

PUBLIC MEETING MINUTES

February 11, 2016

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
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 December 10, 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 December. Those were PERB Decision Nos. 2450a, 2463, 2464-M, 2465-S, 2466-M, 2467-M, 2468-H and 2469-M, and Order Nos. Ad-430-M, Ad-431 and IR-59-C. There were two Requests for Injunctive Relief (IR Request) filed as follows: No. 693 (*Sacramento County Superior Court v. United Public Employees Local 1*), the request was denied, and No. 694 (*Public Employees Local Union 1 v. County of Butte*), 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 December 10, 2015, Public Meeting.

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

Motion Adopted – 5 to 0.

Chair Martinez adjourned the December 10, 2015, Public Meeting. She then opened and called to order the February 11, 2016, Public Meeting.

Minutes

Motion: Motion by Member Gregersen and seconded by Member Winslow that the Board adopt the minutes for the December 10, 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:

Human Resources.

- i The California Department of Human Resources (CalHR) has introduced its webpage, CalHR Jobs, an on-line application system which establishes new departmental accounts and processes. PERB was testing and utilizing this new system for its current recruitments for (1) Legal Analyst (Office of the General Counsel), and (2) Staff Services Manager (Division of Administration).
- i The classification study and salary survey for the Conciliator class series began last spring and would correct PERB's on-going recruitment and retention issues. The project was delayed for a few months to obtain clarification from CalHR regarding recent changes to their process and requirements for State Personnel Board agenda packages, but was now nearing completion. Ms. Aguayo and State Mediation and Conciliation Service Division Chief Loretta van der Pol would meet with consultants to review all documents which were drafted. The salary survey is a portion and would not be completed until March, therefore PERB's package would not be completed until April. The largest hurdle, stated Ms. Aguayo, is PERB's lack of funding to support the recommendations, something that would need to be addressed at a later time.

- i CalHR, as part of the Gov-Opts Initiative (the Governor's initiative for lean management), is fast tracking classification specification revisions for six major areas. The first project they are addressing encompasses Attorney and Administrative Law Judge (ALJ) classifications. This project has the potential to significantly impact PERB positions and future hires. CalHR has asked for subject matter experts from management and PERB's General Counsel and Chief Administrative Law Judge have volunteered to participate. There are to be a series of three meetings each with CalHR.

In answer to Member Banks' inquiry, Ms. Aguayo further explained that the objective for the revisions is to reduce the number of individual classifications. As an example, stated Ms. Aguayo, for ALJs, PERB has its own classification that is currently in use. This project would abolish the PERB-specific classification and the Agency would then use the statewide classification.

- i Regarding the Gov-Opts Initiative, Ms. Aguayo added that pursuant to research 45 percent of work activities could be automated utilizing existing technology, and stated her intent regarding opportunities to save, reduce and cut back whenever possible.
- i Chelsa Boyd, a student in Business Administration (Honor's Program) at California State University, Sacramento, joined PERB in December as an Intern. Ms. Boyd will work in Business Services.

Information Technology.

- i The migration project to update PERB's servers is almost complete.
- i PERB's webpage is being updated to a new template. New features on the webpage would include drop down menus (including subscription options for the Board Agenda and Minutes, among others), formatting for smart phone users, and a search feature for the full webpage, which has not been available in the past. Ms. Aguayo thanked Member Huguenin and Cheryl Shelly for their assistance in this regard, and estimated that the webpage update project would be completed within the next couple of months.
- i PERB Central and PERB's Case Management System, a case tracking database, are housed on outdated software and in the near future would no longer be supported. In addition, there are system flaws and reporting errors created by software upgrades that over the years are now impacting the functionality. These systems need to be updated and currently Ms. Aguayo has been unable to find a suitable solution. In researching and speaking with the California Labor and Workforce Agency and other State departments, Ms. Aguayo discovered that the process to obtain funding for a project is very lengthy and laborious. If PERB were to request funding today, an updated system could be in place by the year 2020.

Member Winslow wanted to know the estimated cost for the system upgrade. Ms. Aguayo explained that an assessment would first need to be made. Having spoken to the Department of Industrial Relations where a new database was being implemented for the CalOSHA Board and being given the costs, Ms. Aguayo calculated it to be approximately \$.5 million. She added that the CalOSHA Board system was slightly more complex than what PERB would require.

In answer to Member Banks' inquiry, Ms. Aguayo further explained the functions and impact of PERB's outdated systems, the necessary software upgrades, and her current inability to locate other suitable solutions.

Fiscal. PERB received recognition for meeting Small Business and Disability Veteran procurements of 40 percent and 22 percent, respectively. Ms. Aguayo acknowledged Della Braaten for her efforts in this regard.

A Fiscal Subcommittee had been established at PERB. The subcommittee was comprised of various PERB Board Members and managers who met on an as-needed basis. Subcommittee discussions included details regarding budget processes in general, and PERB's budget and projections were provided by Ms. Aguayo. In particular, the discussions included prioritizing and filling vacancies as the budget allowed. The subcommittee developed a draft prioritization and estimated that 5 or 6 positions would be required to remain vacant in order to meet next fiscal year's (2016-2017) budget allocation.

There were two Budget Change Proposals (BCPs) published in concert with the Governor's budget in January. The first was a workload BCP (includes four positions for workload and one position that converted contract dollars to bring the human resources function in-house and operating funds for factfinders, administrative services and the new staff). The second BCP contains funds to relocate PERB's Southern California Regional Office in Glendale due to the current location's noncompliance with American with Disabilities Act (ADA) requirements.

Ms. Aguayo had previously reported PERB's struggle with the current budget (fiscal year 2015-2016). With all Board Member positions filled, and salaries, rent and other costs escalating with no correlating budget increase, managing PERB's budget has been challenging. In an effort to reach fiscal solvency, vacancies had been maintained as they occurred. Currently there were eight vacancies: three Attorney positions and one Legal Analyst (General Counsel's Office); one Administrative Assistant II and one Legal Advisor (Board Offices); and one Staff Services Manager I and one Staff Services Analyst (Division of Administration).

Ms. Aguayo provided a projection to the Board for the 2015-2016 fiscal year, and also for the first time, a projection for the 2016-2017 fiscal year. She prefaced her reporting stating that projections fluctuate week-to-week (due to funding and unexpected expenses); she therefore provides an accurate projection as possible. With PERB's current remaining budget (through January 2016, a six-month figure) at \$56,000 the Agency could begin hiring.

Regarding the 2016-2017 fiscal year, Ms. Aguayo pointed out discrepancies noting that although the current published Governor's Budget was skewed, the overall total was correct at \$10,218,000. In Ms. Aguayo's 2016-2017 projection, PERB is fully staffed and there would be an operational deficit of \$712,000.

Member Winslow asked if the 2016-2017 fiscal year budget assumed that the above-reported BCPs were approved and with that wanted confirmation regarding the projected deficit. Ms. Aguayo responded that each was correct. She further explained that the Governor's published budget is used as a starting scenario and assumptions are made to provide as accurate as possible projections for the Board.

Member Banks wanted to know if the 2016-2017 projection included a successful move for PERB's Glendale Office. There was discussion and Ms. Aguayo provided an update. She confirmed for Member Winslow that PERB did not control its lease and that pursuant to the Department of General Services, was required to move due to the current location's noncompliance with ADA requirements. She further provided details about two previously reported sites which were slightly less than the square feet required by PERB and had to be evaluated. There was discussion which also included details regarding estimated tenant improvements at \$100 per square foot that PERB was not budgeted to pay for, so a resolution on how to fund those costs was still pending.

Ms. Aguayo concluded reporting that due to a shortage of staff and increased workload there were a number of reports that are due to control agencies that had been delayed and would be completed as soon as possible.

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 December 2015 and January 2016. He stated that the monthly activity and litigation reports were distributed to the Board offices for review. He highlighted significant activity since the Board's regular Public Meeting on December 10, 2015.

Mr. De La Torre then reported on activities during the past two months (December 2015 and January 2016) stating that a total of 108 new unfair practice cases of all types were filed with the GC Office (a slight decrease of 2 over the prior two-month period [in October and November—100 charges were filed]). The GC Office completed 160 case investigations (a significant increase from October/November—126 investigations completed). The number of complaints issued was 52 and there were 19 charges dismissed (compared to 39 complaints and 19 dismissals in the prior two months). Case processing times increased from the two-month average: currently—137 days; October/November—123 days. The number of litigation matters completed by the GC Office decreased in December/January to 14 (compared to 54 in October/November).

In the GC Office there was a decrease in the number of factfinding requests—9 (compared to 14 in October/November), and representation petitions—16 (compared to 20).

Mr. De La Torre confirmed for Member Huguenin that the numbers reported for factfinding requests and representation petitions were for matters filed at PERB.

As mentioned by the Chair, since the Public Meeting in December there were two IR Requests: (1) No. 693 (*Public Employees Union, Local 1 v. Sacramento County Superior Court*), request denied; and (2) No. 694 (*Public Employees Union, Local 1 v. County of Butte*), request denied, expedited administrative proceeding ordered.

Since the regular Public Meeting in December:

- In terms of court litigation, two new matters were filed, both against PERB.
 - (1) *City of San Diego v. PERB; San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, Catherine A. Boling, T.J. Zane, Stephen B. Williams*, Court of Appeal, Fourth Appellate District, Division One, Case No. D069630; PERB Decision No. 2464-M (PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M)—Whether the Board erred in Decision No. 2464-M.
 - (2) *Catherine A. Boling, T.J. Zane, Stephen B. Williams v. PERB; San Diego Municipal Employees Association, Deputy City Attorneys Association, American Federation of State, County and Municipal Employees, AFL-CIO, Local 127, San Diego City Firefighters, Local 145, IAFF, AFL-CIO, City of San Diego*, Court of Appeal, Fourth Appellate District, Division One, Case No. D069626; PERB Decision No. 2464-M (PERB Case Nos. LA-CE-746-M, LA-CE-752-M, LA-CE-755-M, LA-CE-758-M)—Whether the Board erred in Decision No. 2464-M.

The GC Office filed motions to dismiss in both cases.

- As to case determinations in December and January, there were no final case determinations.
- Regarding closed litigation, the GC Office closed two matters without a final court ruling or a ruling on the merits: (1) *PERB v. CNA; County of Contra Costa*, Contra Costa Sup. Ct. Case No. C15-01814, IR Request No. 685 (PERB Case No. SF-CO-370-M); and (2) *PERB v. SEIU Local 1021; County of Solano*, Solano Sup. Ct. Case No. FCS046244, IR Request No. 691 (PERB Case No. SF-CO-376-M). The parties in each of these matters resolved their disputes making the litigation moot, and both matters have been dismissed.

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 that currently there was only one bill identified as relevant to PERB as follows:

- Senate Bill 950 (Baker) — This bill would enact the Excluded Employee Arbitration Act to permit an excluded employee who has filed a grievance with the California Department of Human Resources, or an employee organization that represents that employee, to request arbitration of the grievance if specified conditions are met. It would impact SMCS in that the parties may use our arbitrator lists to request panels.

Chair Martinez wanted clarification and asked if the legislation would apply to excluded employees to which Mr. De La Torres answered in the affirmative. Mr. De La Torre added, as written, the legislation would cover a grievance by the employee or an organization that represents the employee, and that he was unaware of who the Senator had in mind as to what organization represents excluded employees.

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 report had been distributed to Board offices for review. He reported on the highlights as follows:

- Due to aggressive calendaring, dates set for formal hearing from the date of the informal settlement conference is within three months in all three offices (Sacramento, Oakland and Glendale).
- The number of formal hearings completed has significantly increased (approximately 46 percent from last year).
- The number of days of hearing has also increased, as compared to last year.
- The number of proposed decisions issued has slightly increased, as compared to last year.
- Ratio of exceptions to proposed decision has decreased to 38 percent (compared to last year—approximately 46).

Mr. Cloughesy confirmed for Member Huguenin that the above reporting was for the current fiscal year. He added that reporting by fiscal year gave a forecast comparing one year to another versus a small monthly snapshot.

E. State Mediation and Conciliation Service

Division Chief Loretta van der Pol gave the report for the State Mediation and Conciliation (SMCS) for December 2015 and January 2016. She stated that the report had been distributed to the Board offices for review. Ms. van der Pol reported that there was a “slight uptick” and the Division’s caseload had increased, returning to normal years. Last year the Division had seen a dramatic decrease. She noted that in the past several months parties had been meeting, even during the holidays. During that time, under the Meyers-Miliias-Brown Act and in Transit, the Division had eight different mediation case meetings (mostly impasses). Meetings had not been held in school districts, who were off for the holidays. Ms. van der Pol stated that a number of mediators were on vacation to eliminate high leave balances accumulated during the State’s mandatory furloughs. The result was the removal of mediation dates, but available mediators efficiently managed cases.

The Division’s election-related caseload remained steady (10-12 monthly).

Conciliator Don Raczka would retire at the end of June. Mr. Raczka would no longer take cases starting in April and at that time Ms. van der Pol would take cases in Southern California. The Division’s two newest mediators were in the final stages of their probationary periods and were now successfully carrying full caseloads. With the current workload, it is anticipated that the Division can maintain without filling Mr. Raczka’s position immediately. Sometime within the next fiscal year, a decision regarding how and exactly when to recruit would need to be made. Depending on the completion of the study updating the conciliation classification, a list under the old classification may need to be established.

Motion: Motion by Member Huguenin and seconded by Member Banks 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, 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 April 14, 2016, 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, Banks, and Gregersen.

Motion Adopted – 5 to 0.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair