much. Thank you for training your replacement. It's wonderful, I know that you've indicated that you are going to be available a day a month, I think it is, for her to have questions. And, it's just invaluable to have someone to able to ask questions and figure out, how we do it. You know, so again thank you very, very much.”

Member Huguenin:

“I appreciate very much your flexibility with the accounting information when I first got here trying to out how the State budget works compared with experiences I have had on local level with budgets. I also appreciate very much your being very asciduous with your paycheck duties, making sure we get our remittance advices on a timely basis. And get our leave balances all sorted out. Thank you very much.”

Member Winslow:

“I'd like to echo that, but also say *Good Luck* and have fun in retirement.”

Member Banks:

“I want to join my colleagues in saying that I am really going to miss you and *Good Luck*, but inane questions I'd had to those serious concerns like getting my birthdate changed with CalPERS so that I could actually go to Kaiser were things that you just went through and just were so patient, and I know, for both myself and Scott, with all these issues and concerns, just walking us through it and always apologizing for a system that you did not create. I really do appreciate and I am going to miss you a lot.”