

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5511**

1. Opening of Meeting:

The Appeals Board convened at 2:30 p.m., July 29, 2009 in Sacramento, with Chair Bonnie Garcia presiding.

2. Roll Call: Members

	<u>Present</u>	<u>Absent</u>
Bonnie Garcia, Chair	x	
George Plescia, Vice Chair		x
Ann Richardson	x	
Liz Figueroa	x (by phone)	
Cindy Montañez	x (by phone)	
Sharon Runner	x (by phone)	

Chair Garcia stated that Member Plescia called in and he is tied up in another meeting and would try to join us later in this conference call.

3. Finding of Necessity for Emergency Meeting:

Chair Garcia reported that the emergency board meeting is called in accordance with the Governor's Statement of Emergency regarding the economy and the impact of the economy upon the employment community, unemployed community and workers of the State, and referenced the Governor's July 28, 2009 letter (Attachment). The Board must act immediately to remove any obstacles to the public interest and to ensure our Administrative Law Judges are providing maximum resources to the public. These actions should be considered by the Board to avoid impending harm to the public health and safety. With that she deferred to Chief Counsel Hilton to address the items in the Governor's letter.

Chief Counsel Hilton stated that the first order of business is for the Board to vote to adopt the Statement of Emergency as set forth by the Chair.

After a motion and second, Chair Garcia called for a roll call vote, as follows:

Richardson, aye; Montañez, aye; Liz Figueroa, aye; Sharon Runner, aye; Chair Garcia, aye,

Chief Counsel Hilton proceed to identify the specific item to be considered at this meeting, the Governor's request of the Board to take immediate action to remove what he considers to be impediments to addressing the backlog of cases pending right now. The two specific impediments that he referenced in his letter were:

judges who telecommute; and the negotiated limitation on the number of cases that judges can hear and decide each week. The Governor essentially wants the Board to consider taking action to eliminate both telecommuting and the caseload limitation.

Chair Garcia stated that the Board should consider those issues separately, starting with telecommuting. Chair Garcia stated that they had a Senior Staff meeting in the morning wherein it was determined that there are just two field judges who are telecommuting due to special accommodations based on health considerations. There are, however, several judges in the Appellate Operations who are telecommuting. The Appellate Operations is not based in any field office in California; all of the appellate judges are headquartered in Sacramento here at the 400 Venture Oaks Way building. This building is under major construction, and we are chopping up even our offices to make room for the judges that we have hired this year through Phase I and II to help us with our additional workload. Those hearing rooms require not only special accommodations but also some security features to allow for the safe hearings, which require quite a bit of construction which was significantly delayed due to fiscal constraints, but we started in July of this year after we received an exemption to the contracting process.

Chair Garcia added that our space for the appellate judges has also been reconfigured to accommodate the new appellate judges, with some of our judges now working two to an office. The work of the appellate does not require them to interact with the general public. All of the work that they do is based on reviewing documents, listening to testimony, reviewing transcripts, exhibits and any additional evidence that is been submitted by the appellant or the employer. Judges who work two to an office would have an extremely difficult time occupying the office at the same time, since they must listen to recorded hearings. The telecommuting policy has the judges doubling up in an office space but occupying that space when their partner is not within that space. The question before us, and Ralph can frame this correctly if necessary, is do we the Board have the authority to lift a telecommuting policy that we have adopted to address some of the impacts of the lack of space and which allows the judges to do their maximum amount of work. Do we have the ability, and are there practical considerations that we should also be determining. For example, if we do lift the telecommuting policy would we then need to acquire additional office space. Is there any benefit or detriment to the agency in doing so and at what cost. Finally, can we just make a decision or are there contractual limitations that we have. Ralph will lead on the questions and if any Board members have questions, we will discuss them before we vote.

Member Richardson asked if she can also hear from Alberto and Jorge before we vote.

Chair Garcia responded certainly.

Chief Counsel Hilton stated that the Telecommuting Program for the appellate

judges is set forth in a Board Policy, No. 17. It was adopted in 1994, and by its own terms states that the Agency is supposed to evaluate and review the program annually for the continued mutual benefit of the CUIAB and the participants. The Board certainly can vote on one of its own policies. However, a potential limitation to voting at this time is that the Board has apparently never performed the required annual review of the policy to determine what benefits or problems are created by the telecommuting program. In addition, there are some labor implications to substantively changing to this policy. Certainly there would be a significant impact upon the rank and file judges that must to be dealt with. The Board probably has an obligation, before it votes to change or rescind that policy, to conduct the required review, and then to notify the judges union of the intended change, with regard to its potential impact. This would involve the Department of Personnel Administration, as they are the labor arm of state government. Any labor issues would have to be dealt with through the Department of Personnel Administration. In practical terms, as the Chair has already mentioned, we have very limited space in this building, and if we were to require all of the appellate judges to return to work here in the office, we would have to look for additional space for lease or purchase. That would take some time to do. One of the things that needs to be evaluated in any annual review of the program is if there is any reduction of production in the number of cases as a result of the telecommute, or any lessening of efficiencies in handling of the cases, while keeping in mind that under a separate settlement agreement there is a certain maximum number of cases that those judges can be assigned each week.

Deputy Chief Carrillo commented that at the present time we have 14 appellate judges who are telecommuting. With the hiring of 5 new judges last month, and we had hired 2 judges in April, all of his judges were moved to double offices. There are 12 judges right now who are sharing our 6 offices and that is because we have no offices to give them individually. At this point even if we end the telecommuting program it will not change the amount of maximum cases that we can assign unless that agreement is changed to allow more cases to be assigned. That is totally independent at the telecommuting policy. The telecommuting policy in and of itself won't change the ability to assign more cases. In addition to the judges that we have hired last month, we are scheduled to hire an additional 5 judges in October and if he were to try to accommodate those 5 judges, he would have to put them into existing occupied offices that barely are large enough for just one ALJ. The office space would present a very difficult circumstances if we where to end the telecommuting program right now.

Member Figueroa stated she wanted to know if we have had any personnel action against a judge because of any abuses of the telecommuting program. She has not heard of any and thinks that is why the policy was never reviewed because we have so many other crisis situations since she has been there. This is not one that came up to them because everything was going well, no one has ever abused it from her perspective. She thinks that some assumptions being made here from the Governor's Office because he does not know.

Deputy Chief Carrillo responded that he is not aware of any disciplinary actions taken against judges that would be related to work at home program. There is nothing that he is aware where any judges abuse the state equipment, state time that we would be concerned about. He thinks she is right, it is not that we have intentionally failed to evaluate the telecommute program, as it has been working very well that there's been no need to identify any changes other than what we've made as we got along. It has not been raised as an issue that somehow it was causing problem, and if anything we have developed a number of tools and procedures that have made it almost irrelevant whether they are working in the office or working at home. Judges are able to do the same amount of work as quickly as possible as if they were in the office. Other than appearances or location it has really no effect whether they are working in the office or at home.

Chair Garcia asked Pam Boston if we have any filed grievances or problems or have we had since we adopted this policy.

Deputy Director Boston replied no, not that she's aware of.

Member Richardson stated obviously space will be a consideration if people are not able to telecommute, but does that also change the staffing ratio because we have furlough Friday and we have a lot of staff that will be out of the office. She is a little concerned about how to meet quality when staff is not going to be there to support the judges. Maybe Alberto and Jorge can address that ratio.

Deputy Chief Carrillo responded that the ratio is going to be the same; the furlough is going to have an affect that because if they are not in the office then of course it would impact the flow of work, but the ratio will remain overall. The problems that we are going to see are going to be because of the furlough, not necessarily because the judges are working at home or in the office.

Member Figueroa commented that it is exactly what the Governor is trying to do, this letter disguises the real problems that we are having, which are the furloughs. The furloughs is what is causing the backlog on cases, that is what is putting us deeper and deeper in trouble and that is what is making it almost impossible to serve our workers in a timely basis and he is just using this as a distraction. This has never been a problem, there is no data that will tell him that because some of our judges telecommute once in a while because of shortage of offices and with a number of cases there is a need for additional judges. It shows to her the lack of knowledge of how our Board works and the responsibility that is delegated to us. It is also in the second part which we will be discussing, the contract; she has seen the Governor do this with other boards, he has eliminated certain board members because they did not do this or that with the contract. The Governor is paying attention to the Board members have nothing to do with. This is being used as a distraction to take away from the focus of the furloughs.

Deputy Chief Carrillo pointed out the at the appellate judges really have no contact with the public, as they are reviewing files which can be done at the office or it can

be at home. They are accessible to the Board members by email or by phone so there is contact available for that. They can process their cases by email or by phone with our staff so there is no difference by them being at home. The other thing he wants to mention is that the telecommuting program started in the 1990s when Governor Pete Wilson issued a policy encouraging state agencies to offer telecommuting as a way of improving worker morale, eliminating commuting costs, eliminating the effects on the environment by people driving to work, and conserving office space, to the point that there was a task force that developed guidelines which is what we used to implement the telecommute program. This is a policy that took effect with state encouragement in the 1990s and used by a number of state agencies including the Attorney General Office. It has never been viewed as a negative; it has always been viewed as a positive.

Chair Garcia recommended that the Board should conduct an evaluation of the telecommute policy to address all of the practical issues that would have to be addressed if we were to change the telecommute policy, either elimination or modification, including what cost it would have to the Agency if we needed to acquire additional space or how it would impact us if we were to bring them into the office, knowing that we've in essence doubled our workforce over the last year to respond to the workload. We need to evaluate the impact that our recent staffing and office changes have already had on our staff. If we cannot add additional real estate then we would have to consider putting three judges to an office, and that might have some significant implications on how and where they can even hear the cases. As you know, even when we review the cases the recorded hearing could be as long as an hour and many times they have to go a certain portion of it, and that might interfere with somebody else that is in the room doing the same thing.

Member Figueroa commented that when they are in Sacramento, they are always closing their doors to hear the tape recording.

Chair Garcia added that her recommendation would be that before we take any action to change the telecommute policy that we look at evaluating the telecommute program and its efficiency and revisit it at the next Board meeting.

Member Figueroa stated that the Governor did not give us any specific time when he wants it. He just made the assumption that we are going back and telling him we will evaluate it and give you the specifics but in reality it works.

Member Richardson commented that one of the things that we should consider when we are evaluating this telecommute policy is our ability to conduct telephone hearings from remote offices and homes if we can ramp up our telephone hearing pilot, and that could really assist us in eliminating some cases. Also, every ALJ II should be doing the mass calendars, which is something that is already provided for in our contract negotiation. I hope those things are also evaluated when the telecommute program is evaluated.

Chair Garcia stated that she does not want to mix apples with oranges here. We

should stay focused on the first portion of his letter, which is the fact that our employees are working from home, and what you already heard from our Appellate Chief is that we have 23 appellate judges, with 14 of them participating in the telecommute program, and that 12 judges are sharing space. Just to respond to the Governor's issue regarding employees working from home, what we are talking about is 16 employees out of 205 and the fact that in Field Operations we only have 2 employees working from home and those 2 employees are there because of special accommodations made for their health reasons. Alberto if you want to respond to the fact that your field judges work out of their field offices, how that works, and we can then address the other issues of efficiencies.

Member Montañez asked how many total field judges we have and from what she hears there are only 2 that are telecommuting in the entire state.

Chief ALJ/Acting Executive Director Roldan responded that there are only 2 that do exclusively phone hearings because of health issues.

Member Montañez further asked out of how many totals. Chief ALJ/Acting Executive Director Roldan replied 180 field judges.

Member Montañez commented that out of 180 field judges these 2 judges, because of health reasons, we cannot bring them back into the office. We have no issue of the field because there is no way that these 2 judges can come back into the office.

Chief ALJ/Acting Executive Director Roldan said that is correct, it would be a violation of reasonable accommodation that we made for them as employees to bring them back into the office. They are meeting the same workload count as the judge who comes into the office. They still have a calendar case count and that will not change just because they are in the physical office rather than at their home. They are still required to deliver their cases within the same time standard as the judge in the office and they are assigned the same number of cases as any other judge based on their employment. Nothing changes in terms of their productivity under the circumstances. The very nature of field judge work requires that there be an interaction with the public.

Member Montañez stated that she appreciates that because then the Administration would understand as far as field offices are concerned there is no way that we can legally require these 2 judges to come back into the office. The question of telecommuting would apply to appellate judges, and are there 14 who telecommute.

Chair Garcia added that we have 23 judges now in Appellate Operations and we are adding another 5 this Fall, and so if you consider that 7 of those judges are brand new judges we are looking at how we can accommodate the next 5 here in the next 60 days. One of the other considerations is that those senior judges who are doing the telecommuting are also are ALJ IIs that are doing the training. In

addition to sharing that office space there are some other considerations. Their time is not just spent working on whatever workload they have but they also have to accommodate room to sit and mentor and work with each of these individual judges. There are some practical considerations which she thinks are important as we evaluate the program and the efficiency. If we can just separate this out for a second, the first thing we should do is the evaluation, and she is going to ask Jorge and Pam to consult with our Legal Counsel so we can address all of those issues in terms of costs and finding new facilities, etc. so we can come back to our August 11 meeting with some information that the Board can act on. The second part of that equation is looking forward, looking at not just the current workforce but the additional workforce that we are going to fold into that equation. If we can move on that motion and get someone to second it.

Member Montañez added that it should be an annual review of the contract, phrased that way so the Governor does not think that we are going out to do some manual study but we are doing what the contract expects us to do.

Chair Garcia stated that she will amend it to say that we are doing an annual evaluation of the Board policy regarding telecommute and that we are asking staff to report back at the next Board meeting scheduled for August 11th.

The roll call vote was as follows: Member Richardson, aye; Member Montañez, aye; Member Figueroa, aye; Member Runner, aye; and Chair Garcia, aye. The Motion is out 5 to 0.

Chair Garcia added if we can go to the second part of this question, Ralph you indicated that in the event that any kind of action needed to be taken to either modify or eliminate it would require the labor portion to be addressed, how do we as a Board ask the Labor Agency, DPA, what does it require, a written letter or request, and how long does it take.

Chief Counsel Hilton responded that if the Board decides go down that road in terms of re-evaluating or trying to eliminate the current stipulation for settlement which governs a number of cases that judges, both in appellate and the field, are required to handle each week, then the Board should vote to make a request of the Department of Personnel Administration. They are the labor arm of the government; they have sole authority in terms of negotiating with the unions, and since this particular agreement was entered into between the CUIAB, CASE, and DPA, it would require attempted re-negotiation, just as any other labor issue would require. The Board could therefore vote to direct DPA to seek re-negotiation or elimination of this caseload agreement. At that point in time, once the Board has so voted, then it is out of our hands and it is entirely up to the Department of Personnel Administration. In terms of time it is anybody's guess, as we've been in main contract negotiation for a couple of years now.

Member Figueroa asked when it would expire.

Chief Counsel Hilton replied that the main contract for Unit 2, the attorneys and ALJs, has already expired but by terms of the governing law, most of its provision continue in effect.

Chair Garcia questioned when did the original contract expire, 2006?

Chief Counsel Hilton replied 2007.

Chair Garcia stated that we have been operating under the extensions.

Chair Garcia clarified that if she understands the process correctly, we would notify DPA and we would meet and confer with that bargaining unit and we would tell them what it is that we would intend to change, and asked if we give them a 60 or 90-day timeframe. How does that work?

Chief Counsel Hilton stated that he does not want to get into the details of the negotiation process, and much depends on how this particular agreement is categorized and how it intertwines with the main agreement. The only thing the Board needs to be concerned about is, does it want to direct DPA to attempt to renegotiate the limitation on the number of cases to be assigned.

Chair Garcia commented that any issue that goes to DPA once we ask DPA to meet and confer with any bargaining unit is out of our hands as to how long it takes. What she understands is because we are trying to address the Governor's concern, which is immediate change, whether that immediate change can happen within our control or is it within someone else's control.

Chief Counsel Hilton stated that the Board can vote today to seek a change in the caseload agreement, but beyond that it is going to be up to DPA to attempt to effect that change, and the time frame is a complete unknown.

Chair Garcia referenced the Governor's letter (Attachment A), third paragraph, third sentence from the bottom, "similarly the artificial limitation on the number of cases which the Administrative Law Judges may be assigned during the week deprive the Board of its ability to hear, resolve appeals or explore alternative scheduling processes that may yield greater efficiencies." The key term that she is focused on is "artificial limitation". There has been a great deal of discussion about the number of cases, and she wants to know if that is an artificial limitation or is it something written into a contract, and how did it come to be. Do we have an artificial limitation or do we have a real and fixed number?

Chief Counsel Hilton replied that the term "artificial" is certainly a loaded term. The limitation on the number of cases came about as a result of an attempt to settle a dispute between the CUIAB and CASE with regard to the interpretation of a provision of the principal Memorandum of Understanding. A number of years ago, around 2002, the CUIAB had a spike in its workload and it attempted to increase the number of cases being handled by each of its judges. CASE filed a grievance

and then an unfair labor practice charge with regard to that attempted increase. Without going into the merits of the dispute, but each side had a certain points in their favor and as a result of that grievance and unfair labor practice charge the parties negotiated a stipulation for settlement that was signed in 2006 by the DPA, CASE, and CUIAB. As with any settlement agreement both sides got something out of it; CASE got some reassurance that management would not, for instance, increase the number of cases to 50 or 100 cases a week for the judges, and what the Board got out of it was a limited ability to increase or decrease the number of cases assigned to judges depending upon the workload.

Chair Garcia stated that, so the answer is it is not an artificial number and that it came about as a result of legal actions, and that we are bound in the contract that was signed.

Chief Counsel Hilton added that it was a resolution of a legal case against the agency.

Member Richardson commented that it is a stipulation which means that it is agreed to by all the parties.

Member Runner stated that the current administration as well.

Chief Counsel Hilton responded that is correct. It would be wrong to say it is artificial, because when management decided on the number of cases that they wanted in the agreement, it did an assessment as to what they thought the maximum number of cases were that the judges could handle on an ongoing basis. It was not a number pulled out in thin air, but it was based on the history of this Agency and the judges in this Agency.

Member Richardson asked what the number is so we know.

Chief Counsel Hilton replied it is 30 appellants, with no limitation on the number of decisions . You can have 30 appellants before a judge, but that may result in 40 or 50 decisions that have to be issued with regard to those 30 appellants.

Chair Garcia, addressing the Board members, stated for clarification purposes that we do not have the ability to change that because it is a legal and binding contract on us, a stipulated agreement, legal and binding document that was agreed by all parties, DPA, the labor negotiator for our ALJs, CASE and the Agency, to resolve the legal dispute. However, if we were to change the terms or seek changes to that existing agreement, what would be the process.

Chief Counsel Hilton replied the Board would vote to seek change and it would do that by voting to direct DPA to engage in negotiations with the labor representative for the ALJs.

Chair Garcia asked, would the Board have to provide supporting documentation or

request a study or provide anything short of a written request to ask them to explore that option.

Chief Counsel Hilton responded that the Board would engage in the vote and the direction to DPA, and at the point in time DPA would probably come back to us and ask the Agency to provide them with supporting information.

Member Figueroa commented on the last sentence, paragraph 3, "scheduling processes that may yield greater efficiencies". First, we open this box and it will backfire because we now have to work with furloughs, they have to work with a huge amount of cases, and they have to work now providing additional training. This necessarily is not going to have the judges reviewing more cases, it might make it the other way around. Member Figueroa feels, based on her visits to various offices, that the judges are working at the utmost, she does not feel that this is the time to ask for a review of this contract. She just thinks that this is the time to be supportive, not to open up a whole new negotiation just because this Governor wants to cover up the issue of his furloughs.

Member Runner asked with 30 cases is that the minimum or maximum number of cases.

Chief ALJ/Acting Executive Director Roldan replied that is for the ALJs who are at the second rank, with the ALJ's say have a maximum of 27 cases but also recognize that the ALJ IIs have participated on the mass calendars a month, and when an ALJ II is calendared for a mass calendar they will generally have about 54 placed on average on the calendar. So if you have 5 ALJ doing a mass calendar they will have 240 matters scheduled for that week for those 5 ALJs to process. If you look at our overall productivity you will see that in terms of cases we are averaging about 46 cases a week per ALJ in our most recent numbers. That is because of the mass calendars as well.

Member Runner mentioned that not every field office is doing the mass calendar, is that correct?

Chief ALJ/Acting Executive Director Roldan replied that the only such office is San Jose, and that is because of the physical plant, they are in a temporary facility there and the physical plant cannot be used since there is not sufficient security at that location for mass calendar. The new facility is opening in the middle of August, and when we are back in that new facility we will be back to mass calendars in that office. One other point that he wants to make is we are never going to move completely away from a set number of cases being set in a week because the very nature of our work requires that we get notice to all parties involved in a case and if they be calendared at a particular location and we are always going to be limited by the physical plant that we have available, the number of hearing rooms that we have available, the notice that needs to go out to all of the parties and the scheduling that needs to be done in every office to set cases. There is always going to be a concrete calendar. The other point he would make is

the judges don't control their own calendars. They don't make an arbitrary decision and this week he is going to hear 10 cases and next week he will hear 25. Their calendars are imposed on them by the process itself. They have little or no say in their calendar other than asking their PJs for earned time off at any given time. There is the idea that they are somehow stepping outside of the responsibilities of doing cases. They just don't have control over the cases that are assigned to them.

Deputy Chief Carrillo added that we met with the Department of Labor on Monday and one of the things that they stressed is their concern about time lapse; they wanted us to maintain our quality of review and they emphasized that they are very pleased with that aspect of operation. One of the concerns he has about changing the maximum is whether or not we are making an informed decision ahead of time of studying what the impact would be of increasing the caseload, what it would have on the quality of the cases. We are required to deliver due process to the parties. The right of benefits is considered a property interest that the claimants have a right to, and they cannot be deprived of those benefits without due process, so we have to ensure our hearings deliver a minimal level of fairness and due process before we can decide that someone's benefits should be cut off. We need to go into any negotiations prepared, but the fact that we think an increase in workload is possible and that it will not have the adverse effect of minimizing the quality that we are required by the DOL to maintain.

Chair Garcia asked if we could do things a little bit differently so that we can maximize the number of cases that we do have available, and since January we have adopted a number of things that have helped us streamline some of the processes and that will help us reduce the amount of work that comes in to the Agency, specifically those cases that need to be reopened, those cases that end up doubling our workload because people fall out of the system. We have already adopted auto dialers. We already implemented the paperless system, we are looking at the way we schedule mass calendar and the way we document the number of cases that each of our judges do so we can show where we need to tighten up the mass calendars or increase productivity. We are measuring how much impact it has when we pull an ALJII from the workload when he is doing training and how much impact it has. We saw that immediately in Appellate Operations with the hiring of 7 judges and so you can imagine with the 180 judges that we are hiring around the state that is just 1/12 of the problem right here in appellate, and it has the impact out in Field Operations with 200 plus judges what you are talking about is about 1000 cases each every year or more when you are talking about the work that each of them will individually will be assigned, and for practical purposes you could not move people in and out of those offices fast enough or get those decisions typed up even if we were to double or triple the number of cases that we gave each judge. They would never be able to meet that threshold. Even if we hired 300 more judges today we still would not be able to bring that backlog down within a year, but there are some efficiencies that we can do. The way we should address this issue first of all, the contract has already expired; it is no secret to DPA that there are some things that every agency with

ALJs or attorneys that are important to that agency that has to be re-evaluated with every contract cycle. She has not been here long enough to be part of the discussions that have happened in the past but it is her understanding that this was an issue that was already raised with the DPA and that we requested some assistance with addressing exactly how it is that make any modifications and that is not an issue that is been acted on and so she would request as a Board that DPA do a study to really evaluate, because she is concerned that there have been some assumptions made that today we can say whether or not it is not true. We do not have employees who work from home, we do not have artificial limits, we do not have control over changing some of the workload because of legal or other contractual limitations, and she thinks that should be identified and when you look at the workload, the specialized kind of work that each Agency does in CUIAB, you have judges that are dealing with 30-50 claimants each week, whereas in some agencies you have ALJ's dealing with one case all week. The amount of time that they put in and the kind of work or even some of the due process constraints that we might have in handling some of these cases really come into play. Chair Garcia does not want to create a situation where we come up with an artificial number.

Chair Garcia clarified that she is not talking about our judges, she is talking about other agencies, like the Labor Relations Board or the Coastal Commission, one of those agencies. Their cases may take up to a whole week. Our judges deal with something different. Comparing an ALJ here against another agency is really not fair because the yardstick is not the same. I would move we ask DPA to conduct a study so that we run into negotiations as they advance their contract talk with CASE, not just with CASE, not just with CUIAB, but with every agency that is part of Bargaining Unit 2. Any agreement that they make that impacts our staffers, they are making that decision based on information that is valid and not an artificial number that is being drawn out of thin air. There are reasons why we have the numbers and why those numbers have existed even prior to this current contract. Her understanding is those numbers go back to the 1990s, 1980s, etc. It would be fair to say that if evaluations are going to be made, it should be made based on valid information not conducted by our staff so that it is not tainted or biased in anyway, and in fact it is used in a way that will help us recognize both the important work that the judges are doing, their contributions and the fair negotiating tool when they eventually get to the unit 2 contract.

Member Figueroa asked if there is a timetable when it should be done.

Chair Garcia responded that we should formalize our request to DPA to conduct the study and if appropriate for the study to be paid for by the Agency, definitely we get some clear direction from them on how we should undertake a study that is unbiased and not conducted by our staff, and she would say to set a time limit that would be good, because right now as we can see it has out there for a couple of years; six months would be appropriate because we have 12 field offices and they would have to go around and look at the distinction between them. What happened in San Jose is not the same thing that happens in Pasadena.

Member Runner commented she appreciates the conversation about the Department of Labor regarding time lapse and quality review because even as a member she knows some cases may take a long time to review and make decision on and others may not take as long. Each case needs quality of review and the DOL recognizes that it is hard to determine how much time a specific case is going to take. Every single case is another employer or employee that we really have to give our time to.

Member Figueroa added that the Governor has really missed in pointing out that the DOL repeatedly has commented on the quality of our work, the work that our judges and we do as a whole. The quality has been always year after year good. She does not want that quality to suffer in any way.

Chair Garcia stated that Chief ALJ/Acting Executive Director Roldan has shared with the Board a couple of minutes back that we had 18 quality quarters in a row.

Chief ALJ Roldan added it had been a historical issue with the Department a number of years ago that we were consistent with failing the 80% benchmark of quality review that DOL requires of the Department. Back at that time there was an effort made by the Board and by the leadership of this Department to improve on the quality review standard. What has been amazing in recent months, given the number of judges that we have absorbed into the Department, has been that we not only maintained the quality review standard but in fact in the last quarterly review improved upon it. 80% is the benchmark that the DOL requires to have as a passing mark, and our most recent QR rating was slightly above 90%. That is when the whole bunch of new judges in the Department and with a record workload swapping us. That is an accomplishment that should not be overlooked.

Chair Garcia stated that let's not be too happy about that because we also know over the last 9 years we failed to meet their performance measures and that we are on a corrective action plan. However, in our discussions regarding the corrective action plans, part of the problem is our ability not in terms of quality but just our ability to meet the timelines, and one of the big things we have done this year since January is to add 57 new judges, and we talk about 205 judges today, that's an increase in our workforce of 25%, and it is significant that we start seeing the results in a couple of months when they complete their training. Also, we need to recognize and we shared this information with the Senate Labor Committee when we were there couple of weeks ago, one of the problems that we had and one of the reasons that we are still in a workload situation that is still highest at the end of the last fiscal year, is that we had to lay off employees and even send retired annuitants home and as a result we started the fiscal year with a backlog that continue to build until we were able to add to that workforce. That has also impacted our ability to catch up, and currently the other impact that we have on our workload is that one day for 3 weeks in a month we in essence are impacted by furloughed employee. So even though our employees are operating on self directed furloughs it still means that for one day a week they are not available to

address the workload. Our staff at CUIAB, if you look at the reports that we prepared and send with our exemption request to the Governor's Office, indicated that 34% of our workforce is at retirement age, and when we look at the raw numbers more than 45% of our workforce has hundreds of hours of unused leave time on the books. That means our staff has not been taking time off. That is extremely significant because not only can 1/3 of them go home if they do not want to deal with this, but it is going to be extremely difficult for us to recruit and replace employees that are ready to hit the ground running day 1, and as we have already seen by the number of people that have declined opportunities to come work for the State of California, those employees are also thinking they are walking out the door as they already have a 15% pay cut is.

Member Figueroa added that the morale of the whole Agency is going down because they realize how hard they are working and they are affected by the furloughs, affected by letters constantly we are getting from the Administration and that not one percent of our funding come from the state. The exemptions we have requested and repeatedly been ignored on is what the Governor targeting us for. All of our time today is spent on emergency Board meetings, time that we could be serving the needs of the workers of the State of California working on our cases. And what we are saying about special studies to feed to the mess we have, and all of these assumptions that they made because none of it is a reality, and that was very upsetting that we are spending money, time and energy when we should be focusing on serving the workers.

Chair Garcia commented that she thinks we have many challenges and so again she is going to ask that we move on a motion to request that DPA do the study so that we can really look at what we can request as they are moving forward on the contract with Unit 2.

Chair Garcia requested a roll call vote, as follows:

Member Richardson, no; Member Montañez, aye; Member Figueroa, abstain; Member Runner, aye; Chair Garcia, aye.

Chair Garcia stated that they have 3 in support, one opposed, and 1 abstention, and that Motion is out. She wants to again say that the only reason that we are asking for the study is so that we have better information to help us with DPA, and again she is concerned that there is a perception that there is an artificial number that we, the Board, established when in fact it was based on a legal settlement.

Member Figueroa commented that she knows why we requested it, that we need to show our workforce that we applaud what they are doing and this is not the time we should be asking for additional study. They are working very very hard and we are taking away time and money to do things just because the Governor has made assumptions to hide the detriment that he has caused our workers because of the furloughs that has nothing to do with the budget, that is the worst part of it.

Member Richardson stated the reason she voted no is because she is not just prepared to move on a proposal to DPA and a bunch of questions and stuff like that. At some later date if she changes her mind, can she change her vote or is this my last hoorah.

Chief Counsel Hilton added she can change her vote, in effect, only if the matter is brought before the Board again.

Member Richardson stated that she will go ahead and change her vote to an abstention rather than a no vote, because she does not have sufficient information to make an informed and educated decision.

Chair Garcia asked if there is information from staff today that would help her reach a decision.

Member Richardson replied that it carried anyway with even with her vote.

Chair Garcia added that if she has questions and they could be answered now that she doesn't have to abstain for lack of information.

Member Richardson stated that she will go ahead and abstain because there are procedural questions that she prefers to ask of Counsel. That is the basis for abstaining.

Chair Garcia stated the record will reflect that. The final issue is we obviously have to respond to this letter from the Administration and she would like to draft a letter that can be signed by every member of the Board that addresses each of these issues. The first being addressing the issue of employees working from home, the second would be to request that DPA conduct a study and provide the background information on how are currently operating based on the settlement agreement, and addressing the artificial limitation issue so that we address the fact of why we reached that, why we are operating under that, and the request for the study that we are going to make of DPA. Finally, she would like to reiterate that we have put in two requests for an exemption for a furlough and that again provide the current information regarding our workload and have the Governor's Office consider that again, because it has an impact based on the information that we are sending in a weekly report to the Labor Secretary, which goes to the Governor's Office. That report is prepared weekly and you should have received the one that went out yesterday and shows the impact of the third furlough day. That report also discusses the action we took as a Board to request our employees under the self directed furlough use the accumulated time, which showed that as of June 1, 2009, nearly 29% of our staff, 208 out of 728 have over 300 hours in accrued leave balance, and projected through the end of the year another 14%, or 101 out of 728 employees, will have more than the maximum carry over.

Member Figueroa commented that she hopes that they don't decide to take it off at

one time and we are in trouble.

Chair Garcia stated that is just the vacation and personal leave time that has gone unused, and that is 43% of our workforce. Let me say that again 43% of our workforce, more than 300 of our employees, have more than 8 weeks of paid leave time that they can take today if they decided that they wanted to take a vacation or go on extended leave, 1 in 3 employees are over the age of 55 and can today drop retirement papers on our personnel office. Those are things that we are struggling with and through July 1, 593 employees out of our 728 employees have banked their furlough hours because of our workload, which comes out to 34,323 furloughed hours in the bank that we eventually will have to give to these employees to draw down. When we look at all those raw numbers we really have a problem brewing because no matter what the workload is, no matter how far it extends out, eventually we're going to reach that deadline when they have to use up all those furlough hours or lose them. What has already been demonstrated by our employees is that they are so conscientious they are not taking time off because they recognize and say it over and over again that at the other of that file is a real human being waiting for an answer. We have demonstrated that we are trying to work within the limitations that we have, two that we have no control over; one being the furlough, and the second whatever contract we operate under. We are trying to do the best we can, and Chair Garcia thanked everyone because she knows it is taking a lot of time away from the other things that we need to do, but this is really an important discussion to have, and the positive side of receiving this letter is we are finally able to tell our story. It has been very nice to be your Chair.

Member Runner thanked the Chair for everything that she has done.

Member Figueroa asked if there is something that we could do as a Board if the Governor plans to remove the Chair just because you are not immediately going along with his assumptions.

Chair Garcia commented that she honestly came to this Agency with the desire to use her skills, her talents, and her education to help advance something that is important to her.

Member Figueroa added that Chair Garcia has done a great job and thanked her.

Chair Garcia continued to say that she hopes we continue to work in a way that is transparent, and she respects the Governor and she knows that it is a very difficult decision to ask us to be a participant in the furlough program and she knows that he some tough challenges ahead, but she thinks that all of our responsibilities regardless of who appointed us is to tell them the truth about what is going on so that they can make well informed decisions. She is going to continue to do that and her hope is that they will act on the information in a way that helps our employees and helps us deliver services to the general public.

Member Figueroa asked if we have heard more about us becoming a part-time

Board.

Chair Garcia replied that her understanding is that is always a discussion during budget times in the Governor's Office, so she is not paying too much attention to that because that has been out there as long as she can remember.

Member Figueroa asked if it occurs talking about a backlog of cases.

Chair Garcia stated that you need leadership and during tough times you don't kill your Generals. She thinks that is going to be a decision for the legislature and the administration, but in her opinion she does not think it is a good time for any agency that is struggling or trying to put strong leadership in place to be replaced or to be downsized. She hopes that is not that they are moving on, either for us or future Boards, because it ties your hands. We have recognized many problems and put the resources into them in our sub-committee work, and by putting in the dollars and in chasing dollars to help us meet some of those goals.

Member Figueroa thanked Chair Garcia for her leadership.

Chair Garcia thanked everyone for their support.

Member Runner stated that her understanding is that the Chair is going to put together a letter to the Governor that we will all sign.

Chair Garcia stated yes. It is going to be signed by you and she does not want to put out the letter without everyone on the Board because this letter did not come to her the Chair, it came to us the Board. We are drafting that letter and we will be sent to you and if you can sign off on it, or if you have some modifications you need us to make that will be okay, but do not hold us up with major rewrites unless you have some very serious concerns, because we need to get it out as soon as possible. She wants them to see it and sign off on it and we are doing it tomorrow and have it back to the Governor by noon tomorrow, so they will get it in the morning.

Member Montañez commented that with the Governor addressing our workload issue, the Chair, Board members, Alberto, Jorge and all staff have gone all out in this difficult time to do their best. We hope to continue to get the Governor's support to get few more hires on Phase III, so that we ultimately can get people's unemployment benefit or get an answer to employers who are out there. Per Alberto our judges are out there doing a significant amount of cases, we hope to get more hires or something different than allowed to reduce the workload. The Chair's leadership has really been very important in this very difficult time, the staff has the respect for the Chair, and hopefully the Administration will see the Chair as someone who can really help us with our workload. Again, we are on the same page, but how we get there we may differ on a little bit ,but hopefully they see you and the Board as allies, but we need help.

Chair Garcia thanked Member Montañez, and stated we have no further questions or comments; we have no further business before the Board and so she needs to open it up for public comment. Since nobody from the public wants to add anything to the agenda, the Chair calls for closure of the meeting. We have concluded our meeting at 4:00 p.m. today, July 29. Thank you everyone for attending.

5. Public Comment:

None

Adjournment