

PUBLIC MEETING MINUTES

Virtual Meeting

February 10, 2022

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 December 9th, 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 December 9th, 2021 Public Meeting.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Chair Banks officially opened the Public Meeting of February 10, 2022.

Adoption of Minutes

Chair Banks asked the Board if they had any questions, comments, or corrections to the minutes of December 9, 2021, or move to approve it.

Motion: Motion by Member Shiners and seconded by Member Paulson to adopt the minutes of the December 9, 2021 Public Meeting.

Ayes: Banks, Krantz, Paulson, Shiners

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 PERB is keeping an eye out for the introduction of bills that impact PERB operationally or jurisdictionally.

Currently, PERB is watching Senate Bill 931 by Senator Leyva, which would subject public employers to civil penalties and attorney's fees for violations of Government Code Section 3550, and Senate Bill 1733 by Assembly Member Quirk, which relates to remote participation at open meetings.

Further, Mr. Golka stated that, in the upcoming weeks, the Senate and Assembly Budget Subcommittee will hear PERB's budget change proposal.

The subcommittee will consider PERB's request for funding technology needs related to the electronic court filing system, ePERB.

Lastly, Mr. Golka reported that the internal monthly staff lunch-and-learn series has been launched, which has already had a presentation on the California State legislative process and will be having guest speakers from CalHR to talk about the Employee Assistance Program.

Report - Division of Administration

Susan Davey, Deputy Executive Director, reported that PERB currently has 73.25 filled permanent positions and five vacancies; a Board Member, a Board advisor, a conciliator, an office technician, and an IT procurement analyst.

Currently, Human Resources is working through the conciliator job analysis and expects to be releasing a new examination in the upcoming months with a goal to fill the position by July 1st of 2022. HR is also revising and updating the telework policy as well as the Illness and Injury Prevention Program.

Ms. Davey projects a very tight fiscal year; however, this includes an adjustment to deposit of 500 thousand dollars into the architectural revolving fund to start the process for tenant improvements to the San Francisco Regional Office location.

For Business Services, Ms. Davey reported that the State Bar dues have been paid; all attorneys and judges should have already received their cards. CalATERS training has been rolled out to all divisions, the final division scheduled for the training next week. Further, PERB switched delivery service from FedEx to GLS.

Ms. Davey stated that the IT cost report has been submitted to CDT for review. Additionally, PERB's purchasing authority delegation has entered into an audit period with DGS, which should be completed in two months.

As a Facilities update, Ms. Davey stated that the Oakland Harris State Building has been identified as a potential suite for PERB offices. She will be working with DGS in the upcoming months to make a space plan conducive to PERB's operations.

Ms. Davey stated that replacement iPhones and the Mobile Device Management system have been deployed to all staff. Discussions continue for the MATS and PASS replacement system for State Mediation Conciliation Services.

Tasks slated for the future include updating outdated application, remediating cybersecurity, assessment findings, and establishing an improved IT inventory control process.

On February 1, 2022, the ePERB system transferred to the customer support maintenance mode. Ms. Davey extended her great appreciation to all those involved in the project and to Cheryl Shelly, in particular, for leading the effort.

Report - Office of the General Counsel

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 90 new unfair practice charges in December 2021 and January 2022; a decrease from the prior two-month period of 106.

In December-January, the General Counsel's Office completed 101 case investigations; a decrease from the 108 investigations completed in the prior two-month period.

In December-January, the General Counsel's Office issued 53 complaints and dismissed 18 charges. This compares to the 57 complaints issued and 25 charges dismissed in October and November of 2021.

Factfinding requests decreased. In October-November, the GC Office received 6 factfinding requests compared to 5 requests received in December and January.

The number of representation petitions decreased from 46 in October and November to 37 in December and January.

Since the last Board meeting, the Office of the General Counsel received one request for injunctive relief, one new litigation matter filed against PERB, and five 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 3 to 3-1/2 months out from the informal conference. The number of pending written decisions is little bit higher than the prior year.

The total number of active cases -- cases in the queue and cases pending a written decision -- is somewhat lower than the prior year. Chief Judge Cloughesy expects the number to further decrease as more proposed decisions issue.

The average number of days for a proposed decision to issue is 125. Chief Judge Cloughesy expects that number to increase as older cases are moved out.

Lastly, Chief Judge Cloughesy reported that the total number of cases closed has significantly increased over the prior year; this year 92 closed, last year 79.

Exceptions ratio continues to be 13, which is markedly lower than in prior years.

Report - State Mediation & Conciliation Service (SMCS)

Gerald Fecher, SMCS Director, reported a decrease in new cases in January 2022; however, ongoing cases increased to 107, which is the high point over the last two years. Mr. Fecher attributes the increase to the complexity of the cases.

Due to an uptick in COVID infections, Mr. Fecher stated that he steered a lot of the staff back to video mediation.

In December 2021, SMCS had six representation matters; three elections and three card checks. In January of 2022, SMCS received four representation matters; one election and three card checks. Mr. Fecher provided the details and status of all cases.

Mr. Fecher reported that in December 2021, SMCS received a total of \$1,126.50 for chargeable services, the entirety resulting from the Arbitration Panel Program.

In January 2022, SMCS received a total of \$1,811.25 for chargeable services; \$1,725 from the Arbitration Panel Program and \$86.25 from the Conflict Resolution for the Workplace Mediation Program.

Further, Mr. Fecher reported that as a result of ongoing educational and outreach efforts throughout the labor relations community, SMCS has seen an increase in requests for pre-impasse mediation.

Lastly, Mr. Fecher reiterated what had been mentioned earlier; SMCS continues to work on updating MATS, which is the mediation tracking system, and on PASS, which is the Arbitration Panel Program.

Motion: Motion by Member Krantz and seconded by Member Paulson to accept the reports by the Executive Director, the Division of Administration, the Office of the General Counsel, the Division of Administrative Law, and the State Mediation and Conciliation Services.

Ayes: Banks, Krantz, Paulson, Shiners

Motion Adopted - 4 to 0

Old Business

Mr. Golka stated that three priorities from the Case Processing Efficiency Initiative that dealt with exceptions, word limits in exceptions, the subpoena process, and matters related to motions were included in the rulemaking package that went into effect on January 1, 2022.

Background materials for the expedited case processing regulation and training tools to assist pro pers are still being developed.

Chief Judge Cloughesy presented the proposed language of a reasonable accommodation regulation.

Member Krantz and Chair Banks stated their appreciation to the committee for their hard work in creating the proposed regulation, and then each delineated specific changes, additions, and edits to further clarify the language.

Motion: Motion by Member Krantz and seconded by Member Shiners to approve submitting proposed text of the regulation with the aforementioned changes to the Office of Administrative Law in order to initiate the formal rulemaking process and add new PERB Regulations governing requests for accommodations, including approving the proposed text to the regulations, authorizing the committee to initiate rulemaking based on 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 that case, the committee must bring the proposed changes to the full Board for approval.

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 April 14th, 2022.

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 Shiners and seconded by Member Paulson to recess the meeting to continuous closed session.

Ayes: Krantz, Banks, Shiners, Paulson

Motion Adopted - 4 to 0

APPROVED AT THE PUBLIC MEETING OF: April 14, 2022