



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

Thursday, April 19, 2018

2:00 P.M.

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

Chairman Collins called the meeting to order at 2:02 p.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 March 19, 2018.**

Member Steinke noted a typographical error on page three, and recommended changing "tol" to "told." With that correction, Member Miller moved to approve the minutes of March 19, 2018. Seconded by Member Steinke.

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 March meeting, three new unfair employee relations practice claims had been received: UERP 2070, filed by SEIU Local 721 against the Department of Transportation alleging an unlawful unilateral change to working conditions (shift change assignment) (has been processed); UERP 2071, filed by SEIU Local 721 against the Department of Public Works, Bureau of Sanitation Wastewater Collection Systems Division (has been processed); and UERP 2072, filed by AFSCME, Local 3090 against the Department of Recreation and Parks alleging interference and retaliation for protected activity.



b) Status of impasses.

Mr. Bergeson advised the Board that there were no new requests for imposition of impasse procedures.

c) Administrative matters, if any.

He also informed the Board that our office has received a response from LAPD to a factfinding report and that report will be placed on the agenda of the May meeting. Mr. Bergeson further indicated that also going on the May agenda for approval by the Board should be the results of last week's Senior Personnel Analyst and Confidential Senior Personnel Analyst elections and that a majority of votes were cast for L.A. Professional Managers Association in the latter election and for no organization for non-confidential Senior PAs. Lastly, Executive Director Bergeson stated that, as mentioned at the top of the meeting by Chairman Collins, there is an executive session today to review applications to replace him upon his retirement in July.

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

Executive Director Bergeson stated that the Board had received one request for withdrawal. He recommended that the Board approve the request of LAPMA to withdraw Petition C890 which was intended to create a bargaining unit of Municipal Police Captain.

Member Miller so moved. Seconded by Member Lugo.

Motion carried unanimously.

5. Consideration of draft Decision and Order U-223 in the matter of UERPs 2044 and 2052 filed by the Engineers and Architects Association against the City of Los Angeles Department of Recreation and Parks.

The following individuals were present on this matter: Attorney Adam Stern, on behalf of Engineers & Architects Association; Personnel Director Harold Fujita, on behalf of the Department of Recreation and Parks (RAP).

Mr. Fujita expressed concern that the draft notice to employees included two aspects not recommended by the hearing officer. Executive Director Bergeson explained that the hearing officer had been in the ERB office the prior week and told him she had not fully edited her report so as to get it out timely and had not intended her recommended order to be adopted verbatim. Accordingly, said Mr. Bergeson, he amended the recommendation a bit in accordance with that comment and the Board's historical language. Chairman Collins opined that the two provisions to which RAP objected appear to have been set forth immediately above the recommended order in the hearing officer's conclusions of law. Personnel Director Fujita replied that one of those factors, rescission of both a Notice to Correct Deficiencies and a counseling memorandum to bargaining unit member Edwin Realegeno was erroneous because Mr. Realegeno had first been issued an NTCD and then following intervention by EAA, the NTCD was reduced to a counseling memo. Attorney Stern took issue with that objection, stating that the Board has already adopted the hearing officer's report so that RAP was attempting to re-litigate the facts.

Chairman Collins agreed with Mr. Stern on that point. Mr. Collins did, however, indicate his opinion that the first full paragraph on the second page of the draft report contained a lengthy run-on sentence which would be more comprehensible if rewritten to mirror the draft notice. Member Hilyer suggested use of numbers to do so.

Member Steinke expressed agreement with the comments of Chairman Collins and Member Hilyer and moved to approve the draft order with the suggested changes. Seconded by Member Lugo.

Motion carried.

6. Consideration of draft Decision and Order ERB-539, in the matter of Petition C886, filed by SEIU Local 721 seeking accretion of Theater Technician (class code 0710) to the Service and Crafts Unit.

There were no appearances.

Member Miller moved to approve draft Decision and Order E.R.B. No. 539. Seconded by Member Lugo.

Motion carried unanimously.

7. Consideration of Petition C892, filed by Los Angeles Airport Peace Officers' Association, seeking certification as exclusive representative of the Municipal Police Officers Unit.

The following individuals were present on this matter: Attorney Howard Liberman, on behalf of Los Angeles Airport Peace Officers' Association; Deputy City Attorney Janis Barquist, on behalf of the City.

Attorney Liberman stated he believed that aside from possible questions concerning a disclaimer of interest filed by EAA, this item appears to be pro forma. Ms. Barquist stated the City has no position on the propriety of the disclaimer.

Executive Director Bergeson stated that he had once thoroughly researched NLRB case law on disclaimers and in checking The Developing Labor Law, NLRB policy appears to have remained constant that that board does nothing with a received disclaimer unless and until it becomes relevant to an issue in a subsequent case. That typically occurs in an unfair practice matter in which the union acts inconsistent with its disclaimer, said Mr. Bergeson. Because in the present situation there is no such evidence, Mr. Bergeson recommended the Board order Petition C892 to be posted and considered at a subsequent meeting.

Member Miller so moved. Seconded by Member Hilyer.

Motion carried unanimously.

8. Recommending appropriate action on Petitions:

- a) C893, filed by Los Angeles Professional Managers' Association (LAPMA) seeking accretion of Portfolio Manager (class code 9143) to the Management Employees Unit;
 - b) C894, filed by Los Angeles Professional Managers' Association (LAPMA) seeking accretion of Public Safety Risk Manager (class code 7976) to the Management Employees Unit;
 - c) C895, filed by Los Angeles Professional Managers' Association (LAPMA) seeking accretion of Motion Picture and Television Manager (class code 1789) to the Management Employees Unit;
- and
- d) C896, filed by Los Angeles Professional Managers' Association (LAPMA) seeking accretion of Assistant Executive Director Cannabis Department (class code 9428) to the Management Employees Unit.

The following individual was present on these matters: Executive Director Charley Mims, on behalf of L.A. Professional Managers Association.

Executive Director Bergeson recommended that Petitions C893, C894, C895, and C896 be posted and scheduled for consideration at the Board's next regular meeting..

Member Lugo so moved. Seconded by Member Steinke.

Motion carried unanimously.

9. Consideration of appeal filed by IBEW, Local 18 of executive director's decision not to process Decertification Petition D41 and Petition C889 regarding the class of DWP Chief Electric Plant Operator, (CEPO) A and B currently included in the DWP Management Employees Unit represented by DWP Management Employees Association.

The following individuals were present on this matter: Attorney Michael Plank, on behalf of IBEW Local 18 (IBEW); Attorney Adam Stern, on behalf of DWP Management Employees Association (MEA).

Chairman Collins opined that Petition C889 appeared to be inappropriate because the Board's rules provide that only City management or the union certified by the Board has standing to petition to accrete a classification to a bargaining unit and since the classification involved in the two petitions, Chief Electrical Plant Operator (CEPO), is represented by MEA, IBEW lacks standing to so petition.

Attorney Plank asserted that whether or not that is the case, although the ERB's executive director is authorized to decline to process unfair practice claims, he lacks such authority over representation matters. Therefore, argued Mr. Plank, the Board should order Mr. Bergeson to process the instant petitions with their merits to be addressed thereafter.

Mr. Bergeson replied that the Board's rules are silent as to whether the executive director can refuse to process representation petitions. Mr. Bergeson stated that although in nearly 18 years with the Board he has never declined to process a representation petition, because these two petitions are so clearly lacking in merit, his motivation was to obviate the need for MEA and DWP to have to respond to the petitions and for DWP to need to submit a list of names to the Board to check MEA's showing of interest and to have to post the petitions on its relevant bulletin boards.

Mr. Stern voiced support for Chairman Collins's position and asserted the Board should dismiss the petitions on that basis without addressing the rationale expressed in Mr. Bergeson's letter declining to process them. Executive Director Bergeson explained that although he did not necessarily disagree with Chairman Collins and Attorney Stern, because Board Rule 2.06 says an accretion can be filed by "*an* affected certified representative" rather than "*the* affected certified representative," it might reasonably be argued that IBEW could have standing to file an accretion petition. Accordingly, since the two petitions were so clearly improper on other grounds, he relied on those in declining to process them.

Several Board members then expressed skepticism about whether IBEW could somehow prevail on the merits. Chairman Collins responded that since the published agenda stated the two petitions had been calendared solely for the purpose of ruling on the propriety of the executive director's refusal to process them, for the Board to dismiss them now might perhaps run afoul of the Brown Open Meetings Act. As such, Attorney Plank was asked whether IBEW might consider just withdrawing the petitions to which and he replied that IBEW would like to see the Board order the executive director to process them consistent with its usual procedure.

Member Miller moved to direct Executive Director Bergeson to process the petitions. Seconded by Member Hilyer. VOTE: 4 - Ayes (Miller, Hilyer, Steinke, Collins) 1 - No (Lugo)

Motion carried.

10. Consideration of a motion from AFSCME, Local 3090 that an issue in UERP 2059 filed against the Public Works Bureau of Sanitation alleging interference with the ERO rights of some Communications Information Representatives (CIRs) I, II, III, Administrative Clerk, and Sr. Administrative Clerks, sent to hearing in January 2018, be deferred to arbitration.

The following individuals were present on this matter: Attorney Hannah Weinstein, on behalf of AFSCME Local 3090; Senior Personnel Analyst Steve Presberg, on behalf of the Department of Public Works Bureau of Sanitation.

Ms. Weinstein and Mr. Presberg had an extended debate over the scope of the issues which should be decided by Hearing Officer Ken Perea on the one hand and Arbitrator Fred Horowitz on the other. Consistent with that debate, members of the Board opined regarding the extent to which the Board itself should strictly define the issues before Mr. Perea. The majority of the Board was of the opinion drawing that line should be left to the hearing officer whose first day of hearing, May 2, appears to be considerably before the arbitration will begin.

Member Lugo moved to deny the motion. Seconded by Member Steinke. VOTE: 3- Ayes (Collins, Lugo, Steinke) 2 - Noes (Miller, Hilyer)

Motion carried.

Chairman Collins called for a ten minute break.

Chairman Collins thereafter called to resume the meeting.

11. Executive Session for review of applications for Employee Relations Board executive director.

Members in Executive Session.

Members out of Executive Session.

The Board reviewed candidate applications and narrowed the candidate pool to three with the interview date and times to be determined. No other action taken.

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

Motion carried unanimously.

MEETING ADJOURNED AT: 4:32 P.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.