



BOARD OF RETIREMENT

Staff Report

File #: 21-055

Agenda Date: 8/5/2021

Agenda #: 9.

FROM: Neal Waner, Board Chair

SUBJECT: Board Member Protocols Regarding Labor Negotiations

RECOMMENDATION:

Adopt protocols for Board Members regarding labor negotiations.

BACKGROUND:

The Executive Committee met on July 20, 2021 and requested that staff agendize a discussion/action item regarding board member protocols during employee bargaining/negotiations. The information contained herein is provided for the Board's consideration as they reflect on their role in the collective bargaining process and outlines best practices to follow when employees or union representatives petition them about issues related to labor negotiations.

The Board, as the governing body of SBCERA, is the ultimate decision maker for actions taken by the organization, and has delegated authority to the Chief Executive Officer (CEO) to run the day-to-day operations of the organization including but not limited to employment decisions and labor negotiations. The CEO designates a team to represent SBCERA's interests during negotiations with the bargaining unit, and this team typically consists of members of the management team knowledgeable about finance, human resources, and operations along with the Chief Counsel and outside labor counsel to advocate for SBCERA.

To communicate its position regarding matters within the scope of representation, the Board is permitted by the Brown Act to meet with their negotiation representatives in closed session (Gov. Code § 3549.1, subd. (d)). During these closed session meetings, the Board authorizes parameters for negotiations, including financial impacts, and the goals within the negotiations process. With the Board's authority and direction, the SBCERA negotiation team meets with the bargaining unit's negotiation team and enters into tentative agreements about matters within the scope of negotiations. These tentative agreements do not become binding until they are ratified by both the Board and the bargaining unit. Individually, no board member has authority in negotiations. Rather, the Board as a whole makes these decisions, instructs the negotiations team, and ratifies any tentative agreements reached in negotiations.

The Meyers-Milias-Brown Act (MMBA) governs employer-employee relations within California's municipal, county, and local special district employers, and is enforced by the Public Employment Relations Board ("PERB"). Under the MMBA, both SBCERA and the employee organization are obligated to deal with the other's chosen representative to negotiate matters within the scope of representation. This means that, for matters subject to the negotiation duty, the bargaining unit is obligated to meet and bargain with the employer's chosen representatives, and the employer is obligated to meet and bargain with the unit's chosen representatives. Neither party may circumvent

the negotiations process or the designated representatives.

Based on the information above, the following best practices are recommended for board members to adopt when they are approached by employees or union representatives about SBCERA negotiations:

1. Avoid any individual conversations about issues in negotiations because these could be misrepresented and could even rise to the level of violating the Meyers-Milias-Brown Act governing employer-employee relations (e.g. direct dealing) and/or potential violations of the Brown Act (e.g. serial meeting);
2. Refer the individual to their respective bargaining team or invite them to address the Board as a whole by encouraging them to make their comments at the public comment portion of an upcoming Board meeting;
3. Remember that the Board and its bargaining representatives are a team. The Board and individual board members should not be mediating between employees and the SBCERA team.

BUDGET IMPACT:

None.

STRATEGIC PLANNING GOAL/OBJECTIVE:

Quality Employer and Workplace

STAFF CONTACT:

Stacey Barnier

ATTACHMENTS:

None.