CALIFORNIA
STATE PERSONNEL BOARD

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Governor Edmund G. Brown Jr.

L[redacted] G[redacted]
v.
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Appeal from Demotion

R[redacted] M[redacted]
v.
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Appeal from Dismissal

Case No. 13-0279PA

Case No. 13-0741A

BOARD DECISION AND ORDER

(Precedential)

No. 14-01

November 6, 2014

APPEARANCES: John Chung, Attorney at Law, appeared on behalf of Appellants, L[redacted] G[redacted] and R[redacted] M[redacted]; Christopher D. Howard, Assistant Chief Counsel, appeared on behalf of Respondent, California Department of Corrections and Rehabilitation.

BEFORE: Patricia Clarey, President; Maeley Tom and Richard Costigan, Members.[1]

DECISION

These consolidated cases are before the State Personnel Board (SPB or Board) after the Board granted a Petition for Rehearing in the matter of the appeal by L[redacted] G[redacted] (Appellant G[redacted]) from demotion from the position of Correctional Sergeant to the position of Correctional Officer and rejected the Proposed Decision of the Administrative Law Judge (ALJ) in the matter of the appeal by R[redacted] M[redacted] (Appellant M[redacted]) from dismissal from the position of Correctional Officer, both with the

[1] Vice President Burton and Member Shanahan did not participate in this decision.

California Department of Corrections and Rehabilitation (Respondent or CDCR). In both cases, the Proposed Decisions recommended dismissal of the adverse actions on the ground that Respondent failed to comply with the time frame for notifying Appellants of its decision to take disciplinary action, as required by Government Code section 3304, subdivision (f). In each case, the ALJs concluded that decisions made during a "402/403 Conference" constituted Respondent's decision to impose disciplinary action and that Respondent failed to notify Appellants of its decision within 30 days of that conference.

While not limiting the issues the parties could address, the Board specifically requested the parties to brief the following issues:

1. Whether the date of CDCR's committee's review of the underlying misconduct at the 402/403 Conference and its documentation of its decision on CDCR Forms 402 and 403, in accordance with the Department Operations Manual sections 33030.13 and 33030.14, is deemed to be CDCR's decision to impose discipline on Appellant for purposes of Government Code section 3304, subdivision (f); and
2. Whether the 30-day time limitation provided in Government Code section 3304, subdivision (f) serves as a statute of limitations beyond with the adverse action is barred.[2]

[2] This statement of issues is taken from the Board's Resolution and Order rejecting the Proposed Decision in Case No. 13-0741. While the issues were phrased slightly differently in the Board's Decision and Order granting the Petition for Rehearing in Case No. 13-0279P, the Board considers the issues raised in both cases to be identical.

The Board has heard oral argument and reviewed the entire record in this matter, including the transcripts, exhibits, and the written arguments of the parties. As set forth below, in the absence of specific direction from the Legislature or the courts, the Board concludes that a plain reading of section 3304(f) compels the conclusion that the time frame set forth in that section does not begin to commence until after all preliminary responses or procedures required by *Skelly v. State Personnel Board* (1975) 15 Cal.3d 175 have been exhausted. Accordingly, the Board concludes that the notices of adverse action were timely served in both cases and remands these matters to the Chief Administrative Law Judge for further proceedings on the merits.

SUMMARY OF FACTUAL AND PROCEDURAL HISTORY[3]

Alleged Misconduct

In Case No. 13-0279PA, CDCR alleged that, on January 19, 2012, while reviewing and sorting mail for distribution to inmates, Appellant G[redacted] violated CDCR policy by allowing a sexually explicit photograph to be distributed to an inmate.

In Case No. 13-0741A, CDCR alleged that, between October 1, 2011, and May 11, 2012, Appellant M[redacted] violated CDCR policy by engaging in an overly familiar relationship with an inmate and failing to report that the inmate had access to a cell phone, and was dishonest in her investigatory interview.

[3] Only those facts relevant to the legal issue of the timelines of the adverse action are set forth herein. The Board makes no findings concerning the factual allegations of misconduct, but sets them forth herein for background purposes only.

Investigatory Process/DOM Provisions[4]

CDCR's Department Operations Manual (DOM) sets forth procedures for investigating allegations of employee misconduct. The CDCR Office of Internal Affairs (OIA) investigates certain types of cases, and conducted investigations into the allegations against both Appellants in this case. DOM section 33030.13 provides that, once OIA completes its investigation, it prepares an investigation report and forwards it first either to the "Vertical Advocate" (VA) or, in cases monitored by CDCR's Bureau of Independent Review (BIR), to the Special Assistant Inspector General (SAIG), for review.[5] The VA is an attorney in CDCR's legal office. As soon as possible, but no more than 21 days following receipt of the investigative report, the VA reviews the investigative report and provides feedback to the investigator. Once that review is complete, the investigator then forwards a copy of the investigative report to the Hiring Authority (HA) for review. In most cases, the HA is the Warden or Acting Warden of the institution in which the alleged misconduct occurred.

DOM Section 33030.13 further provides that the HA is to review the investigative report and supporting documentation and make investigative findings following consultation with the VA. In doing so, the HA is required to consider the following factors: (1) whether the investigation is sufficient; (2) whether the allegations in the investigation are founded or not; (3) whether corrective or disciplinary action is

[4] With its brief before the Board, Respondent filed a Request for Official Notice of certain documents, including various provisions of CDCR's DOM, legislative history documents, transcript excerpts, and documents pertaining to Appellants. Appellants have not objected to Respondent's request. Therefore, Respondent's Request for Official Notice is granted. (2 Cal. Code Reg., § 58.10.)

[5] Neither of the cases at issue herein involved monitoring by BIR.

supported by the facts; (4) if disciplinary action is supported by the facts, what penalty is appropriate within the parameters of CDCR's "Disciplinary Matrix;" (5) what causes for discipline under Government Code section 19572 are supported by the factual findings; and, (6) what recommendations are made by the SAIG, for cases monitored by BIR. The HA's findings are recorded on CDCR Form 402. CDCR Form 402 is then to be forwarded to the Employee Relations Officer (ERO)/Disciplinary Officer, who is to either initiate corrective or disciplinary action or forward a copy of the Form 402 to the VA to initiate disciplinary action in designated cases. In the event of a significant disagreement regarding investigative findings, the CDCR Form 402 is not to be completed until an "Executive Review" is conducted pursuant to DOM section 33030.14. An additional investigation may be performed in cases where the investigation is insufficient.

DOM section 33030.13.1 further provides that the findings of each allegation shall be determined by the HA in consultation with the VA (or the SAIG, in appropriate cases) and defines five types of findings that may be made: No Finding, Not Sustained, Unfounded, Exonerated, or Sustained. DOM section 33030.13.2 provides that, upon conclusion of each Internal Affairs investigation, the ERO/Disciplinary Officer shall transmit an "Internal Affairs Investigation Closure" memorandum to the subject of the investigation, outlining the findings for each specific allegation. This memorandum is to be signed by the HA and transmitted after the HA completes CDCR Form 402 and prior to the imposition of the disciplinary action. Finally, DOM section 33030.14 provides for an "Executive Review," the purpose of which is to resolve significant disagreements

between stakeholders about investigative findings, imposition of a penalty, or settlement agreements. When Executive Review is requested, completion of Forms 402 and 403, service of the final notice of adverse action or *Skelly* letter, or settlement agreement, is to be delayed until the Executive Review is concluded and a determination made.

402/403 Conference

In order to comply with its obligations under the DOM sections governing disciplinary investigations, CDCR utilizes a procedure known as a "402/403 Conference," so named because of the forms used to document the meeting. In such cases, the HA holds a meeting with "stakeholders" to discuss the charges against the employee after the Internal Affairs investigation is complete. Attendees at the meeting generally include the HA, the institution's ERO, and the VA. At that meeting, the attendees review and discuss the OIA investigative reports in order to determine whether there was sufficient evidence to sustain the allegations of misconduct and, if so, whether corrective or disciplinary action should be initiated. The findings of the conference members are documented on CDCR Form 402, which is signed by the HA. If the participants determine that formal discipline is warranted, they then discuss the appropriate penalty, which is documented on CDCR Form 403 and also signed by the HA. If the participants determine that the investigation was insufficient, the matter may be referred for further investigation. If a consensus is not reached during the conference, the matter may be referred for an executive review by higher-level supervisors. The HA has the authority to make the final decision regarding the imposition of discipline.

Form 402, entitled "Hiring Authority Review of Investigation," contains the following instructions:

> The Hiring Authority shall review the final investigative report and compete the following including specific details regarding an insufficient investigation and/or if further investigation is requested. The completed and signed original form shall be forwarded to the ERO/Disciplinary Officer. The ERO/Disciplinary Officer shall coordinate with the Office of Internal Affairs, Central Intake Unit, for any requests for further investigation. The ERO/Disciplinary Officer shall forward a copy to the Vertical Advocate for designated cases. The Vertical Advocate shall ensure the SAIG is provided a copy of the completed and signed form, for all cases monitored by the Bureau of Independent Review.

Form 402 provides boxes to be checked indicating one of the following: (1) the investigation is insufficient; (2) further investigation is requested; (3) the investigation is sufficient; (4) corrective action ordered; or, (5) disciplinary action ordered. The form includes a section for the HA to indicate the findings for each allegation and a space for comments, and provides for a signature by the HA. Form 403, entitled "Justification of Penalty" instructs the HA to refer to all investigation documentation and the "Employee Disciplinary Matrix" when determining the level of discipline to impose, and similarly requires the HA to forward the completed and signed form to the ERO/Disciplinary Officer, and to forward the form to the VA and SAIG, as appropriate. Form 403 contains boxes to be checked indicating whether or not adverse action should be imposed and, if so, the level of penalty to be imposed. This form, too, contains a space for the HA's signature.

Review of Investigations of Appellants' Misconduct

In each of the instant cases, Acting Warden M.E. Spearman (Spearman) performed the functions of the HA. In fulfilling his duties as HA, Spearman held 402/403

meetings with the institution's ERO and an attorney from CDCR as the VA to discuss the investigative reports received from OIA.[6] Following those meetings, Spearman filled out and signed Forms 402 and 403, finding that the allegations of misconduct were sustained and recommending that discipline be imposed.[7] Following the meetings, CDCR served each Appellant with a "Closure to Internal Affairs Investigation" memo setting forth the allegations that had been sustained. In addition, CDCR served each Appellant a "Letter of Intent" notifying the Appellant that CDCR intended to take disciplinary action based upon the sustained allegations and further notifying each Appellant that formal notice of adverse action would be served within 30 days. Within 30 days of serving the Letter of Intent, CDCR served each Appellant with a Notice of Adverse Action (NOAA) specifying the penalty and effective date of the adverse action.[8]

The relevant dates for each Appellant are set forth below:

Appellant G[redacted]

January 19, 2012:	Date of alleged misconduct
December 21, 2012:	402/403 Conference held
January 15, 2013:	402/403 forms signed by Acting Warden
January 16, 2013:	Closure to Internal Affairs Investigation memorandum served
January 16, 2013:	Letter of Intent served
February 13, 2013:	Final NOAA served

[6] In the *M*[redacted] case, a representative from the Office of the Inspector General also attended the meeting.

[7] The completed Forms 402 and 403 were not introduced into evidence. At the request of the ALJ in the *G*[redacted] case, however, blank forms were provided following the hearing before the ALJ.

[8] CDCR also served a "Preliminary Notice of Adverse Action" (NOAA) on Appellant M[redacted] specifying the penalty to be imposed, but without an effective date, and a final NOAA one day later specifying the effective date of the adverse action.

Appellant M[redacted]

October 1, 2011 - May 11, 2012:	Dates of alleged misconduct
April 22, 2013:	402/403 Conference held
April 26, 2013:	Closure to Internal Affairs Investigation memorandum served
April 30, 2013:	402/403 forms signed by Acting Warden
May 1, 2013:	Letter of Intent served
May 30, 2013:	Preliminary NOAA served
May 31, 2013:	Final NOAA served

Procedural History

On January 9, 2014, the Board adopted the ALJ's Proposed Decision in Case No. 13-0279, granting Appellant G[redacted] motion to dismiss the adverse action. On March 20, 2014, the Board granted CDCR's Petition for Rehearing in Case No. 13-0279P. On May 22, 2014, the Board rejected the ALJ's Proposed Decision in Case No. 13-0741, involving the adverse action against Appellant M[redacted]. With the agreement of the parties, both cases were consolidated for briefing, oral argument, and decision.

ISSUE

What is the date of CDCR's "decision to impose discipline" for purposes of the 30-day limitation period specified in Government Code section 3304, subdivision (f)?

DISCUSSION

The Public Safety Employees Procedural Bill of Rights Act (POBRA) (Gov. Code, §§ 3300 et seq.)[9] "sets forth a list of basic rights and protections which must be afforded to all peace officers [citation] by the public entities which employ them. It is a catalogue of the minimum rights [citation] the Legislature deems necessary to secure stable

[9] Except as otherwise noted, all statutory references herein are to the Government Code.

employer-employee relations [citation]." (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 320, citing *Baggett v. Gates* (1982) 32 Cal.3d 128, 135 and *White v. County of Sacramento* (1982) 31 Cal.3d 676, 681 [noting that POBRA "is concerned primarily with affording individual police officers certain procedural rights during the course of proceedings which might lead to the imposition of penalties against them"].) The various procedural protections provided by POBRA "balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair treatment." (*Mays*, 43 Cal.4th at 320, quoting *Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 909, citing *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 569.)

Section 3304 sets forth the procedural rights afforded to peace officers accused of misconduct during their employment. Of relevance here are subdivisions (d) and (f) of section 3304, which provide, in pertinent part:

> (d) (1) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. ... In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed discipline by a Letter of Intent or Notice of Adverse Action articulating the discipline that year, except as provided in paragraph (2). The public agency shall not be required to impose the discipline within that one-year period.[10]
>
> (f) If, after investigation *and any predisciplinary response or procedure*, the public agency decides to impose discipline, the public agency shall notify

[10] Subdivision (d)(2) contains various provisions, not applicable here, that allow the 1-year period set forth in subdivision (d)(1) to be tolled under specified circumstances.

> the public safety officer in writing of its decision to impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(Emphasis added.)

Section 3304, subdivision (d) establishes a one-year limitation period for the employing agency to complete its investigation of alleged misconduct by a peace officer employee and to notify the employee that it may take disciplinary action. (*Mays*, *supra*, 43 Cal.4th at pp 323-325; *Jackson*, *supra,* 111 Cal.App.4th at p. 910.) In 2009, effective January 1, 2010, the Legislature amended subdivision (d) to specify that a public agency need not actually impose the discipline within the 1-year period, but it must articulate the proposed discipline by notifying the officer with either a Letter of Intent or a Notice of Adverse Action. (Stats. 2009, Ch. 494, Sec. 1 (AB 955).)[11] The 2009 amendments did not alter subdivision (f) of section 3304.

The meaning of subdivision (f) has been addressed in three published judicial decisions. In *Sulier v. State Personnel Board* (2004) 125 Cal.App.4th 21, the court explained the relationship between subdivisions (d) and (f) of section 3304 as follows:

> Thus, under the plain language of section 3304(d), if the CDC desires to discipline an officer, then it must complete the investigation into the misconduct within one year of the discovery of the misconduct by a person authorized to start an investigation into the conduct. If, at the conclusion of that investigation, the CDC "determines that discipline *may* be taken," then it must give the officer notice of the "proposed disciplinary action" during that same one-year time frame. (*Idid.* [sic], italics added.) When the CDC actually "*decides* to impose discipline," then it must notify the public safety officer in writing of its decision to impose discipline (§ 3304, subd. (f), italics added.).

[11] The bill specifically abrogated *Mays* to the extent it held that the public agency need not notify the officer of the specific proposed punishment within the one-year period.

(*Sulier*, 125 Cal.App.4th at p. 27 (italics in original).)

In concluding that CDCR complied with section 3304, subdivision (d) by providing notice of its proposed disciplinary action within one year after the commencement of the investigation, the court in *Sulier* characterized the notice required under subdivision (f) as a "final formal notice" that is provided "subsequent" to the informal or preliminary notice under subdivision (d). (*Sulier*, 125 Cal.App.4th at pp. 28-29.) Thus, the court stated:

> Our reading of the statute harmonizes each of its provisions and fits the scheme of an original informal notice and a final formal notice envisioned by sections 3304(d) and 3304, subdivision (f). If section 3304(d) required a formal notice of adverse action, it would render the subsequent notice required by section 3304, subdivision (f) meaningless. There would be no reason for the CDC to provide a subsequent notice it had decided to impose discipline if the original notice under section 3304(d) contained that same information.

(*Id.* at p. 29.)

Relying extensively on *Sulier*, the court in *Mays v. City of Los Angeles*, *supra*, also described the notice required under section 3304, subdivision (f), as occurring after the notice under subdivision (d). Significantly, the court noted that section (f) applies only after an applicable predisciplinary response and/or hearing has occurred. Thus, the court stated:

> Thus, it appears that, ordinarily, a predisciplinary response and/or hearing will occur subsequent to the investigation but prior to the agency's conclusion regarding the specific discipline to be imposed. Once the agency follows its relevant procedural mechanism and decides the level of specific discipline it intends to impose, it *then* has 30 days to so notify the officer. ... When the two subdivisions are read together, it is evident that section 3304(d) limits the duration of the investigation and provides, through its notice requirement that discipline *may* be imposed, a *starting* point for predisciplinary responses or procedures, whereas subdivision (f)

> is directed at providing the officer with written notice of the discipline that the agency—after considering the officer's predisciplinary response—has *decided* to impose.

(*Mays*, *supra*, 43 Cal.4th at pp. 322-23 (italics in original, citing *Sulier*, *supra*).)

As noted above, the Legislature abrogated the holding in *Mays* that the notice required under section 3304, subdivision (d), did not require the agency to specify the proposed disciplinary action within the one-year period. However, by leaving subdivision (f) intact and specifically providing that the notice under subdivision (d) need not be imposed within the one-year period, the Legislature did not disturb the above language in *Mays* describing the differing purposes of subdivisions (d) and (f).

This analysis was borne out in *Neves v. California Department of Corrections and Rehabilitation* (2012) 203 Cal.App.4th 61. In that case, the court held that the 30-day notice period specified in subdivision (f) was triggered by the date of CDCR's formal notice of adverse action, and not by a prior notice that notified the employee of the Department's intent to take disciplinary action but did not specify an effective date. (203 Cal.App.4th at pp. 65, 70.) The court noted that, although that case arose under the pre-2010 version of subdivision (d), CDCR appeared to have complied even with the amended version of that provision because the "*Sulier*" preliminary notice it provided notified the employee of the specific recommended penalty. (*Id.* at p. 70, fn. 3.) The court further noted that the 2009 amendment "made no change to section 3304(f), which *Mays* described as being 'directed at providing the officer with written notice of the discipline that the agency – after considering the officer's predisciplinary response – has decided to impose.'" (*Id.* (citation omitted).)

Principles of statutory construction dictate that, in interpreting a statute, "[s]ignificance should be given, if possible, to every word of an act." (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 798, citing *Mercer v. Perez* (1968) 68 Cal.2d 104, 112.) "Conversely, a construction that renders a word surplusage should be avoided." (*Id.* at 799, citing *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54 and *California Mfrs. Assn. v. Public Utilities Com.* (1979).) Thus, "courts may not excise words from statutes" and "must assume each term has meaning and appears for a reason." (*Kulahrestha v. First Union Commercial Corporation* (2004) 33 Cal.4th 601, 611.)

Applying these principles, we find the reasoning of *Neves* persuasive. As noted by the court in *Neves*, "[t]he *Mays* reference to predisciplinary response and/or hearings contemplates some type of response from the employee or a hearing before a final decision on discipline is determined." (203 Cal.App.3d at pp. 69-70.) This interpretation is consistent with the express language of the statute, which specifies that the 30-day notice shall occur "after investigation and any predisciplinary response or procedure." Pursuant to *Skelly v. State Personnel Board*, *supra*, prior to the imposition of discipline, a state civil service employee is entitled to, at a minimum, notice of the charges and an opportunity to be heard prior to the imposition of discipline. (*Ibid*, 15 Cal.3d at p. 215.) These predisciplinary safeguards are codified in Government Code section 19574 as implemented by SPB Rule 52.6, which requires the employee to be given written notice of the proposed adverse action at least five days before the effective date and that the notice include: (1) the reasons for such action; (2) a copy of the charges for adverse

action; (3) a copy of all materials upon which the action is based; (4) notice of the employee's right to be represented in appeal proceedings; (5) notice of the employee's right to respond to a designated person; and, (6) a statement advising the employee of the time within which to file an appeal with the SPB. (2 Cal. Code Reg., § 52.6).

Giving significance to all the words of section 3304, subdivision (f), we conclude that "decision" to impose discipline does not refer to any preliminary "decision" that may be made at the 402/403 conference, but instead refers to the final decision to impose discipline made after the *Skelly* predisciplinary response procedures have been completed.[12] Thus, the 30-day period specified in that section does not begin to run until after the conclusion of the *Skelly* procedures specified in SPB Rule 52.6. Accordingly, we conclude that Respondent did not violate Government Code section 3304, subdivision (f).[13]

Appellants argue that construing subdivision (f) in this manner would permit CDCR to unduly delay its decision indefinitely simply by serving a Letter of Intent (thus satisfying the requirements of subdivision (d)) and then waiting to serve a NOAA. Such an "imaginary horrible" of intentional bad faith dilatory conduct did not occur in this case. (*Sulier, supra*, 125 Cal.App.4th at 30.) Instead, CDCR adhered to the statements made in its Letters of Intent by serving NOAAs within 30 days of those letters. We have no

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[12] As noted by Respondent, a contrary construction could impose a shorter time frame for CDCR to serve a notice of adverse action than the 1-year limitations period specified in section 3304, subdivision (d).

[13] In reaching this conclusion, we note that the court in *Neves* was not presented with any evidence that a "decision" had been made prior to the date the NOAA was signed, whereas, in these cases, the parties presented extensive evidence concerning the 402/403 process, which Appellants contend constituted CDCR's "decision" to take adverse action. We do not find this factual difference significant, given our conclusion that the time period under section 3304, subdivision (f), does not begin to run until after the predisciplinary response procedures have been completed.

reason to speculate that CDCR would not be diligent in following up its investigation with prompt notification of its decision. Moreover, to the extent any ambiguity exists in the language of section 3304, it is for the Legislature, not this Board, to clarify any such ambiguity.[14]

CONCLUSION

Government Code section 3304, subdivision (f), imposes a 30-day requirement for service of written notice of a public agency's decision to impose discipline only after investigation completion of preliminary response procedures. Therefore, because preliminary response procedures were not completed at the time Respondent served its NOAA's in these cases, no violation of subdivision (f) occurred.

ORDER

Based upon the entire record in this matter, the foregoing findings of fact, and conclusions of law, it is hereby ORDERED that the matters of the appeals by L[redacted] G[redacted] and R[redacted] M[redacted], Case Nos. 13-0279PA and 13-0741A are remanded to the Chief Administrative Law Judge with instructions to prepare a Proposed Decision on the merits of each appeal.

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[14] Because we find no violation of Government Code section 3304, subdivision (f), we do not reach the issue of the remedy for the alleged violation of that section.

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STATE PERSONNEL BOARD

Patricia Clarey, President
Maeley Tom, Member
Richard Costigan, Member

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This Board Decision and Order is certified for publication as a Precedential Decision pursuant to Government Code section 19582.5.

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STATE PERSONNEL BOARD

Patricia Clarey, President
Maeley Tom, Member
Richard Costigan, Member

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I hereby certify that the State Personnel Board made and adopted the foregoing Board Decision and Order at its meeting on November 6, 2014.

SUZANNE M. AMBROSE
Executive Officer