

PUBLIC MEETING MINUTES

AUGUST 9, 2018

10:00 a.m.

PUBLIC EMPLOYMENT RELATIONS

BOARD Headquarters Building

1031 18th Street

Sacramento, CA 95811

Members Present

ARTHUR A. KRANTZ, Member

PRISCILLA S. WINSLOW, Member

ERICH W. SHINERS, Member

Absent: ERIC R. BANKS

Quorum Present? Yes

Executive Staff Present

FELIX DE LA TORRE, General Counsel

SHAWN CLOUGHESY, Chief Administrative Law Judge MARY

ANN AGUAYO, Chief Administrative Officer LORETTA VAN

DER POL, Chief Conciliator, SMCS

Proceedings:

- Meeting called to order at 10 a.m. by Member Krantz.

Since June 14th, 2018, the Board has been in continuous closed session to deliberate on pending cases on the Board's docket.

Member Krantz read into the record decision numbers 2569-M, 2570-M, 2545-E, 2571-M, 2572-M, 2573-M, 2574-H, 2575-M, 2576-M, 2577-M, 2578-H, and 2579-M, and two administrative determinations, Ad-466 and Ad-467.

Additionally, Member Krantz gave the status on four requests for injunctive relief: IR case numbers 753, 754, 755, and 756.

A list of the aforementioned decisions and determinations can be found on PERB's website.

Motion: Motion by Member Winslow and seconded by Member Shiners to close the June 14, 2018 Public Meeting. **Ayes:** Krantz, Winslow, Shiners
Motion Adopted - 3 to 0

- **Adoption of Minutes**

Member Krantz officially opened the Public Meeting of August 9, 2018, by asking the Board if they would like to discuss potential corrections to the minutes of June 14, 2018 or move to approve it.

Motion: Motion by Member Shiners and seconded by Member Winslow to approve the minutes of the June 14, 2018 Public Meeting.

Ayes: Krantz, Winslow, Shiners

Motion Adopted - 3 to 0

- **Public Comment**

Annette Deglow, public speaker, asked the Board to give their attention to an appeal she hand delivered requesting that the Board vacate two 1986 dismissals and issue a complaint. Ms. Deglow summarized the appeal, citing the *Edwards* case and PERB decision number 2548 as being on point to the appeal.

- **Chief Administrative Officer's Report**

Mary Ann Aguayo, Chief Administrative Officer, introduced one new staff, Geycel Colcol, a Staff Services Manager I who will be the main point of contact for Human Resources.

Ms. Aguayo stated that the relocation of the LA Regional Office is complete. For the Headquarters Office, a lease renewal proposal has been submitted.

An electrical fire in the Headquarters facility initiated a corrective action plan for routine State Fire Marshall inspections.

The rollout of eCourts, replacing the current case management system, is anticipated to begin in approximately late September 2018. The migration of Office 365 for CMS users will begin at approximately the same time as the eCourt implementation.

Staff is continuing to prepare for the Voice-Over-Internet system, meeting with AT&T every two weeks.

All the equipment for audio-visual has been procured and is in the process of being installed.

On July 1, 2018, ePay went live, though some kinks remain to be worked out.

Ms. Aguayo updated the Board on PERB's planned cyber security assessment..

Ms. Aguayo provided a budget summary for 2017-2018. A budget bill for fiscal year 2018-2019 provides PERB with a 1.5 million dollar augmentation to fund seven positions. The Department of Finance can increase that budget up to 900 thousand dollars depending on a mission-based review.

Ms. Aguayo provided a vacancy report, stating that Human Resources has several recruitments underway.

- **General Counsel's Report**

Felix De La Torre, General Counsel, announced the promotion of Sara Kang to an attorney-three position in the Los Angeles Regional Office.

Mr. De La Torre reported the statistics for June and July of 2018 as follows: 109 unfair practice charges were filed, reflecting a slight decrease from the prior two months when 116 charges were filed; 132 investigations were completed, reflecting an increase over the prior two months of 94 investigations; and 45 complaints issued and 18 charges dismissed as compared to the prior two months of 42 complaints issued and 21 charges dismissed.

Case processing time also decreased: the two-month average is now 150 days as compared to the two months prior when it was 163 days.

Litigation matters completed decreased to four as compared to 23 completed the prior two months. Fact-finding requests decreased from 12 requests the prior two months to ten. Representation petitions decreased to 17, compared to 25 during the prior two months. And requests for injunctive relief totaled four since the last Board meeting.

Mr. De La Torre noted the four litigation matters that have been filed against PERB; *ULTA v. PERB*, *State of California, Department of State Hospitals v. PERB*, *Michael Martin v. PERB*, *Georgia Babb v. PERB*, the last two cases having been filed in Federal Courts.

Mr. De La Torre commented about the decision in *Boling v. PERB*, explaining the significance of the Court's ruling, calling it a "momentous case" for PERB. He publicly acknowledged and congratulated Wendi Ross and Joe Eckhart for their work on the case.

Mr. De La Torre updated the Board on the status of three Assembly Bills: AB 2305 by Assemblymember Rodriguez, regarding peace officer organizations, now in the Senate Appropriations suspense file; AB 2886 by Assemblymember Daly, bringing Orange County Regional Transit District under PERB's jurisdiction, now on the Senate side in a suspense file; and AB 3034 by Assemblymember Low, placing certain employees of BART under the MMBA and under PERB's jurisdiction, now in the suspense file.

- **Chief Administrative Law Judge's Report**

Shawn Cloughesy, Chief Administrative Law Judge, announced the hiring of an administrative law judge, Scott Miller, working in Glendale.

Regarding statistics, hearings are still being set about three months out; however, the number of pending cases has been reduced, having 86 at July's end versus 113 the previous year.

Case processing and decision writing time has also been reduced to an average of 130 days. ALJ Cloughesy is focused on getting older cases out and eliminating the backlog.

Additionally, last year the exceptions ratio was about 44 percent, having had a spike near the end. The year before was 48 percent.

- **SMCS, Chief Conciliator's Report**

Loretta van der Pol, Chief Conciliator of the State Mediation and Conciliation Service Division, stated that her division is trending about the same as it did the prior year.

In June, 50 cases were opened and 81 were closed, and the month ended with 75 active cases. In July, 44 cases were opened and 29 closed, the month ended with 91 cases, a total very close to the prior year's total.

Of note, neither June nor July had new representation cases. The two cases shown on the SMCS's report are related to adjudication of a couple of representation disputes from the Public Utilities Transit Agencies.

Ms. van der Pol stated that filling conciliator vacancies is problematic. In answer to Member Winslow's question as to the source of the problem, Ms. van der Pol points to low wages, the salary range currently topping out at around \$101,000.

- **Old Business**

ALJ Cloughesy provided an update regarding the progress of Case Processing Efficiencies Initiatives, stating that they are close to a final draft on the precedential/non-precedential decision regulation. The draft regulation went through an "eye-opening" number of iterations, which indicates other regulation changes from the Initiative may take more work than anticipated.

Regulations in other States were reviewed for the possibility of serving as a model for rewriting regulations. ALJ Cloughesy commented that New York State has regulations of a similar nature.

Mr. De La Torre added that, although regulations make up the bulk of the Case Processing Efficiencies, progress has also been made on non-regulatory areas. He stated that Ms. Aguayo has been working on the IT personnel issues and whether or not the person should be a PERB employee or a subcontractor.

Further, the pro per training is in the beginning stages with discussions about how extensive the training should be; real time, written, and video.

ALJ Cloughesy discussed the issue of regulations covering discovery and subpoena duces tecums, and the impact of those determinations.

Ms. Aguayo reminded everyone that any and all improvements, even if it is just rulemaking, come with a monetary cost. Ms. Aguayo also stated that the mechanism for obtaining such funds is a budget-change proposal unless it is included as part of the 900 thousand dollars that the Department of Finance has leeway with.

- **Meeting Adjourned.**

Member Krantz stated that, immediately upon recess, the Board would be in continuous closed session each business day until the next regularly scheduled meeting on October 11th, 2018.

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

Ayes: Krantz, Winslow, Shiners

Motion Adopted - 3 to 0

Respectfully submitted,
Wendy Dippold
Capitol Electronic Reporting

APPROVED AT THE PUBLIC MEETING OF: **October 11, 2018**

Arthur A. Krantz, Board Member