

COUNTY OF VENTURA

civil service commission

BOARD OF REVIEW AND APPEALS



Commissioners

Don Becker
Alyse M. Lazar
Haywood Merricks III
Patricia S. Parham
James Vandenberg

**MINUTES
SPECIAL MEETING
THURSDAY, DECEMBER 1, 2016
10:30 a.m.
VENTURA COUNTY GOVERNMENT CENTER
LOWER PLAZA ASSEMBLY ROOM**

Chair Lazar called the meeting to order at 10:30 a.m.

Commissioners present: Chair Lazar, Vice-Chair Vandenberg, Commissioners Becker, Merricks and Parham. Staff present: Cheryl Shaw, Commission Assistant, Roberto Orellana, Law Advisor Grant Burton, Law Advisor, Mike Curnow (IR) and Craig Leedham (IR).

1. Section 103 Reviews of Proposed Amended Memorandum of Agreements (MOA) and Letters to the Board of Supervisors of the County of Ventura Regarding Proposed Amendments to Leave Redemption Provisions for the following MOA's:
 - a. Amendment to the 2013-2016 MOA between the County of Ventura and the International Union of Operating Engineers (IUOE), Local 501.
 - b. Amendment to the 2014-2017 MOA between the County of Ventura and the California Nurses Association (CNA) Regular Unit.
 - c. Amendment to the 2013-2016 MOA between the County of Ventura and the Service Employees International Union (SEIU), Local 721.
 - d. Amendment to the 2015-2018 MOA between the County of Ventura and the Ventura County Professional Firefighters Association (VCPFA).
2. Direct the Chair of the Commission to Sign a Letter Advising the Board of Supervisors that the Commission Has No Objection to the Board of Supervisors' Waiving Second Hearings for Amendments to Memoranda of Agreement That Are Similar in All Material Respects to Those Listed in Item 1, above.

Craig Leedham, County Executive Office (Industrial Relations), represented that each of the above-listed employee MOAs contain annual leave redemption provisions that permit, but do not require, covered employees to opt to receive cash in lieu of annual leave (up to various limits specified in the MOAs). He then stated that the Internal Revenue Service (IRS) views the right to obtain cash in lieu of annual leave as constructive income for employees, triggering an obligation for the County to withhold taxes, even where employees do not opt to take the cash in any given year. The County's legal and tax counsel therefore have advised the Auditor Controller to begin reporting each new year's right to receive cash in lieu of annual leave as taxable income for employees who chose to roll over earned annual leave to the following year. In August, the Industrial Relations Department met with representatives of all employee groups to explain the ramifications of counsel's opinion regarding the leave redemption policy.

Mr. Leedham further explained that certain private letter rulings issued by the IRS indicate that employees will now need to specifically request, in the prior calendar year, whether they intend to redeem cash in lieu of annual leave during the following calendar year in order to deal with the constructive income issue. Two provisions are proposed for all MOAs to deal with this issue: first, a required, all employees must make an irrevocable election to receive (or not receive) cash in lieu of annual leave (which election must be made before the end of the prior calendar year); and, second, a limitation on how much and when redemptions of annual leave can be made during the subsequent year (hereafter, employees can only redeem so much annual leave as they have accrued in the tax year during which any in lieu payments are to be made).

Mr. Leedham then stated that the County has tentative agreements with four of the unions with respect to these annual leave payment amendments (listed above) and is continuing to negotiate with the remaining seven bargaining units. He also stated that the reason for expediting the amendments is that the tax implications regarding constructive income will be imposed by the Auditor Controller beginning in January, 2017. If the MOAs can be amended prior to January, then the represented employees can make the proper election for redemption of annual leave in December, 2016.

Vice-Chair Vandenberg questioned what would occur if agreements were not entered into with the remaining unions prior to January, 2017. Mr. Leedham stated that the Auditor Controller sent letters to the employees stating that the County would be following the tax code and would start reporting annual leave subject to in lieu payments as constructively received income for such employees. In response to a question from Commissioner Parham, Mr. Leedham stated that, with respect to the ratification process for these amendments, some of the MOAs require a ratification vote while others permit ratification by the employee unit's representatives.

Commissioner Becker opined that the proposed amendments regarding changes to annual leave redemption provisions in the MOAs would not adversely affect the County's Personnel Rules and Regulations. Chair Lazar inquired about potential impacts to rule 2204 of the Personnel Rules and Regulation, regarding resignations and terminations. Mr. Leedham stated that the

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amendments will only deal with ongoing, annual redemption provisions and would not impact the ability to cash out any remaining annual leave banks at retirement. Mr. Burton then stated that, after reviewing the Personnel Rules and Regulations and the amendments to the MOAs presented to the Commission at this meeting, his opinion was that the amendments would have no adverse impact on the Personnel Rules and Regulations.

In response to Chair Lazar's question regarding the emergency circumstances referenced in the letter to the Board of Supervisors, Mr. Leedham stated that the emergency circumstances exception language contained in each of the amendments is drawn directly from analogous provisions in IRS regulations regarding other emergency situations, such as early withdrawals from 401k plans. Mr. Leedham reiterated that the County has been in discussions with the unions on the leave redemption issue for months. Every employee who is covered by an MOA with annual leave redemption provisions will receive a form that explains the employee's options with respect to redeeming annual leave before January, 2017.

Regarding agenda item 2, above, and in response to Commission Parham's question concerning the County's request for waivers of second readings of amended MOAs by the Board of Supervisors, Mr. Orellana stated that, as a policy matter, the County and Industrial Relations have previously indicated to the Commission that they would not request waivers of second readings unless there was an emergency. As the affected unions will have already ratified these MOA amendments before the Board acts, there should be no objection from the unions with respect to these waiver requests. The only persons who could potentially object regarding waivers of second readings would be a member of the general public, but such persons are not impacted by these amendments, which only cover the represented employees.

Upon motion by Commissioner Becker, seconded by Vice-Chair Vandenberg, the Commission unanimously voted to direct the Chair to sign letters to the Board of Supervisors stating that the Commission finds that the proposed amendments to the 2013-2016 MOA between the County of Ventura and the International Union of Operating Engineers, Local 501, the 2014-2017 MOA between the County of Ventura and the California Nurses Association (CNA) Regular Unit, the 2013-2016 MOA between the County of Ventura and the Service Employees International Union Local 721, and the 2015-2018 MOA between the County of Ventura and the Ventura County Professional Firefighters Association, will have no adverse impact on the County's Personnel Rules and Regulations. Staff was instructed to submit the letters to the Clerk of the Board of Supervisors.

Upon motion by Commissioner Becker, seconded by Vice-Chair Vandenberg, the Commission also unanimously voted to Direct the Chair of the Commission to sign letters to the Board of Supervisors stating that the Commission has no objection to the Board of Supervisors' waiving second hearings for amendments to other MOAs that are similar in all material respects to those amendments listed in Item 1, above.

The meeting was adjourned at 11:12 a.m.