

PUBLIC MEETING MINUTES

June 12, 2008

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

Members Present

Karen L. Neuwald, Chair
Sally M. McKeag, Member
Alice Dowdin Calvillo, Member

Robin W. Wesley, Member (Excused)
Tiffany Rystrom, Member (Excused)

Staff Present

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

Call to Order

Chair Neuwald called the Board to order for a return to the open session of the April 10, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in April, the Board has issued PERB Decision Nos. 1952, 1953-M, 1954, 1955-H, 1956-M, 1957-C, 1958, 1959 and 1960-M, and Administrative Appeal Nos. Ad-372, Ad-373 and Ad-374. In request for injunctive relief (I.R.) No. 544 (Orange County Employees' Association v. County of Orange), the request was withdrawn; I.R. No. 545 (Alex Hernandez v. SEIU Local 1000), the request was denied; I.R. No. 546 (Regents of the University of California v. AFSCME Local 3299), the request was withdrawn; I.R. No. 547 (AFSCME Local 3299 v. Regents of the University of California), the request was withdrawn; I.R. No. 548 (Regents of the University of California v. AFSCME Local 3299), the request was granted (the Board granted this request on May 28, 2008 exclusively with respect to the Patient Care Technical Unit; the matter was subsequently withdrawn); and in I.R. No. 549 (Los Angeles Unified School District v. United Teachers of Los Angeles), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Motion: Motion by Member McKeag and seconded by Member Dowdin Calvillo to close the April 10, 2008 public meeting.

Ayes: Neuwald, McKeag, and Dowdin Calvillo.

Motion Carried.

Chair Neuwald opened the meeting of June 12, 2008 and Member McKeag led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Dowdin Calvillo and seconded by Member McKeag that the Board adopt the minutes of the Public Meeting of PERB for April 10, 2008.

Ayes: Neuwald, McKeag, and Dowdin Calvillo.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Chief Administrator Officer Eileen Potter first reported on the relocation of PERB's Los Angeles Regional Office. An agreement has been reached with the owners of a location at 700 North Central in Glendale. The Department of General Services (DGS) and the brokers for the building are working to complete the lease process by June 30, 2008. DGS is concurrently working to get an extension on PERB's current lease to allow time to finalize and build to specifications at the new location. The current lease expires August 30, 2008. She reported that this relocation effort with DGS has been a lengthy process that started five years ago.

Chair Neuwald commented on the length of time required for relocation processes. She thanked Ms. Potter and PERB's Los Angeles Regional Office staff for their diligence and patience with this effort. She continued that there are many steps in completing these processes, whether there is an anticipated move or to upgrade a lease, which take a great amount of time.

Ms. Potter stated that it was not only the steps involved, but the documents required that take up most of the time.

Ms. Potter then reported on factfinding. A memo, which had been circulated to the Board by Ms. Potter and General Counsel Tami Bogert, was made available to the public at today's meeting. The memo stated that PERB's budgetary needs required factfinding contracts be reduced from \$4,000 to \$2,000 per contract for the remainder of the fiscal year. Ms. Potter reported that, to date, PERB has spent \$103,000 on factfinding contracts.

PERB's 2007-2008 fiscal year budget for factfinding is \$85,000. As a result, chairpersons of all open factfinding contracts (\$4,000) have been notified by PERB's Sacramento Regional Office that there will be no amendments to their current contracts.

As a final item, Ms. Potter reported that PERB's budget has passed out of both the Senate and Assembly in the same version, which avoids going before the Budget Conference Committee. In its current state, PERB is facing an approximate \$200,000 baseline reduction. Until the final budget is signed by the Governor, all agencies are subject to a potential blue pencil reduction or an unallocated reduction across the board for all state agencies. When the actual PERB budget amount is set, Ms. Potter would then be able to explain what the reduction means to PERB's operations.

Member Dowdin Calvillo had questions regarding factfinding contracts and asked about that process in general.

Les Chisholm, Division Chief, Office of the General Counsel, explained that factfinding is mandated as part of the statutory impasse procedures under both EERA and HEERA. In the factfinding process, the parties first go to mediation, and if unable to reach agreement in mediation, the mediator can then conclude whether the issues are appropriate for factfinding. The mediator then notifies the parties and PERB. Either party to the case can request that the issues be submitted to factfinding where statutory timelines are strict. A three-member panel is formed with each party naming one member of the panel and PERB appointing, in most cases, the neutral chairperson. PERB maintains a panel of neutrals, primarily used for factfinding. Typically, the parties select one of the persons from that panel of neutrals to serve as the chairperson. If the parties are unable to agree, PERB will select a chairperson from the panel who is available to perform the duties within the timelines required.

Mr. Chisholm stated, in answer to Member Dowdin Calvillo's question, that PERB issues a contract to cover the costs of the factfinding chairperson, only. He continued that the Board has established a per diem rate for factfinders of \$800 per day, which is less than the going rate for arbitrators. PERB has issued contracts since the rate went to \$800 per day at a total amount of \$4,000. Based on experience, that amount should cover the costs of most contracts, including the number of days and other expenses incurred. Mr. Chisholm stated that many of the contracts are funded under \$4,000, some cases settle before the factfinder has to complete any work, and others require additional days of hearing where PERB would, in the past, then consider amendments.

Since PERB is over its budget for factfinding, Member Dowdin Calvillo asked where the additional monies were coming from to fund the existing contracts.

Ms. Potter responded that the funds came from salary savings.

Chair Neuwald stated that \$85,000 was included in the 2007-2008 fiscal year budget, where in some prior years, PERB did not have a budget for factfinding, yet still had to pay for it. Factfinding is a statutory mandate and resources have to be found elsewhere to meet that mandate. In prior years, when there was no funding, PERB had to reduce the rate paid

to factfinders. Currently, PERB is in a similar situation and, as in the past, took this approach to meet its statutory mandate.

b. Legal Report

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. Included in the case processing report is information regarding investigations and staff disposition of cases filed with PERB (cases filed include unfair practice charges, representation matters, and impasse requests).

Ms. Bogert first summarized the case processing report stating that during the months of April and May, 237 new cases were filed, 213 case investigations were completed, and 32 informal settlement conferences were held. During that same two-month period, six requests for injunctive relief were filed and completed as follows: three were withdrawn by the charging party; two were considered and denied by the Board; and one was considered and granted by the Board, exclusively with regard to a particular bargaining unit (the matter subsequently was withdrawn, and therefore, PERB did not pursue injunctive relief in court in this case.)

Ms. Bogert then reported on litigation giving an update on the essential-employee-strike cases. She reported that PERB now has published opinions in two of the three essential-employee-strike cases. In an opinion rendered by the Sixth District Court of Appeal in the City of San Jose case, the appellate court found that PERB has exclusive initial jurisdiction over whether essential employees can strike. (City of San Jose v. Operating Engineers Local Union No. 3 (Local 3), Sixth Appellate District, Case No. H030272, Santa Clara County Superior Court Case No. CV064707.) This case has been appealed to the California Supreme Court by the City of San Jose. PERB is waiting to hear from the Supreme Court as to whether it will grant that appeal. The opinion rendered by the First District Court of Appeal, in the Contra Costa County case, unlike the City of San Jose case, found that PERB does not have exclusive initial jurisdiction. (County of Contra Costa v. Public Employees Union Local One et al./County of Contra Costa v. CA Nurses Assn. et al., First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227.) The Contra Costa County case becomes final towards the end of this month. Once final, there will then be a ten-day window period in which a party may appeal to the California Supreme Court. Ms. Bogert lastly reported that the third essential-employee-strike case, in which two cases were consolidated, is pending in the Third District Court of Appeal. (County of Sacramento v. AFSCME Local 146 et al./County of Sacramento v. AFSCME Local 146 et al., Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790.) This case is the furthest behind of these essential-employee-strike cases. In this case, oral argument was initially set to occur on June 16, but has been rescheduled to Monday, July 21.

Chief Administrative Law Judge Bernard McMonigle reported that currently the administrative law judges (ALJ) have 32 decisions to write and 32 cases assigned for formal hearing. He stated that the division has a manageable five decisions to complete and five cases scheduled for each ALJ. In the current fiscal year, 49 formal hearings have

been completed and the ALJs have conducted 155 days of hearing, with this number expected to increase by the end of the fiscal year. In May, six new cases were assigned. He noted from the General Counsel's Office report that 22 complaints had been issued in May, and generally half of those will be scheduled for formal hearing. As a result, he anticipates the ALJ workload to increase but still remain manageable. Also in May, five proposed decisions were issued and in June it is anticipated that as many as eight decisions will be completed. Overall, the caseload and timelines within the division have improved greatly with a staff of seven ALJs.

Mr. McMonigle reported that he has received notice from Ann Weinman, an ALJ in PERB's Los Angeles Regional Office, that she will be retiring in a year. He stated that Ms. Weinman does an excellent job, is very knowledgeable, sought for leadership, and has been contacted on different issues because of her extensive National Labor Relations Board (NLRB) experience. He commended her for the well in advance notice and stated that she would be missed.

Chair Neuwald agreed with Chief ALJ McMonigle that Ms. Weinman would be missed. She remarked on the vast experience of staff and that Ms. Weinman with her NLRB experience brought a lot of expertise to PERB, is very prolific and has an enthusiasm that shows in her work.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on legislation that affect matters within PERB's jurisdiction or are of interest. He reported that, at this time, the only matter of note concerned Senate Bill 1296 (Corbett), which is legislation that would amend the Meyers-Milias-Brown Act (MMBA) to remove from PERB's jurisdiction disputes involving interest arbitration and firefighters. SB 1296 passed out of the Assembly Judiciary Committee and was referred to the Appropriations Committee. There is one non-substantive clarifying amendment being made to this bill.

Member Dowdin Calvillo inquired whether there was a party line vote on this bill. Mr. Chisholm responded that he had not seen the vote.

Chair Neuwald asked about the cost impact of the bill and whether it was fiscally neutral to PERB.

Mr. Chisholm replied that the costs were negligible and that there were only a handful of such cases that PERB has had since the enactment of the MMBA.

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

Ayes: Neuwald, McKeag, and Dowdin Calvillo.

Motion Carried.

Old Business

None.

New Business

Chair Neuwald announced the Advisory Committee meeting, which was publicly noticed, that is to follow today’s Public Meeting at 11:00 a.m.

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 August 7, 2008 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 Dowdin Calvillo and seconded by Member McKeag that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Neuwald, McKeag, and Dowdin Calvillo.

Motion Carried.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Karen L. Neuwald, Chair