

civil service commission

BOARD OF REVIEW AND APPEALS



Commissioners

Don Becker
Alyse M. Lazar
Haywood Merricks III
Joyce A. Taylor
James Vandenberg

**MINUTES OF
SPECIAL MEETING
MONDAY, SEPTEMBER 15, 2014
9:30 a.m.
CONFERENCE ROOM B, FOURTH FLOOR
HALL OF ADMINISTRATION**

Chair Merricks called the meeting to order at 9:37. Present were Chair Merricks, Commissioners Vandenberg, Lazar and Taylor, Cheryl Shaw, Commission Assistant, Robert Orellana, Law Advisor, and Jim Dembowski, IR.

- 1. SECTION 103 REVIEW OF PROPOSED MOA AND LETTER TO THE BOARD OF SUPERVISORS OF THE COUNTY OF VENTURA RE:** Adoption of 2014-2017 Memorandum of Agreement between the County of Ventura and the Criminal Justice Attorney's Association of Ventura County (CJAAVC). [A copy of the Memorandum of Agreement may be obtained from the Industrial Relations Division of Ventura County's County Executive Office.]

Mr. Dembowski outlined the major changes in the new agreement and stated that this contract contains terms that impact PR&R sections 1802 and 1803 by including two additional supervisor designations in the Office of the District Attorney and one additional supervisor designation in the Office of the Public Defender. Senior Attorneys will also be allowed to be designated as supervisors under the new contract.

Mr. Dembowski also noted that a second impact is presented by language added to Section 402 wherein the parties "agreed to disagree" on the legal status of that section in light of an appellate court's decision in *Markov v. Lipson, et al.*, a case that originated before the Commission. Under Section 402's terms, as revised, each side reserves its right to argue the impact, if any, on this section of the *Markov* decision, upon any future revocations of the designation of Senior Attorney by a Hiring Authority.

Finally, Mr. Dembowski stated that as of last Thursday evening Maeve Fox, President of CJAAVC, had informed him that there was a 98% approval rating of the terms of the new contract but that this was before voting closed, last Friday evening.

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In response to an inquiry from Commissioner Vandenberg, Mr. Dembowski stated that the Section 402 issue was the last item negotiated by the parties, and that the union had wanted the County to eliminate the language of Section 402, which had been approved by both parties during a prior amendment of the agreement (while the *Markov* matter was still pending before the Commission). This language was creating an impasse between the parties until each side agreed to the compromise language presented in the proposed amendment. Under the proposed compromise language in Section 402, if the matter should arise again, the County is permitted to argue that Section 402 establishes that the "senior attorney" designation is "at will" and may be revoked without complying with formal notice and hearing procedures while the union may argue that, given the final decision in the *Markov* case, the employee's procedural protections found in Article 21 of the Personnel Rules and Regulations would apply.

Commissioner Lazar expressed concern as to why the language was included at all as it was somewhat ambiguous. Mr. Dembowski indicated that, because half of the members of the union are senior attorneys, an agreement would not have been finalized without the inclusion of this (or similar) language to Section 402. Mr. Orellana stated that the language also precludes a waiver argument by the County.

Commissioner Vandenberg expressed concern regarding wording of the Commission's standard advice letter to the Board of Supervisors given the issues that could arise based on the proposed additional language in Section 402. Mr. Dembowski indicated that this was a unique designation which only exists for these attorneys. The proposed language is designed to preserve the ability for the County to argue application of Section 402 while permitting the union to argue its preemption under case law. Mr. Dembowski also stated that, although it is management's position that Skelly-type hearings are not required for a removal of a senior attorney designation due to the wording of Section 402, management could still provide such hearings if they so choose.

Commissioner Lazar suggested that the Commission's letter to the Board of Supervisors state that, although the Commission found that the subject MOA had no adverse impact on the Personnel Rules and Regulations, a sentence be added noting that the wording of Section 402 creates an ambiguity that could impact the work of the Commission. Ms. Shaw was directed to amend the letter to reflect the Commission's notation.

Upon motion by Commissioner Lazar, seconded by Chair Merricks, the Commission voted to direct the Chair to sign a letter to the Board of Supervisors stating that the Commission, by a unanimous vote of those present at the meeting, finds that the proposed MOA amendment will have no adverse impact on the County's Personnel Rules and Regulations, however noting the potential impact of the language added to Section 402. Staff was instructed to submit the letter to the Clerk of the Board of Supervisors for placement on its next two meetings' agenda.

The meeting was adjourned at 10:10 a.m.

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APPROVED: _____