

PUBLIC MEETING MINUTES

Virtual Meeting

October 14, 2021

10:00 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office

1031 18th Street

Sacramento, California

Members Present

ERIC R. BANKS, Chair
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, Director, SMCS

Proceedings:

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

Since August 12th, 2021, 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 Paulson and seconded by Member Shiners to close the August 12th, 2021 Public Meeting.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Chair Banks officially opened the Public Meeting of October 14, 2021.

Adoption of Minutes

Chair Banks asked the Board if they had any questions, comments, or corrections to the minutes of August 12th, 2021, or move to approve it.

Motion: Motion by Member Shiners and seconded by Member Paulson to adopt the minutes of the August 12th, 2021 Public Meeting.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Public Comment

Ken Hamidi, President of the California Professional Public Employees Association, (CPPEA), requested that the Board consider an amendment to PERB Regulation 32770(b), which requires 30 percent proof of support for the initiation of a decertification election. He detailed the reasons supporting his request and referred the Board to a letter CPPEA submitted on September 29th, 2021. To request a copy of the written submission, please e-mail Cheryl.Shelly@perb.ca.gov

Kim McElroy, Vice President of CPPEA, echoed Mr. Hamidi's statement, adding that the current regulation is an obstacle to the State employees exercising their rights of voting.

Executive Staff Reports:

Joshua Golka, Executive Director, provided a quick update on five bills that PERB has been following through the legislative process: Senate Bill 270 by Senator Durazo; Senate Bill 598 by Senator Pan; Assembly Bill 273 by Assemblymember Gray; Assembly Bill 1550 by Assemblymember Rivas, and Assembly Bill 1578 by the Assembly Judiciary Committee. These bills have now been signed into law by Governor Newsom.

Mr. Golka also reported that PERB's website has been updated to include a rulemaking page, which will be updated regularly to reflect information about current and recently completed rulemaking packages. Additionally, a PDF of PERB's Regulations has been re-added to the website.

Lastly, Mr. Golka stated that the move of the San Francisco Regional Office (SFRO) from the 15th floor to the 6th floor is now complete.

Report - Division of Administration

Susan Davey, Deputy Executive Director, reported that PERB currently has 69 filled permanent positions and seven vacancies; a Board Member, a Board Advisor, and a Presiding Conciliator, two Legal Support Analysts, an Office Technician, and a Procurement Analyst, the latter four vacancies resulting from employees moving on for promotions within State service.

As a budget update, Ms. Davey stated that 2021-2022 budget reflects a five percent reduction shown in the reports as an expenditure item of 189 thousand. The total allocation with projecting this reduction shows a balance of 50,539 dollars.

Ms. Davey announced that the ePERB contract with Journal Technologies and an RFO for IT consultant services is now complete. Because of telework and State-issued cellphones, landline usage is being reviewed and, if found unnecessary, services discontinued; however, main line, general lines, and lines needed by staff will continue.

Ms. Davey reiterated Mr. Golka's report on the SFRO's move to the 6th Floor, adding that the new lease is only 18 months; therefore, PERB is still searching

for a more permanent work site.

In IT, work continues on replacing the MATS and PASS system for the State Mediation and Conciliation Service (SMCS), and progress continues on deploying a Mobile Device Manager for PERB issued cellphones. Ms. Davey further reported on the kickoff of a new security awareness training program. Future tasks includes upgrading outdated applications, remediating cyber security assessment findings, and creating IT desk procedures.

Report - Office of the General Counsel

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 86 new unfair practice charges in August and September; an increase from the prior two-month period of 76.

In August and September, the General Counsel's Office completed 103 case investigations; an increase from the 85 investigations completed in the prior two-month period.

In August and September, the General Counsel's Office issued 63 complaints and dismissed 23 charges. This compares to the 43 complaints issued and 18 charges dismissed in June and July.

Factfinding requests have also increased. In August and September, the GC Office received 11 factfinding requests compared to five requests received in June and July.

The number of representation petitions increased from 43 in June and July to 50 in August and September.

Since the last Board meeting, the Office of the General Counsel has received three requests for injunctive relief, one new litigation matter filed against PERB, and three final case determinations. Mr. De La Torre provided the details and status on each case.

Report - Division of Administrative Law

Shawn Cloughesy, Chief Administrative Law Judge, stated that cases continue to be set three to four months out from the informal. The number of cases set

for hearing or pending a written decision is mid-110s as compared to the average number of cases pre-pandemic in the mid-90s and the high point of cases this year in the mid-140s. Judge Cloughesy stated that it's a good downward trajectory in regards to catching up with active cases.

The number of hearing days is about the same as the prior year, which was a high year. Number of proposed decisions issued and cases closed is up.

Exceptions ratio is around nine percent.

Report - State Mediation & Conciliation Service (SMCS)

Gerald Fecher, SMCS Director, reported that new case requests increased during September, which was expected as schools are back in session. However, the overall SMCS caseload is higher than usual due to collective bargaining issues relating to the pandemic.

The majority of mediation continues to be conducted by video; however, some mediation has been held in-person when safe and appropriate to do so.

In August, SMCS received seven representation cases; three were card check elections and four were decertification elections. In September, SMCS had six representation cases, all of which were secret ballot decertification elections.

For program administration, SMCS, in August, received a total of \$3,075 for chargeable services, the entirety resulting from the Arbitration Panel Program.

In September, SMCS received a total of \$3,752.50 for chargeable services; \$3,350 from the Arbitration Panel Program and \$402.50 from the Conflict Resolution for the Workplace Mediation Program.

Also in September and as part of a SMCS's continued participation in outreach efforts, SMCS presented on a panel concerning dispute resolution at the National Academy of Arbitrators Annual Meeting for North American members.

Lastly, Mr. Fecher stated that SMCS held an exam for the presiding conciliatory position. He anticipates holding the hiring interview soon and then filling the position, which is currently being filled on an interim basis by Jun Payoyo.

Motion: Motion by Member Krantz and seconded by Member Paulson that the Executive Director of Division of Administration, Office of the General Counsel, Division of Administrative Law, and the State Mediation and Conciliation Service reports be received.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Old Business

Mr. Golka updated the Board regarding the consolidated rulemaking package involving exceptions, continuances, subpoenas and more is now under final review at the Office of Administrative Law.

Additionally, Mr. Golka stated that progress continues on the pro per training portion of the Case Efficiencies Initiative Project by updating and simplifying the website to make it more easily understood and accessible. Moving forward, the site will be offering more substantial training options.

Mr. De La Torre updated the Board on the rulemaking package regarding transit regulations, most significantly, the changes necessary because Governor Newsom signed Senate Bill 598, which places Sacramento Regional Transit (Sac RT) under the Board's jurisdiction when the union decides to opt-in for unfair practice charge processing.

Additionally, Mr. De La Torre stated that these changes to the regulations include revising definitions and making all rules and regulations applicable to Sac RT, except for Subchapter Six, which is not applicable to Sac RT nor to BART nor to Orange County. Additionally, Sac RT District has been added to Subchapter 5, Section 32602, allowing PERB to process unfair practice charges using the current processes.

Member Shiners suggested two edits to the proposed regulation before its submission to the Office of Administrative Law. Though important, neither edit would change the substance of the regulations.

Motion: Motion by Member Shiners and seconded by Member Paulson to

approve submitting the proposed text of the regulations to the Office of Administrative Law in order to initiate the formal rulemaking process regarding the proposed regulations on transit districts, in the same manner used in prior rulemaking packages like JCEERA and case processing, including approving the proposed text of the regulations, authorizing the committee to initiate the rulemaking based on the approved text of the proposed regulations, and authorizing the committee to review, evaluate, and respond to public comments after the 45-day comment period without further Board approval, unless the committee wants to make substantive changes from the previously approved text, in which case the committee must bring the proposed package back to the Board for full approval.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

New Business

Chair Banks stated that, prior to the meeting, the Board received two written comments, one from Kerianne Steele on behalf of SEIU, and one from Kathleen Mastagni Storm on behalf of Mastagni Holstedt. And during the meeting, Jeffrey Norman, on behalf of the Anonymous Know Nothings, submitted a written comment for the Board's later review.

Mr. De La Torre reported to the Board regarding the revisions to Regulation 32147, the expedite rulemaking regulation. These revisions include clarifying the procedures to be followed in requesting an expedite, defining which cases are mandatory expedites, and the procedures to be followed by PERB when cases are approved for an expedited status.

Additionally, the revised regulation covers representation elections that have been stayed, requests for extensions of time, and the mitigation of prejudice from amended pleadings.

Public Comment

Kerianne Steele, Attorney, Weinberg Roger & Rosenfeld, on behalf of SEIU State Council, suggested that regulatory timelines for the expedite process should be specified in the regulation as it would give more

meaning to the designation of an *expedited* case.

Ms. Steele also noted an omission in the listing of case types that should, in all instances, be expedited without motion or order. The omission is PERB Regulation 61215, the petition for recognition regulation under the MMBA,

Teal Miller, Attorney on behalf of SEIU Local 1000, commented on the value of having a case expedited, stating that it's a far less burdensome process on all the parties and on PERB itself than the process of injunctive relief.

However, Ms. Miller warned against making the request to have a case expedited too complicated or creating too many procedural hurdles, which could result in the delays that the expedited process is seeking to avoid.

Timothy Yeung, Attorney, Sloan Sakai Yeung & Wong, commented on the provision regarding the request for a continuance and the introduction of an extraordinary circumstance standard. He stated that the good cause standard in the existing Regulation 32205 should be sufficient.

Mr. Yeung also stated his agreement with Ms. Steele; unless and until timelines are delineated in the regulations, an expedited case might not resolve any faster than any other case.

Member Shiners stated that, after the draft regulation text was posted, the drafting subcommittee received two suggestions from PERB's staff about possible additions to the regulation; the first regarding abeyances of expedited cases and the second regarding continuances when a party is subpoenaed to produce a large volume of documents.

Member Krantz stated his support that the regulation should be clear that the parties in a case, upon agreement, can have their expedited case held in abeyance. To the second addition, Member Krantz felt it unnecessary, stating that the Division of Administrative Law and the Office of the General Counsel do a very good job balancing requests for continuances.

Member Krantz detailed other corrections and additions to be incorporated into the rulemaking package as well.

Chair Banks stated his agreement with Member Krantz on the majority of his comments, but needed more time to consider the matter of continuances when a large volume of documents is subpoenaed.

Chair Banks stated his disagreement with Ms. Teal regarding a separate motion to expedite a case as being an obstacle.

Member Paulson stated that more deliberation was needed on the second possible addition to the regulation

Member Banks suggested to continue this item to allow the committee time to consider all the comments.

Motion: Motion by Member Paulson and seconded by Member Krantz to refer the matter back to the committee for consideration of all the comments received now and in the future and then have the matter brought back to the Board in December for a full vote or further consideration.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Chief Administrative Law Judge Cloughesy detailed the need for a regulation regarding the request for a reasonable accommodation in the hearing process or at an informal. He stated that it would benefit the stakeholders, members of the public and witnesses to be able to make reference to the regulation and perhaps fill out a simple form that is then forwarded to the appropriate person.

Motion: Motion by Member Shiners and seconded by Member Krantz to authorize the preparation of a rulemaking package to add new PERB Regulations governing requests for accommodation.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Meeting Adjourned

Chair Banks stated that, immediately upon recess, the Board will meet in continuous closed session until the next regularly scheduled public meeting on December 9, 2021.

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 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 9, 2021