THE STATE BAR
OF CALIFORNIA

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MOU Ratification

DATE: December 10, 2007

TO: Members, Board Operations Committee

FROM: Robert Hawley, Deputy Executive Director

SUBJECT: Labor/Management MOU Negotiations
Ratification of 2008 MOU Amendments

EXECUTIVE SUMMARY

On the evening of December 7, 2007, the State Bar and Union bargaining teams reached tentative agreement on the issues reopened for negotiation under the Memoranda of Understanding ("MOU's") to be effective in 2008. The tentative agreement will be presented to the Union membership for ratification. The tentative agreement is presented here for ratification by the Board Operations Committee acting on behalf of the Board in-between meetings. Management recommends ratification of the proposed MOU amendments. The amendments are consistent with budget considerations as discussed below and are within standards of prudent personnel administration. IF YOU HAVE SUBSTANTIVE QUESTIONS PLEASE ATTEND THE BOARD OPERATIONS COMMITTEE MEETING OR CONTACT ROBERT HAWLEY (415) 538-2277, Robert.Hawley@calbar.ca.gov.

RECOMMENDATION

Rules 6.8 and 6.9 of the Rules & Regulations for the Administration of Employer-Employee Relations require that all Memoranda of Understanding ("MOU's") be submitted to the Board of Governors for ratification. Due to the need to obtain ratification of the 2008 amendments before January 1, 2008, ratification is sought from the Board's Operations Committee, which is authorized to act on behalf of the Board in-between meetings. The ratification will be reported to and discussed by the Board at its January 2008 meeting. The Union membership is likewise being requested to ratify the proposed 2008 MOU amendments at a union ratification vote that is being scheduled. State Bar management recommends that the Board Operations Committee ratify the proposed amendments as set forth below. Assuming that the Board Operations Committee agrees with this recommendation, the following resolution is recommended:

"**WHEREAS**, representatives of the State Bar of California ("State Bar") and Service Employees International Union (SEIU), Local 535 ("Union") met and conferred pursuant to California Government Code sections 3505 and 3505.1 and the State Bar's Rules & Regulations for the Administration of Employer-Employee Relations, with a view to reaching agreement on the Memoranda of Understanding for the General and Attorney Bargaining Units to be effective in 2008; and

WHEREAS, on December 7, 2007, the State Bar and Union bargaining teams reached tentative agreement on proposed amendments to the Memoranda of Understanding for the General and Attorney Bargaining Units to be effective January 1, 2008 through the end of 2008; and

WHEREAS, the Union will be recommending that the Union membership vote to ratify the proposed amendments at a ratification vote to be scheduled; and

WHEREAS, the State Bar's Rules and Regulations for the Administration of Employer-Employee Relations provides at Sections 6.8 and 6.9 that the proposed Memoranda of Understanding be submitted to the Board of Governors for ratification and adoption; and

WHEREAS, the Board Operations Committee is charged with Board oversight responsibility for the MOU negotiations and is authorized to act on behalf of the Board in-between meetings; now therefore, it is

RESOLVED that the Board Operations Committee, acting on behalf of the Board in-between meetings ratifies and adopts the proposed Memoranda of Understanding amendments for the General and Attorney Bargaining Units in the form discussed this date to be effective January 1, 2008; and it is

FURTHER RESOLVED that the Office of General Counsel and the Office of the Executive Director are authorized to take the appropriate steps to effectuate these amendments.

BACKGROUND

The employees of the State Bar of California have been represented by Service Employees International Union ("SEIU") since 1980. The State Bar is a public entity subject to the jurisdiction of California's Meyers-Milias-Brown Act ("MMBA"), Government Code section 3500 *et seq.*, for labor relations purposes. The MMBA governs cities, counties and "miscellaneous" public entities such as water districts, community college districts, and redevelopment agencies.

The State Bar's union employees are divided into two separate bargaining units: the Attorney Unit and the General Unit. State Bar Executive Staff and designated Confidential Employees are not represented by the Union. Their terms and conditions of employment are established by the Rules & Regulations Pertaining to the Employment of Executive Staff Employees and the Rules & Regulations Pertaining to the Employment of Confidential Employees adopted by the Board of Governors and administered by the Executive Director. Office of Human Resources and Office of General Counsel employees are among the non-union Confidential Employees.

Negotiations did not begin until the State Bar's authority to collect revenues in 2008 was secured through passage of the State Bar's 2008 fee bill. Negotiations began October 10, 2007. After approximately seven bargaining sessions, on December 7, 2007, the Union and State Bar bargaining teams reached tentative agreement on MOU amendments to be effective through 2008.

The existing MOU's run through the end of 2008. Negotiations just concluded were on three issues reopened for negotiation for 2008: wages and classifications; employee health coverage; and a third issue to be selected by the Union.

Health Coverage: The State Bar was fortunate to receive favorable renewals on its health insurance coverage programs from providers for 2008. Existing coverage was preserved with an overall average premium increase of approximately 5%. The State Bar and bargaining unit employees split the cost of heath insurance premiums 80%/20% (State Bar 80%/Employee 20%). The Union and the State Bar agreed to roll this coverage over into 2008 without further change. This resulted in a cost savings to the State Bar in the approved budget.

Wages: The State Bar budgeted a 3% cost-of-living increase for bargaining unit employees in 2008. This was identified in the State Auditor's report and highlighted in the legislative counsel's analysis of the State Bar's fee bill. Although the Union vigorously sought a substantially higher increase, agreement was ultimately reached on a 3% across-the-board increase for bargaining unit employees effective January 1, 2008.

In the 2005 negotiations for 2006 and 2007, the State Bar and Union employed William Mercer, Inc. to survey the State Bar's public sector benchmark agencies to determine the extent to which the State Bar maintained comparable wages and benefits. The survey confirmed that range adjustments, particularly in the non-attorney General Unit were warranted. These range adjustments were ratified by the Board and incorporated in to the MOU's for 2006 and 2007.

In the recent negotiations, market data demonstrated that the State Bar's current salary ranges for the Attorney Unit, even increased by 3%, lag behind benchmark agencies, particularly the Judicial Branch of state government, which is the State Bar's primary benchmark. As a result, in addition to a 3% increase effective January 1, 2008, the Attorney Unit salary ranges were extended two additional "half-steps" each of which is equivalent to a 2.5% increase. Under the MOU, employees advance two "half steps" upon their annual anniversary date, assuming a satisfactory performance evaluation. The addition of these "half-steps" will allow those attorneys who would otherwise not advance in 2008, to advance to this end step of the range. This adjustment was consistent with market data and its financial impact was within budget parameters.

As noted in the State Auditors report and in the legislative analysis of the State Bar's fee bill for 2008, a growling number of employees are reaching the end of the salary range and "toping out," resulting in no more range advancement. This was addressed for the Attorney Unit with the addition of the two "half steps" noted above. Market data did not support increasing the General Unit ranges any more than 3%. However, the State Bar significantly benefits from the experience of its highly tenured bargaining unit staff. As a result, it is proposed here that on the anniversary dates of employees in the General Unit, rather than receiving a step increase to base pay that has future ongoing cost, they receive a lump sum payment that is equivalent to the step increase that they do not receive due to being "topped out" on the range. The cost of this is limited as a one-time expense, does not carry forward in base pay and does not compound with the passage of time. This cost is with in budget parameters.

Third Issue: The third issue presented here for ratification is an amendment to the MOU that seeks to treat attorneys, investigators, and LAP case managers and specialists, who are exempt from overtime requirements, consistent with the legal standards that govern overtime-exempt status. Currently, MOU covered exempt employees must adhere strictly to an 8:45 a.m. to 5:00 p.m. workday and work set hours. They are entitled to compensatory time for hours worked in excess of the normal pay period, and they are subject to dockage for being late or not at work during work hours. This amendment eliminates compensatory time and strict adherence to a time clock and allows the State Bar to manage these employees in accordance with their work performance and workload as opposed to their timecard, as is consistent with professional and exempt status.

The Union will recommend that the Union membership ratify these amendments. These same amendments are presented here for ratification consistent with the governing authorities. Management recommends ratification. Management is satisfied that the proposed amendments are consistent with budget considerations, are consistent with the Board's institutional goals for the State Bar and are within the Board's mandate that the State Bar be managed prudently.

A side issue not here for ratification but worthy of note is the status of the recognized exclusive bargaining representative of the State Bar's bargaining unit employees. SEIU Local 535 has been the recognized bargaining agent for the State Bar's bargaining units for many years. Due to an internal reorganization of SEIU, SEIU's many locals have been reformulated into larger divisions. Local 535 is being incorporated into SEIU Local 1021. A change in bargaining representative requires ratification by the Board as well as confirmation among represented employees that the identified representative is the choice of the majority within the represented units. To address the fact that Local 535 is the recognized entity at the State Bar, that Local 1021 is apparently succeeding to Local 535's responsibilities, and that SEIU Local 1000 is expressing interest in possibly assuming the role of bargaining representative for the State Bar's employees, the State Bar sought and received an indemnity agreement from SEIU Locals 535 and 1021 indemnifying the State Bar from any liability as a result of the State Bar continuing to recognize Local 535 as it recast into Local 1021. Local 1000, we are advised, is in the process of negotiating a "service agreement" between Local 535/1021 and Local 1000 by which Local 1000 will service the State Bar's employees on behalf of Local 535/1021.

None of this requires Board consideration at this point. However, due to the public attention SEIU's institutional reorganization has had and the variables presented to the State Bar with SEIU Locals 535, 1021, and 1000 directing attention our way, management wished to assure the Board that the interests of the State Bar and its employees are being appropriately addressed.

DISCUSSION

Applicable Authorities

It is a responsibility of the Board and its Board Operations Committee to set policy pertaining to employer-employee relations. Pursuant to Rules 6.8 and 6.9 of the Rules & Regulations for the Administration of Employer-Employee Relations, this includes the act of ratifying successor MOUs. It is the responsibility of the Executive Director to manage personnel prudently and of her designees to conduct the negotiations in accordance with the fiscal policy and budget determinations set by the Board. The negotiations recently concluded were conducted in accordance with these principles.

Once tentative agreement is reached by the bargaining teams, that tentative agreement is presented by the Union to its membership for ratification. The proposed MOU amendments are also submitted to the Board for adoption and ratification.

The proposed MOU amendments are summarized above. The actual MOU amendments will be drafted and approved by the Office of General Counsel and the Office of the Executive Director/Secretary consistent with the proposed resolution above.

PERSONNEL/FISCAL IMPACT

The amendments strive to maintain wage parity with the State Bar's public sector bench mark comparability points. The budget cost is within the budget parameters set by the Board for 2008. The cost of adding steps to the Attorney Unit ranges and providing lump sum anniversary date payments to "topped out" General Unit employees is neutralized by the savings realized by the State Bar from the favorable, less than anticipated, premium increases on 2008 health insurance coverage and other personnel-related savings in 2008.

ADMINISTRATIVE MANUEL IMPACT

None

RULES/STRATEGIC PLANNING CONSIDERATIONS

None

CONCLUSION

Assuming the Board Operations Committee agrees with the recommendation that the proposed MOU amendments be ratified, it is recommended that the above resolution be adopted.

To expedite consideration of this item at the meeting, if anyone wishes a more detailed explanation of the amendments or the negotiating process, please contact Robert Hawley at (415) 538-2277, Robert.Hawley@calbar.ca.gov.