

LOS ANGELES CITY EMPLOYEE RELATIONS BOARD



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R. Douglas Collins
Chairman
Anthony Miller
Vice Chairman
Rosalinda Lugo
Rhonda L. Hilyer
Suzanne Steinke
Robert R. Bergeson
Executive Director

MINUTES OF MEETING

Monday, October 23, 2017

9:30 A.M.

BOARD MEMBERS PRESENT: **R. Douglas Collins**
 Anthony Miller
 Rosalinda Lugo
 Rhonda L. Hilyer
 Suzanne Steinke

Chairman Collins called the meeting to order at 9:31 a.m.

- 1. Public comments on matters within the Board's jurisdiction. A maximum of ten minutes will be provided for members of the public to address the Board on items of interest that are within the jurisdiction of the Board. Said ten minutes shall be equally divided among speakers, not to exceed five minutes per speaker.**

There were no public comments.

- 2. Consideration of minutes of the Board meeting of September 25, 2017.**

Member Stienke moved to approve the minutes of September 25, 2017. Seconded by Member Lugo.

Motion carried unanimously.

- 3. Executive Director's report:**

- a) New unfair employee relations practice claims filed.**

Executive Director Bergeson informed the Board that since its September meeting, three new unfair employee relations practice claims had been received: UERP 2062, filed by individual employee Nathan Jackson against Los Angeles Police Department alleging retaliation for protected conduct (not prima facie); UERP 2063, filed by Los Angeles Airport Peace Officers Association (LAAPOA) against Los Angeles World Airports (LAWA) alleging an unlawful unilateral change to a pension benefit (has been processed); and UERP 2064, filed by individual employee Paul A. West, et al. against Department of Water and Power Management Employees Association (DWP MEA) alleging violation of the duty of fair representation (not prima facie).

- b) Status of impasses.**

Mr. Bergeson advised the Board that LAPD and LAPPL (Los Angeles Police Protective League) requested a list of factfinders for IMP-234 involving the proposed revision to its policy regarding the appeal process for denial of a concealed weapons permit for its retired sworn employees.

c) Administrative matters, if any.

Mr. Bergeson announced that the Mayor intends to reappoint Member Hilyer to the Employee Relations Board.

4. Recommending appropriate action on Petition C885, filed by Los Angeles Professional Managers' Association (LAPMA), seeking the creation and representation of a Confidential Senior Personnel Analyst Unit.

Executive Director Bergeson recommended that Petition C885, filed by Los Angeles Professional Managers' Association (LAPMA) seeking the creation and representation of a Confidential Senior Personnel Analyst Unit, be posted and scheduled for consideration at the Board's next regular meeting.

Member Miller so moved. Seconded by Member Hilyer.

Motion carried unanimously.

5. Consideration of requests to withdraw various matters, if any.

Executive Director Bergeson stated that the Board had received no requests for withdrawal.

6. Consideration of request for impasse procedures, IMP-235, filed by the Los Angeles Police Department requesting a list of potential factfinders. Los Angeles Police Protective League advocates that the dispute be sent to mediation.

Item #6 - held to be heard later during the meeting

The following individuals were present on this matter: Detective Theresa Hartter and Sgt. Candice Guzman, on behalf of LAPD; no appearance on LAPPL's behalf.

Mr. Bergeson stated that he spoke with LAPPL Independent Counsel Gary Ingemunson and was under the impression he would be attending this meeting.

It was suggested that this matter be held over for later in the meeting to allow time for LAPPL counsel to make an appearance.

7. Consideration of further processing of Unfair Employee Relations Practice Claims:

a) UERP 2053, filed by individual employee Jacob Brothers, represented by EAA, against the Department of Transportation alleging retaliation for protected activity.

The following individuals were present on this matter: Attorney Adam Stern, on behalf of the claimant; Sr. Personnel Analyst Steve Presberg, on behalf of the Department of Transportation.

Attorney Stern advised the Board that the parties have agreed to mediation on this matter and requested the matter be held in abeyance to allow the parties to do so.

Mr. Presberg agreed.

Member Hilyer so moved. Seconded by Member Steinke.

Motion carried unanimously.

b) UERP 2056, filed by individual employee Jesus Ramirez against SEIU Local 721 alleging violation of the duty of fair representation, continued from the Board meeting of September 25, 2017.

The following individuals were present: Assistant General Counsel Shirley Lee, on behalf of SEIU Local 721; Jesus Ramirez, claimant.

Mr. Ramirez asserted that the union has intentionally not processed a group grievance and alleged the union has been discriminating against the grievants and has violated the duty of fair representation. Claimant further contended the union has also not responded to his calls or made legitimate attempts to address his concerns as a dues paying member.

Ms. Lee responded that group grievance alleged that various employees including security officers who work at sewage and water treatment facilities should receive premium pay for working under "obnoxious conditions." The union did not arbitrate that grievance for security officers, said Ms. Lee, because there is nothing in the relevant MOU to provide premium pay for them. Attorney Lee explained that certain employees have that benefit under a different MOU. She added that the union is amenable to trying to obtain the same benefit for security officers like Mr. Ramirez.

After much discussion, Member Miller moved to dismiss UERP 2056. Seconded by Member Lugo.

Motion carried unanimously.

c) UERP 2059, filed by American Federation of State, County and Municipal Employees, Local 3090 (AFSCME) against the Department of Public Works Bureau of Sanitation alleging:

- (1) interference with the ERO rights of Communications Information Representatives (CIRs) I, II, III, and some Administrative Clerks and Sr. Administrative Clerks and**
- (2) unlawful direct dealing with such employees.**

The following individuals were present: Attorney Hannah Weinstein and AFSCME Business Representative Theresa Sanchez, on behalf of AFSCME Local 3090; Sr. Personnel Analyst Rizza Abuan and Attorney Janis Barquist, on behalf of the Department of Public Works Bureau of Sanitation.

Attorney Weinstein asserted the charge has a statutory basis in the classification of various workers at the bureau of which some are regular city employees represented by AFSCME Local 3090, and others are classified as exempt or as contract employees. The union contends the latter two types of employees are misclassified. Those employees are not exempt under the Charter nor should they be classified as contract employees given the number of hours that they work for the city. Such employees are classified as exempt when their contracts end but although they continue working for the City that does not mean they fit the Charter definition of the term, she said.

Ms. Weinstein informed the Board that the union filed a grievance based on the misclassification and it is moving separately. She acknowledged that there will be overlapping questions but opined that the retaliation charge in the unfair will probably not be addressed in arbitration.

In the latter regard, said Attorney Weinstein, after the grievance filing, bureau supervisors and managers held meetings with the contract and exempt employees, threatening them for their involvement in the grievance process. The employees were further told that as the result of the filing of the grievance, once

their contract term ends, they will no longer be employed by the bureau in any capacity.

Ms. Abuan stated that the union's interpretation of what occurred at the meeting is incorrect. Moreover, said Ms. Abuan, the union has requested remedies outside of the ERB's jurisdiction. Ms. Weinstein retorted that although the Board may lack authority over violations of the Charter, it can order the bureau to cease and desist from direct dealing, making unlawful threats and the like.

Chairman Collins inquired whether there is a dispute over ERO coverage for the workers whom the bureau refers to as "exempt" and "contract." Ms. Weinstein responded affirmatively as they have been misclassified and should be covered by the MOU under the rubric of "intermittent" employees who work less than half-time. Ms. Sanchez added that exempt status employees pay union dues or agency fees.

Chairman Collins stated there is some inconsistency between the ERO and the MMBA as to what constitutes an "employee" for purposes of coverage. Mr. Bergeson added that the standard for whether one is an employee for ERO coverage is whether they hold a position of long or undefined duration.

Irrespective of the definition, said Mr. Bergeson, some difficult legal issues that this case presents are probably within the expertise of everyone on the ERB's hearing officer panel but that is not so of everyone on the arbitration panel.

Ms. Abuan reiterated her request that the Board dismiss UERP 2059, asserting that the department merely informed employees that because there was an active grievance which it was attempting to resolve, there could be no movements approved until that occurred.

After additional discussion, Ms. Barquist asserted that there is nothing in the claim that shows a factual predicate for finding intimidation to City employees. She suggested that the Board therefore consider sending only a portion of the union's allegations to hearing.

After additional discussion of overlapping issues and concerns about status, classification, retaliation and direct dealing, Member Miller moved to send UERP 2059 to hearing in its entirety. Seconded by Member Lugo.

Motion carried unanimously.

The Board resumed with Item #6

6. Consideration of request for impasse procedures, IMP-235, filed by the Los Angeles Police Department requesting a list of potential factfinders. Los Angeles Police Protective League advocates that the dispute be sent to mediation.

Executive Director Bergeson was privately informed by ERB Sr. Administrative Clerk, Joe Dionisio, that LAPPL received notice of this agenda item but indicated it did not intend to send a representative and Mr. Bergeson so announced to those in attendance.

The following LAPD individuals were present on this matter: Detective Theresa Hartter and Sgt. Candice Guzman.

Sgt. Guzman indicated this case involves a dispute over how long sworn personnel involved in a work-related shooting should remain out of field duty. She stated the department views the two-week standard it proposes as a serious issue beneficial not only to such officers and the department but also to the community. This time limit is to ensure the mental well being of the officer and to shield him or her from

getting involved in another incident within that two-week period, she said.

Chairman Collins asked what the current practice is, to which Sgt. Guzman responded that after a shooting incident officers are seen by Behavioral Sciences Services, which informs the commanding officer when the officer involved is cleared to return to field duty. Sgt. Guzman stated the union is not willing to concede any amount of days officers are to be out of the field and prefers to maintain the current policy.

After some discussion, Member Hilyer moved to send this matter directly to factfinding. Seconded by Member Steinke.

Motion carried unanimously.

8. Executive Session: Discussion on a personnel matter.

Members in Executive Session.

Members out of Executive Session and back on the record.

Chairman Collins reported the Board discussed personnel matters and the only action taken was to appoint Members Lugo and Steinke to a subcommittee to address the issues regarding appropriate classification and re-classification of the Commission Executive Assistant and the procedure the Board will follow in finding a replacement for Executive Director Bergeson who is retiring in July 2018.

Member Miller moved to approve the appointment of the subcommittee to address personnel issues.

Seconded by Member Hilyer.

Motion carried unanimously

Member Hilyer moved to adjourn the meeting. Seconded by Member Miller.

Motion carried unanimously.

MEETING ADJOURNED AT: 11:27 A.M.



ROBERT R. BERGESON
Executive Director

PERSONS WITH DISABILITIES: As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability and, upon request, will provide reasonable accommodation to ensure equal access to its program, services, and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or services may be provided upon request. To ensure availability, you are advised to make your request at least 72 hours prior to this meeting. For additional information, please contact Commission Executive Assistant Guadalupe N. Rodarte at (213) 473-9700.