

## **PUBLIC MEETING MINUTES**

May 24, 2007

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95814

Chairman Duncan called the meeting to order at 10:00 a.m.

### **Members Present**

John C. Duncan, Chairman  
Lilian S. Shek, Member  
Sally M. McKeag, Member  
Karen L. Neuwald, Member

### **Staff Present**

Tami Bogert, General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer  
Les Chisholm, Division Chief, Office of the General Counsel

### **Call to Order**

Chairman Duncan called the Board to order for a return to the open session of the April 12, 2007, Board meeting. He reported that the Board met in continuous closed session to deliberate on cases pending on the Board's docket.

Since that open session in April, the Board has issued PERB Decision Nos. 1899, 1900-M, 1901-S, 1902, 1903, 1904-M, 1905-M, Administrative Appeal Decision Nos. Ad-361-M and Ad-362-M. The requests for injunctive relief in I.R. No. 517 (Municipal Employees' Association of Beverly Hills v. City of Beverly Hills, et al.), I.R. No. 519 (Hayward Unified School District v. Hayward Education Association, CTA/NEA), and I.R. No. 520 (Hayward Unified School District v. Hayward Education Association, CTA/NEA) were withdrawn. PERB denied the requests for injunctive relief in I.R. No. 521 (Ira Eisenberg v. State of California (Employment Development Department)) and I.R. 522 (Fairfield-Suisun Unified Teachers Association v. Fairfield-Suisun Unified School District). Injunction was not sought by PERB and the case was settled by the parties in I.R. 518 (Society of Professional Scientists & Engineers v. UC Regents (Lawrence Livermore National Laboratory)). A document containing a listing of the aforementioned decisions was made available at today's meeting.

**Motion:** Motion by Member Neuwald and seconded by Member McKeag to close the April 12, 2007, public meeting.

**Ayes:** Duncan, Shek, McKeag, and Neuwald.

**Motion Carried.**

Chairman Duncan opened the meeting of May 24, 2007 and Member Shek led in the Pledge of Allegiance to the Flag.

Chairman Duncan clarified that today's meeting was scheduled, not as a regularly scheduled public meeting but instead, as a special meeting to hopefully take final action on the proposed agency fee regulations currently under consideration by the Board. He indicated that there will be no other action or discussion today on any other regulatory packages proposed by PERB.

### **Comments From Public Participants**

Ron Jackson, Field Representative for California Federation of Teachers and speaking on behalf of the Santa Clara Federation of Teachers, Local 6343 expressed his concern regarding PERB Case No. SF-RR-874-E. He stated that their charge was initially filed and approved by PERB on May 31, 2005 and effective May 31, 2007, two years would have passed without a decision from the Board. He asked that the Board consider his plea regarding Case No. SF-RR-874-E.

### **Staff Reports**

#### a. Administrative Report

Chief Administrative Officer Eileen Potter was pleased to report that both the Senate and Assembly approved PERB as budgeted. The Governor's Budget added two staff positions to the General Counsel's office and one Administrative Law Judge to the Administrative Law Division. In addition, she reported that the Governor's Budget restored lost funding for PERB fact finding.

Ms. Potter also reported that since 2005, PERB has been attempting to renegotiate the Los Angeles Regional Office lease, which is set to expire in August 2008. The Department of General Services notified PERB that lease negotiations appeared to be breaking down and advised PERB to begin a new site search immediately.

Chairman Duncan acknowledged the hard work of Ms. Potter and Les Chisholm in their support of and presenting the PERB budget before the Legislature.

#### b. Legal Report

General Counsel Tami Bogert reported that PERB gave oral argument before the First Court of Appeal in the case of City and County of San Francisco v. Operating Engineers Local 39. PERB is an amicus in that case and at issue is PERB's jurisdiction over the

MMBA. She also reported the General Counsel's office will be filing appellate briefs in three of the four essential employee strike cases. This month, three requests for injunctive relief were filed with PERB, two of them were denied by the Board and one is pending in the General Counsel's office.

Chief Administrative Law Judge Bernard McMonigle reported that the administrative law judge report was distributed to the Board for their review. The workload in his division continued to climb and he looked forward to the addition of a new ALJ to help with the growing workload.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, distributed to the Board the weekly Legislative update on various bills that affect PERB's jurisdiction. He had nothing new to add to the report.

Mr. Chisholm expects that staff, by the next public meeting scheduled for June 7, 2007, will have further analysis and recommendations for the other pending regulatory package before the Board.

Chairman Duncan asked about the status of Assembly Bill 553 (Hernandez). Mr. Chisholm responded that the bill is still pending the third reading and final passage by the Assembly. The bill would amend the MMBA. It states that it is declaratory of existing law as opposed to making any change to the law, but would add a new subsection 3509(d). The intent of the Legislation, from the perspective of the sponsors, is to clarify that PERB has initial and exclusive jurisdiction over questions of seeking injunctive relief in all matters involving a strike, work stoppage or lock out involving employees covered by the MMBA. There are a number of litigation matters pending where PERB and various unions and various public agencies are in dispute over the scope of PERB's jurisdiction in that regard and this legislation was intended to help clarify that.

**Motion:** Motion by Member McKeag and seconded by Member Neuwald that the Administrative, Legal Reports (including General Counsel and Chief Administrative Law Judge) and Legislative Report be received.

**Ayes:** Duncan, Shek, McKeag and Neuwald.

**Motion Carried.**

**Old Business**

Chairman Duncan stated that the Board will now further consider the proposed amendments to PERB's agency fee regulations. For clarification, he stated that the public hearing on the proposed rulemaking on this particular subject is already formally closed and no further public testimony will be taken at today's meeting.

To recap, Chairman Duncan stated the public hearing on the proposed changes to the agency fee regulations was held on February 8, 2007, following issuance of a Notice of Proposed Rulemaking on December 1, 2006, and receipt of written comments from interested parties. Following the February 8, 2007, public hearing, the Board issued a Notice of Proposed Modifications in response to the comments received in writing and at the public hearing. On April 24, 2007, a Second Notice of Proposed Modifications was issued to interested parties, based on direction given by the Board at its April 12 public hearing. Written comments were to be received by 5:00 p.m. on Friday, May 18, 2007 (2 written comments were received).

After presentation and discussions based on this Second Notice, the Chairman noted that he would ask the Board to vote to send this proposed package with modifications to the Office of Administrative Law for approval. Chairman Duncan then requested Mr. Chisholm of the General Counsel's office to brief the Board on the second proposed modifications to agency fee regulations.

Mr. Chisholm stated that written comments were received from the California Teachers Association (CTA) and the California Federation of Teachers (CFT) in response to the second notice of proposed modifications. Both raised a concern that the language of section 32992(b)(1) contained an ambiguity that could lead to an interpretation that a union would be required to submit to audit the decision as to the allocation between chargeable and non-chargeable expenditures. CTA and CFT correctly note that such is not required by case law and they cited the 2003 9<sup>th</sup> Circuit Court decision Cummings v. Connell (Cummings) that PERB relied upon in proposing the language. Mr. Chisholm stated that staff had further reviewed the language, as well as the Cummings court decision, in light of the expressed concern. He noted that the proposed language giving rise to the concern is itself adopted from the language of Cummings, and staff believes that the language does not mean and cannot be interpreted to mean that an allocation audit is required. An audit of expenditures is required, and that is what the proposed language requires.

PERB staff is recommending that the Board adopt the language as stated in the second notice of proposed modifications and in total, adopting the changes as shown in the document titled, Proposed Final Text (dated 5/24/07) for submission to the Office of Administrative Law for final approval.

**Motion:** Motion by Member Neuwald and seconded by Member McKeag to adopt the proposed final text on the agency fee regulations and submit them to the Office of Administrative Law for approval.

**Ayes:** Duncan, Shek, McKeag and Neuwald.

**Motion Carried.**

Member Neuwald thanked PERB staff and the interested parties who participated in formulating a good and solid package of proposed agency fee regulations to submit to the Office of Administrative Law.

**New Business**

None.

**General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through June 7, 2007 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 Shek and seconded by Member Neuwald that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Duncan, Shek, McKeag and Neuwald.

**Motion Carried.**

Respectfully submitted,

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Chris Wong, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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John C. Duncan, Chairman