

PUBLIC MEETING MINUTES

June 11, 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
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 April 9, 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 April. Those were PERB Decision Nos. 2391a-H, 2401a, 2405a, 2419-M, 2420, 2421, 2422-H, 2423-M, 2424-M, 2425, 2426, 2427-M, 2428-M, 2429-M, 2430-M, and 2431-M, and PERB Order Nos. Ad-420-M, Ad-421-M, and Ad-422-M. There were no Requests for Injunctive Relief (IR Request) filed. 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 Huguenin and seconded by Member Winslow, to close the April 9, 2015, Public Meeting.

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

Motion Adopted – 5 to 0.

Chair Martinez adjourned the April 9, 2015, Public Meeting. She then opened and called to order the June 11, 2015, Public Meeting.

Minutes

Motion: Motion by Member Banks and seconded by Member Huguenin that the Board adopt the minutes for the April 9, 2015, Public Meeting.

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

Motion Adopted – 5 to 0.

Comments from Public Participants

Brian Crowell, appeared before the Board and commented as follows:

Good morning Members of the Board, my name is Brian Crowell, that's actually how it's pronounced. I made appearances in PERB Decision 2405, 2405a and 2411, it's kind of embarrassing. But, I am here on behalf of teachers not only in Berkeley, California, but also Oakland, California. We want to know a question of jurisdiction. When we read code 3540, it says "This chapter shall not supersede any sections of the Ed Code," yet, we are wondering who actually has jurisdictions over Ed Code violations because we are seeing increasingly violations in 44660, 44664, 44031, 44113, which covers whistleblowing, retaliation, yet when you read the *Novato* test case, it clearly cites 44031, which cites personnel files. So, what we would like to see is a closer comingling of Ed Code violations in unfair labor practices and I can't believe that this body was created not to enforce the Ed Code. Because clearly the statute says, this Body can't supersede the Ed Code, but it doesn't say that you can't adjudicate the Ed Code. Doesn't say that at all. But, in a lot of these decisions we are seeing Ed Code violations as evidence of unfair labor practices and not only for employers, but now we are seeing unions violate the Ed Code. And so teachers are calling me from Sacramento and Stockton and Los Angeles and San Diego and Oakland and San Francisco, "hey, Mr. Crowell, I have been violated by the Ed Code, where do I go? Do I go straight to Appellate Court? Do I go to Superior Court? Do we go to PERB?" I mean so, and, I am like, I don't know. So I am here to this Body to say, your constituents say you can't act on the Ed Code, but there is nothing in the statute that says that you can't, but sometimes you actually do. So I am wondering what, when the EERA was written, was it just that the Ed Code was living above your heads and kind of becoming some kind of cloud. Or, is it actually that the Ed Code is kind of this grey weird things that nobody wants to take seriously because when now we are seeing collective bargaining contracts violate the Ed Code directly. So, we are going far field of what I think. I think that this body should adjudicate and enforce the Ed Code and it make it clear not only to employers, but also union organizations: you have to live under State law and not some kind of back room deal, because that is what I see is the problem. This Board, I think, does have jurisdiction because the statute clearly says that you can't supersede the Ed Code but it never said that you couldn't adjudicate it. And so that's why I am here. I'm pleased to be here. But, this issue is going to come up more and more and more and more. We're seeing a lot of, what I call, unit modification

violations where some people are acting as managers, supervisory employees and also acting as teachers. We're seeing lots of problems where, I believe, this Body is like, aww they're just PERB, we don't have to take them seriously because they don't rule on the Ed Code. And I think that needs to be taken up by this Body. And I yield back the rest of my time. Thank you.

Matt Gilchrist, IT Director, Infinity Consulting Group, appeared before the Board:

Good morning Members of the Board, my name is Matt Gilchrist, I am the IT Director at Infinity Consulting Group. We have recently begun working with PERB. We will be taking over full responsibility of network administration as well as application support, come June 30th. We were awarded a bid approximately a month ago, well a month ago about this time and Mary Ann asked us to come today and introduce ourselves to the Board. We are very happy to be here and be a part of PERB, and look forward to working with you all.

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.

Fiscal:

Ms. Aguayo stated that charts had been provided displaying PERB's current fiscal year budget and that while PERB's budget remained healthy it was very close. She referenced the column regarding personnel services, that because of various vacancies throughout the year PERB would end up with a small amount of funds to purchase much needed equipment and other items. Although if a projection were made for next fiscal year, she explained the column with that information would display \$500,000 more than the amount budgeted.

Ms. Aguayo reported that a budget change proposal for Fiscal Year 2016-2017 was being prepared. Instructions from the Department of Finance (DOF) had been issued and she had noticed there was a strategic plan tie-in. She stated that this was an area that would need to be addressed within the next sixty days.

PERB staff were working on year-end functions, balancing and closing PERB's budget. She reported a noteworthy item: PERB's main Cal-card had been hacked recently. In this regard there were issues to correct, and the card had to be cancelled and reissued.

Human Resources:

PERB was currently undergoing an audit by the State Personnel Board (SPB). All items requested by SPB had been provided. It was noted on the checklist that there were deficiencies and that there would be findings in PERB's hiring practices (one such requirement was to participate in a disability advisory council), and that moving forward these areas would need to be corrected.

PERB had two new vacancies: Administration—Staff Services I (vacated by Taji Jorden); and Office of the General Counsel—Attorney (vacated by Katharine Nyman who is now Legal Counsel to PERB Board Member Mark Gregersen). Ms. Aguayo stated that she has been working with the California Labor and Workforce Development Agency (LWDA) to contract for an Attorney in Fiscal Year 2015-2016.

For PERB vacancies, Ms. Aguayo stated that there was a six-month rule that had been strengthened. No longer were "paper moves" allowed to prevent elimination of vacant positions. Agencies must be very careful as it was more difficult to reestablish a position once it had been eliminated. LWDA and DOF review and approval would be required where questions would be asked, determinations made and reestablishment of a position was based on certain criteria. Currently, PERB was under review for its conciliator classifications.

Facilities:

Site searches would be conducted for PERB's Los Angeles Regional Office and five-six locations in the Glendale area had been scheduled for the following Monday. In the Glendale Office there were AT&T service transition issues which although cleared-up had caused problems for staff. In PERB's Sacramento Office paint touch-ups would occur according to PERB's lease.

Travel:

PERB was looking into a new State travel system called "Concur" which would mostly affect mediators as they do the bulk of the travel. Chief Conciliator Loretta van der Pol, a couple of SMCS staff, and Ms. Aguayo attended a training session. The conciliators were comfortable that this system would be functional. The roll out of this system for PERB is planned anytime from September to December. Based on PERB's year end and accounting practices, which would take the bulk of this transition, the roll out is expected to be closer to December. Deadlines, instructions, and training would be provided to all PERB staff to ensure a smooth transition.

Information Technology:

Infinity Consulting would assume PERB's information technology contract on June 30. Matt Gilchrist, who had appeared and introduced himself to the Board at today's meeting, and Scott Sanders would be working on that transition this month.

The Department of Technology had requested a plan of action and milestones from PERB regarding areas identified as deficient. One deficiency was the privacy policy posting requirement for the PERB webpage and Ms. Aguayo was currently working with PERB's General Counsel regarding this matter. Another deficiency identified was the "end to life" of PERB's Windows 2003 server operating system. The exact end date was not known, but it was assumed to be next month or sometime in the fall. Ms. Aguayo asked Infinity Consulting for assistance in preparing a plan to reply to the Department of Technology.

PERB's e-mail server was at capacity and archive folders were being set up for staff to address this matter. Member Huguenin volunteered to assist with this endeavor.

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 April and May 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 April 9, 2015.

Mr. De La Torre reported that with regard to monthly activities during the past two months (April and May), a total of 120 new unfair practice cases of all types were filed with the GC Office (a decrease of 34 over the prior two-month period—there were 154 in February/March). During the most recent two-month period the GC Office completed 182 case investigations (a slight decrease—there were 191 in February/March). In April, 183 cases were reported as complete, but that number had been adjusted to 182. In April and May, 48 complaints were issued, and 39 cases dismissed (compared to the prior two months, 61 complaints and 28 charges dismissed)—a significant decrease in complaints issued with a corresponding rise in the charges dismissed. The number of litigation matters completed in April and May increased slightly—8 (up from 7 in February/March), and the number of factfinding requests—9 (6) and representation petitions—23 (16) also increased.

As mentioned by the Chair, since the Public Meeting in April, there were no requests for injunctive relief in the prior two months.

In terms of court litigation, since the last regular Board meeting in April, two new matters were filed against PERB as follows:

- (1) *Bellflower Unified School District v. PERB; CSEA Chapter 32*, Supreme Court of California, Case No. S226096, California Court of Appeal, Second Appellate District, Division Two, Case No. B257852, PERB Decision No. 2385-E (PERB Case No. LA-CE-5508-E). Issue in this case was whether the Board clearly erred in Decision No. 2385-E. This was a petition for review filed by Bellflower and PERB was waiting for a decision by the court.
- (2) *Wenjiu Liu v. Trustees of the California State University, PERB*, Court of Appeal, First Appellate District, Division Four, Case No. A145123; PERB Decision No. 2408-H (PERB Case No. SF-CE-1009-H) and PERB Decision No. 2391a-H (PERB Case No. SF-CE-995-H). The issue in this case was whether the Board clearly erred in

Decision No. 2291a-H. (Although Mr. Liu includes PERB Decision No. 2408-H, that matter has already been fully adjudicated and its inclusion in this litigation matter is improper.)

As to case determinations since the last regular Board meeting in April, PERB received two final court rulings from the California courts (both in San Bernardino County): (1) *County of San Bernardino v. California Nurses Association*; PERB, San Bernardino Sup. Ct. Case No. CIVDS 1418227; Court of Appeal, Fourth Appellate District, Division One, Case No. D067084; IR Request No. 675 [PERB Case No. LA-CO-191-M]; and (2) *PERB v. California Nurses Association*; *County of San Bernardino*, San Bernardino Sup. Ct. Case No. CIVDS 1417971; IR Request No. 675 [PERB Case No. LA-CO-191-M]. These matters have settled, dismissals have been filed by the parties, and dismissals were issued by the Court.

C. Legislative/Rulemaking

For informational purposes and inquires by the Legislature, the GC Office monitors legislation that concern the labor relations statutes under PERB's jurisdiction.

Mr. De La Torre updated the Board on three bills which remain active that were reported at the April Public Meeting.

- Assembly Bill 874 (Rendon): This bill would apply the Dills Act to employees of the Judicial Council, with the exception of employees of the Supreme Court, courts of appeal, or the Habeas Corpus Resource Center. Also, the bill would prohibit PERB from including Judicial Council employees in a bargaining unit that includes employees other than those of the Judicial Council. Although this bill would not add an additional statute under PERB jurisdiction, it would increase the number employees subject to the Dills Act. The bill passed the Assembly and is now in the Senate awaiting its first committee assignment.
- Senate Bill 548 (de León): This bill would create a new statute under PERB jurisdiction and authorizes family child care providers to form, join, and participate in the activities of provider organizations, and to seek the certification of a provider organization to act as the exclusive representative for family child care providers on matters related to state-funded child care programs pursuant to a petition and election process overseen by PERB or a neutral third party designated by the Board. The bill passed the Assembly and is now in the Senate where it has had its first reading, but is being held at the Desk.
- Senate Bill 686 (Pan): Similarly, this bill would allow certain supervisory peace officers to join a union by providing that the definition of "employee" or "higher education employee" also includes a supervisory employee employed as a sworn peace officer by the University of California or Hastings College of Law. March 2015—Senate Committee on Public Employment and Retirement and was set for hearing on April 13. The bill has passed the Assembly and is now in the Senate. It has had its first reading, but is also being held at the Desk.

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. Mr. Cloughesy gave highlights from that report stating that cases were being set for formal hearing approximately 4 months from the date of the informal settlement conference in the Sacramento and Oakland offices, and 3-4 months in the Glendale office.

Mr. Cloughesy reported the following regarding statistics for the Division (as compared to prior years):

- i Case assignments were up—approximately 30 percent (there was a “spike of cases” that had been assigned). This was approximately the same as two years ago, which was a high year.
- i Formal hearings completed were comparable to the prior year.
- i Number of days of hearing was slightly up as compared to the prior year.
- i Proposed decision production was slightly down.
- i Notably, the number of “active” cases (cases that were either set for hearing or pending proposed decision) increased from the prior year—also similar to two years ago. With the number of pending proposed decisions to be written down, this increase had to do more with cases assigned and set for formal hearing.
- i Exceptions ratio was down—approximately 46 percent, an acceptable range and more the norm as compared to the prior year. Previously the exceptions ratio was reported at 56-57 percent.

E. State Mediation and Conciliation Service

Division Chief Loretta van der Pol stated that the State Mediation and Conciliation (SMCS) report for April and May 2015 had been distributed to Board offices for review. She introduced two mediators recently hired who were in attendance at the Public Meeting: Jun Payoyo, who would work in the Central Region, and Gerald Adams, who would work in the Southern California Region.

Ms. van der Pol then reported highlights for SMCS case processing stating that Presiding Conciliator Ken Glenn had a reduction in caseload anticipating family leave starting July 13 through early September. As this was the Division’s slow time of year, there was the ability to spread out the work allowing this time for Mr. Glenn.

Regarding case summaries, in the April report categories were added for in-home support services (IHSS) impasse and IHSS grievance. Even though these units were still under the Meyers-Milias-Brown Act and had not yet transitioned over, with one exception, SMCS was starting to see the impasses in these newly organized units. Because these are the first contracts for these units, they tend to be very difficult to resolve because of the uncertainties regarding funding and the upcoming minimum wage laws which had constituents on edge.

SMCS was actively working on three of those cases and they most likely would be reflected in its next report.

Also during the month of April SMCS had a lower number of cases than the prior year. The number of cases opened was 41, 50 were closed, and the Division ended the month with 124 active cases. April tended to be very difficult to schedule because of the number of school breaks. Regarding academic calendars, after the furlough periods and the years of concession bargaining, there were still many school districts that were opting to keep the two-week spring break which developed during concession bargaining. There were a lot of school districts with little time to meet during the spring which overflowed under the other statutes. This resulted in SMCS staff taking a lot of leave during April and there were mediators on forced vacation due to high leave balances—38 days of paid leave taken which limited dates to mediate.

With regard to its elections and representation work, SMCS had 15 active representation cases in April and 18 in May. Ms. van der Pol explained that card checks were included in the elections and representation work. SMCS conducts a number of card checks in the private sector where the Federal Mediation and Conciliation Service does not perform card checks and refers those services to SMCS.

Ms. van der Pol provided detail regarding SMCS's two new staff (Gerald Adams and Jun Payoyo) stating that they were still in training. Last month both were on scheduled shadow assignments, and had attended their first SMCS staff meeting yesterday. Both employees were in the process of picking shadow assignments where they would gradually flip and start taking basic cases—by August it was anticipated that they would start carrying small caseloads and experienced mediators would shadow them. It was also expected that they would be able to take contract impasse cases by September or October.

Three SMCS staff attended the “Concur” travel training with Ms. Aguayo and additional staff were scheduled to attend training on June 16th. It is believed that the Concur system will be a very valuable tool for SMCS given the amount of time staff spend traveling because it was “a one stop shop.” Provided the system was used properly by mediators, it was also anticipated that the Concur travel system would not incur additional costs to PERB as initially thought. Staff were provided training on this system at yesterday's meeting.

SMCS was working on a public sector data base for purposes of workload forecasting. This was a project a small committee of SMCS staff could work on during slower mediation cycles that occur in August and early September. The intended desire was to forecast where the contracts were most likely to result in impasses and when. Because of new patterns set in negotiations during the years of concession bargaining, and with employees receiving raises again, there was a potential that caseloads would stabilize for the Division.

Another big SMCS project slated for this summer was the update to the SMCS pages of the PERB website. There were broken links that needed to be restored which were deactivated when chargeable services were suspended. Also, the difference between services provided by SMCS versus the GC Office needed to be clarified. It had been found that even the most experienced advocates were beginning to blend these offices regarding the types of elections conducted and supervised, and the types of mediation performed by SMCS.

Ms. van der Pol attended the National LERA Meeting on behalf of California SMCS. She participated on a panel with the mediation and conciliation services from other states where she found very good information about how to restructure training in the Division at little or no cost.

Motion: Motion by Member Winslow and seconded by Member Banks that the Division of Administration, Office of the General Counsel, 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

The Office of the General Counsel (GC Office) and the Division of Administrative Law nominated staff pursuant to PERB's Superior Performance Recognition Program.

Deputy General Counsel Wendi Ross nominated staff on behalf of the GC Office:

Good morning. It is my honor to nominate these three individuals. All three of them are in the classification of Regional Attorney III, and that is Laura Davis, Mary Weiss and Ronald Pearson. In a nutshell, although they have the higher classification and are expected to perform that higher level of work, over the course of this last year, when the Board designated me as Acting General Counsel, the three of them, and all of the General Counsel, really stepped up to the plate, I believe. But, the three of them in particular really assisted me on a day-to-day basis and I mean day-to-day, seven days, 24-7, 365; they were always available. They took the hardest litigation, they stuck with it. There's been many trials and tribulations, as you can imagine. I just want to point out for the three of them: Laura Davis assisted us with *County of Tulare*, *City of Vacaville*, *City of Long Beach*, *County of Fresno*, *County of San Bernardino* and several essential employee IR's; Mary helped us with *County of Riverside*, *LAUSD*, *Glendale City Employees Association*, *County of San Bernardino*, as well as several IR's; and Ron was fortunate enough to work on *City of Fremont*, *San Diego Housing Commission* and also assisted. They assisted, not only do they have, of course, their own workload of charges, settlement conferences, representation work and a smattering of other things, but when we were in the throes of heavy litigation, as well as IR's, they were always there and really should be commended for assisting, not just the General Counsel's Office, but this Agency as a whole. Made sure that that year was not just smooth, but I felt that the staff knocked it out of the park and did a fantastic job and its due in large part to these three individuals. Unfortunately Laura and Ron are taking

some well-deserved vacation, but Mary is with us today and I am just very proud of all three of them. So, I would like to nominate them for this award.

Chief Administrative Law Judge Shawn Cloughesy nominated staff for the Division of Administrative Law:

The nominees in regards to the Division of Administrative Law are the Glendale Administrative Law Judges, all three of them: Eric Cu, Valerie Pike-Racho, and Kent Morizawa. And, I have to kind of explain the Glendale hearing office a little bit. Usually, it shoulders about 55 percent of our hearing work. Over the last two to three years, which was even an increase from prior years, but this year was around 57-62 percent and, that's a lot of work. And, not only did they handle that work, and I will call the Glendale hearing offices "The Wild West" of PERB practice for this reason. I've heard cases in all three offices and truly that is the most dynamic place in regards to the type of hearings that you can get; anything can happen, and does. So, in regards to Eric Cu and Kent Morizawa, they have the highest production of proposed decisions, even in light of all this. Among all the other Administrative Law Judges, Valerie Pike-Racho shouldered twice to three times the number of hearing days as most of the other Administrative Law Judges in the entire Division and that's not an exaggeration. I'm not just saying twice to three times, these numbers are *real*. So, these three judges truly cooperate as a team to deliver hearing services to the PERB stakeholders. So, I nominate all three to receive the Superior Accomplishment Award for 2014-2015.

Board Members commented regarding the nominees:

Chair Martinez: "On behalf of the Board, . . . I just want to thank all of you. It takes a village to do PERB's work and you guys are definitely the front-runners of the village, and so thank you very, very much. I know that each of your divisions really counts on you each and every day and, you are doing it! So, thank you."

Member Banks: "I can attest to how hard these four work because I get work around them that much with them in LA. Heads are always down, very, very, serious but always smiling. And I often do say to your bosses thank you, job well done! But, I don't often get a chance to say it to your face. So, thank you very much for everything that you do. I really do appreciate it."

Member Huguenin: "Here, here."

Member Gregersen: "Thank you for your dedicated service to PERB."

Member Winslow: "Well, I would just like to say thank you for all the litigation support too, *Riverside* is very close to my heart. And, to all of the ALJ's thank you too. It's a pleasure to read each and every one of your decisions too, by the way. Even if we don't always agree."

Motion: Motion by Member Huguenin and seconded by Member Banks to approve the Office of the General Counsel's and Division of Administrative Law's staff nominations under PERB's Superior Performance Recognition Program.

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

Motion Adopted – 5 to 0.

The Board next discussed and considered PERB's contract for personnel services with the Department of General Services (DGS). Ms. Aguayo provided background as follows:

PERB contracted with DGS to provide human resource/personnel services since 1999. Prior to that time, these services were performed in-house. Due to severe budget reductions there was a reduction in staff. PERB had approximately 100 employees at that time, with three dedicated to human resources.

The first contract with DGS was hourly. Thereafter, the first fixed-cost contract was \$11,000. That grew to \$27,688 in 2005-2006; \$45,000 in 2006-2007; and in the current fiscal year PERB is contracted with DGS for \$135,000. Keeping this same rate structure, PERB would pay \$145,000 in Fiscal Year 2015-2016.

The services that DGS provide include classification and pay, labor relations, testing, examinations, and transactions. Ms. Aguayo is the PERB liaison for DGS.

- Classification and Pay: PERB prepares all documentation and all work required for classification changes or different structures (i.e., legal analyst hire versus a more generic associate analyst, or reclassifying a conciliator to presiding conciliator). Managers at PERB draft the justifications and Ms. Aguayo personally compiles the documents to send to DGS for review. Any modifications required or changes found which are not acceptable to California Department of Human Resources (CalHR) guidelines, the documentation is returned to PERB for review. Ms. Aguayo stated that many times she has found DGS incorrect in such requests.
- Labor Relations: PERB employees are exempt (do not have union representation), and therefore do not use these services.
- Examinations: PERB generally has an exam every year or two (this year a conciliator exam was held).
- Transactions: This area, performed by a Personnel Specialist at DGS, PERB uses on almost a daily basis. It includes timekeeping, payroll, new employee paperwork for medical benefits, and any changes to withholding, addresses, etc.

Ms. Aguayo had a question for Members of the PERB Board. She stated that she had identified within her first month of hire that personnel services provided by DGS were poor. As the liaison with DGS, she could not provide good customer service to PERB employees. There was a delay in processing documentation due to stall mechanisms in place at DGS. As a large department, DGS had a hierarchy where there were three or four levels of approval for

anything that might be slightly contentious, to which Ms. Aguayo was not accustomed. Ms. Aguayo wanted to know what the PERB expectations were for human resources.

Member Winslow provided insight stating that the Board desired efficiency and an end to road blocks, etc.

Chair Martinez asked Ms. Aguayo to provide the Board with details regarding how personnel services would be structured and provided in-house.

Ms. Aguayo responded that she had spoken to Chair Martinez regarding this proposal for many months and had brought a plan forward to PERB's Administration Committee where concerns were raised. She then submitted the proposal to LWDA, who referred her to DOF also for input/review. Both agencies approved of the proposal.

Ms. Aguayo stated that a plan was then developed to provide human resource services in-house at PERB. DGS did not fully offer human resource services that met PERB's needs, therefore, many of these services were already performed at PERB by Ms. Aguayo and staff. Ms. Aguayo also provided examples of reporting requirements that had not been met and having discovered those, she was constantly finding additional functions in reporting where PERB was deficient. To staff human resources at PERB, Ms. Aguayo and a former supervisor had developed duty statements and conducted interviews, but a job offer had not yet been made.

Providing specific details regarding the provision of human resource services in-house at PERB, Ms. Aguayo explained that the proposal included performing the functions currently carried-out by DGS and that initially PERB would not focus on any deficiencies that had been discovered in reporting. The end goal was to have PERB's personnel services staffed by a part-time Personnel Specialist (to handle the transactions workload) and a full-time Associate Personnel Analyst (to handle more complex transactions and any classification pay issues such as hiring). To get these services started and for Fiscal Year 2015-2016, Ms. Aguayo was proposing that PERB hire the Personnel Specialist and a Retired Annuitant (instead of and delaying the hire of the full-time Personnel Analyst). Both positions would work on a part-time basis. PERB would advertise the Retired Annuitant position as a Staff Services Manager I who would serve as PERB's personnel officer. This would fill the Staff Services Manager II position recently vacated by Taji Jordan. There was one very good candidate who retired having had a full career in human resources as a Staff Services Manager II. Although not a cost savings proposal, this proposal would save at least \$60,000 in Fiscal Year 2015-2016.

Ms. Aguayo then fielded questions from PERB Board Members confirming and clarifying the structure of the services to be provided under this proposal for Fiscal Year 2015-2016. She stated that while in Fiscal Year 2015-2016 there would be the ancillary cost savings, in future years human resource services in-house at PERB would be flush with the cost if PERB were to keep the contract with DGS. PERB would provide in-house most human resource services that DGS provided, except the conduct of exams. Those services would be contracted out, which she estimated would cost \$10,000 - \$15,000. She confirmed Member Gregersen's question that the real motivation to bring personnel services in-house was not necessarily budgetary, but for quality and efficiency. Ms. Aguayo provided many examples of the improvement to be

gained in these areas. While she could not say the processes in-house would be totally error-free, there would be a marked improvement. PERB would have direct access to State systems (including the Controller's Office and California Public Employees Retirement System) and could therefore get immediate responses. With that, there would still be those areas that were outside of PERB's (as was with DGS) purview where delays were caused, but PERB would be able to deal with those directly. She confirmed for Member Winslow, with examples, that PERB's hire of new employees would be smoother and more expeditious.

Member Gregersen asked whether managers at DGS were made aware of the concerns regarding its performance of PERB's personnel services. Ms. Aguayo stated that she and Ms. Ross had attended a meeting in this regard at DGS with the Chief of Administration and the result was uneventful.

In answer to Member Banks's question, Ms. Aguayo stated that while she always felt accountable for PERB's personnel services, even when performed by DGS, she would continue to be accountable and that would include any delegations received from CalHR and/or audits by SPB. She mentioned as an example of this responsibility and accountability, a problem she had experienced in receiving PERB documents requested from DGS with regard to an audit so that she could submit them directly to SPB. She had spoken to both CalHR and SPB, and all agencies were agreeable but for DGS's refusal to provide her with documents pertaining to PERB.

Another concern, expressed by LWDA, was staff turnover; that with small agencies the knowledge-base leaves with the employee. Ms. Aguayo expressed that from the inception of human resource services in-house at PERB, the Retired Annuitant hired would be instructed to develop strong processes and procedures in this regard. She further explained that staff turnover at DGS had been much higher—she had worked with four different analysts in the last 15 months and had to retrain each—than what was anticipated at PERB. Overall, stated Ms. Aguayo, having human resource services in-house would not be error-free, while following standard State structure, there would be a 90 percent improvement in personnel services for PERB employees.

Motion: Motion by Member Huguenin and seconded by Member Winslow to approve that the contract for human resource/personnel services with the Department of General Services be cancelled.

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

Motion Adopted – 5 to 0.

The Board considered adoption of a sexual harassment and discrimination policy.

Ms. Aguayo provided a description of the proposed policy stating that it was a general update and that PERB currently had a sexual harassment policy that did not incorporate discrimination. This general update folds in prevention of discrimination and has other minor updates to the prevention of sexual harassment. It also served as training for PERB employees. The policy has a signature form on the back and there was a reference to an on-line training course for all PERB supervisory employees. She noted a minor edit to the draft of the

proposed policy provided to the Board, under the liability section any reference to “employer” would be changed to “PERB” as the responsible party.

Member Huguenin quoted an “old saw” that “nobody’s life or property being safe while the Legislature is in session”; that laws regarding the prevention of invidious discrimination tend to get rewritten every legislative session. He stated that to maintain currency as required by Fair Employment and Housing Commission statutes and regulations, this policy should be updated on an annual basis.

Motion: Motion by Member Banks and seconded by Member Huguenin that the Prevention of Sexual Harassment and Discrimination Policy be adopted and filed.

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

Motion Adopted – 5 to 0.

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 August 13, 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 Winslow 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