

PUBLIC MEETING MINUTES

August 13, 2015

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
Mark C. Gregersen, Member

Staff Present

J. Felix De La Torre, General Counsel
Shawn Cloughesy, Chief Administrative Law Judge (Excused)
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 11, 2015, 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. 2432, 2433-M, 2434, 2435-M, 2436-M, 2437-H, 2438, 2439, 2440, 2441, 2442-M, 2443-M, 2444, 2445, 2446, and 2447, and PERB Order Nos. Ad-423-M, Ad-424-M, Ad-425-M, Ad-426-M and Ad-428. There were two Requests for Injunctive Relief (IR Request) filed as follows: No. 681 (*San Bernardino PEA Teamsters 1932 v. City of Chino Hills*), the request was denied; and No. 682 (*County of Santa Clara v. Service Employees International Union, Local 521*), the request was granted. 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 Huguenin, to close the June 11, 2015, Public Meeting.

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

Motion Adopted – 5 to 0.

Chair Martinez adjourned the June 11, 2015, Public Meeting. She then opened and called to order the August 13, 2015, Public Meeting.

Minutes

Motion: Motion by Member Gregersen and seconded by Member Banks that the Board adopt the minutes for the June 11, 2015, Public Meeting.

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

Motion Adopted – 5 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

Ms. Aguayo gave the report regarding the Division of Administration as follows:

Fiscal: The Division closed the 2014-2015 fiscal year on August 5; slightly late. Therefore, Ms. Aguayo would be unable to provide a budget update as the State Controller's Office accounting reports for the new fiscal year were not yet available. Earlier provided budget projections for the 2015-2016 fiscal year showed a deficiency. Measures have been taken to reduce expenditures and meet the budget.

A budget change proposal (BCP) modifying the 2016-2017 fiscal year budget was being developed, first for review by the California Workforce and Labor Development Agency (Labor Agency). The BCP would then be submitted to the Department of Finance (DOF) for consideration in September.

Facilities: Regarding the move to an ADA compliant site for the Glendale office, only one location selected from the June site search bid to build-out space and that bid was high. PERB was awaiting a response from the Department of General Services (DGS) on this matter.

Information Technology: Infinity Consulting began maintaining PERB's network and systems on July 1. Infinity was in the process of assessing PERB's systems and would provide recommendations regarding repairs or improvements within the next month. Ms. Aguayo then reported the following:

- Much needed servers had been purchased. PERB's servers were outdated and Infinity was to transition old servers and install the newly purchased servers at each office beginning next week with the Glendale office.
- As reported to the Department of Technology, PERB's spam filtering server was running an operating system that was no longer supported and was replaced last weekend.

Human Resources:

- PERB continued to be under audit by the State Personnel Board. A response to a request for additional information would be submitted.
- The contract with DGS for human resources/personnel services was cancelled effective July 31. Only partial PERB records were returned. Ms. Aguayo was communicating with DGS to retrieve the remaining documentation.

Two part-time staff were hired to transition and carry-out the basic functions that were previously handled under the DGS contract. Ms. Aguayo introduced Clara Bonetti who has been working at PERB as a student intern for approximately 14 months under a contract with University Enterprises. Ms. Bonetti was transitioning to one of the part-time positions and would be the key contact regarding transactions (including time-keeping, leave balance issues, etc.). Jennifer Gereghty was introduced noting her many, many years of experience in human resources within State departments. Ms. Gereghty came on board as a retired annuitant who would work two days a week helping Ms. Aguayo and Ms. Bonetti with transitioning, training and developing PERB's in-house program.

New legislation, entitled the "State Leadership Accountability Act" or "SLAA," would require additional reporting; mostly administrative. This new legislation changed the name of a prior reporting which was entitled "FISMA." PERB's first report under SLAA would be due on August 31.

Member Winslow asked if the reporting under SLAA was to DOF and asked for further details. Ms. Aguayo confirmed that the reporting under SLAA would be to a division within DOF and explained that FISMA had encompassed more internal controls, mainly within the administrative function. The new legislation broadened the scope and changed the name to ensure State departments encompassed all operations and not just the administrative function. Therefore, explained Ms. Aguayo, SLAA encompassed all operations, but the bulk was controls within administration and confirmed for Member Winslow that this did include fiscal controls.

Member Winslow then inquired about PERB's budget. She stated that the budget graphic provided to the Board at the Public Meeting in June projected a surplus of \$933,000 and asked Ms. Aguayo for an estimate of PERB's budget at the fiscal year end.

Ms. Aguayo stated that PERB ended the fiscal year with a small surplus and that this was intentional—it was the way State accounting and reporting was set-up. She stated that, given current staff resources, it would be impossible to identify an exact balance at the fiscal year end. Ms. Aguayo provided an example stating that fairly recently an invoice that was two years old surfaced where the Agency was able to go back two fiscal years and draw from those funds for payment, since remaining funds stay on the books for three years prior to reverting to the General Fund.

Member Banks wanted information regarding the Glendale office site search. He asked whether the assessment of the bid being high was by DGS standards or what PERB had set as a limit for the move/build-out. Ms. Aguayo stated that it was a DGS standard.

Member Banks wanted to know if the next step was a “waiver” or if PERB would simply start a search for another site. Ms. Aguayo answered that PERB was awaiting a response from DGS but that she assumed the Agency would continue with its site search. She continued answering Member Banks’ question that PERB could stay at its current location until the “soft” term of the lease expired, February 2017, and added that the earliest funds could budgeted and made available for the move would be July 1, 2016. She stated that the move would be costly. In answer to Member Winslow’s question, Ms. Aguayo explained that although the funds for the move would be derived from PERB’s budget, she would request 100 percent of those funds through a BCP and that there had already been a preliminary approval through DOF. Ms. Aguayo further explained that she would keep the BCP regarding funds for the move separate from any other budget needs by PERB. In answer to Chair Martinez’s question she continued that she would be asking for a specific dollar amount and that estimated figure was compiled and provided by DGS (expected costs/anticipated rent). Based on this information, if the bid came in too high, it was not a site PERB could afford.

B. Office of General Counsel

General Counsel J. Felix De La Torre gave the report for the Office of the General Counsel (GC Office) for the months of June and July 2015. He stated that the monthly activity and litigation reports were distributed to the Board offices for review. He highlighted the activity since the Board’s regular Public Meeting on June 11, 2015.

Mr. De La Torre reported that with regard to monthly activities during the past two months (June and July), a total of 104 new unfair practice cases of all types were filed with the GC Office (a decrease of 16 over the prior two-month period—there were 120 cases filed in April/May). During the most recent two-month period, the GC Office completed 170 case investigations (again a slight decrease—182 in April/May). Between June and July, the GC Office issued 56 complaints, and dismissed 29 charges (compared to 48 complaints issued in the prior two-month period, and 39 dismissals—an increase in complaints and a drop in dismissals). The number of litigation matters completed by the GC Office more than doubled in June and July, 19 (compared to 8 in April/May). The number of factfinding requests also increased—in June and July there were 12 requests for factfinding (in the prior two-month period there were 9 requests). The number of representation petitions decreased slightly—from 23 in April/May to 19 in June/July.

As mentioned by the Chair, since the Public Meeting in June, there were two requests for injunctive relief:

1. *County of Santa Clara* (IR Request No. 682), the request was granted. This IR Request required two separate efforts by PERB to go into court. (See below regarding court litigation—nos. 2 and 3). The union in one case withdrew their strike after a tentative agreement was reached. The request was reinstated when the union was unable to get the tentative agreement ratified. Ultimately, PERB never had to implement the injunction because the parties resolved the dispute and settled their contract.
2. *City of Chino Hills* (IR Request No. 681), the request was denied.

In terms of court litigation, since the last regular Board meeting in June, four new matters were filed by or against PERB as follows:

1. *San Luis Obispo Deputy County Counsel Association and San Luis Obispo Government Attorneys' Union v. PERB; County of San Luis Obispo* (June 24, 2015) California Court of Appeal, Second Appellate District, Case No. B265012; PERB Decision 2427-M (PERB Case Nos. LA-CO-123-M & LA-CO-124-M). The issue in this case is whether the Board erred in Decision No. 2427-M. The administrative record was due on September 4, 2015, and the petitioner's opening brief is due October 9, 2015.
2. *PERB v. Service Employees International Union, Local 521; County of Santa Clara* (June 29, 2015) Santa Clara County Sup. Ct. Case No. 115 CV 282467; IR Request No. 682 (PERB Case No. SF-CO-366-M). The issue in this case is whether a pre-impasse strike by Service Employees International Union, Local 521, should be enjoined in its entirety or, alternatively, whether the court should enjoin only essential employees whose absence creates a substantial and imminent threat to the health or safety of the public.
3. *County of Santa Clara v. Service Employees International Union, Local 521; PERB* (June 29, 2015) Case Information: Santa Clara County Sup. Ct. Case No. 115-CV-282408; IR Request No. 682 (PERB Case No. SF-CO-366-M). The issue in this case is whether the County of Santa Clara may bypass PERB by unilaterally seeking an injunction from the superior court to block a pre-impasse strike by Service Employees International Union, Local 521. (See below regarding closed litigation—no. 1, this case has been withdrawn/dismissed.)
4. *Los Angeles Unified School District v. PERB; United Teachers Los Angeles* (July 24, 2015) Court of Appeal, Second Appellate District, Division Four, Case No. B265626; PERB Decision No. 2438 (PERB Case No. LA-CE-5810-E). The issue in this case is whether the Board erred in Decision No. 2438-E. The administrative record was due September 17, 2015, and the petitioner's opening brief is due on October 22, 2015.

As to case determinations since the last regular Board meeting in June, PERB received one final court ruling as follows: *Bellflower Unified School District v. PERB; CSEA Chapter 32* Supreme Court of California, Case No. S226096 California Court of Appeal, Second Appellate District, Division Two, Case No. B257852, PERB Decision No. 2385-E (PERB Case No. LA-CE-5508-E). This was a petition for review of the California Supreme Court.

The petition was denied and the case was now final. The GC Office has opened a compliance project to ensure compliance with the Board's Order.

In addition, regarding closed litigation, the GC Office closed two matters without a final court ruling or a ruling on the merits as follows.

1. *County of Santa Clara v. Service Employees International Union, Local 521; PERB*, Santa Clara County Superior Court Case No. 115-CV-282408, IR Request No. 682 (PERB Case No. SF-CO-366-M). The County had filed a request for an injunction which was withdrawn by the County when it proved unsuccessful.
2. *PERB v. City of Fremont (SEIU Local 1021)*, Alameda Superior Court Case No. RG 13677821, IR Request No. 633 (PERB Case No. SF-CE-1028-M). Filed in the First Appellate District. This case was rendered moot when SEIU disclaimed interest in the bargaining unit in effect making the appeal moot, and a companion case that was still at the Superior Court in *PERB v. City of Fremont* in Alameda County. A request for dismissal was filed in both Courts. The requests were granted, and both cases are now closed and final.

For informational purposes and inquires by the Legislature, the GC Office monitors legislation that concern the labor relations statutes under PERB jurisdiction. Mr. De La Torre stated that because it was near the end of the legislative session, many bills had either died or not made it through committee. He reported on legislation which was currently active:

- Senate Bill 548 (de León): This bill authorizes family child care providers to form, join, and participate in the activities of provider organizations, and to seek the certification of a provider organization to act as the exclusive representative for family child care providers on matters related to State-funded child care programs pursuant to a petition and election process overseen by PERB or a neutral third party designated by the Board. Location: The bill passed the Assembly Labor and Employment Committee and is now in Assembly Appropriations. There was no scheduled hearing date.
- Assembly Bill 874 (Rendon): This bill would apply the Dills Act to employees of the Judicial Council, with the exception of employees of the Supreme Court, courts of appeal, or the Habeas Corpus Resource Center. Also, it prohibits PERB from including Judicial Council employees in a bargaining unit that includes employees other than those of the Judicial Council. Location: The bill passed the Assembly and was now in the Senate assigned to the Public Employment and Retirement Committee (PE&R). The bill has been at the committee since early June without any scheduled hearing.
- Senate Bill 686 (Pan): This bill provides that the definition of "employee" or "higher education employee" also includes a supervisory employee employed as a sworn peace officer by the University of California or the Hastings College of Law. Location: The bill passed the Assembly and is now in the Senate where it passed the Senate Higher Education Committee. The bill then moved to the Senate Appropriations Committee and has been placed on Suspense.

There was no rulemaking activity.

D. Division of Administrative Law

In Chief Administrative Law Judge Shawn Cloughesy's absence, General Counsel De La Torre reported on the activities in the Division of Administrative Law and stated that the Administrative Law Judge (ALJ) report had been distributed to Board offices for review. Mr. De La Torre reported on the highlights as follows:

- For the current calendar the Division was scheduling cases for formal hearing three to four months from the date of the informal conference in all three offices (Sacramento, Oakland and Glendale).
- Case assignments were up from the preceding year—13 so far this fiscal year as compared to 10 at this same time last fiscal year. As a note, last fiscal year's case assignments were 209, the largest in PERB's recent history.
- Days of formal hearing and number of formal hearings were down from the previous fiscal year.
- Pending proposed decisions to be written were down from last month by three decisions, a good start for a reduction in the backlog.
- The number of proposed decisions issued was up from last year.
- The ratio of exceptions to proposed decisions is 48 percent.

E. State Mediation and Conciliation Service

Division Chief Loretta van der Pol stated that the State Mediation and Conciliation (SMCS) report for June and July 2015 had been distributed to Board offices for review. Ms. van der Pol stated that the Division was in its slower cycle.

The Division's two newest Mediators, Jerry Adams and Jun Payoyo, were now starting to carry their own cases. Mr. Adams and Mr. Payoyo were getting the basic contract impasses and grievances, and soon would be transitioning into representation and election work. SMCS Presiding Conciliator Ken Glenn would be on leave, originally through September 12, but with additional time on the books had extended that time through the end of September. During the month of June, four days of leave were taken by Mediators and 25 days of leave were taken in July.

Regarding SMCS case processing, Ms. van der Pol reported the following:

- June. 55 cases were opened, 65 were closed and the Division ended with 104 active cases going forward. In comparison with the prior year, where SMCS was starting to see the "slight uptick" from the end of the recession as it affects the public sector, in June 2014, 66 cases were opened, 88 closed and had 111 active cases going forward.

- July. 48 cases opened, 65 closed and 95 active cases going forward. In comparison, the prior year 78 opened, 86 closed and 111 active cases going forward.
- Elections and Representation:
 - June. 15 active representation cases: 1 decertification showing of interest card check; 1 representation showing of interest card check; 4 representation elections; 6 decertification/representation elections; and 3 agency shop elections. Four cases were resolved prior to the end of June: 1 agency shop; and 3 representation elections that resulted in the union establishing a majority.
 - July. 13 active representation cases: 3 card checks; 5 decertification/representation elections; 2 representation elections; and 3 agency shop. Eight cases were resolved: 5 card checks and elections, union established a majority; 1 decertification election, successful for the challenging union; 1 agency shop election, the union failed to establish a majority; and 1 decertification effort, SMCS withdrew its services where the parties could not agree on a consent agreement and this case would most likely move forward to PERB's GC Office.

Regarding personnel administration Ms. van der Pol reported the following:

- One Conciliator had informally notified an intention to retire sometime this fiscal year, creating another vacancy.
- The CPS classification study was underway. The first of two interviews to be conducted was recently held in Sacramento with the Subject Matter Experts. The second interview, to start finalizing the new class specifications, would be conducted in early October.

Regarding program administration the following was reported:

- June. SMCS received \$1,735 for chargeable work and lists of arbitrators, closing the year for a total of \$79,087.49.
- July. With start of new fiscal year, SMCS had receipts of \$21,280, primarily consisting of the annual arbitrator panel fee.

Motion: Motion by Member Banks 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, Banks, and Gregersen.

Motion Adopted – 5 to 0.

Old Business

None.

New Business

None.

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 8, 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 Huguenin and seconded by Member Winslow to recess the meeting to continuous closed session.

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

Motion Adopted – 5 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair