

PUBLIC MEETING MINUTES

Virtual Meeting
OCTOBER 8, 2020
10:00 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 18th Street
Sacramento, California

Members Present

ERIC R. BANKS, Member
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, Interim Director, SMCS

Proceedings:

Meeting called to order at 10 a.m. by Member Shiners.

Since July 23, 2020, 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 Banks and seconded by Member Krantz to close the July 23, 2020 Public Meeting.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Adoption of Minutes

Member Shiners officially opened the Public Meeting of October 8, 2020, by asking the Board if they would like to discuss potential corrections to the minutes of July 23, 2020, or move to approve it.

Motion: Motion by Member Paulson and seconded by Member Banks to approve the minutes of the July 23, 2020 Public Meeting.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Public Comment

No public participants requested to comment on issues outside of the agenda; however, written comments were submitted by Brian Crowell and Kerianne Steele. To request a copy of the written comments, please email Cheryl.Shelly@perb.ca.gov

Executive Staff Reports:

Joshua Golka, Executive Director, stated that the annual report is nearing completion and will be released to the public soon.

Mr. Golka updated the Board on the status of three Legislative Bills that PERB is tracking: Assembly Bill 3096, Senate Bill 1173, and Assembly Bill 2850. He also stated that PERB has initiated the formal rulemaking process for the filing regulations with the Office of Administrative Law. Accordingly, the notice of proposed action will be published in the California Regulatory Notice Register on October 16th, which marks the start of the 45-day public comment period.

Mr. Golka welcomed Jerry Fecher as the new Interim Director of the State Mediation and Conciliation Service.

Mr. Golka thanked the Executive Staff for their hard work in mitigating the impacts related to COVID and staffing.

Report - Division of Administration

Susan Davey, Deputy Executive Director, reported that PERB currently has 69-1/2 filled permanent positions, retired annuitant help, two half-time temps, and 5-1/2 vacancies. She then provided an update on the staffing changes that have occurred since the last Board meeting.

As a structural change to staffing, a vacant accounting administrator-I position was converted to two positions; a perm full-time office technician and a half-time accountant-I specialist. Additionally, PERB has hired four student interns to work in the Division of Administration.

Regarding accounting, Ms. Davey reported that fiscal year '19-20 closed on time. The Fi\$Cal portion of work is now being contracted to the Centralized Fiscal Services with Department of General Services effective July 1, 2020.

On September 1, 2020, the Virtual Card Number Program became effective, which will assist staff when they travel. CalATERS Global, which will allow for the electronic processing of travel claims, is expected to roll out soon.

Providing a budget update, Ms. Davey stated that there's currently an estimated surplus of approximately \$362,000 for fiscal year '20-21. That amount factors in vacancies and the five percent savings the Governor requested to help with the deficit.

Regarding IT, Ms. Davey expects that upgrades to Cloud-based storage and to equipment will be completed by the end of 2020. ePERB launched on August 31, 2020, and the project should be finalized with the vendor for sign-off later this month.

For Facilities, construction is nearing completion at the Headquarters Office. Securing a location for the San Francisco Regional Office continues to be an issue; the current lease is set to expire August 2021.

Both legal staff and student interns are working on document remediation to be compliant by August 2021. Ms. Davey reported that COVID staff continue to work from home. Costs related to COVID total \$136,461 thus far. Member Shiners thanked all staff, and in particular, Cheryl Shelly, staff services manager, for their hard work through multi-years to bring ePERB online.

Report - Office of the General Counsel

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 105 new unfair practice charges, an increase from the prior two-month period of 96.

In August and September, the General Counsel's Office completed 86 case investigations, which is a slight decrease from the 90 cases completed in the prior two-months.

In August and September, the General Counsel's Office issued 51 complaints and dismissed 16 charges. This compares to the prior two months of 50 complaints issued and 21 charges dismissed.

Factfinding requests increased significantly; the GC Office received nine requests in August and September as compared to one in the prior two-month period.

The number of representation petitions also increased from 27 in August and September compared to 21 in the prior two months.

Since the last Board meeting, the Office of the General Counsel has received three injunctive relief requests, two litigation matters filed against PERB, and two final case determinations. Mr. De La Torre provided the details and the status on each.

Report - Division of Administrative Law

Shawn Cloughesy, Chief Administrative Law Judge, stated that the San Francisco Regional Office is setting cases three to four months out from the informal. For the Headquarters Office and the Los Angeles Regional Office, cases are set about four months from the informal.

The assignment of cases is greater than the prior year, and the number of active cases is considerably high because of the shelter-in-place order from March into June. However, now that virtual hearings have ramped up, the number of hearing days has greatly increased as the Division of Administrative Law works to catch-up.

Proposed decisions and the number of closures are a little bit down from the prior year but are expected to rise as cases start to get heard and/or settle.

The exceptions ratio is around 42 percent, which is average for prior years.

Lastly, Judge Cloughesy announced Jeff Edwards, a newly hired Administrative Law Judge.

Report - State Mediation & Conciliation Service (SMCS)

Gerald Fecher, Interim Director, reported a light uptick in cases. The majority of mediations are held virtually; however, personal protection equipment and supplies have been procured for the mediators should in-person mediation return in the future.

Additionally, SMCS has had a slight uptick in representation election requests, in August receiving four, increasing to five in September. Currently, for the safety of staff and constituents, SMCS is conducting only mail ballot elections.

For program administration, Mr. Fecher reported that, in August, SMCS has received a total of \$3,108.75 for chargeable services; the Arbitration Panel Program yielding \$2,275 and Conflict Resolution in the Workplace Program receiving \$833.75. For September, SMCS's chargeable services totaled \$1,370.75; the Arbitration Panel Program yielding \$1,025.75 and the Conflict Resolution in the Workplace Program receiving \$345.

Mr. Fecher stated that SMCS continues to develop training frameworks tailored to the individual constituents. In connection with outreach, staff have become involved with the Southern and Northern California Labor and Employment Relations Association.

Additionally, Mr. Fecher reported that one mediator has been assigned to the

State's contact tracing task force, which will continue for approximately six more months.

Lastly, Mr. Fecher stated that he is honored to have been appointed as Interim Director of SMCS and looks forward to working with the Board and staff.

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

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Old Business

Mr. Golka presented a brief update on the Case Processing Efficiency Initiatives, stating that staff continues to work on the background documents of the Board-approved regulations required for submission to the Office of Administrative Law. He thanked the staff for their work.

For pro pers interested in how to file an unfair practice charge, PERB intends to display sample documents and record a training Webinar after the new ePERB public portal has been fully updated.

Mr. Golka stated that revisions for the expedited hearing process is still in the works. He hopes to bring the revision step process to the Board in December.

Moving to the submittal of a proposed rulemaking package regarding transit regulations to the Office of Administrative Law, Member Shiners asked General Counsel to present the that package and answer any additional questions the Board may have.

Mr. De La Torre reported that the proposed regulations have been posted on PERB's website, including the errata displaying the changes from the initial posting. He thanked the staff for putting the package together.

Regarding transit regulations, Mr. De La Torre provided a detailed explanation and clarification for each proposed change to Chapters, Subchapters, and Articles in the regulations.

Public Comment : Kerianne Steele, an attorney with Weinberg, Roger, & Rosenfeld, stated she had submitted a written statement on behalf of her client, SEIU Local 1021.

Ms. Steele then expressed her strong support for the SF BART regulations and the errata update.

She believes the regulations accurately capture the legislative intent through clear and straightforward language that PERB's practitioners, constituents and staff can easily apply.

She thanked PERB for the speed and careful attention paid to the project.

Member Krantz detailed two minor items; one in Regulation 32100 and the other in Regulation 32661.

Mr. De La Torre stated he would review the two edits.

Member Shiners asked questions regarding some language in the Orange County Act, Regulation 32614, 32615, and 71030.

Mr. De La Torre provided the rationale for the language and also stated the drafting team would work on the modifying the language of concern.

Member Banks offered to serve on a committee for revising the regulations.

Mr. De La Torre stated that the committee will look at the three proposed revisions and come back to the Board in December for approval of the new language to submit to the Office of Administrative Law.

Member Banks thanked Mr. De La Torre and everyone who had worked on his team.

New Business

Member Shiners stated that there was no new business items on the agenda.

Meeting Adjourned

Member Shiners stated that, immediately upon recess, the Board will meet in continuous closed session until the next regularly scheduled public meeting on December 10, 2020, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. 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 Banks to recess the meeting to continuous closed session.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

APPROVED AT THE PUBLIC MEETING OF:
