

**PUBLIC MEETING MINUTES**

**Virtual Meeting**

DECEMBER 10, 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

SUSAN DAVEY, Deputy Executive Director

FELIX DE LA TORRE, General Counsel

SHAWN CLOUGHESY, Chief Administrative Law Judge

GERALD FECHER, Interim Director, SMCS

**Proceedings:**

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

Since October 8, 2020, the Board has been in continuous closed session to deliberate on cases pending on the Board's docket. A list of those Board decisions, determinations, and resolutions can be viewed on PERB's website.

**Motion:** Motion by Member Banks and seconded by Member Paulson to close the October 8, 2020 Public Meeting.

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

**Motion Adopted - 4 to 0**

**Adoption of Minutes**

Member Shiners officially opened the Public Meeting of December 10, 2020, by asking the Board if they would like to discuss potential corrections to the minutes of October 8, 2020, or move to approve it.

**Motion:** Motion by Member Krantz and seconded by Member Banks to approve the minutes of the October 8, 2020 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, provided a quick COVID update regarding the Governor's latest regional stay-at-home order, stating that PERB offices remain open though with limited in-office days for staff to ensure continuity of services.

Mr. Golka stated that the annual report is now posted on PERB's website. He thanked the staff for their work in preparing the report for production.

In a legislative update, Mr. Golka stated that the Legislature is back in session. Two hundred bills have already been introduced, though none impacting PERB directly. Staff continues to work on compiling the background documents for the seven regulatory packages the Board has approved for submission to the Office of Administrative Law.

Mr. Golka thanked the staff for their hard work and flexibility in navigating this unprecedented year.

### **Report - Division of Administration**

Susan Davey, Deputy Executive Director, reported that PERB currently has 72 filled positions, four vacancies, and is actively recruiting for an administrative law judge to replace a retiring judge.

Ms. Davey welcomed newly hired Mai Heu, Luana Chen, and Brian Beyersdorf. She also announced the recent promotions of Stacy Taylor and Nikoo Seirafi, and the out-of-class assignment of Jun Payoyo at SMCS.

In a budget update, Ms. Davey projects \$504,203 left over at the end of the fiscal year, a surplus largely due to the vacant chair and legal advisor positions.

Ms. Davey stated that the IT project is still underway and hopes to implement, by the year end, a mobile device management system on the State-issued cellphones that were provided to PERB employees.

Providing an update on Facilities, Ms. Davey stated that the construction project on the Sacramento Headquarters Office has had its final walk-through, and the contractors are now finishing up on identified corrections.

Ms. Davey stated that they're obtaining quotes from multiple vendors to get the historical Board decisions remediated, which is necessary to be compliant with AB 434 by August 31 of 2021.

In response to COVID, the staff primarily work from home. The added expenditure in the current fiscal year is \$83,031, bringing the total to \$166,794. The amount also includes the wages of two full-time PERB employees devoted to contact tracing. The Governor's office has extended the contact tracing assignments until June of 2021.

### **Report - Office of the General Counsel**

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 107 new unfair practice charges, a slight increase from

the prior two-month period of 105.

In October and November, the General Counsel's Office completed 108 case investigations, an increase from the 86 investigations completed in the prior two-months.

In October and November, the General Counsel's Office issued 52 complaints and dismissed 21 charges. This compares to the prior two months of 51 complaints issued and 16 charges dismissed.

Factfinding requests decreased; the GC Office received six requests in October and November as compared to nine requests in the prior two-month period.

The number of representation petitions increased from 30 petitions in August and September to 34 in October and November.

Since the last Board meeting, the Office of the General Counsel has received one injunctive relief request, four litigation matters filed against PERB, and two final case determinations. Mr. De La Torre provided the details and the status on each.

### **Report - Division of Administrative Law**

Shawn Cloughesy, Chief Administrative Law Judge, stated that they are basically caught up from the March to June shutdown, now setting cases three to four months from the informal.

The number of hearing days is twice the number in an ordinary year, last year having 79 hearing days compared to 154 this year. Active cases -- cases set for hearing or writing a proposed decision -- is approximately 21 percent higher than the previous year.

The number of case closures, withdrawals, and proposed decisions is nearly the same as the year before.

Exceptions ratio had been 33 percent, but recently climbed to 40 percent.

Average number of days for issuing a proposed decision is about 82 days, a number Judge Cloughesy expects to grow during the next phase of catch-up.

## **Report - State Mediation & Conciliation Service (SMCS)**

Gerald Fecher, Interim Director, reported an uptick in new case requests. SMCS received three representation cases in October and five representation cases in November.

All mediations and other services are currently held remotely via teleconference or videoconference; however, SMCS continues to actively monitor the infection rates through the State to ascertain when it would be safe to return to in-person mediation.

For program administration, Mr. Fecher reported that, in October, SMCS received a total of \$1,355.00 for chargeable services; the Arbitration Panel Program yielding \$1,125.00 and Conflict Resolution in the Workplace Program receiving \$230.00.

For November, SMCS's chargeable services totaled \$1,895.00; the Arbitration Panel Program yielding \$975.00 and the Conflict Resolution in the Workplace Program receiving \$920.00.

Mr. Fecher stated that the SMCS staff continue to be involved in training and outreach projects, including national and state webinars with the Association of Labor Relations Agencies and the National Academy of Arbitrators.

SMCS continues to have one mediator assigned to the State's contact tracing task force. This assignment is expected to continue for up to four more months.

Mr. Fecher reiterated Ms. Davey's announcement of Jun Payoyo's appointment to Interim Presiding Conciliator. This position was temporarily vacated when Mr. Fecher was appointed Interim Director effective October 1, 2020.

Member Paulson and Member Banks expressed their appreciation to Mr. Fecher and to his staff for their hard work on case resolution.

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

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

## **Motion Adopted - 4 to 0**

### **Old Business**

Mr. Golka presented two brief updates on the Case Processing Efficiency Initiatives. 1) On December 7th, 2020, the final rulemaking package was submitted to the Office of Administrative Law for their final review and determination. 2) Staff continue to modify the PERB website to make it more transparent and easier to navigate.

Member Krantz thanked everyone at the Office of the General Counsel for their expediency in turning out the package of proposed regulations.

Mr. De La Torre presented the substantive modifications the subcommittee made to the proposed transit regulations, and he provided the reason for each change. He stated that the proposed regulations have been publicly shared on PERB's website.

Member Shiners thanked the drafting subcommittee for resolving the issues in the proposed regulations.

**Motion:** Motion by Member Paulson and seconded by Member Banks to approve submitting the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process regarding the proposed regulations governing transit districts.

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

## **Motion Adopted - 4 to 0**

### **New Business**

Chief Judge Cloughesy presented the amendments to existing Regulation 32180 governing the rights of parties at hearings. He stated that the proposed modification does two things: 1) It clarifies the definition of *in-person*, and 2) it negates the need for the Governor's executive order to hold a virtual hearing.

**Public Comment :** Kerianne Steele, an attorney with Weinberg,

Roger, & Rosenfeld, asked how the issue would be resolved when one party insists on a virtual hearing and one party insists on an in-person hearing.

Chief Judge Cloughesy stated that, when the parties cannot agree on whether to conduct the hearing virtually or in-person -- an issue that has come up -- the Judge makes a ruling.

**Motion:** Motion by Member Krantz and seconded by Member Banks to approve submitting the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process regarding the amendments to regulation 32180.

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

**Motion Adopted - 4 to 0**

### **Meeting Adjourned**

Member Shiners stated that, immediately upon recess, the Board will meet in continuous closed session until the next regularly scheduled public meeting on February 11, 2021, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. During closed session, the Board will deliberate on cases listed on the Board's docket, personnel matters, pending litigation, and any pending requests for injunctive relief.

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

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

**Motion Adopted - 4 to 0**

APPROVED AT THE PUBLIC MEETING OF:

February 11, 2021

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