

**PUBLIC MEETING MINUTES**

AUGUST 8, 2019

10:00 a.m.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office

1031 18th Street

Sacramento, California

**Members Present**

ARTHUR A. KRANTZ, Member

ERIC R. BANKS, Member

ERICH W. SHINERS, Member

LOU E. PAULSON, Member

*Quorum Present? Yes*

**Executive Staff Present**

JOSHUA GOLKA, Executive Director

MARY ANN AGUAYO, Deputy Executive Director

FELIX DE LA TORRE, General Counsel

SHAWN CLOUGHESY, Chief Administrative Law Judge

LORETTA VAN DER POL, Division Chief, State Mediation & Conciliation Service

• **Proceedings:**

Meeting called to order at 10 a.m. by Member Krantz. Since June 13th, 2019, the Board has been in continuous closed session to deliberate on pending cases on the Board's docket.

Member Krantz read into the record the following decision numbers: 2647, 2648-M, 2649, 2650-P, 2651, 2652, 2633-Ea, 2653-M, 2654, 2655-M, 2656-M, 2657-M, 2658-M.

Member Krantz noted that one injunctive relief decision has been made, IR-61-M, and that two requests for injunctive relief are currently pending, IR-766 and IR-777.

A list of the aforementioned decisions, determinations, and resolutions can be found on PERB's website.

**Motion:** Motion by Member Banks and seconded by Member Paulson to close the June 13th, 2019 Public Meeting.

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

**Motion Adopted - 4 to 0**

- **Adoption of Minutes**

Member Krantz officially opened the Public Meeting of August 8, 2019, by asking the Board if they would like to discuss potential corrections to the minutes of June 13th, 2019, or move to approve it.

**Motion:** Motion by Member Shiners and seconded by Member Paulson to approve the minutes of the June 13th, 2019 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.

Before moving to the Executive Staff reports, Member Paulson welcomed the Board's new advisor, Jana Ellingson-Kegel.

- **Executive Staff Reports:**

Joshua Golka, Executive Director, congratulated Member Paulson on his unanimous confirmation from the State Senate.

Mr. Golka stated that the budget wrapped up in June, but unfortunately, the Governor had deleted 2.5 million dollars of legislative augmentation, viewing it as premature. Mr. Golka is now working with the Department of Finance, the Administration and the legislature on finding the appropriate funding level for PERB.

Mr. Golka updated the Board on two pieces of legislation impacting PERB's budget; the education omnibus budget trailer bill and the human services omnibus bill. PERB's website now contains the required form to predetermine whether an entity seeking to represent childcare providers qualifies as a provider organization.

Mr. Golka stated that AB 355, which would give PERB jurisdiction over unfair practices charges of the Orange County Transportation Authority, is in the Senate Appropriations Committee.

Currently, the regulatory package regarding the PEDD, PECC, and precedential decisions is being finalized now that the public comment period has been concluded. Those comments will be included as part of the package that gets submitted to the Office of Administrative Law (OAL).

The two packages that the Board approved in June, one regarding the State Mediation and Conciliation Service and the other related to exceptions, are being

prepared for submission to OAL.

Finally, the records retention schedule has been updated and will be submitted to the Secretary of State.

- **Deputy Executive Director's Report**

Mary Ann Aguayo, Deputy Executive Director, provided three budgets to the Board: the budget for July 2018 to June 2019 fiscal year, capturing all expenditures for the past fiscal year; a projected 2019-2020 fiscal year budget reflecting full staffing and a \$250,000 deficit; and a 2019-2020 updated budget reflecting salary savings through August 2019.

Ms. Aguayo reported that the 2018-2019 fiscal year resulted in an ending balance of \$1.4 million due to a planned architectural revolving fund deposit not being approved by the Department of Finance. A budget change proposal is being prepared for submittal to the Department of Finance to request funding for a future relocation of the San Francisco Regional Office whose lease is nearing its end.

Ms. Aguayo provided detail on nine recruitments that were underway and stated that the cyber security assessment has been completed and necessary corrections identified.

Ms. Aguayo also reported that ongoing power outages at the Los Angeles Regional Office were disrupting operations and that the backup battery and hearing recording system repairs were underway.

- **General Counsel's Report**

Felix De La Torre, General Counsel, reported that the Office of the General Counsel had received 116 unfair practice charges during June and July, which is a decrease from the 129 received during the April and May.

In June and July, the General Counsel's Office completed 116 case investigations, which is an increase over the prior two-month period of 98 case investigations completed.

In the past two months, the General Counsel's Office issued 47 complaints and dismissed 29 charges. This is compared to 34 complaints issued and 23 charges dismissed in April and May.

Case processing time has increased from a two-month average of 127 days in April and May to 170 days in June and July.

The number of litigation matters that the General Counsel's Office completed decreased from 17 in April and May to 14 in June and July.

Fact-finding requests decreased from 14 in April and May to 12 in June and July. Representation petitions also decreased; 12 petitions in April and May compared to nine in June and July.

Since the last Board meeting, the General Counsel's Office has received one request for injunctive relief, one new case filed against PERB, and four final case determinations. Mr. De La Torre then provided the details of the determinations.

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

Shawn Cloughesy, Chief Administrative Law Judge, stated that all offices are now calendaring cases 90 days out, which is a month less than usual.

Judge Cloughesy reported that the number of active cases on the docket is about ten less than last year, and the average number of days for issuance of a proposed decision is at 89, although he expects the number to fluctuate between 120 to 89 as they continue to knock out older cases, especially those that have crossed the six-month line.

The exceptions ratio for the last fiscal year is going to be 33 to 35 percent, which is the lowest reported in Judge Cloughesy's memory.

- **SMCS, Division Chief's Report**

Loretta van der Pol, Division Chief, provided to the Board a summary of the routine case activity and of the prior fiscal year.

In the last two months, SMCS had only five representation cases; three in June, two in July. SMCS also only had 170 impasses during the last fiscal year, which is a record low. Ms. van der Pol then provided a heat map showing where the concentration of cases were this last fiscal year.

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

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

**Motion Adopted - 4 to 0**

- **Old Business**

Mr. Golka updated the Board on the progress of implementing the priorities from the Case Processing Efficiencies Initiative, particularly the pro per training component

and making PERB's website easier for folks to understand and navigate.

Member Krantz then presented to fellow Board members the proposed language changes and additions to the PERB's current regulation regarding recusals.

Member Shiners then suggested an additional change to the filing of recusals that would align the Board's advisor's timeline to the timeline of the Board members.

**Motion:** Motion by Member Krantz and seconded by Member Banks to request General Counsel to make a change reflecting the proposal from Member Shiners.

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

**Motion Adopted - 4 to 0**

**Motion:** Motion by Member Banks and seconded by Member Paulson to add "and should be recused from the case or proceeding," in 32155(d) at the end of the third sentence.

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

**Motion Adopted - 4 to 0**

Board members further discussed the changing the word *reconsideration* to the word *review* throughout Regulation 32155(d).

Mr. De La Torre agreed that the word *review* is more understandable among attorney and non-attorneys alike and would streamline the process.

**Motion:** Motion by Member Shiners and seconded by Member Paulson to approve submitting the proposed rulemaking package to the Office of Administrative Law in order to initiate the formal rulemaking process with the two changes previously voted on and with the additional substitution of the word *review* for the several places where the word *reconsideration* appears in 32155(d), and to delegate to Member Banks and Member Krantz the task of ensuring that the changes made by the General Counsel conform to the Board's discussions.

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

**Motion Adopted - 4 to 0**

Member Krantz then requested Judge Cloughesy to present the amendments to the regulations regarding subpoenas, motions and authority of board agents and to answer any questions the Board may have.

Judge Cloughesy stated that the subcommittee working on the revisions had added a definitions section, tried to use plain language to make the regulation more readable, and implemented a headings format. Additionally, timeframes for filing motions, replies, and revoking subpoenas were revised.

Judge Cloughesy then explained the new language regarding the regulation on

drawing an adverse inference for a party's failure to comply with a valid subpoena.

Judge Cloughesy stated that (d)(2) should now read: "When filling out a blank records subpoena, a requesting party shall specify the records requested, and shall specify a production date that complies with subsection (f) below."

Member Shiners made a point regarding subsection (k) of 32150. A discussion of the Board followed about the need for language regarding the drawing of an adverse inference at the request of a party or other advance notice with an opportunity to respond. A discussion of the Board followed.

Member Shiners expressed his appreciation to Judge Cloughesy for his patience in the constant rewrites and edits from the subcommittee.

**Motion:** Motion by Member Paulson and seconded by Member Banks and Member Shiners to approve submitting the proposed rulemaking package to the Office of Administrative Law to initiate the formal rulemaking process with both the change that Judge Cloughesy read into the record and the additional change that Judge Cloughesy and the Office of the General Counsel will help draft in response to Member Shiners' point and in conformance with our discussion and to delegate to the existing committee of Member Banks and Member Krantz the task of ensuring that the changes made will conform to the Board's discussion.

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

**Motion Adopted - 4 to 0**

- **New Business**

Member Krantz then requested Judge Cloughesy to address the one new business item, which is to consider whether to authorize the Division of Administrative Law to proceed with drafting revisions to existing regulations governing continuances.

Judge Cloughesy provided background on the problematic issues with the current regulation regarding continuances and described the possible fixes to align the language with real life practice.

Member Krantz commented that the changes make sense and asked that the language around *prejudice* be looked at and the proposal align to real life practice.

**Motion:** Motion by Member Paulson and seconded by Member Banks to authorize the Division of Administrative Law to proceed with drafting revisions regarding the proposed regulations on continuance requirements.

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

**Motion Adopted - 4 to 0**

- **Meeting Adjourned.**

Member Krantz stated that, immediately upon recess, the Board will be in continuous closed session each business day until the next regularly scheduled meeting on October 10th, 2019.

**Motion:** Motion by Member Shiners 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: **October 10, 2019**

---

Arthur A. Krantz, Board Member