

# AGENDA ITEM

**MARCH 114**  
**MOU: Status Report**  
**Potential Ratification**

**DATE:** February 27, 2009

**TO:** Members, Board Operations Committee  
Members, Board of Governors

**FROM:** Robert Hawley, Deputy Executive Director

**SUBJECT:** Labor/Management MOU Negotiations  
Report on Negotiations Re 2009 MOU Amendments  
Authority and Potential Ratification

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## **EXECUTIVE SUMMARY**

*The State Bar and Union bargaining teams have completed negotiations on potential amendments to the Memoranda of Understanding (“MOU’s”) for the Attorney and General Bargaining Units to be effective in 2009. Tentative agreement was not reached between the bargaining teams as the State Bar team did not have the authority to commit to a tentative agreement. The State Bar team agreed to present the Union’s “final” offer to the Board to determine if the Board would authorize settlement of the negotiations on the terms presented. Those terms are reported here. If the Board authorizes settlement on these terms, the Union will present these terms to the Union membership for ratification. If these terms are acceptable to the Board, the Board is also offered the opportunity here to ratify these MOU amendments, subject to the Union membership’s ratification vote. If the Board does not authorize these amendments, the State Bar team will resume negotiations with the Union as required by labor law standards and the State Bar will continue to operate without a labor contract in place. 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. Normally, the State Bar and Union bargaining teams reach a tentative agreement on the terms each side is prepared to recommend to their respective constituencies. The tentative agreement is then presented to each constituency with a ratification recommendation.

In this instance, the Board of Governors, at its January 2009 meeting, declined to provide authority to the State Bar bargaining team to reach a tentative agreement on terms that met the Union’s demands. As a result, the Union presented to the State Bar team its “final” proposal for

the State Bar team to report to the Board. The State Bar team recommends settlement of the negotiations on the terms reported here. These terms provide cost reductions over the 2009 budget that was adopted by the Board in August of 2008. These cost reductions are intended to help address the structural deficit that the Board discussed at its January 2009 meeting. The terms set forth in Attachment 1 also advance the operational needs of the State Bar by re-establishing governing contract terms for bargaining unit employees that expired December 31, 2008. These terms are also consistent with prudent personnel administration standards.

If the Board authorizes settlement on the terms reported here, it is requested that the Board ratify these terms, subject to the Union membership doing the same. If the Board authorizes this settlement, the Union bargaining team will present these terms to the Union membership with a recommendation to ratify. Assuming ratification, we will then have a labor contract for 2009.

Assuming that the Board Operations Committee and Board of Governors authorize settlement of the negotiations on the terms reported here, the following resolution is recommended:

**“WHEREAS**, representatives of the State Bar of California ("State Bar") and Service Employees International Union (SEIU) Local 1000, operating under s Service Agreement with 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 2009; and

**WHEREAS**, following the January 2009 meeting of the Board of Governors, the State Bar team invited the Union to present its “bottomline” proposal on proposed amendments to the Memoranda of Understanding for the General and Attorney Bargaining Units to be effective January 1, 2009 through the end of 2009; and

**WHEREAS**, the Union did so as reported this date to the Board of Governors; and

**WHEREAS**, the Board hereby authorizes the State Bar’s negotiating team to reach settlement with the Union on the terms reported this date to the Board; 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; now therefore, it is

**RESOLVED** that upon the recommendation of the Board Operations Committee, the Board of Governors, acting on behalf of the State Bar of California, ratifies the proposed Memoranda of Understanding amendments for the General and Attorney Bargaining Units in the form discussed this date to be effective January

1, 2009, subject to those terms being presented to and ratified by the Union membership; and it is

**FURTHER RESOLVED** that the Office of General Counsel and the Office of the Executive Director 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. The State Bar was represented by SEIU Local 535 prior to the negotiations this year. SEIU has undergone a major internal reorganization that has resulted in a restructuring of its various locals. In that process, Local 535 entered into a Service Agreement with Local 1000 (the former California State Employees Association) to undertake representation of the State Bar's bargaining unit employees. Local 1000 has served as the designated and exclusive representative of bargaining unit employees under this Service Agreement since 2008.

Since 2003 the State Bar and the Union have periodically reopened limited issues under the MOU's for renegotiation, primarily on wages and employee benefits. The entire MOU's have not been open for complete renegotiation since 2003. This year, SEIU Local 1000 insisted on a complete renegotiation of the MOU's that commenced in December 2008. The MOU's expired December 31, 2008, without agreement being reached on successor agreements. The State Bar has been working without MOU terms in place since January 1, 2009.

The terms upon which settlement of the current negotiations can be achieved are set forth in the attached Executive Summary. The actual contract language will be prepared following settlement, should that occur. As the financial impact of these terms is what is subject to Board action, a financial impact analysis is provided below. The MOU amendments are highlighted below and summarized in the attached Executive Summary.

Assuming the Board authorizes settlement on the terms set forth here, the Union will recommend that the Union membership ratify these amendments. Management is satisfied

that the proposed amendments are consistent with the Board's direction to effect cost savings from the existing 2009 budget and going forward, while at the same time assuring that the Board's institutional goals for the State Bar can be achieved through the prudent management of State Bar resources and personnel.

## **DISCUSSION**

### **Applicable Authorities**

It is a responsibility of the Board and its Board Operations Committee to set prudent policy standards 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 providing policy guidance to management for the MOU negotiations and ratifying successor MOU's. 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 settlement terms presented here are in accord with these principles, including the Board's direction that savings be effected from what the Board originally set as the fiscal parameters for the negotiations in August 2008 with its adoption of the 2009 budget.

As noted above, the terms presented here reflect the Union's "bottom line" demand. As this exceeds the authority that was discussed by the State Bar negotiating team with the Board at its January 2009 meeting, the terms presented here are not in the form of a tentative agreement, but are the terms that will achieve a settlement of the current negotiations and place in effect a binding MOU for 2009.

The proposed MOU amendments are summarized in the attached Executive Summary. 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**

Operationally, the State Bar is pleased to obtain several of the items presented here. Brief highlights are noted below. More detail is presented in the attached Executive Summary:

**Lincoln's Birthday:** The elimination of Lincoln's Birthday gives the State Bar one additional full regular business day of work, consistent with federal standards that have long observed President's Day instead of both President's Day and Lincoln's Birthday. Expanding existing half-day holidays on Christmas Eve and New Years Eve to full holidays in return, addresses the reality that most employees take these "Eves" off anyway, and the half-day is not productive, while Lincoln's Birthday is a full productive workday.

**“Comp Time”:** The “exempt time” Letter of Understanding moves the State Bar away from providing “comp time” to attorneys and others “exempt” from state and federal overtime standards and respects their professional obligation to manage their time so as to accomplish the assigned work, rather than require them to strictly account for work time on a time card that provides for “comp time” when work is performed in excess of the pay period threshold. This enhances the professionalism of the “exempt” staff and provides some cost savings in no longer providing paid time off as “comp time.”

**Dress:** The Union’s recognition of the State Bar’s right to implement dress standards for the work place in what will be a meet and confer process soon to commence is a valuable achievement for management.

**Discipline, Performance Evaluations, Probationary Periods:** Clarifications in existing contract language in these areas enable more effective management and personnel administration.

As to the fiscal impact of these terms, we provide the following analysis:

**Wages:** The Union, recognizing the Board’s direction that the 2009 budget passed in August 2008 be cut due to material changes in economic realities, has proposed wage rates for 2009 that are less than originally budgeted. The Board originally budgeted for a 5% step increase for those within the step range and a 3% lump sum payment for senior employees “topped out.” What is proposed here is a cut in the 5% step to a 2.5% half-step. This results in a cost savings in the 2009 budget and going forward of approximately \$1.7 Million.

The wage adjustments presented here are well within comparability range to what other agencies are providing to employees where, like the State Bar.

**Health Care:** We have renewed existing health care benefit coverages splitting the premiums 20%(employee)/80%(State Bar) at rates less than projected in the 2009 budget, resulting in cost savings approximating \$1 Million. Due to the absence of an in-base salary adjustment for many employees, for 2009 only, the terms presented here provide for the State Bar to reimburse the incremental increase for 2009 in employee contributions to health care deducted from salaries. This cost to the State Bar varies based on the coverage option selected by employees and ranges from under \$1.00 per month to \$33.00 per month per employee.

**CalPERS Retirement:** The State Bar’s contribution to CalPERS will increase up to 4% due to CalPERS investment losses. This is an added budget cost of nearly \$3 Million State Bar-wide, but is not related to the MOU negotiations. The Union acknowledges this added cost in its willingness to accept less in 2009 in-base wages.

**Commuter Reimbursement:** The State Bar provides commuter reimbursement for the use of public transportation not to exceed the Internal Revenue Service (IRS) approved maximum. This maximum increased for 2009 from \$100 to \$120.00 per month. The terms presented here raise the State Bar reimbursement maximum to conform to the increased 2009 IRS limit. Based on usage, this increase approximates a total annual increased cost of approximately \$5,000.00.

**Vacation Cap:** The increase in the maximum annual vacation accrual cap from 30 days to 40 days has a variable cost depending upon how vacation is accrued and used by each employee. Based on current accruals, this expansion is not expected to affect more than 10% of the workforce with the deferred cost of this item not likely to exceed \$75,000.

#### **ADMINISTRATIVE MANUEL IMPACT**

None

#### **RULES/STRATEGIC PLANNING CONSIDERATIONS**

None

#### **CONCLUSION**

Assuming the Board Operations Committee and Board support settlement of the negotiations on the terms presented here, 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](mailto:Robert.Hawley@calbar.ca.gov).**

## Executive Summary

**Term:** The term of the MOU's will be extended to December 31, 2009. A longer term, while desirable, is not possible due to the economic challenges facing the State Bar and the economy in general. Negotiations will reopen toward the end of 2009 on successor MOU terms for 2010 and following.

**Wages:** The Union rejects entirely providing only lump sum payments excluded from base pay. The Union has proposed as its "bottom line," cutting in half the standard 5% steps as set forth in the MOU Appendix C salary grid range to 2.5%. Employees in the salary range and not "topped out" will received on anniversary dates in 2009, assuming a "meets requirements" or better performance rating, a half-step approximating 2.5% in base pay. Long-term employees who are currently at or above the range maximum will receive no in-base adjustment but, in lieu thereof, will receive a 3% lump sum payment on anniversary dates assuming a "meets requirements" or better performance rating.

**Holidays:** The Lincoln Birthday holiday will be eliminated in 2010. In return, the State Bar expands what are currently half-day holidays on Christmas Eve and New Year's Eve to full day holidays. These are nonproductive work days due to the holiday season. In return for expanding these half-day holidays to full days, the State Bar gains a full productive work day in February consistent with what is the federal standard that recognizes Washington's and Lincoln's Birthdays jointly on President's Day. Currently, the State Bar, like the State of California, observes President's Day as well as Lincoln's Birthday.

**Health Care:** The State Bar renews for 2009, its existing health care benefit coverages. The State Bar and bargaining unit employees split the premium cost for health care 20%(employee)/80%(State Bar). The State Bar was able to negotiate beneficial renewal rates for 2009 resulting in budget savings for 2009 from what had been projected when the budget was adopted in August 2008. Because of the increasing number of employees who are "topped out" and who will not see an in-base adjustment in their salary, the State Bar will reimburse the incremental 2009 increase employees will see in their health care premiums deduction from salary, but only for 2009. This is a minimal cost ranging between \$1.00 and \$33.00 per month per employee. The State Bar pays 100% of the health care premium costs for Executive Staff and Confidential Employees.

**Transit Reimbursement:** The maximum commute/transit reimbursement amount of \$100 was increased to \$120 consistent with the Internal Revenue Service standard. Increasing this cap consistent with IRS standards is a total annual cost of less than \$5,000.00.

**Retiree Health:** Bargaining unit employees have no retiree health coverage at the State Bar. In 2009, a joint Union-Management Task Force will study potential options by which bargaining unit employees might obtain retiree health coverage at little or no cost to the State Bar of California. High deductible and employee funded options will be studied.

**Layoffs:** In return for the Union accepting wages less than the standard 5% steps budgeted by the Board in August 2008, the State Bar will not effectuate layoffs in 2009. The State Bar reserves the right to offer a voluntary incentive separation program as well as to notice layoffs in 2009 to be effectuated thereafter.

**Vacation:** The maximum cap on vacation accrual rates for bargaining unit employees was increased from 30 to 40 days. Currently, only about 10% of bargaining unit employees are approaching the 30 day maximum cap. As a result, extending it to 40 days is not a material budget impact.

**Exempt Status/Comp Time:** A pilot program begun last year, by which employees “exempt” from overtime are treated as truly exempt from timecard monitoring in return for the elimination of “comp time,” is expanded to all attorneys in the Attorney Bargaining Unit and the majority of the employees in the General Unit with some exceptions. The elimination of “comp time” will have a favorable budget impact.

**Alternative Work Schedules (AWS):** The existing AWS program, which is not an entitlement but is at the discretion of management, will include the possibility of a four day work week and telecommuting, dependent upon the work needs of the office involved and the State Bar as a whole.

**Probationary Periods:** Probationary periods, which are currently three months to six months in the General Unit and twelve months in the Attorney Unit, will no longer be extended for probationary employees. Employees who do not satisfactorily complete their probationary period will be separated at the end of that period rather than given more time to demonstrate satisfactory performance.

**Personnel Files:** It is clarified that an employee’s written response to a disciplinary or other issue will be placed in the employee’s personal file upon request.

**Discipline:** It is clarified that formal discipline shall mean a written warning or something more severe. Oral warnings are treated as non-disciplinary counselings.

**Part Time Status:** The State Bar will report to the Union changes in bargaining unit employee part-time status.

**Contracting:** The State Bar will subject contractors doing bargaining unit work to the same term restrictions that apply to temporary employees, i.e., 90 days without limitation, 180 days when the underlying position is under recruitment.

**Performance Evaluations:** If a bargaining unit employee’s manager fails to timely complete the employee’s annual performance evaluation within 60 days of its due date, the employee is “deemed” to “meet requirements” under the terms of the MOU.

**Bilingual Differential:** Language changes are made which have no fiscal nor operational impact.

**Holidays:** The State Bar will “observe” holidays rather than “celebrate” holidays.

**Bereavement Leave:** Bereavement leave is allowed not only for attending to the funeral of a qualified decedent, but also to attend to the decedent’s affairs.

**Paid Personal Days:** It is clarified that the existing allocation of two paid personal days per year is to be used for absences from work for personal reasons and not as vacation.

**Expense Reimbursement:** Language changes are made which have no fiscal nor operational impact.

**Retroactivity:** The terms agreed upon will be effective retroactively to January 1, 2009 and run through December 31, 2009. Negotiations will reopen on 2010 terms upon the Union’s demand.

**Dress:** The State Bar will meet and confer with the Union over the development of workplace dress standards for the State Bar.