

Per California Code of Regulations, title 2, section 548.5, the following information will be posted to CalHR's Career Executive Assignment Action Proposals website for 30 calendar days when departments propose new CEA concepts or major revisions to existing CEA concepts. Presence of the department-submitted CEA Action Proposal information on CalHR's website does not indicate CalHR support for the proposal.

A. GENERAL INFORMATION

1. Date

10/17/2018

2. Department

Public Employment Relations Board (PERB)

3. Organizational Placement (Division/Branch/Office Name)

Division of State Mediation and Conciliation Services (SMCS)

4. CEA Position Title

Chief, Division of State Mediation and Conciliation Service

5. Summary of proposed position description and how it relates to the program's mission or purpose. (2-3 sentences)

PERB proposes to allocate the Chief, SMCS to the banded CEA category. All duties described are presently performed by the incumbent in the Supervisor of Conciliation, DIR, CEA "comma CEA" classification.

The position plans, organizes and directs the work of all SCMS staff in the mediation and conciliation of labor disputes. SCMS's mission is to promote the use of mediation and conciliation in the establishment of harmonious labor-management relationships, and the prevention of labor disputes and work stoppages. The position functions as the State's top level mediation expert and bears responsibility for development, formulation, implementation and maintenance of PERB's state-wide policies pertaining to the use of alternate dispute resolution in all public sector bargaining matters.

6. Reports to: (Class Title/Level)

PERB Chair

7. Relationship with Department Director (Select one)

- Member of department's Executive Management Team, and has frequent contact with director on a wide range of department-wide issues.
- Not a member of department's Executive Management Team but has frequent contact with the Executive Management Team on policy issues.

(Explain):

8. Organizational Level (Select one)

- 1st 2nd 3rd 4th 5th (mega departments only - 17,001+ allocated positions)

B. SUMMARY OF REQUEST

9. What are the duties and responsibilities of the CEA position? Be specific and provide examples.

1. Plans, organizes and directs the statewide operations of the SCMS by providing programmatic direction and policy guidance to assigned mediation staff. Oversees and evaluates the performance in the program areas of responsibility, e.g., mediation, representation, and the Arbitrator's Panel operations.
2. Formulates, develops, implements and maintains the State's policies and procedures regarding the neutral and confidential mediation of labor disputes. Examples: A) In partnership with the California Public Employee Relations Program (CPER), oversees maintenance and updating of the "CPER Mediation Guide," which is an invaluable pocket reference regarding mediation proceedings; and B) Establishes and maintains the policies, procedures and expectations for SCMS staff to conduct themselves in their work in a neutral and confidential manner that is consistent with Sections 1115 - 1128 of the Evidence Code.
3. Oversees and formulates all administrative policies and procedures, and plans, organizes and directs all SMCS programs. For example: A) Oversees and monitors strategic plan goals and objectives and utilizes results to identify impediments and root causes of issues, as well as develop policy and procedural remedies; B) As an executive staff member, partners with other executives in the formulation of strategic goals and objectives; C) Engages PERB's executive staff members in the formulation and implementation of operations policies and procedures to ensure SMCS's quintessential responsibility for neutrality, e.g., ongoing compliance with separation of duties, policies and procedures (a "Firewall") between SMCS's activities and the PERB General Counsel's enforcement and prosecutorial responsibilities of labor relations cases; D) Assumes primary responsibility for accurate and timely gathering, analyzing, synthesizing and reporting salient SCMS information. The primary use of such information is inclusion in PERB's mandated annual report to the Legislature, and; E) Updates the Executive Director regarding status of SMCS's strategic goals and identification of issues of significance, e.g., issues that may be subject to intense scrutiny by the Administration, Legislature, general public, organized labor, etc. Shares information with the Executive Director pertaining to positive SMCS events/activities that contribute to labor harmony.
4. Develops policies and procedures and provides guidance to Mediators. Through subordinate supervisors, oversees assignment of staff Mediators to labor disputes; oversees the selection, training and evaluation of the performance of all subordinate staff.
5. Oversees the mediation and conciliation of the most complex cases where there may be far-reaching political and/or public scrutiny. Examples: A) A major public transit or port contract dispute that involves the attention of the Governor and other politicians, attracts constant media coverage, attracts active interference from political, community or religious leaders, and in which some or all of the bargaining teams' leadership use the status of being in mediation as a means of publicly espousing good faith, without actually engaging in the process; B) A contract dispute in a statewide system, such as the California State University, the University of California, or certain State units with critical positions, in which there are widely differing issues by region, or bargaining teams with internal competing interests, or repeated strike threats that require parallel involvement by PERB's Office of the General Counsel; or C) A presentation or representation/ decertification dispute in which numerous formal charges are filed and the election has to be put in abeyance pending the outcome of the complaint process, but one of the parties continues to agitate for immediate action.
6. Facilitates meetings of labor and management to train on mediation/alternative dispute resolution (ADR) techniques that can be brought to bear to achieve mutually acceptable resolution of issues and problems. Also, to impart the intrinsic value of using mediation/ARD to settle differences without resorting to timely, expensive, and often repugnant, options such as fact finding and/or formal litigation.
7. On behalf of the State, negotiates working agreements with the Federal Mediation and Conciliation Service and other public agencies in regard to matters of jurisdiction, the filing of dispute cases and the adjustment of labor disputes.

B. SUMMARY OF REQUEST (continued)

10. How critical is the program's mission or purpose to the department's mission as a whole? Include a description of the degree to which the program is critical to the department's mission.

- Program is directly related to department's primary mission and is critical to achieving the department's goals.
- Program is indirectly related to department's primary mission.
- Program plays a supporting role in achieving department's mission (i.e., budget, personnel, other admin functions).

Description: Effective in July 2012, the Governor transferred the State Mediation and Conciliation Services Unit, including its existing staff and budget from the Department of Industrial Relations (DIR) to PERB. Under DIR, the operation was a "...unit within the department to be known as the California State Mediation and Conciliation Service..." as cited in Labor Code Section 65. At DIR, the incumbent in the classification of Supervisor of Conciliation, DIR, CEA was the program manager. This title is for a "Comma CEA" civil service classification. Upon transfer of the function to PERB, the State Mediation and Conciliation Services program was elevated to Division status. In this elevated status, the Chief independently formulates and implements the State's mediation policies and practices, and serves as a member of PERB's Executive staff team. Both PERB and SMCS have a statutory duty to promote labor-management peace and harmony in the State's public collective bargaining work arena. State mediation laws require SMCS to conduct its work in a neutral and confidential manner. Although SMCS's neutral and confidential roles and responsibilities are distinct and separate from the enforcement and appellate work performed and overseen by the PERB Board Members, the Office of the General Counsel and the Division of Administrative Law, they all serve a common mission and a critical goal of promoting labor-management peace and harmony in the State's public collective bargaining work arena. SMCS performs these responsibilities in a distinctly difference fashion, i.e., it operates in a strictly neutral and confidential manner. This is done to foster an environment that facilitates the parties in dispute to consider possible opportunities to use mutually agreed upon compromises and settlements as a means to informally resolve their labor disputes. It is universally recognized that establishing and maintaining open and harmonious labor management relationships is critical. Specifically, mediation is recognized as an invaluable option and is usually far more effective than having parties in dispute resorting to formal litigation. The latter, being monetarily expensive, also carries a heavy price in the form of increased acrimony, breeding of mistrust, and can effectively erode and impede harmonious labor-management relations. The five-member appointed Board, the Office of the General Counsel and the Division of Administrative Law also exist in harmony with the overall purpose of its enabling legislation "...to promote the improvement of personnel management and employer-employee relations within the State of California by providing a uniform basis for recognizing the right of State employees to join organizations of their own choosing and be represented by those organizations in their employment relations with the State. It is further the purpose of this Chapter, in order to foster peaceful, employer-employee relations..." (Excerpt from Government Code Section 3515 of the Ralph Dill Act -State Employer-Employee Relations Act (SEERA). PERB operations support that PERB is the State Agency responsible for administering and enforcing the laws which govern collective bargaining for employees in public schools (Grades K - 14); State civil service; the University of California; California State Colleges and Hastings College of Law; cities, counties and special districts; trial courts, and supervisory employees of the Los Angeles County Metropolitan Transportation Authority. A critical manner in which the Chief, SMCS serves this mutual goal is exercising the primary authority for maintaining a "Firewall" between its operations and PERB's enforcement operations. The Chief formulates and implements policies and procedures to establish a separation of duties to protect against inappropriate ex-parte communications about the neutral and confidential work of SMCS.

B. SUMMARY OF REQUEST (continued)

11. Describe what has changed that makes this request necessary. Explain how the change justifies the current request. Be specific and provide examples.

Effective July 2012, the Governor transferred the State Mediation and Conciliation Services Unit, including its existing staff and budget from the Department of Industrial Relations (DIR) to PERB. Under DIR, the operation was a "...unit within the department to be known as the California State Mediation and Conciliation Service..." as cited in Labor Code Section 65. At DIR, the incumbent in the classification of Supervisor of Conciliation, DIR, CEA was the program manager. This title is for a "Comma CEA" civil service classification.

Upon transfer of the function to PERB, the State Mediation and Conciliation Services program was elevated to Division status. In this elevated status, the Chief independently formulates and implements the State's mediation policies and practices, and serves as a member of PERB's Executive staff team.

In support of the Classification Consolidation Plan associated with the Civil Service Improvement Project, PERB is proposing the abolishment of the "Comma CEA" classification. As such, it is necessary to establish a Banded CEA position in which the current incumbent will continue to carry out her duties via reallocation by Board Resolution. There will be no change in duties or responsibilities as the incumbent will continue to assume and perform all responsibilities described in the "Comma CEA" classification. Simultaneously, approval of the Banded CEA will allow PERB to support the Governor's Plan to consolidate state classifications, creating a more modernized and efficient classification system. For future recruitment purposes, the change to the Banded CEA will also allow for a broader candidate pool and support development of more diversity within the candidate pool.

C. ROLE IN POLICY INFLUENCE

12. Provide 3-5 specific examples of policy areas over which the CEA position will be the principle policy maker. Each example should cite a policy that would have an identifiable impact. Include a description of the statewide impact of the assigned program.

As the Chief, SMCS, this position exercises independent authority over policy development, formulation and implementation for the following areas of responsibility.

- **MEDIATION SERVICES:** Chief, SMCS formulates, develops, implements and maintains all SMCS statewide mediation services, policies and procedures. Specifically, the policy and procedural framework for providing confidential and neutral mediation services in instances where the parties have reached collective bargaining negotiation impasses. This mediation responsibility applies to collective bargaining impasses between constituents covered under any of the collective bargaining acts under PERB's jurisdiction. This is the primary area of responsibility.
- **REPRESENTATION MATTERS:** In addition, the Chief formulates, develops, implements and maintains all SMCS policies and procedures pertaining to collective bargaining representational matters, such as: 1) Conducting secret ballot union representation elections in a fair and impartial manner; and 2) Administration of the panel of Arbitrators that can be assigned to a public sector collective bargaining matter that is to be arbitrated.
- **MEDIATES CASES OF EXTREME SENSITIVITY:** These are the instances where a prolonged impasse/labor dispute can have major socio-economic consequences for a large to statewide segment of the state or even statewide impact, and may result in significant eroding of harmonious labor relations such as:
 - A major public transport contract dispute that involves the attention of the governor and other politicians, attracts constant press coverage, attracts active interference from political, community and religious leaders, and in which some or all of the bargaining team's leadership use the status of being in mediation as a means of publicly espousing good faith, without actually engaging in the process; or
 - A contract dispute in a statewide system, such as the CSU, the UC, or certain state units with critical positions, in which there are widely differing issues by region, bargaining teams with internal competing interest, repeated strike threats that require parallel involvement by PERB's Office of the General Counsel; or
 - A representation or representation/decertification dispute in which numerous formal charges are filed and the election has to be put in abeyance pending the outcome of the complaints, but one of the parties continues to agitate for immediate action.
- **ARBITRATION PANEL OPERATIONS:** On the State's behalf, the Chief manages and oversees the maintenance of a list of qualified private arbitrators and handles request from labor and management parties for arbitration lists. Upon mutual request by labor and management, for a nominal fee, the Service provides a list of arbitrators with experience in labor relations. Examples of critical management responsibilities include: A) Maintains the Panel of Arbitrators Selection System (PASS). The PASS system generates a random list of arbitrators based on criteria indicated in the parties' request; B) Manages policies and procedure for how to: 1. request an arbitration list 2. view the current SMCS panel of arbitrators and citations of published decisions 3. arbitrator updating of their PASS resumes 4. apply to join the SMCS panel of private arbitrators;
C) Manages arbitrator panel requirements.
- **SEPARATION OF DUTIES - aka "FIREWALL":** Consistent with guiding principles for SMCS's work being done in a neutral and confidential manner, there are established policies, procedures and guidelines for appropriate activities and behavior in the conduct of business. Specifically, as noted above, other PERB Divisions are empowered to enforce the provisions of the public sector collective bargaining aging statutes under its purview. Notwithstanding this, the Chief is responsible for the policy framework that serves to keep SMCS's operations appropriately partitioned and separated from other ongoing PERB operations.
- **ADMINISTRATION OF PERB:** The Chief is responsible for managing the Division's administrative responsibilities pertaining to strategic actions related to program direction and how it aligns with PERB as a whole, staffing, succession planning, staff development, justifying needs for budget, public outreach and relations, and office management.

C. ROLE IN POLICY INFLUENCE (continued)

13. What is the CEA position's scope and nature of decision-making authority?

In California, labor mediation in the public sector was largely conducted by the SMCS within the Department of Industrial Relations' governing structure. The SMCS was founded in 1947, the same year as the Federal Mediation and Conciliation Service (FMCS). In July 2012, the SMCS' full operation was transferred to PERB and restructured as a Division.

The SMCS, pursuant to California Government Code Section 3601, "shall endeavor to promote sound union-employer relationships." This underlying tenet has existed since the entity's establishment and it is the foundation of the work of mediators who provide this service throughout the State of California.

Initially, the SMCS mediated labor disputes in private sector matters that affected intrastate commerce. However, with the genesis of public sector collective bargaining in the State in the late 1960's, its subsequent statutory expansion in the 1970's, and its continuing growth thereafter, the bulk of the agency's work now occurs in the public sector.

These areas include school districts (K-12 and Community College districts) under the Education and Employment Relations Act (EERA); local government agencies (including cities, counties and special districts) under the Meyers-Milias Brown Act (MMBA); state employees under the Dills Act, previously known as the State Employer-Employee Relations Act (SEERA); the state's higher-education systems (University of California and California State University) under the Higher Education Employer-Employee Relations Act (HEERA); California trial courts under the Trial Court Employment Protection and Governance Act (TCEPGA); and California court interpreters under the Trial Court Interpreter Employment and Labor Relations Act (TCIELRA). Mediators also work in the public transit area in both the Transit Employee-Employee Relations Act (TEERA) which covers the supervisors of the Los Angeles County Metropolitan Transit Authority and the plethora of unique enabling statutes enumerated in the various sections of the California Public Utility Code, along with some transit agencies that are covered under the MMBA.

Sections 1115-1128 of the Evidence code are at play regarding confidentiality of mediator's materials, notes, documents, etc., that cannot be subpoenaed. In particular, Section 1119 codifies that discussions, admissions, etc., made during mediation are protected confidential communications. Likewise, writings made during mediation are also protected. Adherence to confidentiality is sacrosanct and is the expected norm for all SCMS participants. Without confidentiality it would be impracticable to attempt to engage parties in open discussions about issues and problems that may underlie the fundamental labor dispute at play.

The Chief is the State's policy head and exercises independent oversight for the administration of all aspects of the State's mediation and conciliation services. While the Federal Mediation Services (FMCS) has a presence in the State, in concert with statewide authority, the Chief exercises independent authority to negotiate FMCS agreements whereby areas of responsibility are established to effectively avoid overlap of roles and responsibilities. For example, FMCS primarily exercises in the jurisdiction over mediation and conciliation matters pertaining to federal employment matters.

14. Will the CEA position be developing and implementing new policy, or interpreting and implementing existing policy? How?

The Chief, SMCS, is the state's chief mediation executive. The chief is responsible for the development, implementation, interpretation and management of the state's mediation and representation election policies. These policies can directly affect the majority of counties and all state level departments and many of the state's Trial Courts employees engaged in collective bargaining. This position's impact upon public employment harmony is expansive. The Chief, SMCS, also engages with interested constituents such as employers, labor organizations and labor management committees about the mediation process and its potential benefits. The primary strategic goal herein is to seek their acceptance of SMCS's services; and thereby promote its statutory mandate to foster peaceful employer-employee relations.