

## **PUBLIC MEETING MINUTES**

October 8, 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 (Excused)  
Eric R. Banks, Member  
Mark C. Gregersen, Member

### **Staff Present**

J. Felix De La Torre, 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 August 13, 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 August. Those were PERB Decision Nos. 2448, 2449, 2450, 2451-M, 2452, 2453, 2454-M, and 2455. There were three Requests for Injunctive Relief (IR Request) filed as follows: No. 683 (*California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation)*), the request was denied; No. 684 (*Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara*), the request was denied, and No. 685 (*County of Contra Costa 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 Gregersen and seconded by Member Banks, to close the August 13, 2015, Public Meeting.

**Ayes:** Martinez, Banks, and Gregersen.

**Motion Adopted – 3 to 0.**

Chair Martinez adjourned the August 13, 2015, Public Meeting. She then opened and called to order the October 8, 2015, Public Meeting.

### **Minutes**

**Motion:** Motion by Member Banks and seconded by Member Gregersen that the Board adopt the minutes for the August 13, 2015, Public Meeting.

**Ayes:** Martinez, Banks, and Gregersen.

**Motion Adopted – 3 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.** An update on the budget was provided along with four handouts and discussion took place. One was a copy of PERB's published budget totaling \$8,868,000. Ms. Aguayo provided a breakdown of the numbers, and pointed out that \$7,042,000 is budgeted for personnel services, leaving a very small budget to operate a public agency. The second handout was a 2014-15 prior fiscal year balance showing that just over \$40,000 remained unencumbered to pay for expenses not yet accounted (billed) for in that year. Ms. Aguayo pointed out that each fiscal year remains open for three years for this purpose.

The third handout was a current fiscal year, 2015-16 projection to fully fund PERB's positions and operations. The projection assumes all positions were filled, and shows a deficit of over \$600,000. The fourth handout was also a 2015-16 fiscal year projection that displays a balanced budget. The balance is achieved by holding the current vacancies open and significantly reducing all discretionary operating expenses to generate savings. Discussion ensued and Ms. Aguayo clarified that there were five vacancies: three Attorney, one Staff Services Manager, and one Administrative Assistant II.

**Facilities.** A second site search had been completed for PERB's Los Angeles regional office. Lessor bid responses were due yesterday, but at last check, PERB had received at least one viable response. Ms. Aguayo confirmed for Member Banks that the response received was in the Glendale area.

## Human Resources.

- PERB continues with the establishment of its in-house human resource/personnel services program.
- The State's open enrollment for benefits would close tomorrow where original documents are required.
- The State Personnel Board audit was completed with a preliminary finding and a concluding meeting was to be held next week. Chair Martinez inquired about the finding. Ms. Aguayo responded that the findings were in line as with other State agencies. She added that (1) as previously reported, PERB did not have a Disability Advisory Committee as required, and (2) that there were minor issues with PERB's recordkeeping where 50 percent of those issues were the result of work performed when PERB was under contract with the Department of General Services (DGS). DGS had been invited to attend the concluding meeting but declined to do so.

## 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 August and September 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 August 13, 2015.

Mr. De La Torre reported on activities during the past two months (August and September). A total of 98 new unfair practice cases of all types were filed with the GC Office (a decrease of 6 over the prior two-month period [in June and July—104 cases were filed]). The GC Office completed 167 case investigations (a slight decrease from June/July—170 investigations completed), issued 57 complaints and dismissed 42 charges (compared to 56 complaints and 29 dismissals; complaints remained steady while dismissals increased by 13). In August and September the GC Office saw a decrease in the following areas (compared to June and July): (a) the number of litigation matters completed—9 (19); (b) the number of factfinding requests— 7 (12); and (c) in the number of representation petitions—14 (19).

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

- (1) No. 683 (*California Correctional Peace Officers Association v. State of California (Department of Corrections & Rehabilitation)*)—denied by PERB.
- (2) No. 684 (*Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara*)—denied by PERB.
- (3) No. 685 (*County of Contra Costa v. California Nurses Association*)—granted, in part. This case involved an approved request for injunctive relief as to certain essential employees involved in a strike at the county's medical facilities.

In the prior two-month period (June and July) there were two requests for injunctive relief.

Since the last regular Board meeting in August:

- In terms of court litigation, no new matters were filed by or against PERB.
- As to case determinations, PERB received no final rulings from the California courts.
- 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 Fresno v. PERB; SEIU Local 521*, Fresno County Superior Court Case No. 14CECG02042 CAC (PERB Case No. Ad-414-M). Dismissal filed by Fresno County after the SEIU Local withdrew its factfinding request which was the basis for the whole case.
  - (2) *PERB v. City of Fremont (SEIU Local 1021)*, 1st District Court of Appeal, Division 4, Case No. A139991 (PERB Case No. SF-CE-1028-M). Withdrawn by PERB regarding mootness.

Legislation/Rulemaking. 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 the legislative session had ended and bills were now before the Governor. He reported on the only two bills left which PERB was tracking and that were currently pending action by the Governor:

- Senate Bill 548 (de León): Requires the Department of Education to ensure that all family child care providers attend an in-person orientation training. This bill has been completely modified from its original version where it authorized the unionization of the child care providers.
- Senate Bill 686 (Pan): Provides that the definition of “employee” or “higher education employee” under the Higher Education Employer-Employee Relations Act also include a supervisory employee employed as a sworn peace officer by the University of California or the Hastings College of Law (effectively allowing them to join a union).

There was no rulemaking activity.

#### 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 Board offices for review. He reported on the highlights as follows:

- Setting the date for formal hearings, from the date of the informal settlement conference, in the Sacramento and Glendale offices are approximately within 4 months and the Oakland office is 3-4 months..
- Case assignments to the ALJs are up approximately 40 percent (as compared to last year, which was an all-time high). The Division was experiencing a spike in this regard.

- Number of formal hearings completed are up approximately 50 percent.
- Number of total cases closed are up approximately 50 percent.
- Ratio of exceptions to proposed decisions is approximately 44 percent.

E. State Mediation and Conciliation Service

Division Chief Loretta van der Pol stated that the State Mediation and Conciliation (SMCS) report for August and September 2015 had been distributed to the Board offices for review. Ms. van der Pol reported the following:

Case Processing.

- August: The Division experienced an unusually light month—24 new cases for the entire month. A review of SMCS records provided no other time where intake of new cases had been that low. SMCS closed 45 cases and had 78 active cases going forward.
- September: Intake numbers back to normal—52 new cases. SMCS closed 50 cases and had roughly 96 active cases going forward.

Ms. van der Pol noted that in an effort to eliminate high leave balances, SMCS mediators were taking vacation and, as a result, cases had been scheduled further out. This was reflected above in the number of cases closed.

Elections and Representation.

- August: Ten (10) active representation or election cases (4—decertifications, 2—showing of interest, 1—representation, and 3—agency shop elections). Four (4) concluded during the month: (a) in 2 of the decertification efforts, the challenging union was successful in one and in the other the incumbent union prevailed, and (b) in the 2 showing of interest, in one the county placed the issue in abeyance temporarily while they continued to research their local rules, and in the other the union established a sufficient showing of interest.
- September: Eleven (11) active cases (3—decertifications, 1—showing of interest, 2—representation, 4—agency shop elections, 1—request to oversee a union’s contract ratification vote, which are occasionally performed by SMCS). Four (4) concluded during the month: (a) in 1 of the decertification efforts the challenging union was successful, (b) in 1 representation election the union established the majority, and (c) in 2 of the agency shop elections the union established the majority.

Personnel Administration. SMCS was nearing the end of the classification study being conducted by CPS of the conciliator series. A second round of meetings with subject matter experts had been held. CPS was in the process of finalizing a draft class specification for review by SMCS including the development of the knowledge, skills and abilities statements. It is SMCS’s goal to have a recommendation to share with the Board sometime before December. Through these processes, it was the Division’s desire to agendize these classification study

results at the State Personnel Board and the new job titles could be officially adopted. Currently, SMCS class specifications are directly under the Department of Industrial Relations, have not been revised since the 1970's, and were considerably out-of-date.

SMCS has one mediator who has been on extended leave since mid-July, but had extended that time through mid-October (or possibly longer). With that, the Division's caseload remained manageable.

Program Administration. In August, SMCS received \$1,735 in reimbursements and in September \$2,090.

Ms. van der Pol reported on an additional item. The California Law Revision Commission (CLRC) has been working on a study to determine whether modifications were needed to the State's Evidence Code regarding mediator confidentiality and attorney malpractice or misconduct. A letter drafted by PERB's General Counsel had been submitted stating PERB's position. Ms. van der Pol and General Counsel De La Torre were to attend CLRC's regular meeting this afternoon at the University of Davis, School of Law, to be in the audience and available to answer any questions.

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

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

**Motion Adopted – 4 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 December 10, 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 Gregersen and seconded by Member Banks to recess the meeting to continuous closed session.

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

**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