

**PUBLIC MEETING MINUTES**

OCTOBER 11, 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

ERIC R. BANKS, Member

*Quorum Present? Yes*

**Executive Staff Present**

FELIX DE LA TORRE, General Counsel

SHAWN CLOUGHESY, Chief Administrative Law Judge

MARY ANN AGUAYO, Chief Administrative Officer

**Proceedings:**

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

Since August 9th, 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 2580-S, 2581, 2582-M, 2583-M, 2584, 2585, 2586, and 2587.

Additionally, Member Krantz gave the current status on four requests for injunctive relief; IR 755, IR 756, IR 757, and IR 758.

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

**Motion:** Motion by Member Banks and seconded by Member Winslow to close the August 9, 2018 Public Meeting.

**Ayes:** Banks, Winslow, Shiners, Krantz

**Motion Adopted - 4 to 0**

- **Adoption of Minutes**

Member Krantz officially opened the Public Meeting of October 11, 2018, by asking the Board if they would like to discuss potential corrections to the minutes of August 9th, 2018, or move to approve it.

**Motion:** Motion by Member Shiners and seconded by Member Winslow to approve the minutes of the August 9th, 2018 Public Meeting.

**Ayes:** Winslow, Shiners, Krantz

**Abstaining:** Banks

**Motion Adopted - 3 to 0**

- **Public Comment**

Annette Deglow, public speaker, restated her offer to make an oral presentation before the Board. She further urged the Board to review the records of the pre-67 instructors, claiming their long-standing rights had been compromised by the Los Rios Community College District.

**Executive Staff Reports:**

Member Krantz announced that Joshua Golka has joined PERB as the new Executive Director. Further, he noted two new Board Counsel, Jeff Edwards and Estelle Huerta.

Member Banks stated that his legal advisor of six years, Scott Miller, left to become an Administrative Law Judge with the Division of Administrative Law. He then introduced and welcomed Brendan White, who has filled the position of legal advisor to Member Banks.

- **Chief Administrative Officer's Report**

Mary Ann Aguayo, Chief Administrative Officer, provided the Board a list of vacancies, and pointed out the recently filled positions.

Ms. Aguayo gave the following updates: PERB is still undergoing an audit from the State Personnel Board; Department of General Services continues to negotiate a lease renewal for PERB's headquarters facility; and PERB is still waiting for the outcome of the Department of Finance's Mission-Based Review. She expects the outcome of the review on October 29th.

- **General Counsel's Report**

Felix De La Torre, General Counsel, reported that OGC received 116 new unfair practice charges. In the prior two-month period, OGC had received 109 charges.

In August and September, the OGC completed 94 case investigations. In the prior two-month period, OGC had completed 132 case investigations.

In the last two months, the General Counsel's Office issued 47 complaints and dismissed 21 charges. In June and July, OGC issued 45 complaints and dismissed 18 charges.

The case processing time increased with a two-month average of 167 days in August and September compared to 150 days in June and July.

The number of completed litigation matters increased to 17 from the 4 completed in June and July. Fact-finding requests also increased from 10 in June and July to 11 in August and September.

Representation petitions remained the same; 17 in June and July, 17 in August and September.

Mr. De La Torre stated that nine new litigation matters have been filed against or by PERB and gave the status on each.

Mr. De La Torre updated the Board on Assembly Bill 2305, Assembly Bill 2886, and Assembly Bill 3034. Governor Brown vetoed all three, expressing reluctance to expand the Board's jurisdiction without first addressing its underfunding and consequent backlog. However, the Governor did sign SB 1085, a bill relating to leaves of absence for union business.

Mr. De La Torre introduced two new regional attorneys in the Los Angeles Regional Office, Seth Williams and Diana Suarez.

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

Shawn Cloughesy, Chief Administrative Law Judge, announced the appointment of two Administrative Law Judges, Katharine Nyman and Scott Miller, both having completed their first case.

Regarding the current calendar, Chief Administrative Law Judge Cloughesy stated that all three offices are scheduling cases about 3-1/2 months out from the informal conference. The number of cases is about the same as last year at this point.

This year, the number of days of hearing is down slightly, but the number of proposed decisions issued is nearly the same as last year. Average number of days for

issuance of a decision has dropped by about 50 days from last year.

Exceptions ratios is down to 25 percent. Last year's rate was about 43-44 percent overall.

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

In lieu of appearance, Division Chief Loretta van der Pol submitted a written report.

**Motion:** Motion by Member Winslow and seconded by Member Shiners to accept the Executive Staff reports.

**Ayes:** Shiners, Krantz, Banks, Winslow

**Motion Adopted - 4 to 0**

- **Old Business**

Chief Administrative Law Judge Cloughesy provided an update regarding the progress of Case Processing Efficiencies Initiatives.

- **New Business**

Ms. Aguayo proffered budget charts to the Board. Ms. Aguayo provided a list of unfunded needs for the Board's consideration. The Board deferred any decision on this item.

Ms. Aguayo stated that PERB will have ongoing mandatory cybersecurity assessments and audits. The first assessment occurred two years ago and a second one is due before June 30, 2019. The estimated cost for assessments is 50 thousand dollars. Cost for an audit remains unknown.

Ms. Aguayo also reported that PERB has unknown costs for the Department of Justice's representation of PERB in *Janus*-related litigation.

Mr. De La Torre added that at the present time, PERB has five *Janus*-related lawsuits in which the Department of Justice is representing the Board. A motion to dismiss one of the cases will be heard in early November.

Sheena Farro, regional attorney, presented the Board with a packet of proposed changes to PERB's regulatory text. This included a new chapter to the Government code titled, *The Prohibition on Public Employers Deterring or Discouraging Union Membership*, assigned the acronym PEDD.

Chief Administrative Law Judge Cloughesy updated the Board on the progress in

revisions to the language in the non-precedential/precedential regulation.

- **Public Comment**

Kerianne Steele, an attorney with the Weinberg, Roger and Rosenfeld Law Firm, speaking on behalf of SEIU California, urged the Board to include proposed regulation 32611, the definition of employer unfair practices under the PEDD. She presented a letter of suggested language to the regulation and provided detailed clarification in support of its contents.

Caitlin Vega, Legislative Director for the California Labor Federation, supported language in the regulations that would clarify what does and does not constitute an unfair practice. She stated that such clarity would enable the enforcement of SB 285.

**Motion:** Motion by Member Winslow and seconded by Member Banks that the amendment suggested in the October 11th letter from Ms. Steele be adopted into the proposed regulations, including her suggested language on subsection (c).

**Ayes:** Banks, Winslow, Shiners, Krantz

**Motion Adopted - 4 to 0**

**Motion:** Motion by Member Shiners and seconded by Member Banks to approve the package with the addition noted in the prior motion and the deletion of the proposed regulation 33014 that had been erroneously included.

**Ayes:** Winslow, Shiners, Krantz, Banks

**Motion Adopted - 4 to 0**

Member Krantz opened the discussion on whether the Board should consider delegating authority to the Office of the General Counsel and the Division of Administrative Law to investigate and conduct hearings on alleged violations of the PECC and PEDD.

Mr. De La Torre explained that a temporary delegation of authority is necessary to allow the continued adjudication of cases while the PECC and PEDD regulations move through the administrative rulemaking process.

**Motion:** Motion by Member Banks and seconded by Member Shiners to approve the temporary delegation of authority to the Office of the General Counsel and Division of Administrative Law to investigate and conduct hearings on alleged violations of the PECC and PEDD until such time as the new regulations become final.

**Ayes:** Winslow, Banks, Shiners, Krantz

**Motion Adopted - 4 to 0**

Mr. De La Torre stated that he has circulated an email among attorneys at the Office of the General Counsel instructing that they are not to enforce any of the statutes, regulations, and precedential decisions upholding the fair-share fee statutes.

He requested the Board confirm this directive by formal announcement.

**Motion:** Motion by Member Shiners and seconded by Member Krantz to approve the General Counsel's decision that in the wake of *Janus v. AFSCME*, PERB will no longer enforce existing statutory or regulatory provisions requiring non-members to pay an agency fee without having consented to such a fee, including those statutory and regulatory provisions listed under the current agenda item in the public agenda in the current meeting.

**Ayes:** Winslow, Shiners, Banks, Krantz

**Motion Adopted - 4 to 0**

- **Meeting Adjourned.**

Member Krantz stated that, immediately upon recess, the Board will be in continuous closed session each business day until the next regularly scheduled meeting on December 13th, 2018.

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

**Ayes:** Banks, Shiners, Winslow, Krantz

**Motion Adopted - 4 to 0**

APPROVED AT THE PUBLIC MEETING OF: **December 13, 2018**

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Arthur A. Krantz, Board Member