

PUBLIC MEETING MINUTES

February 10, 2011

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

Chair Dowdin Calvillo called the meeting to order at 10:03 a.m.

Members Present

Alice Dowdin Calvillo, Chair
Sally M. McKeag, Member
Robin W. Wesley, Member
Kari F. Miner, Member

Staff Present

Wendi L. Ross, Interim General Counsel
Les Chisholm, Division Chief, Office of General Counsel
Christine Bologna, Acting Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

After establishing that a quorum had been reached, Chair Dowdin Calvillo called the Public Employment Relations Board (PERB or Board) to order for a return to the open session of the December 9, 2010 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.

Chair Dowdin Calvillo introduced and welcomed Member Kari Miner to her first meeting on the PERB. Ms. Miner was appointed to PERB by Governor Schwarzenegger on January 2, 2011. She previously served under Governors Davis and Wilson as a statewide development and programs officer for the Department of Alcohol and Drug Programs from 1996 to 2002. Prior to state service, Ms. Miner worked for the law firm of Burger and Plavan in the areas of Employment and Corporate law. Ms. Miner's community service history includes advocating on behalf of foster children as a Court Appointed Special Advocate (CASA) and service on the Board of Directors for the Junior League of Sacramento.

Chair Dowdin Calvillo also welcomed Miranda Carroll to PERB and asked Member Wesley to introduce Ms. Carroll. Member Wesley was pleased to introduce Ms. Carroll as her Legal

Advisor. Ms. Carroll has a broad experience in several areas of law, including employment and appellate law. She also has experience with arbitration, and has served as a law clerk for the Sacramento County Superior Court. Ms. Carroll is a graduate of UC Berkeley and McGeorge School of Law, where she received awards for her trial and appellate advocacy, and her writing and editing skills.

Chair Dowdin Calvillo read into the record the decisions that issued since the open session in December. Those were PERB Decision Nos. 2147-E, 2148-M, 2149-E, 2150-E, 2151-H, 2152-S, 2153-H, 2154-S, 2155-M, 2156-S, 2157, 2158-M, 2136a-S, 2159-E, 2160-E, 2161-M; and Administrative Appeal No. Ad-389. In request for injunctive relief (I.R.) No. 593 (*National Union of Healthcare Workers v. Salinas Valley Memorial Hospital District*), the request was denied; I.R. No. 594 (*Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara*), the request was denied; I.R. No. 595 (*Stationary Engineers Local 39, International Union of Operating Engineers, AFL-CIO v. County of Yolo*), the request was denied; and I.R. No. 596 (*SEIU Local 521, CTW v. City of Tulare*), the request was denied. A document containing a listing of the aforementioned decisions was made available at the meeting.

Without objection, Chair Dowdin Calvillo adjourned the December 9, 2010 public meeting in memory of her father, Richard L. Dowdin, who passed away on January 2, 2011. Her father taught in the Placer Union High School District for 37 years - until his retirement in 2003. During much of that time, he was involved in local union activities, and even served 10 years on CTA's elected State Council. Her father always believed in the collective bargaining process and was well-respected by his colleagues as well as the school district for his balanced and fair negotiations.

Chair Dowdin Calvillo then opened and called to order the February 10, 2011 public meeting. Without objection, Chair Dowdin Calvillo substituted the previous roll call for the purposes of declaring a quorum. Hearing no objection, the order was made. Member Miner led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Wesley and seconded by Member Miner, that the Board adopt the minutes for the December 9, 2010 public meeting.

Ayes: McKeag, Wesley, Miner and Dowdin Calvillo.

Motion Adopted – 4 to 0.

Comments From Public Participants

Mary Ann Massenburg, Labor Advocate, representing UAW Local 2865, first expressed her condolences to Chair Dowdin Calvillo. Ms. Massenburg then stated that within the last few years they have participated on the PERB Advisory Committee. On behalf of UAW Local 2865, she requested that PERB consider reinstating the PERB Advisory Committee. She found the meetings to be very useful and a good opportunity for both labor and management to have

a more informal discussion about PERB and its procedures. Chair Dowdin Calvillo thanked Ms. Massenburg for her suggestion and agreed that it would be a prudent idea to talk about reconvening the Advisory Committee. Chair Dowdin Calvillo stated she will meet with her colleagues to discuss reconvening the meeting and that it was her plan to have a notice out within the next several months.

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. Administrative Report

Chief Administrative Officer Eileen Potter reported on the status of the State Budget. It was her understanding that there may be a current year reduction coming to all General Fund agencies depending on the outcome of the on-going negotiations within the Legislature. Ms. Potter stated that currently PERB is not scheduled for a budget hearing, but she will keep the Board apprised of future developments.

b. Legal Reports

Wendi Ross, Interim General Counsel, reported that the monthly activity and litigation reports had been distributed to the Board for its review. From those reports Ms. Ross recapped, since the Board's last public meeting in December, the following information. With respect to unfair practice charges during the months of December and January, Ms. Ross reported that 160 new cases were filed with the General Counsel's office; 162 case investigations were completed; and a total of 48 informal settlement conferences were conducted by staff. As Chair Dowdin Calvillo mentioned earlier, during the same two-month period, 4 requests for injunctive relief were filed and all were denied by the Board.

In terms of litigation, Ms. Ross first reported on the case, *Association of Building, Mechanical and Electrical Inspectors (ABMEI) v. PERB; City of San Jose* in the Sixth District Court of Appeal, in which ABMEI seeks to overturn PERB Decision No. 2141-M. This case pertains to ABMEI's conduct of picketing four private construction sites on three separate days and thereby engaging in conduct constituting unlawful pressure tactics. The next step is that ABMEI will file its opening brief later this month.

Ms. Ross also reported on *CSEA, Chapter 401 v. PERB; Castaic Union School District* in the Second District Court of Appeal, in which CSEA seeks to overturn PERB Order No. Ad-384/JR-25 (pertaining to a unit modification petition filed by CSEA seeking to include part-time playground positions in a wall-to-wall classified bargaining unit). The next step is PERB will file the administrative record with the appellate court later this month.

With respect to case determinations, Ms. Ross reported the California Supreme Court rendered its decision in the case of *IAFF Local 188 v. PERB; City of Richmond* and affirmed

the Board's substantive determination in PERB Decision No. 1720-M that a local agency's decision to layoff personnel is not subject to negotiations; while the impacts and effects of such a decision are negotiable. In addition, the Court ruled that decisions by PERB not to issue a complaint in unfair practice cases are subject to judicial review. She also reported that in *California Correctional Peace Officers' Association (CCPOA) v. PERB; State of California (Dept. of Personnel Administration (DPA))* the Third District Court of Appeal summarily denied CCPOA's Petition seeking to overturn PERB Decision No. 2102-S.

Acting Chief Administrative Law Judge Christine Bologna reported on the activities of the Division of Administrative Law and stated that the administrative law judge (ALJ) report had been distributed to the Board for its review. Ms. Bologna reported that hearings were scheduled through September in the Sacramento office; through August in the Los Angeles Office and through January 2012 in the San Francisco Office. In an effort to keep the parties informed of current informal conference dates, the Division of Administrative Law will now notify the Office of the General Counsel on a weekly basis when the ALJs in Sacramento are available for hearing.

Ms. Bologna reported that there are 78 hearings assigned to the ALJs and 20 cases have been submitted for decisions to be written. To date for this fiscal year, the ALJs have issued 19 proposed decisions and of those decisions, 4 exceptions were filed. Ms. Bologna was also proud to report that this fiscal year, she and ALJ Shawn Cloughesy had closed 42 cases in comparison to 38 which were closed in fiscal year 2009-2010.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported that the Legislative Report was circulated to the Board for its review. Mr. Chisholm reported on the following pending legislation that directly affects or may impact PERB and/or its jurisdiction. He reported that Assembly Bill 195 (Hernández, Roger) would amend Section 3506 of the Meyers-Milias-Brown Act to specifically define unfair practices by an employer covered by that Act. He also reported that Senate Bill 153 (Strickland) would affect the salaries of Board members of certain named agencies, including PERB and the ALRB.

Mr. Chisholm reported that he was also following Senate Bill 104 (Steinberg), a bill that does not affect PERB, but would affect labor relations. He stated that the bill would amend the Agricultural Labor Relations Act to provide for card check and would also strengthen provisions of the statute with respect to interference with protected rights pertaining to elections conducted under the act as well as the card check process.

He further reported on two other items of legislation that had not yet been introduced: (1) a bill that would affect the Higher Education Employer-Employee Relations Act with respect to the definition of employee under that Act. The Act provides a balancing test with respect to student employees as to whether or not they are covered by the Act. It was his understanding that this legislation would simply remove the balancing test for student employees covered under the Act; and (2) a bill pertaining to child care providers and representation rights for them. He stated that there has been similar legislation enacted but

both times the legislation was vetoed by Governor Schwarzenegger. In both prior versions PERB would have had responsibilities in the area of making determinations with respect to proof of support and, where necessary, conducting elections with costs being reimbursed.

Mr. Chisholm will continue to monitor the aforementioned legislation and keep the Board apprised of future developments.

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

Ayes: McKeag, Wesley, Miner and Dowdin Calvillo.

Motion Adopted – 4 to 0.

Old Business

None.

New Business

None.

General Discussion

Chair Dowdin Calvillo 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, 2011 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 Wesley and seconded by Member McKeag to recess the meeting to continuous closed session.

Ayes: McKeag, Wesley, Miner and Dowdin Calvillo.

Motion Adopted – 4 to 0.

Respectfully submitted,

Chris Wong, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Anita I. Martinez, Chair