

PUBLIC MEETING MINUTES

August 11, 2022

10:00 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOCATION: Pursuant to Government Code section 11133, there was no physical meeting location – the meeting was conducted by videoconference.

Members Present

ERIC R. BANKS, Chair
ARTHUR A. KRANTZ, Member
LOU E. PAULSON, Member
ERICH W. SHINERS, Member

Quorum Present? Yes

Executive Staff Present

JOSHUA GOLKA, Executive Director
SUSAN DAVEY, Deputy Executive Director
FELIX DE LA TORRE, General Counsel
SHAWN CLOUGHESY, Chief Administrative Law Judge
GERALD FECHER, Director, SMCS

Proceedings:

Meeting called to order at 10 a.m. by Chair Banks.

Since April 14th, 2022, the Board has been in continuous closed session to deliberate on cases pending on the Board's docket. A list of those Board decisions, determinations, and resolutions can be viewed on PERB's website.

Motion: Motion by Member Paulson and seconded by Member Shiners to

close the April 14th, 2022 Public Meeting.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Chair Banks officially opened the Public Meeting of August 11th, 2022.

Adoption of Minutes

Chair Banks asked the Board if they had any questions, comments, or corrections to the minutes of April 14th, 2022, or move to approve it.

Motion: Motion by Member Krantz and seconded by Member Shiners to approve the minutes of the April 14th, 2022 Public Meeting.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Public Comment

No public participants requested to comment on issues outside of the agenda.

Executive Staff Reports:

Joshua Golka, Executive Director, acknowledged the staff achieving 5-, 10-, and 15-year anniversaries of service to PERB.

Regarding legislation issues, Mr. Golka reported that PERB is watching the progress of Senate Bills 931 and 957, and Assembly Bills 1577, 2524 and 2556. He delineated the impact and effects each bill would have on PERB.

Mr. Golka further reported that PERB's budget change proposal requesting ongoing funding to support IT needs was passed by the Legislature and signed into law by the Governor.

As an update on the rulemaking packages, Mr. Golka stated that PERB has voluntarily withdrawn the Judicial Council Employer-Employee Relations Act rulemaking packaging in order to make changes to the description of the required forms.

Once the changes have been completed, the public will have 15 days to comment on those changes, and then the package will be resubmitted to the Office of Administrative Law for final determination.

The Expedited Case Processing package is being prepared for submission to the Office of Administrative Law. The background and supporting documents for the Transit Regulation Package is nearing completion to be submitted to the labor agency to sign-off on before submission to the Office of Administrative Law.

Report - Division of Administration

Susan Davey, Deputy Executive Director, reported a total of 71 filled permanent positions and five vacancies including a Board Member, Legal Advisor, Conciliator, and two legal support positions for the San Francisco Regional Office. Ms. Davey introduced Christina Nielsen, a new attorney in the Los Angeles Regional Office.

Ms. Davey further stated that PERB is 100% compliant with annual performance evaluations and is now aligning all trainings to be due August 31st, 2022.

Outdated policies have been updated and are available online, including a new COVID-19 prevention policy. Development of a new exam for Administrative Law Judges is underway; Ms. Davey expressed her appreciation to Judge Christine Bologna for serving as a subject-matter expert in that development process.

Ms. Davey stated that open enrollment will begin on September 19th and will last through October 14th, 2022, with changes to be effective January 1st of 2023.

In a budget update, Ms. Davey reported that the fiscal year closed on June 30,

2022 with \$152,820 dollars remaining. Business Services' fiscal yearend closing is expected to be completed by August 31, 2022 with the State Controller's Office. She thanked the administrative staff who worked with the Department of General Services Centralized Fiscal Services Unit to accomplish that work.

Since August 1st of 2022, travel payments for the new fiscal year are being processed through CalATERS.

A Purchasing Authority Delegation Audit with Department of General Services has been completed. PERB has maintained its delegation level there as well.

With the salary savings from the prior fiscal year, PERB created an architecture revolving fund for the Oakland Office for its move to the State Harris Building next year.

Ms. Davey welcomed Ed Lee, a new IT staff member. She also welcomed two new student interns, Dave Huynh and Gurvir Sanghera.

For the IT update, Ms. Davey stated that upgrades have been made for improved performance on storage savers and the internet in both the San Francisco and Los Angeles Regional Offices. In hearing room workstations, PCs have been upgraded to solid state drives.

In process is the launching of an Online Security Awareness Training Program, updating policies to comply with the State Administrative Manual, deploying endpoint protection to the iPhones, and working with Procurement to establish an IT inventory control process.

Future tasks include upgrading outdated applications, remediating cyber security issues, and creating detailed documents of the infrastructure design to review for improvements.

Report - Office of the General Counsel

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 102 new unfair practice charges in June and July, which is an increase from the 93 charges received in April and May. In June and July, the General Counsel's Office completed 90 case

investigations; a decrease from the 101 investigations completed in the prior two-month period.

In June and July, the General Counsel's Office issued 63 complaints and dismissed 11 charges. This is compared to the 51 complaints issued and 27 charges dismissed in April and May.

The number of factfinding requests decreased. In April and May, the General Counsel's Office received nine factfinding requests compared to seven received in June and July.

The number of representation petitions decreased from 44 in April and May to 27 in June and July.

Since the last Board meeting, the General Counsel's Office has received seven requests for injunctive relief, seven new litigation matters filed against or by PERB, and one final case determination. Mr. De La Torre reported the details and status on each case.

Lastly, Mr. De La Torre reiterated Ms. Davey in welcoming the newest attorney in the Los Angeles Regional Office, Christina Nielsen.

Report - Division of Administrative Law

Shawn Cloughesy, Chief Administrative Law Judge, stated that cases continue to be set three to four months out from the informal. The number of active cases is lower than the prior year. The total days of hearing in July was 43.

Chief Judge Cloughesy acknowledged two departures from the Division of Administration Law; Judge Clement, who had left in the previous month, and Judge Racho, who would be leaving at the month's end. Chief Judge Cloughesy expressed his appreciation to both for their hard work and collegiality.

Lastly, Chief Judge Cloughesy also reiterated Ms. Davey's appreciation to Judge Bologna for serving as a subject-matter expert in developing the ALJ duty statement and exam.

In reply to Chair Banks' inquiry on the exceptions ratio, Chief Judge Cloughesy

reported it to be zero.

Report - State Mediation & Conciliation Service (SMCS)

Gerald Fecher, SMCS Director, reported that caseloads continue to increase; SMCS having 132 open cases at the end of July.

Although requests for in-person mediation and elections have increased, the high COVID infection rates necessitate the need for continuing with video services, restricting in-person mediation and election to when it's requested by constituents, deemed safe, and in the mediator's discretion.

During fiscal year '21-22, SMCS received a total of 511 cases and closed the year end at 439. Mr. Fecher attributes the uptick in cases to continued efforts of outreach, providing constituents with information on SMCS's mediation services.

In June, SMCS had three active representation cases; one for decertification/certification, one for a private sector card check, and one PUC Transit election petition.

In July, SMCS had seven active representation cases; one for a mail ballot representation election, one for a decertification/certification election, two for card checks, one for a union affiliation election, one for a chargeable contract ratification, and one PUC Transit election petition.

For Program Administration, Mr. Fecher reported that in June, SMCS received a total of \$5,700. for chargeable services; \$1700 resulting from the Arbitration Panel Program and \$4,000 from a chargeable union contract ratification election.

In July, SMCS received a total of \$10,809.14 for chargeable services; \$9,809.14 from the Arbitration Panel Program and \$1,000.00 from a chargeable election. Also included in the monthly amount is the \$150 annual membership renewal fee from arbitrators on the panel.

SMCS continues to receive requests for training and facilitation, including information on the interest-based bargaining.

On June 13th, 2022, the new MATS system went live.

Lastly, SMCS continues to work with a vendor on the new arbitration list, PASS system, which replaces the old, unstable system.

Motion: Motion by Member Paulson and seconded by Member Krantz to accept the staff reports.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Old Business

Mr. Golka provided three updates regarding the Case Processing Efficiency Initiative: The Expedited Case processing regulation, which is expected to be submitted to the Office of Administrative Law fairly soon; the pro per information item, which a committee is currently hard at work on; and a comprehensive review and report of what has been accomplished regarding the Case Processing Efficiency Initiative.

Mr. De La Torre presented an update to the progress on the rulemaking package as it relates to SB 270, which authorizes labor organizations to file unfair practice charges with PERB when a public employer provides either inaccurate or an incomplete list of employees under Government Code Section 3558. Mr. De La Torre detailed the bill and the substantive changes made to Regulation 32610.3, Subsection (b).

Motion: Motion by Member Krantz and seconded by Member Paulson to approve submitting the updated text of the regulations with the changes agreed upon to the Office of Administrative Law in order to initiate the formal rulemaking process to add these new PERB Regulations governing special remedies and pre-filing procedures under the Public Employee Communications Chapter, including approving the proposed text of the regulations, and authorizing the committee to initiate rulemaking based on the approved text of the proposed regulation.

And lastly, authorizing the committee to review, evaluate, and respond to public comments after the 45-day comment period without further Board approval, unless the committee wants to make substantive changes from the approved

text, in which case the committee must bring the proposed changes to the full Board of approval.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

New Business

Ms. Davey stated that the Office of the General Counsel and PERB's Accounting Unit recommend making no changes to the current factfinder rate set at \$1300. daily for a maximum of five days that was approved at the June 10th, 2021 Board meeting. Travel expense claims will continue to be paid at the State rate outside of the contract. Lastly, Ms. Davey provided a summary on the history of factfinding contract rates.

Member Krantz and Chair Banks thanked Ms. Davey for gathering the information and monitoring the rates on an ongoing basis to ensure that PERB continues to attract a sufficient number of qualified personnel to fulfill that important function.

Motion: Motion by Member Shiners and seconded by Member Paulson to approve the staff recommendations regarding factfinding chairperson compensation.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Meeting Adjourned

Chair Banks stated that, immediately upon recess, the Board will meet in continuous closed session until the next regularly scheduled public meeting on October 13th, 2022.

During closed session, the Board will deliberate on cases listed on the Board's docket, personnel matters, pending litigation, and any pending requests for injunctive relief.

Motion: Motion by Member Krantz and seconded by Member Shiners to recess the meeting to continuous closed session.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

APPROVED AT THE PUBLIC MEETING OF:

October 13, 2022