

PUBLIC MEETING MINUTES

OCTOBER 10, 2019

10:00 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office

1031 18th Street

Sacramento, California

Members Present

ARTHUR A. KRANTZ, Member

ERIC R. BANKS, Member

ERICH W. SHINERS, Member

LOU E. PAULSON, Member

Quorum Present? Yes

Executive Staff Present

JOSHUA GOLKA, Executive Director

MARY ANN AGUAYO, Deputy Executive Director

FELIX DE LA TORRE, General Counsel

SHAWN CLOUGHESY, Chief Administrative Law Judge

LORETTA VAN DER POL, Division Chief, SMCS

JERRY FECHER, Chairperson, Disability Advisory Committee

Proceedings:

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

Since August 8th, 2019, the Board has been in continuous closed session to deliberate on pending cases on the Board's docket.

Member Krantz read into the record the following decision numbers: 2639, 2647, 2650a-P, 2659-M, 2660-S, 2661, 2662, 2663-M, 2664-M, 2665-S, 2666, 2667-P, 2668-S, 2669, 2670-M, 2671, 2672-S.

Additionally, Member Krantz listed two administrative determinations, Ad-474 and Ad-475, and four requests for injunctive relief, IR 766 denied, IR 777 denied, IR 778 denied, and IR 779 denied.

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

Motion: Motion by Member Banks and seconded by Member Shiners to close the August 8th, 2019 Public Meeting.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Adoption of Minutes

Member Krantz officially opened the Public Meeting of October 10, 2019, by asking the Board if they would like to discuss potential corrections to the minutes of August 8th, 2019, or move to approve it.

Motion: Motion by Member Shiners and seconded by Member Paulson to approve the minutes of the August 8th, 2019 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.

Executive Staff Reports:

Joshua Golka, Executive Director, reported that PERB is currently working on the annual report for submission to the Legislature later this month. He thanked all divisions for preparing their sections to be included in the report.

Mr. Golka gave the following legislative updates: The Governor has taken action on Assembly Bill 378, the Childcare Measure, which gives family childcare providers the right to form, join, and participate in the activities of a labor organization. As of January 1, 2020, organizations will be able to file unfair practice charges, although they won't be able to certify as a bargaining unit until April 2020.

The Governor has not taken action on Assembly Bill 355, the Orange County Transportation Authority Bill, which would put the OCTA's unfair labor practice charges under PERB's jurisdiction.

Mr. Golka provided updates in regulatory matters stating that the comment period regarding the PEDD, PECC and precedential decisions package has been completed. PERB is currently wrapping up the regulatory packages by putting all the documents together, including the initial statement of reasons, the fiscal impact statements, and the notice of proposed rulemaking, which are required for the final submission to the Office of Administrative Law.

Mr. Golka described an audit letter received from the California Department of Technology; related to an audit of PERB's Information Security Program. PERB has a commitment from the Labor Agency to work with PERB through the audit process.

Simultaneously, PERB is working to address issues with website accessibility in order to in compliance with new requirements by January 1 of 2020.

Mr. Golka then thanked Kristina Gonzalez for her hard work on the Our Promise campaign, which is wrapping up this month. Mr. Golka, having completed one year with PERB, expressed his gratitude and appreciation to the Board and staff.

Deputy Executive Director's Report

Mary Ann Aguayo, Deputy Executive Director, stated that 98 thousand dollar surplus is projected and that she is in active discussion with the Department of Finance regarding budget change proposals.

Ms. Aguayo further stated that her staff provided training to all managers on processing travel expense claims; thereby creating a more efficient process moving forward.

Ms. Aguayo stated that the Department of General Services will be reviewing PERB's procurement delegation in December of 2019. Ms. Aguayo's staff is in the process of consolidating all information in preparation of the review.

Ms. Aguayo provided a chart that identified position vacancies and the five recruitments that are underway for Human Resources.

Ms. Aguayo updated the Board on the progress of Information Technology, stating that, despite some delays, PERB is getting ready to roll out ePERB. Ms. Aguayo is coordinating closely with the ePERB vendor and CloudKeeper, the IT contractor, who will migrate the data over, then migrate ePERB users to O365. Approximately one month after the roll out, it is planned that the web portal will be in place for online filing and case tracking by the constituents.

Web page accessibility is a new mandate and PERB must be in compliance by December 31st. Ms. Aguayo reported that they have submitted plans to achieve compliance and will be submitting bi-weekly reports to Labor Agency on the progress made towards completion. Training on how to develop compliant documents and how to remediate documents will also take place for staff.

For cyber security compliance corrective action plans have also been prepared and have been progressing over the past 2-1/2 years to correct deficiencies, yet it has not been enough to achieve compliance since there

have been no fund augmentations in the IT area to accomplish growing requirements.

Ms. Aguayo welcomed a new hire, Information Technology Specialist II Polly Vaitayanonta.

Lastly, Ms. Aguayo updated the Board on facility matters, stating that a lease has been signed for Headquarters and that they are waiting for the contractor to provide a schedule with minimal operational interruptions while modifications are made.

The relocation of the San Francisco Regional Office is on hold until the Department of Finance approves the program data on the cost estimates prepared by the Department of General Services. Once an agreement is reached, a site search for the SFRO will commence.

General Counsel's Report

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 90 new unfair practice charges during August and September, which is a decrease from the 116 received during June and July.

In August and September, the General Counsel's Office completed 124 case investigations, which is an increase over the prior two-month period of 116 case investigations completed.

In the past two months, the General Counsel's Office issued 68 complaints and dismissed 23 charges. This is compared to 47 complaints issued and 29 charges dismissed in June and July.

Case processing time decreased from a two-month average of 170 days in June and July to 164 days in August and September.

The number of litigation matters that the General Counsel's Office completed increased from 17 matters in June and July to 19 in August and September.

Fact-finding requests also increased; in June and July there were 12 requests for factfinding while in August and September there were 16 requests.

Representation petitions also increased from nine petitions in June and July to ten in August and September.

Since the last Board meeting, the General Counsel's Office has received three requests, and the Board resolved a fourth request that had been filed

earlier in the year.

Mr. De La Torre then provided details on the five new court litigation matters that have been filed against PERB, and the details of one final determination made since the last Board meeting.

Chief Administrative Law Judge's Report

Shawn Cloughesy, Chief Administrative Law Judge, provided the highlights of the last quarter stating that cases are being set approximately three months out from the date of the informal process.

The assignment of cases, the total days of hearing, the number of formal hearings completed and proposed decisions issued are all up from last year.

The average number of days before issuing a decision is down to 105, which is 20 days less than the first quarter of the last fiscal year; however, the exceptions ratio is up to 50 percent compared to the last fiscal year of 33-34 percent.

SMCS, Division Chief's Report

Loretta van der Pol, Division Chief, State Mediation and Conciliation Service, (SMCS), provided a written report to the Board detailing the case processing over the last two months. August and September were light months; only 72 new cases were received in that timeframe.

Two candidates were extended offers for conciliator positions; one is being finalized this week and is expected to join SMCS on November 4th, the second candidate's start date is extended out until after the New Year.

Lastly, Ms. van der Pol reported on the revenue collected, year-to-date, which totaled \$31,058.50 at the end of September.

Disability Advisory Committee, Chairperson's Report

Jerry Fecher, Chairperson, Disability Advisory Committee, (DAC), provided a handout to the Board that detailed DAC's recent accomplishments and future goals.

Mr. Fecher explained the roots of DAC and its purpose, one goal being to use technology to increase participation and membership throughout all divisions.

He expressed his appreciation to the Board for the opportunity to present and for creating the DAC as a vessel for employees.

Motion: Motion by Member Banks and seconded by Member Shiners to accept the staff reports.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Old Business

Mr. Golka updated the Board on the progress of implementing the priorities gleaned from the Case Processing Efficiencies Initiative, particularly two issues they have yet to tackle; one relating to the pro per training and the second relating to the expedited decision process.

A planned discussion will be held among stakeholders and staff on the aforementioned two issues after the Board's meeting in February 2020.

Chief Administrative Law Judge Cloughesy addressed the issue of the amendments to PERB Regulation 32205, which governs the requirements for requesting a continuance.

ALJ Cloughesy stated that the intent was to lengthen the five-day period to seven days to request a continuance, which would ensure two things; one, the certainty that the seven days would be a business day, and two, it would give a bit more time for a response.

ALJ Cloughesy also explained what necessitated changing some terms regarding continuances, including *unusual circumstances* versus *exceptional circumstances*, and the adherence to and definition of *good cause*.

Motion: Motion by Member Paulson and seconded by Member Shiners to submit the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process to amend PERB's regulation on continuance requirements.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Member Krantz then updated fellow Board members on about the changes made to PERB Regulation 32155, which governs recusal of PERB personnel. Member Krantz stated, that although the General Counsel had made the adjustments the Board approved at the last public meeting, there was one change that had not been discussed previously, the addition to the regulation of the rule of necessity for the rare occurrence that a recusal results in only one Board member able to hear a case, which is not allowed.

Member Shiners added that the first sentence of subsection (d) needed further clarification, and Board members agreed.

Motion: Motion by Member Shiners and seconded by Member Paulson to submit the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process to amend regulation 32155 with an additional amendment as noted by Members Shiners and with the existing subcommittee of Member Krantz and Member Banks to work with the Office of the General Counsel as necessary to make the adjustment.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

Mr. De La Torre introduced and welcomed the newest Regional Attorney, Camille Binon, who came to PERB from CalHR.

Mr. De La Torre then updated the Board on the progress made to regulation package surrounding e-filing and the use of electronic signatures, the definition of which is consistent with the State's Uniform Electronic Transactions Act and applies to all State agencies that are authorized to use electronic signatures.

Additionally, the proposed language is consistent with the language of the new Childcare Provider Act, which is the first time the Legislature has included any rules for PERB regarding electronic signatures.

Mr. De La Torre also explained the exceptions to the e-filing requirements currently under the regulations for unrepresented parties, the updates to the regulations regarding the handling and processing of confidential documents, and the deletion of fax filing as an allowable method for transferring documents.

Lastly, the Office of the General Counsel worked on consolidating language that was spread across different acts, the goal being to make the information easier to find for constituents.

Jeff Sloan, an Attorney with Sloan Sakai Yeung and Wong, expressed his appreciation to the Board for policing the statutes and overseeing the collective bargaining system for the public sector.

Mr. Sloan then directed the Board to a position statement submitted by Tim Yeung, a partner in the Sloan Sakai Yeung and Wong law firm.

Mr. Sloan highlighted two particular points in the statement; the first point is in regards to the authorization cards and the proposed regulation that changes its one year validity to two years, and the second point deals with e-filing and certain issues in the proposed language.

Motion: Motion by Member Paulson and seconded by Member Banks to table

the matter until the December meeting.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

New Business

There was no new business at this Board meeting.

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 12th, 2019.

Motion: Motion by Member Banks 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: **December 12, 2019**

Arthur A. Krantz, Board Member