

## **PUBLIC MEETING MINUTES**

JULY 23, 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

FELIX DE LA TORRE, General Counsel

SHAWN CLOUGHESY, Chief Administrative Law Judge

LORETTA VAN DER POL, Director, SMCS

SUSAN DAVEY, Deputy Executive Director

#### **Proceedings:**

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

Since February 6, 2020, the Board has been in continuous closed session to deliberate on pending cases on the Board's docket. A list of those decisions, determinations, and resolutions can be found on PERB's website.

**Motion:** Motion by Member Paulson and seconded by Member Krantz to close the February 6, 2020, Public Meeting.

**Ayes:** Krantz, Banks, Shiners, Paulson

**Motion Adopted - 4 to 0**

#### **Adoption of Minutes**

Member Banks officially opened the Public Meeting of July 23, 2020, by asking the Board if they would like to discuss potential corrections to the minutes of February 6, 2020, or move to approve it.

**Motion:** Motion by Member Shiners and seconded by Member Paulson to approve the minutes of the February 6, 2020, Public Meeting.

**Ayes:** Krantz, Banks, Shiners, Paulson

**Motion Adopted - 4 to 0**

### **Public Comment**

Written comments from Ms. Valerie Trahan, Mr. Brian Crowell and Mr. Stacy Willoughby were received prior to the public meeting. To request a copy of the written comment, please email Cheryl.Shelly@perb.ca.gov.

Mitch Steiger of the California Labor Federation spoke in support of the proposed regulation changes related to allowing electronic authorization for representation elections. He stated that in the era of COVID 19, the whole process has moved to online and he urged the Board to make sure it happens as soon as possible to help those workers who do want to be represented by a union be able to exercise that right in a safe and effective manner.

Before moving to staff reports, Member Banks took the opportunity to thank PERB staff for their hard work and dedication in continuing to deliver services to constituents during the COVID-19 crisis.

### **Executive Staff Reports:**

Joshua Golka, Executive Director, echoed thanks to both PERB staff and constituents for their patience and understanding as we navigate these unprecedented times.

Mr. Golka congratulated the Board for issuing an impressive 101 decisions during the 2019/2020 Fiscal Year. He pointed out that the Board has a historically low Board Docket compared to previous years, hovering around 20 cases. He stated that we are working on the annual report which is due in October 2020.

On the legislative front, Mr. Golka reported that PERB is tracking three active bills that would have an impact on PERB: Assembly Bill 2850, 3096, and 1173. Regarding regulations, Mr. Golka reported that the Transit Regulations that are being worked on by PERB staff will be before the Board at the October public meeting. He stated that

PERB staff are continuing work on a number of regulations that the Board has approved and will submit to OAL once completed.

Mr. Golka noted that PERB will lose some of our most experienced staff and dedicated public servants who will be retiring over the next year. He mentioned that we will miss them greatly. Mr. Golka acknowledged that the Director of State Mediation and Conciliation Services, Loretta van der Pol, will be retiring before the next public meeting. He thanked her for her service and for helping make SMCS a division that we are proud of. He also welcomed Susan Davey, Deputy Executive Director, who was hired in March 2020.

#### **REPORT – DIVISION OF ADMINISTRATION:**

Deputy Executive Director Susan Davey reported on the Administration Division, beginning with Human Resources. She reported that the 2017 SPB audit is closed. There are plans of action in place so we will be in compliance with the audit findings by the end of August 2020. Ms. Davey reported that there was a staff change in the HR Department and welcomed Andrea Duarte as part of the team.

For staffing, Ms. Davey reported that we have 71.5 filled permanent positions, one limited term position, one position we use for retired annuitants for a total of 73.5 and two vacancies. She reported on promotions in place, filled vacancies and active recruitments.

The Accounting Division is working on year end and has closed fiscal month 12 ahead of schedule. She reported that there was \$1,022,804 left over from fiscal year 2019/2020 because the request for an architectural revolving fund for the Oakland Office move was denied due to the budget crisis. She also reported that accounting work related to Fi\$Cal has been transitioned to the Department of General Services.

She announced two new travel programs PERB staff will be participating in: a Virtual Credit Card Number and a program called CalATERS Global which allows for the electronic processing of travel claims - reducing reimbursement times.

Ms. Davey stated that the Budgets Department is working hard with the new allocations coming in. They are accounting for additional IT accounting costs, subscriptions, upgrades and new equipment in order to be far more secure.

For the budget projections for this year, Ms. Davey stated we are looking at a small surplus. She noted that PERB will save on travel since we are not traveling as much at

the current time. She stated that the technology that PERB invested in during the last fiscal year set PERB up well for savings in travel.

Ms. Davey stated that Procurement Division underwent audit from DGS and did very well. She reported that PERB's accreditation for purchasing was raised to a Tier 2 level. She also reported that for IT competitive bids PERB has approval to purchase up to \$100,000 and for non-IT bids up to \$50,000.

Regarding information technology, she stated that they have been working with the Labor Agency to upgrade our system. We are going cloud-based which will be very helpful, especially with telework which is happening now. She also reported on equipment upgrades. She stated that these upgrades will save time with the automation it brings to PERB, and that the expected completion for the IT modernization project is fall of this year.

For Facilities, Ms. Davey reported that the Sacramento Headquarters building is currently undergoing construction to make building modifications. Ms. Davey reported that the lease for the San Francisco Regional Office expires August 2021. She stated they have been working with DGS but have not located a new office location yet.

Ms. Davey stated that the ePERB Public Portal is expected to launch very soon. She reported that the internal platform is now up and running and has been very helpful during the office closure.

For document remediation, Ms. Davey reported that we have a plan to utilize our current legal support staff to remediate documents to help alleviate the backlog. We are also going to hire student interns to serve in this function.

Ms. Davey reported that in response to the COVID-19 pandemic, Administrative Services was able to procure equipment and supplies for our staff so that we were able to send everyone home with a computer so that they are able to do their job duties online. We have also been complying with the reporting that's required through the GovOps portal. She stated that we purchased mobile hearing packs for our administrative law judges so they can conduct hearings virtually. Ms. Davey stated that most business can be conducted with PERB virtually, but all of our offices are still open 8:00 a.m. to 5:00 p.m., Monday through Friday at all locations. Appointments are required for in person visits to our offices.

Ms. Davey reported that three PERB employees are participating in the contract tracing assignments required by the Governor's office. We were able to give up one

procurement analyst, one accounting position, and one conciliator position from SMCS. She stated that the assignments are expected to last six to nine months.

Member Banks thanked Ms. Davey for her comprehensive administration report.

### **General Counsel's Report**

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 71 new unfair practice charges in May and June, which is a decrease from the 73 received last March and April.

In May and June, the General Counsel's Office completed 81 case investigations, which is a slight increase over the prior two-month period of 78 completed case investigations.

In the past two months, the General Counsel's Office issued 46 complaints and dismissed 19 charges. This is compared to 41 complaints issued and 15 charges dismissed in March and April.

Mr. De La Torre reported that we still do not have accurate case processing times as it is still a feature in ePERB that has not been perfected.

Factfinding requests decreased slightly. In May and June, the General Counsel's Office had received three factfinding requests, while in March and April, they had received four.

Representation petitions decreased from 28 petitions in March and April to 27 petitions in May and June.

Since the last Board meeting of February 6, 2020, the General Counsel's Office has received five requests for injunctive relief and 14 new litigation matters filed against PERB. Mr. De La Torre provided the details and status on each of the cases.

Lastly, Mr. De La Torre gave an update on the Childcare Providers Act election. He stated that America Arbitration Association would be in the headquarters office tomorrow, July 24, to tally the results of the first child care provider election in the State of California. He stated that this new law was passed under the Governor last year, under the Building a Better Early Care and Education System Act, but we call it the Child Care Provider Act. There are approximately 9,500 ballots that will be tallied to determine if the child care providers have selected California Child Care Providers United as their exclusive representative.

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

Shawn Cloughesy, Chief Administrative Law Judge, stated that all three regional offices are setting cases approximately four to five months out from the date of the informal. He stated that the reason for the extra time is due to the COVID-19 pandemic resulting in cancellation of hearings.

Judge Cloughesy stated that the number of pending written decisions has decreased significantly from the prior year, while the number of active cases in the queue remains the same.

The number of proposed decisions is about the same as the prior year. There was a drop in the number of cases heard and number of completed cases due to the fact that a number of cases were canceled because of the COVID-19 pandemic.

He reported that there are 101 cases awaiting hearing and the number of cases pending a proposed decision is low.

He stated that the exceptions ratio is about 40 percent, which is a little lower than usual which is around 42 to 43 percent.

Judge Cloughesy stated that the administrative law judges have begun virtual hearings back in June. Virtual hearing rooms are set up in Sacramento, Glendale and Oakland and all of the judges are being trained.

Lastly, Judge Cloughesy announced the upcoming retirement of Judge Donn Ginoza. He stated that he is going to be greatly missed.

Member Krantz thanked the judges in the division for getting hearings going again in this difficult time. He echoed that Judge Donn Ginoza will be greatly missed.

## **State Mediation and Conciliation Service, Division Chief's Report**

Loretta van der Pol, Division Chief, State Mediation and Conciliation Service (SMCS), stated that SMCS caseloads have been very low because of the COVID-19 pandemic. She stated that the video conference mediations take twice as long as they normally do in person, but that they are just as effective as they are in person.

Ms. van der Pol discussed how the SMCS staff does a short meeting ahead of the conference so that they can make sure that everybody's equipment works and they understand how the conference rooms and the waiting room all work.

For representation cases, Ms. van der pol stated that there are three active cases right now, which is low for representation cases.

Ms. van der Pol thanked the Administration Division for providing emergency supplies to the mediators during the COVID-19 pandemic very quickly.

Ms. van der Pol stated that SMCS collected \$50,041 in Fiscal Year 2019/2020, stating that \$31,000 was from the Panel of Arbitrators program.

Ms. van der pol gave an update on staff in her division. Jayson Hernandez took a position with another state department and we were able to hire Jessica Chernioglo to fill that position.

She stated that one mediator, Sandra Pool, is working with the statewide contract tracing program and that all of her cases have been reassigned.

Ms. van der Pol then confirmed that she will be retiring effective October 1, 2020. She stated she has been with SMCS for about 10½ years. She stated that she loved working with PERB after SMCS was realigned from the Department of Industrial Relations.

Member Banks, Member Krantz, Member Shiners and Member Paulson all thanked Ms. van der Pol for everything she has done and wished her the best.

**Motion:** Motion by Member Shiners 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. In February 2020, PERB held a stakeholder meeting in Sacramento to discuss two issues in the Case Processing Efficiency Initiative, one was the expedited decision process and the second was pro per training. He mentioned that COVID-19 has slowed down progress we were hoping to make and stated that we would have an update on both recommendations at the next Board Meeting.

Member Banks stated the next item on the agenda was that the Board would consider an addition to the previously approved amendments to existing regulations governing filing regulation. He asked General Counsel Felix De La Torre to present the proposed changes to the rulemaking package.

Mr. De La Torre gave some background on the comprehensive larger e-filing regulation that the Board previously approved to update PERB regulations. He stated one delay in moving it through the rulemaking process was because we were developing our new ePERB system and its capabilities around e-service and other areas were unknown. He stated that we are making sure our regulations are consistent with the ePERB processes. He also mentioned that COVID was another reason for the delay as PERB was transitioning to teleworking and productivity of our regulations packages was challenging. He stated that being forced into telework and doing everything electronically allowed to access where there may be gaps in our regulations. The amendment to the rulemaking package was one of the gaps that was discovered.

Mr. De La Torre stated that the new regulations would be number 32111, entitled Notice to Employees Assigned Remote Work. It allows a Board Agent to direct public employers who have to do postings related to representation cases, to do so electronically or by some electronic means. PERB's current regulations require physical postings at the workplace. In a circumstance like right now where employees are not at the workplace because of teleworking, it would be pointless to post something physically at the workplace around a representation election. It would allow the Board Agent under any of the Acts to direct this different type of posting.

Mr. De La Torre stated that this e-filing package is a priority and our goal is to move this as fast as possible. He mentioned that we have to do have to rely on other agencies, but PERB will move quickly because we understand that there is a need to contact these employees and stated that when our current ePERB system rolls out it won't be consistent with what our regulations say and may cause confusion.

Member Shiners stated that it was not clear from the language that this was limited to representation postings. He stated that it could also apply to orders from unfair practice charge cases. He wanted to clarify that if it is only to apply to representation cases, the language should be changed and maybe it should be moved to a different location in the regulations rather than general provisions so it is clear that it applies to one particular type of case and not to UPC cases. Mr. De La Torre agreed and mentioned that the regulation does not have any impact on the Board's authority to issue orders of

any type. He stated he would work on the language and circulate it to make sure it complies with Member Shiners' request.

Member Krantz stated that he supports the language and thanked Mr. De La Torre for making this a priority. He urged that anything the agency can do to get this in effect as soon as possible would be appreciated.

Member Banks thanked Mr. De La Torre and stated he supports Member Shiners' suggestion.

Mr. De La Torre noted that the Office of Administrative Law has a process to allow a regulation to take effect sooner than generally scheduled. He will work with Executive Director Joshua Golka to advocate for the earliest possible publication to get this new regulation on the books quickly as soon as possible.

Member Banks stated that there is a subcommittee on the Board working on regulations, Member Krantz and himself. He asked for a motion to approve submitting the rules regulation rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process regarding proposed regulations on filing requirements with the existing committee of himself and Member Krantz to approve the Office of the General Counsel's changes to assure conformance with today's discussion.

**Motion:** Motion by Member Paulson and seconded by Member Paulson that the Board approve submitting the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process

**Ayes:** Krantz, Banks, Shiners, Paulson

**Motion Adopted - 4 to 0**

Member Banks moved on to New Business. He stated that the Board annually reviews the policy for compensating factfinding panel chairpersons for potential modification. He asked Deputy Executive Director Susan Davey to present the item and answer any questions from the Board.

## **New Business**

Ms. Davey stated that the Educational Employment Relations Act and Higher Educational Employer-Employee Relations Acts require that PERB select and bear the cost of factfinding panel chairpersons to, in addition to the per diem and travel expenses for these cases. She stated that the prior factfinding service was set at \$1,300 a day

plus per diem and travel expenses for a maximum of five days. The maximum contract is \$6,500. Ms. Davey recommended that PERB keep the same rate for the current fiscal year. The previous two years averaged about 12 cases per year and about \$40,000. She indicated that travel is paid outside of the contract and that they try to locate panel members within the region as much as possible. With no questions or comments from the public or Board Members, Member Banks asked for a motion to approve the staff recommendation to keep the factfinder panel member compensation the same.

**Motion:** Motion by Member Krantz and seconded by Member Paulson that the Board make no changes to the policy compensating factfinding panel chairpersons.

**Ayes:** Krantz, Banks, Shiners, Paulson

**Motion Adopted - 4 to 0**

**Meeting Adjourned.**

Member Banks stated that, immediately upon recess, the Board will be in continuous closed session each business day until the next regularly scheduled Board meeting on October 8, 2020, currently scheduled for the Los Angeles Regional Office, 425 West Broadway, Suite 400, in Glendale, California. He indicated that the location is tentative depending on where we are currently in the pandemic.

Member Banks asked for a motion to close this public meeting to recess to closed session.

**Motion:** Motion by Member Paulson 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: October 8, 2020

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