

## **PUBLIC MEETING MINUTES**

June 14, 2018  
PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Gregersen called the meeting to order at 10:00 a.m.

### **Members Present**

Mark C. Gregersen, Chair  
Eric R. Banks, Member  
Priscilla S. Winslow, Member  
Erich W. Shiners, Member  
Arthur A. Krantz, Member

### **Staff Present**

J. Felix De La Torre, General Counsel  
Shawn Cloughesy, Chief Administrative Law Judge  
Mary Ann Aguayo, Chief Administrative Officer  
Gerald Fecher, Conciliator, on behalf of Loretta van der Pol, Division Chief, State Mediation & Conciliation Service

### **Call to Order**

After establishing that a quorum had been reached, Chair Gregersen called the meeting to order for a return to the open session of the April 12, 2018 Public Meeting. He reported that the Board met in continuous closed session to deliberate the pending cases on the Board's docket, pending requests for injunctive relief, pending litigation and personnel matters, as appropriate.

Chair Gregersen read into the record the decisions that issued since the open session in April. Those were PERB Decision Nos. 2560-M, 2561, 2561a, 2562, 2563, 2564-M, 2565, 2566-C, 2567, 2568-S and Order Nos. AD-446a, 462-M, 463-M, 464-M and 465-M.

There were ten Requests for Injunctive Relief (IR Requests) filed as follows: No. 744 (*San Diego City Firefighters Association, Local 145, v. City of San Diego*), the request was withdrawn; No. 745 (*Teamsters, Local 1932, v. City of Fontana*), the request was denied; No. 746 (*Regents of the University of California v. American Federation of State, County and Municipal Employees, Local 3299*), the request was granted in part; No. 747 (*Regents of the University of California v. University Professional and Technical Employees, Local 9119*), the request was granted in part; No. 748 (*Regents of the University of California v. California Nurses Association*), the request was granted in part; No. 749 (*Service Employees International Union v. County of Riverside*), the request was granted; No. 750 (*Hastings College of Law v.*

*American Federation of State, County and Municipal Employees*), the request was denied; No. 752 (*Los Angeles Unified School District v. Service Employees International, Local 99*), the request was withdrawn; and in No. 753 (*City of Berkeley v. City Employees International Union, Local 1021*), the request was pending.

Chair Gregersen announced that a document containing a listing of the aforementioned decisions was available at the meeting and that the decisions were available on PERB's website.

**Motion:** Motion by Member Winslow and seconded by Member Shiners to close the April 12, 2018 Public Meeting.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

Chair Gregersen adjourned the April 12, 2018 Public Meeting. He then opened and called to order the June 14, 2018 Public Meeting.

### **Minutes**

**Motion:** Motion by Member Winslow and seconded by Member Banks that the Board adopt the minutes for the April 12, 2018 Public Meeting.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

### **Staff Reports**

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

#### A. **Division of Administration**

Mary Ann Aguayo, Chief Administrative Officer, gave the report regarding the Division of Administration as follows:

**Facilities.** The LA Regional Office was moved to a new facility in Glendale. She stated that the move went well and they are correcting a few remaining items and addressing issues as they arise.

The headquarters facility's lease is up for renewal in less than two years. Ms. Aguayo reported that she has met with the Department of General Services and done a walk-through of the facility. She stated that the soonest the lease could be signed is November of 2019.

Information Technology. Ms. Aguayo reported that the eCourt system is on track for completion in July 2018. She also reported that the O365 migration is about a third of the way completed with the non-case management system staff already migrated. She stated that the plan is to migrate the remaining staff with the eCourt's rollout.

Ms. Aguayo also reported on the VoIP, the Voice Over Internet. Orders have been prepared and AT&T was selected as the vendor. The LA Regional Office will be transitioned first, and the San Francisco Regional Office and Headquarters will follow.

Ms. Aguayo reported that the vendor for ePay has provided a final draft of the web-front for online payments.

Financial Information System for California. Ms. Aguayo reported that there are still some hiccups with transition into the Financial Information System for California system. They are rounding out the yearend and have been working out the bugs to work with the Financial Information System for California system.

Budget. Ms. Aguayo presented a summary for the 2017-2018 budget. It was a balanced budget showing a surplus, mainly due to salary savings and rent that was budgeted for and not paid for the full fiscal year.

Ms. Aguayo reported that a budget bill has been drafted and PERB has a 1.5 million dollar augmentation that will fund seven new positions if signed. The bill also has language that gives leeway to increase the budget by an additional 900 thousand dollars based on the mission-based review currently undergoing.

Human Resources. Ms. Aguayo reported on positions filled and current recruitments within the Divisions at PERB.

- Positions filled: Board - two legal advisors and two assistants; GC Office - Attorney.
- Recruitments: State Mediation and Conciliation Service - three conciliators; Administration - Staff Services Manager-I Specialist and a Personnel Specialist (permanent intermittent).

Ms. Aguayo also stated that they are at the planning stages for the seven positions in the draft budget.

Ms. Aguayo reported that the State Personnel Board audit has begun and the initial documentation is due June 22, 2018.

Member Winslow thanked Ms. Aguayo and all who were responsible for getting the augmentation. She then had a question regarding the Headquarters lease and how long it typically runs.

Ms. Aguayo stated that the State standard lease is a four-year hard term, four-year soft term, and that they were nearing the end of an eight-year cycle.

Member Winslow inquired about the VoIP auto-attendant and whether speaking to the attorney of the day was an option.

Ms. Aguayo confirmed that the VoIP system could direct a caller to a particular person. She also stated that the VoIP system had significant flexibility in its setup. It could also be disarmed for a live voice to pick up.

Member Banks thanked Ms. Aguayo and her team for the LA Regional Office move. He stated that while there were some hiccups, he thinks the move went extremely well. Member Banks also stated that Ms. Aguayo's constant contact with the LA Regional Office was really important in making sure the office was functional this week. He also thanked Andy Dang and Oanh Tu who helped with the move.

Ms. Aguayo also thanked Member Banks and the move team, which included Eric Cu and Mary Weiss, for all their help in making the relocation successful. She also thanked Andy Dang, Oanh Tu, and the intern, Diana, for everything they did to make the move possible.

B. Office of General Counsel

General Counsel J. Felix De La Torre gave the report for the GC Office for the months of April and May 2018 stating that the monthly activity and litigation reports had been circulated earlier in the week. He highlighted the more notable items since the Board's Public Meeting on April 12, 2018.

Mr. De La Torre then reported on activities during the past two months (April and May), stating that 116 new charges had been filed with the GC Office, which was a decrease from the prior two-month period of 196 charges filed.

During the most recent two-month period, the GC Office had completed 94 case investigations, which was a decrease over the prior two-month period of 113 case investigations. Also during April and May, 42 complaints were issued and 21 charges dismissed. That compared to 52 complaints issued and 14 charges dismissed in the previous two-month period of February and March. Case processing times rose slightly with an average of 163 days in April/May compared to an average of 161 days in February/March.

Mr. De La Torre continued reporting that the number of litigation matters completed by the GC Office increased significantly from 7 in February and March to 23 in April and May. The number of factfinding requests remained the same in April and May as in February and March, which was 12. The number of representation requests increased from 21 in February and March to 25 in April and May.

As reported earlier by Chair Gregersen, there were ten requests for injunctive relief in the last eight weeks.

Since the Public Meeting in April:

- In terms of court litigation, four new litigation matters have been filed by or against PERB.
  - *Los Angeles Unified School District v. PERB: United Teachers of Los Angeles*; Filed April 23, 2018, California Supreme Court. Issue: Whether the Board erred in decision number 2518 when it affirmed a proposed decision holding that certain subjects were within the scope of representation under EERA.
  - *Julie Barrett v. PERB: United Auto Workers, Local 2865*; Filed April 23, 2018, Alameda County Superior Court. Issue: The Petitioner is challenging the Board's decision sustaining the Regional Attorney's refusal to issue a complaint in a duty-of-fair representation case.
  - *PERB V. AFSCME, Local 3299, UPTE, CWA, Local 9119, and California Nurses Association*; Filed May 2, 2018. Issue: IR Requests 746, 747 and 748. Whether the striking employees are essential under the *County Sanitation* case.
  - *PERB v. County of Riverside; SEIU, Local 721*; Filed May 18, 2018, Riverside County Superior Court. Issue: Whether to seek to enjoin a County from implementing its last-best-and-final offer and to reinstate three discharged registered nurses.
- PERB received one final case determination.
  - *Julie Barrett v. PERB and the United Auto Workers, Local 2865*; Filed March 2018. The court granted our motion to dismiss on the basis that a decision not to issue a complaint has to be challenged in the Superior Court and not in the Appellate Court. That is the reason the case listed above was filed April 23, 2018, in the Alameda County Superior Court.

Legislation/Rulemaking. For information purposes and inquiries by the Legislature, the GC Office monitors legislation that concerns the labor relations statutes under PERB's jurisdiction. To date, the GC Office has identified several bills that relate to PERB's jurisdiction and Mr. De La Torre reported on the following bills.

- Assembly Bill 2017 (Chiu) - Existing law prohibits a public employer from deterring or discouraging public employees from becoming or remaining members of an employee organization.

AB 2017 would additionally prohibit a public employer from deterring or discouraging prospective public employees from becoming or remaining members of an employee organization. It is currently on the Senate side at the Public Employment and Retirement Committee.

- Assembly Bill 2305 (Rodriguez) - This bill would add to PERB's jurisdiction by allowing peace officer organizations to bring their cases to PERB. Those precluded would be individual peace officers and those in LA County.
- Assembly Bill 2886 (Daly) - This bill would bring the Orange County Transportation Authority and the San Joaquin Regional Transit District under PERB's jurisdiction.
- Assembly Bill 3034 (Low) - This bill would bring certain BART employees under PERB's jurisdiction.
- Assembly Bill 2970 (Cooper) - As an amendment to the PECC, this bill would provide that the date, time and place of new employee orientations would not be publicly disclosed to anybody other than vendors and the unions who are involved.

Mr. De La Torre introduced a Regional Attorney hired in Sacramento, Ms. Kimberly Procida.

Member Winslow asked if the UTLA case was currently a petition for review that had not yet been granted.

Mr. De La Torre stated he believes it has been fully briefed and he believes that they are waiting for the Supreme Court to respond whether to accept review.

Member Banks inquired about AB 2886 and 3034. He wanted to know the number of employees encompassed under those two bills in Orange County.

Mr. De La Torre replied that he thinks the combined group is under a thousand employees and that it's a pretty small set of units. BART includes only supervisory employees within a certain unit.

Member Banks then bestowed praise on the GC Office and thanked Wendi Ross and Joe Eckhart and the rest of the team that was involved in the San Diego oral arguments in the California Supreme Court a few weeks ago. He stated he appreciated the staff's hard work and endless hours.

#### C. Division of Administrative Law.

Chief Administrative Law Judge Shawn Cloughesy reported on the activities in the Division of Administrative Law and stated that the Administrative Law Judge report had

been distributed to the Board offices. He reported on the highlights and stated that the date set for formal hearing is around 3.5 to four months from the informal date in all three offices, the Oakland and LA Regional Offices as well as the Sacramento Headquarters Office.

Mr. Cloughesy also reported that, compared to the prior year, the assignment of cases was up approximately 9 percent. The number of days of hearing are up approximately 17 percent from the last fiscal year. Formal hearings completed are up 12 percent compared to last fiscal year.

Mr. Cloughesy concluded by reporting that the ratio of exceptions to proposed decisions increased to 39 percent compared with the last fiscal year, which was 48 percent.

#### D. State Mediation and Conciliation Services.

In Division Chief Loretta van der Pol's absence, Gerald Fecher gave the April and May 2018 report. He stated that a written report had been distributed to the Board Offices for review.

Mr. Fecher reported that in April 2018, SMCS opened 43 cases, closed 61 cases, and ended the month with 90 active cases. In April 2017, SMCS opened 29 cases, closed 46 cases, and had 104 active cases going into May. In May 2018, SMCS opened 48 cases, closed 59 cases, and ended the month with 93 active cases. In May 2017, SMCS opened 43 cases, closed 64 cases, and end the month with 115 active cases.

Mr. Fecher also reported that there were six active, regular representation cases in process in May; two for agency shop and four for representation. The union established majorities in the two agency shop cases. In the four representation cases, one was still pending a setup, and in the other three, the union had established majorities. Mr. Fecher reported that there are four Transit District PUC representation matters in process, three that are pending hearings and one is on appeal to the Board.

Mr. Fecher reported on human resources matters within SMCS:

- At the end of May, SMCS lost one mediator to another State position, leaving three full vacancies. One full-time mediator is continuing to work a part-time schedule. Interviews to fill these vacancies will likely occur near the end of July.

Regarding program administration, Mr. Fecher reported that the fiscal year-to-date revenue collected by SMCS is \$63,613.75. Invoices for membership on the SMCS Panel of Arbitrators for the new fiscal year (2018-2019) would be mailed the first week of July.

**Motion:** Motion by Member Banks and seconded by Member Shiners that the Division of Administration, Office of the General Counsel, including Legislative Rulemaking, Division of Administrative Law, and SMCS reports be accepted and filed.

**Ayes:** Gregersen, Banks, Winslow, Shiners, and Krantz.  
**Motion Adopted - 5 to 0.**

### **Old Business**

Chair Gregersen provided an update regarding the PERB Case Processing Efficiencies Initiative. He stated that the Board had received a report prepared by the Admin Committee and that today's meeting was convened to consider the recommendations contained in that report.

#### **Staff Report.**

General Counsel De La Torre gave an overview and history of the PERB Case Processing Efficiencies Initiative. Suggestions that were received from constituents, employees and Division managers were presented to a subject-matter group of individuals at PERB. That group broke down the suggestions into different categories and organized them for the Board.

Mr. De La Torre stated that the report broke down the 124 proposals into five categories: Recommended implementation; Proposals for immediate implementation upon meeting certain criteria; Proposals that were already in process; Proposals that were inapposite to the purposes of PERB's authority. Mr. De La Torre further stated they had come up with ten recommendations to the Board. Questions were then asked about the ten recommendations.

Member Krantz asked Ms. Aguayo a question regarding the cost of the first recommendation, which involved information technology. He asked about the personnel costs versus the IT costs and what was meant by the 200 thousand dollars shown under the IT costs.

Ms. Aguayo responded that they had been able to capitalize on salary savings in order to maintain the systems, though that is not an appropriate way to operate. The State has restructured the classifications for IT. The contract for IT would not be eliminated since the contract is for maintenance and for the day-to-day help tickets and operations.

Ms. Aguayo further stated that the Infiniti contract would be unaffected; the need is for someone to manage that contract and take charge of the agency's multi-faceted IT needs going forward, through comprehensive planning and execution.

Ms. Aguayo reported that there is an action plan in place but PERB is unable to complete parts of the plan due to cost and staff expertise.

Member Krantz asked whether some of the IT items, such as cybersecurity, could be done through a contractor, and whether such contracting out would cost more or less.



Ms. Aguayo stated that they had solicited for a vendor, but only one company had bid. Their quote, 250 thousand dollars, was deemed unaffordable.

Ms. Aguayo confirmed that the 200 thousand dollars was an estimate of needed funds, but were not for eCourts or O365 migration or any other IT already covered.

When Member Banks inquired about Infiniti's IT role, Ms. Aguayo explained the different functions that Infiniti performs. She went on to explain the cybersecurity policies PERB is required to implement, and the cybersecurity audit PERB will undergo by the California Department of Technology.

Member Banks asked if an individual could put together an IT plan, updating the infrastructure and the long term plans, and then help in the plan's implementation.

Ms. Aguayo confirmed that it would be the lead IT.

Regarding the second recommendation, Member Winslow asked Shawn Cloughesy if he intended to limit appeals or the right to appeal only to novel issues.

Mr. Cloughesy answered in the negative, stating that the idea was to expand the non-precedential in order to enable the Board to designate, especially an ALJ decision, as non-precedential, or that Board counsels would be able to assist the Board in coming to decisions.

Member Banks asked whether the 40 thousand dollar figure to change regulations would be for one regulation or lumped together for all regulation changes.

Mr. Cloughesy explained that some of these inter-regulation packages can be combined. He further explained why there may be a greater expense to one area of regulation change as compared to another.

Chair Gregersen reminded all that the costs were only estimates derived by the Management Committee under the Board's direction to come up with cost estimates.

Ms. Aguayo explained the three levels to reflect the cost—small, medium and large—and that the 40 thousand dollars reflected equated to the small level.

Member Krantz asked if PERB managers considered the possibility that the regulation could allow the Board to make parts of decisions non-precedential.

Chair Gregersen stated that that wouldn't be precluded, and Mr. Cloughesy concurred.

Chair Gregersen stated if the Board were to give direction in order to proceed with any of these, there would be further development in consultation with the Board. He then turned to 2a.

Mr. Cloughesy stated that the statute required at least a legal advisor per Board member, which creates a civil service position to provide assistance to Board members. The costing is at an attorney-III level.

Chair Gregersen stated that the legislature, Department of Finance, had already made the decision for the Board, at least in part. He further stated that one of the seven positions that Ms. Aguayo had referred to was Board legal support.

Ms. Aguayo confirmed; one of the seven positions was an attorney-III for the Board.

Chair Gregersen moved to item three and 3b, grouping them together.

Member Winslow asked if the e-signatures were for pleadings and not for authorization cards.

Mr. De La Torre reported that the e-signatures could be structured in any manner the Board deemed appropriate, though the idea behind the recommendation involved the filing of unfair practice charges, responses, and related matters.

Member Winslow raised a question regarding a pro per lacking an email address.

Mr. De La Torre confirmed that those type of exceptions, including indigent or those without access to computers, would be taken into account, further noting the model of the Federal Courts, which require electronic filing for all cases through e-portals.

Member Krantz asked about electronic signatures for proof of support and if that could be wrapped into the same project/regulation.

Mr. De La Torre stated it would be a different project as it has different considerations and would require a number of safeguards to be put in place.

Regarding 4a, Member Krantz raised a question regarding the language of an expedited process based on the level of complexity.

Mr. Cloughesy explained that the current expedited process lacks specificity and deadlines, and that the overall idea was to change, revise, and update the expedited process.

Member Krantz inquired about the expedited process in relationship to the use of video hearings, limited testimony, and accepting declarations as direct evidence.

Mr. Cloughesy explained the current difficulties in the expedited process, including the lack of deadlines and the impact on the parties. He went on to state the need for and importance of a *reason* built into the process for determining an expedited case.

Member Krantz suggested that a regulation could give discretion to the Chief ALJ or to the General Counsel to set appropriate deadlines on an expedited case.

Mr. Cloughesy stated that they are looking for direction from the Board on this matter, but they will be listening a lot to the stakeholders.

Regarding item five, Member Krantz asked Mr. Cloughesy if the recommendation referred mainly to document subpoenas.

Mr. Cloughesy responded that it dealt with subpoenas duces tecum, motions to quash, and boxes of documents, all produced on the first day of hearing. He suggested setting aside certain days before a formal hearing to address any issues and/or pore through the produced documents.

Moving to six, Member Winslow asked Mr. Cloughesy about the filing of motions, including motions to amend the complaint and motions to dismiss.

Mr. Cloughesy described the difficulties encountered when Judges receive motions the day of hearing.

Member Krantz addressed Mr. De La Torre on item number seven, asking what problem the recommendation was trying to fix.

Mr. De La Torre pointed to the lack of rules surrounding the informal settlement conference and, most notably, the lack of consequence to a party failing to appear. Mr. De La Torre suggested ways to encourage settlement and discourage a party's no-show, including possible dismissal or default, and pointed to the strict rules of the State Personnel Board. Further suggestions and comments were then proffered regarding the settlement conference and incentivizing parties to participate.

Member Winslow then asked questions on item eight regarding the suggestion that there be extra assistance for pro pers and inquiring into the cost for such assistance.

Mr. De La Torre explained the problems encountered with unprepared and uninformed in pro pers and possible methods to minimize their missteps during the hearing process.

Member Banks asked if the word, *pro per*, meant non-attorney, and Mr. De La Torre confirmed, yes, but he also included union reps and stewards.

Member Shiners stated that the cost-estimate column indicated a possible regulation change, though he believed the recommendation could be implemented without affecting regulations.

Mr. De La Torre responded that it depended on the simplicity or complexity of the project; simple document uploads to complex formalized video training.

Mr. Cloughesy circled back to item 7a to offer additional comment/explanation regarding informal conferences, the increase of pro pers, and the issue of no-shows.

Chair Gregersen thanked Mr. Cloughesy for the additional information and directed the Board and staff to item nine.

Member Winslow asked why recommendation nine needed to be a regulation.

Mr. Cloughesy replied that it needn't be, and that courts usually set the prehearing 30 days before the first day of hearing.

Member Shiners stated that the objective is to implement as many of the ten recommendations as the Board directs, and then consider what other recommendations might make sense.

Member Winslow then asked clarifying questions about the intent of item ten.

Mr. Cloughesy gave further detail about what ten could expand to address; wall-to-wall subpoenas, day-of-hearing motions, and a more efficient utilization of the prehearing conference.

### **Comments from Public Participants**

Timothy G. Yeung, an attorney with Sloan & Sakai, appeared before the Board. He commended the ten recommendations and looked forward to their implementation. He further stated that others who practiced before PERB were also excited about the forthcoming changes. Mr. Yeung expressed his hope that PERB would receive the funds to move forward with the implementation of the top ten recommendations.

Chair Gregersen responded that PERB doesn't currently have any funds specifically earmarked to implement the recommendations with the exception of the bullpen attorney, which has been funded.

Member Krantz added that some recommendations could be adopted subject to funding availability.

Chair Gregersen further stated that staff would look at this from an economy standpoint.

**Motion:** Motion by Member Winslow and seconded by Member Shiners to accept recommendation number one subject to the availability of funds.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Krantz and seconded by Member Banks to accept recommendation number two with the additional provision that the regulation would permit the Board to deem parts of decisions to be precedential and non-precedential.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Krantz and seconded by Member Banks to accept recommendation number 2a with two provisions; one, it is subject to funding, and two, the new position or positions be broadly and flexibly created with a broad job description indicating that this civil service position would work subject to the direction of the Board.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Winslow and seconded by Member Shiners to accept recommendation number three, with the caveat that this does not apply to proof of support, and 3b with the understanding that there would be exceptions for those who may not have email.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Winslow and seconded by Member Shiners to accept recommendation number 3a with the clarification that the word limit applies to the parties' filings and not on the Board decisions.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Krantz and seconded by Member Winslow to accept recommendation number four and 4a with the change that the regulation be updated to look at categories for expedited cases in general.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Winslow and seconded by Member Krantz to accept recommendation number five.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Krantz and seconded by Member Shiners to accept recommendation number six provided that current regulations on motions to amend shall remain the same.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

Member Krantz asked to discuss recommendation number seven and 7a further. He is concerned to hear about parties not showing up to hearings at trial and supports videoconferencing and other methods that should be directed at the discretion of the Regional Attorney. Further, he supports regulation stating these are mandatory and gives the Regional Attorney power to consider a party non-compliant.

Member Winslow proposed disaggregating 7 and 7a to vote on each separately. She stated that 7a was directed to formal hearings and seven is the informal settlement conference.

**Motion:** Motion by Member Krantz and seconded by Member Winslow to accept recommendation number 7a.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

Member Winslow expressed that the details in the proposed regulations in recommendation number seven be brought to the Board to have an opportunity to further burnish and refine the concerns articulated by Member Krantz.

Member Krantz stated that PERB cannot enforce preparation requirements on the parties; it's not feasible. He further stated his concurrence with a regulation and letters stating that parties should come prepared to discuss settlement.

Member Winslow agreed, stating she didn't want to see the Board replicate the State Personnel Board's practices as described.

**Motion:** Motion by Member Winslow and seconded by Member Krantz to accept recommendation number seven with the understanding that the Board can refine it when the regulation comes to them.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Chair Gregersen and seconded by Member Winslow to accept recommendation number 8 and 8a subject to the availability of funds and removing the word, *pro per*.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Winslow and seconded by Member Shiners to accept recommendation number nine subject to the availability of funds.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

Member Krantz asked for discussion on number ten in reference to Member Winslow's questions to Mr. Cloughesy about whether there is a need for a change in regulations.

Member Winslow suggested that, since no regulation change was required, they could adopt recommendation ten in that the Board can make the informal settlement conferences more effective, and the ALJ or Regional Attorney can determine the timing to hold the conference, whether immediate or closer to the hearing date, based on the potential for settlement.

**Motion:** Motion by Member Winslow and seconded by Member Krantz to accept recommendation number ten.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

### **New Business**

- The Board considered authorization for the General Counsel's Office to initiate preparation for the rule-making packages for JCEERA and the new e-file system. Wendi Ross, Deputy General Counsel, provided a description and details. She stated that the regulations need to be consistent with the statutory provisions and that they are hoping to get them finished by year end.

**Motion:** Motion by Member Banks and seconded by Member Shiners to authorize the General Counsel's Office to initiate the preparation for the rule-making packages for JCEERA and the new e-file system.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

- The Board considered the rule-making process change. Ms. Sheena Farro from the General Counsel's Office provided a description and details. She stated that the Public Employee Communication Chapter, PECC, has been effective since June 2017. In order to aid PERB in exercising its jurisdiction over the PECC, they have been putting together a regulatory package, which has been provided to the Board and posted on the PERB's website since May. The Office of the General Counsel has recommended changes to that regulation language to sections 32100, 32350, and

33013. Most of the regulatory changes are to the Authority and Reference sections. Ms. Farro discussed the changes to each of these sections in detail and the General Counsel's recommended version of this language.

Member Krantz asked if the General Counsel's Office was recommending section 33014.

Ms. Farro stated that the General Counsel's Office, at this point, does not have a position on section 33014.

Member Winslow asked if the hearings under the Adjudicative Due Process or Fairness Act were open to the public and does the Presiding ALJ have the ability to close them.

Ms. Farro replied that that provision in the Adjudicative Bill of Rights provides that the hearing shall be open to public observation as provided in section 11425.20. That section does allow an ALJ to order the closure of the hearing or to make a protective order.

Mr. Cloughesy commented that a good reason must be shown; a privacy issue, constitutional issue and/or statutory issue, and that it is an open hearing under the Administrative Adjudication Bill of Rights.

Member Winslow asked if the Board does not adopt the resolution and the Bill of Rights does not apply would it be presumed to be a closed hearing.

Mr. Cloughesy stated that it's presumed open according to the Administrative Adjudication Bill of Rights, which provides the framework.

Ms. Farro continued explaining the final regulation regarding PERB services, providing details and a description regarding a new Article created in subchapter ten. She stated that this would come into play only if a City or County requests that PERB appoint an Administrative Law Judge or other PERB employee to serve as interest arbitrator.

Ms. Farro also confirmed that it would be a regulation change because the Office of Administrative Law requires a referenced publication year, not just the document.

Mr. Cloughesy suggested that instead of saying the 2018-2019 price book, a reference could state, current State of California Department of General Services' price book.

Ms. Farro stated that, unfortunately, that would probably cause OAL to reject the package because the publication year is required.

Ms. Aguayo explained that annual updates on regulation packages are routinely performed every year.



Ms. Farro detailed the process of doing a substantive regulatory change each year; a package needs to be submitted to the public and OAL and comments would need to be collected during a 45-day period.

**Comments from Public Participants**

Kerianne Steele appeared before the Board. She thanked Chair Gregersen for his leadership and specifically on the Case Processing Efficiency Initiative. She also commented on the efficiency of the new Glendale office.

Ms. Steele suggested edits to the proposed regulations, and in the interest of time, to complete such edits now before the packet is completed.

Member Winslow asked if Ms. Steele could memorialize her comments in writing and provide them to the Board. She further directed the General Counsel to take into consideration Ms. Steele's suggestions.

Ms. Farro requested guidance from the Board on a few points and on the suggestions of Ms. Steele.

**Motion:** Motion by Member Shiners and seconded by Chair Gregersen to not adopt regulation 33014.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Winslow and seconded by Chair Gregersen to direct the General Counsel's Office to take into consideration Ms. Steele's suggestions.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Banks and seconded by Member Winslow to accept the alternative language provided regarding the reimbursement of services and updating the dollar amount annually.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**Motion:** Motion by Member Winslow and seconded by Member Banks to adopt the Office of the General Counsel's proposed regulations 32038, 32100, 32120, 32350 and 33013 subject to the need to change any of those in response to Ms. Steele's comments.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

Chair Gregersen introduced two new Board administrative assistants that Ms. Aguayo had referenced earlier, Kristina Gonzalez and Joe Seisa.

Member Shiners thanked the two new assistants for preparing the binders for the Board.

- The Board reviewed the current factfinding policy for compensating EERA/HEERA factfinding panel chairpersons. Ms. Aguayo stated that, under EERA and HEERA, PERB is required to select and pay for the services of a factfinding neutral panel chair within five days of a request. This is a statutory requirement. Ms. Aguayo stated that the existing rate of pay (\$1,100/per day, four-day maximum) has been found to be sufficient for the fiscal year of 2017-18 and therefore it is staff's recommendation that PERB continue with this same rate of pay for the new fiscal year and review it again next year.
- Ms. Ross thanked the Board for raising the rate of pay and maximum number of days for EERA/HEERA factfinding. She reported on the number of factfindings that have occurred over the last fiscal year under the new rate of pay, which was ten. Ms. Ross confirmed that it is the staff's recommendation that the existing rate and the number of days remain the same for the new fiscal year and review the same again next year after the *Janus* decision has been issued.

**Motion:** Motion by Member Banks and seconded by Member Winslow to accept the recommendation that the rate of pay and number of days for factfinding remain the same.

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

**General Discussion**

Member Winslow noted that this was the last meeting for Chair Gregersen. She expressed her gratitude to him on behalf of herself, but she believes her colleagues join her appreciation for Chair Gregersen shepherding the Board through the difficulties of the prior year, most especially the fruition of the extra funds obtained. Member Winslow also thanked Chair Gregersen for guiding them through the Efficiency Process. She wished him the best of luck in his next chapter.

Chair Gregersen stated that a lot of people had worked together to achieve those elements of success. He wished PERB much success in the future and stated that PERB will always hold a special place in his heart. He thanked everyone.

Chair Gregersen announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the

open portion of this meeting through the next regularly scheduled meeting on August 9, 2018, when the Board would reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Government Code, section 11126(c)(3)), personnel (Government Code, section. 11126(a)), pending litigation (Government Code, section. 11126(e)(1)), and any pending requests for injunctive relief (Government Code, section 11126(e)(2)(c)).

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

**Ayes:** Gregersen, Banks, Winslow, Shiners and Krantz.

**Motion Adopted - 5 to 0.**

Respectfully submitted,



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Barbara Castaneda  
Capitol Electronic Reporting

APPROVED AT THE PUBLIC MEETING OF:

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