

civil service commission

BOARD OF REVIEW AND APPEALS



Commissioners

Don Becker
Alyse M. Lazar
J. William Little
Haywood Merricks III
James Vandenberg

MINUTES SPECIAL MEETING WEDNESDAY, JUNE 13, 2012 10:00 a.m.

**County of Ventura Government Center
LOWER PLAZA ASSEMBLY ROOM
(800 S. Victoria Avenue, Ventura, CA 93009)**

Chair Vandenberg called the meeting to order at 10:00 a.m. Present were Chair Vandenberg, Vice-Chair Merricks, Commissioners Becker, Little and Lazar, Cheryl Shaw, Commission Assistant, and Bob Boehm, Law Advisor. After inquiring if any members of the public wished to address the Commission prior to the closed session, and hearing none, the Commission proceeded into closed session.

- I. CLOSED SESSION** – Conference with legal counsel – Existing Litigation (Gov. Code section 54956.9) in the case of William Markov v. Steve Lipson, et al.; Court of Appeal of the State of California, Second Appellate District, Division Six, Case No. B234138.

Closed session adjourned at 10:30 a.m. Staff present following closed session included Robert Orellana, Law Advisor, Jim Dembowski (IR) and Tabin Cosio (IR).

- II. NEW BUSINESS** – Hearing in accordance with Order dated April 27, 2011, of Superior Court, State of California, County of Ventura Case No. 56-2010-00383044 entitled William Markov v. Steve Lipson, et al., affirmed on April 17, 2012, by Court of appeal of the State of California, Second Appellate District, Division Six (Case No. B234138) to vacate Commission's determination of August 26, 2010, and to determine whether to grant petitioner's request to rescind the reduction in pay until the Public Defender affords petitioner the procedural due process safeguards as set forth in Article 21 of the Ventura County Personnel Rules and Regulations.

Present for the Ventura County Public Defender's Office was Matthew Smith, Assistant County Counsel. Mr. Markov was present along with his attorney, Stephen Silver.

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On motion of Commissioner Lazar, seconded by Commissioner Becker, the Commission unanimously voted to rescind its prior order in this matter dated August 26, 2010.

Mr. Smith addressed the Commission and stated that the issue before the Commission per the appellate court order was to decide whether the petitioner is entitled to a hearing. Mr. Smith reminded the Commission that the Commission is a body of limited jurisdiction. He argued that without a property right, there exists no right to due process and that Mr. Markov did not have a property right in either his designation, or the pay that accompanied the designation. This point is made clear by the County's Personnel Rules and the governing memorandum of agreement which indicate that the title and pay is "at-will" and can be taken away by the appointing authority. Mr. Smith further argued that the petitioner had conceded that the designation was "at-will" but continues to argue that the increased pay must remain. The County feels that further briefing on this issue would be helpful to the Commission in making a determination in this regard. The County has never made a claim that he could be fired as he is a permanent employee in the classification of Attorney III, but the designation of senior attorney is separately provided for under rule 1802, and is merely a designation. In response to Commissioner Little, Mr. Smith briefly outlined the series of proceedings that this matter has undergone both at the superior and appellate court levels.

Mr. Silver stated that all of the County's argument had been previously made in both the superior and appellate court proceedings. He argued that the court of appeal's opinion makes it clear that the reduction in pay must be accompanied by the due process procedures set forth in the County's Personnel Rules and Regulations and the court confirmed that such due process rights were not followed in Mr. Markov's case. Mr. Markov is now asking that the Commission reinstate Mr. Markov's senior attorney pay retroactively until due process procedures are provided and that the Commission must now consider the petitioner's request without regard to the 10-day timing issue contained in the Commission's prior order. He stated that the due process rights require the County provide Mr. Markov with a formal document which outlines the reasons for the discipline. He clarified that Mr. Markov is not challenging the removal of the designation as a senior attorney but is asking that his increased pay be restored pending a hearing before the Commission. The issue is whether the Public Defender's action in reducing Mr. Markov's pay complied with the due process procedures set forth in the County's Personnel Rules. Mr. Silver further argued that this issue has been briefed before the superior and appellate courts and that the petitioner's arguments so submitted were also contained in the prior 2010 letter request made to the Commission.

Mr. Boehm stated that the court of appeal has remanded this matter back to the Commission to determine whether to grant petitioner's request to rescind the reduction in pay until the Public Defender affords petitioner the procedural due process safeguards which suggests that the Commission must make such determination. Mr. Boehm also inquired if there was an issue of whether or not Mr. Markov was a permanent employee. Mr. Silver stated that Mr. Markov was a permanent employee when the action was taken and Mr. Smith stated that the County's position is that he was a permanent

employee only as to his employment as an Attorney III but not as to the senior attorney designation.

Mr. Silver argued that the cases analyzed by the court of appeal provide that procedural safeguards should be in place in cases such as Mr. Markov's and that the appellate court focused on the reduction in pay and not on the issue of the removal of the title. In response to Commissioner Little's question, Mr. Silver stated that the "at-will" designation is only with regard to title but not the increased pay and that the procedures must be followed for a reduction in said pay.

Mr. Smith clarified that the appellate court only decided one issue which was whether or not the superior court was correct in ordering the Commission to reconsider Mr. Markov's request for hearing without regard to the issue of timeliness. The question is whether the designation and the pay that goes with the designation are subject to the Personnel Rules' requirement for notice and a hearing before being removed. Mr. Smith encouraged the Commission to allow the parties to brief the issue.

Mr. Silver agreed that the issue before the appellate court was narrow, however the decision itself provides a very clear roadmap as to what the Commission's decision should be and what the court of appeal would have done should the specific issues were before the court.

The Chair ordered that the Commission go back into closed session at 11:10 a.m.

At 11:45 the Commission reconvened in open session. The Chair informed the parties that the matter would be continued to July 16, 2012, and that briefs are to be submitted to the Commission addressing the issue of whether the reduction in pay which accompanied the removal of Mr. Markov's designation entitled Mr. Markov to the due process procedures in the Personnel Rules. Briefs are to be filed on or before July 6, 2012.

III. MINUTES FOR APPROVAL – Regular Business Meeting of April 26, 2012. The minutes were approved on motion by Commissioner Little, seconded by Commissioner Lazar .

IV. SECTION 103 REVIEW OF PROPOSED MOA AND LETTER TO THE BOARD OF SUPERVISORS OF THE COUNTY OF VENTURA
RE: Approval of Adoption of 2011-2013 Memorandum of Agreement between the County of Ventura and the International Union of Operating Engineers, Local 501.

Tabin Cosio represented to the Commission that the negotiated MOA had no adverse impact on the County's Personnel Rules and Regulations. The Board of Supervisors is expected to adopt the MOA at the second hearing on same on June 26, 2012. Mr. Cosio

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further stated that the contract contained a few changes with regard to benefits and portal to portal payment for certain employees assigned to work in response to emergencies. In response to a question from Commissioner Little, Mr. Cosio confirmed there was no pay or benefit increases during the term of this agreement.

On unanimous vote by motion made by Commissioner Becker, seconded by Commissioner Little, the Commission agreed to advise to the Board of Supervisors that the subject MOA does not adversely impact the Ventura County Personnel Rules and Regulations. Chair Vandenberg was authorized to sign a letter regarding same, which will be submitted to the Board of Supervisors for their agenda.

Chair Vandenberg indicated that he had instructed staff to cancel the next regular business meeting for June 28 if there were no business matters received which must be agendaized prior to posting notice of the meeting.

The meeting was adjourned at 11:55 a.m.