

## **PUBLIC MEETING MINUTES**

April 14, 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**

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 February 10th, 2022, 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 February 10th, 2022 Public Meeting.

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

**Motion Adopted - 4 to 0**

Chair Banks officially opened the Public Meeting of April 14th, 2022.

### **Adoption of Minutes**

Chair Banks asked the Board if they had any questions, comments, or corrections to the minutes of February 10th, 2022, or move to approve it.

**Motion:** Motion by Member Krantz and seconded by Member Paulson to approve the minutes of the February 10th, 2022 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; however, Mr. Bill Crowell submitted written comments. To request a copy of the written submission, please e-mail Cheryl.Shelly@perb.ca.gov

### **Executive Staff Reports:**

Susan Davey, Deputy Executive Director, presented the report of the Executive Director, Joshua Golka, in his absence.

Ms. Davey stated that, since the last Board meeting, two bills have been amended that would expand PERB's jurisdiction; Senate Bill 937 adds the Santa Cruz Metropolitan Transit District and Assembly Bill 2524 adds the Santa Clara Valley Transportation Authority.

She also stated that PERB is in the formal rulemaking process for the Judicial Council Employer-Employee Relations Act Regulations.

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

Ms. Davey reported staffing at 71 positions and .5 in retired annuitants, which include two part-time and five vacancies.

Ms. Davey welcomed Jay Hernandez back to PERB, and congratulated Maryna Maltseva on her position of legal secretary. Further, Ms. Davey stated she expects that by July 2022, the conciliator's position will be filled, or at least recruitment for the position to be well underway.

Department of General Services approved the Telework Policy, and the telework stipends were issued and will continue to be issued. All required filers of the annual Form 700 met the April 1st deadline.

PERB completed the ALJ classification reallocation initiated by the California Department of Human Resources.

Ms. Davey reported that the balance in the budget is \$83,230. She further stated that the Purchasing Delegation Audit is still ongoing; she expects the report in about six weeks.

Reporting on facilities, Ms. Davey stated that PERB is still seeking a temporary hearing room in the Harris Building to utilize and that the ARF is already underway.

For Information Technology, Ms. Davey reported that a replacement vendor has been chosen for MATS and PASS for the State Mediation and Conciliation Services Division.

Lastly, PERB is in the process of upgrading and increasing bandwidth, and the replacement for the hearing room workstation is almost finished. PERB is also launching a new online security awareness training and deploying endpoint protection to all PERB iPhones.

## **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 February and March, which is the same as the prior two-month period, having also received 90.

In February-March, the General Counsel's Office completed 86 case investigations; a decrease from the 101 investigations completed in the prior two-month period.

In February-March, the General Counsel's Office issued 50 complaints and dismissed 17 charges. This compares to the 53 complaints issued and 18 charges dismissed in December and January.

The number of factfinding requests remain the same. Five requests were received in February-March, and five requests were received in December-January.

The number of representation petitions increased from 37 in December and January to 49 in February and March.

Since the last Board meeting, the Office of the General Counsel has received one request for injunctive relief, two new litigation matters filed against PERB, and two 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 case assignments is lower than last year. Judge Cloughesy attributes that to an increase in settlements.

The total number of active cases -- cases in the queue and cases pending a written decision -- is 119, which is a decrease from the prior year of 138 active cases. The average number of days for a proposed decision has increased as older decisions are cleared out. The number of proposed decisions has nearly doubled from the prior year.

Lastly, Chief Judge Cloughesy stated that the exceptions ratio is 27 percent, which is significantly lower than in the prior year.

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

Gerald Fecher, SMCS Director, reported that the current caseload remains high at 111 cases. SMCS's mediation service between Orange County Transportation Authority and Teamsters Local 952 avoided a strike of the bus drivers, which would have impacted approximately 71 thousand riders. Mr. Fecher thanked staff for their diligent work in achieving the 11th hour settlement.

Due to a reduction in COVID infections, Mr. Fecher stated that they have returned to doing more in-person mediation and representation when safe to do so.

In February 2022, SMCS had four representation matters; three for secret ballot elections and one a PUC Transit Unit. In March, SMCS had a total of three representation matters, all for secret ballot elections.

For Program Administration, Mr. Fecher reported that, in February 2022, SMCS received a total of \$1,300. for chargeable services, the entirety resulting from the Arbitration Panel Program.

In March 2022, SMCS received a total of \$1,525. for chargeable services; the entirety resulting from the Arbitration Panel Program.

Lastly, Mr. Fecher reported that SMCS continues to work on replacing the mediation case tracking system as well as developing new, more user-friendly programs for the Arbitration Panel Program.

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

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

**Motion Adopted - 4 to 0**

## **Old Business**

Chair Banks stated that developing training materials for unrepresented individuals -- a priority in the Case Processing Efficiencies Initiative -- has turned out to be a more comprehensive process than originally intended; however, the committee continues to meet and move ahead.

Chief Judge Cloughesy reported on the progress and changes regarding the PERB Regulations governing requests for accommodations.

**Motion:** Motion by Member Krantz and seconded by Member Paulson to approve submitting the proposed text of the regulation with the aforementioned changes to the Office of Administrative Law in order to initiate the formal rulemaking process to add new PERB Regulations governing requests for accommodation, including approving the proposed text of 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**

## **New Business**

Mr. De La Torre reported on the impact Senate Bill 270 had on Section 3558 of the Government Code, and the resulting changes needed in the rulemaking package to implement those changes.

Three written comments on the regulation were submitted; one letter by Timothy Yeung of Sloan Sakai, and two letters by the Law Firm of Weinberg, Roger, and Rosenfeld. To request a copy of the written submission, please e-mail Cheryl.Shelly@perb.ca.gov

**Motion:** Motion by Member Shiners and seconded by Member Krantz to submit the proposed text of the regulations with the aforementioned changes to

the Office of Administrative Law in order to initiate the formal rulemaking process to add new PERB Regulations governing special remedies under the Public Employee Communications Chapter, including approving the proposed text of the regulations authorizing the committee to initiate rulemaking based on the approved text of the proposed regulations and authorizing the committee to review, evaluate, and respond to the 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 June 9th, 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 Krantz 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: **June 9, 2022**