

**MINUTES
FOR THE REGULAR MEETING
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
Docket No. 5598**

1. Opening of Meeting:

Pursuant to order of adjournment, the Appeals Board reconvened the meeting of September 8, 2015 at 10:40 a.m., September 10, 2015, in Sacramento with Chair Robert Dresser presiding.

2. Roll Call: Members

Present

Absent

Robert Dresser, Chair

x

Michael Allen, Vice Chair

x

Ellen Corbett

x

3. Unfinished and New Business:

Chair Dresser called Item 12 for further consideration.

The Chairman asked Chief Counsel Levy to specify what additional comments have been received on Item 12. Chief Counsel Levy responded that after Tuesday's meeting, the Board received comments from Cynthia Thornton, two comments from Susan Lee via fax, a comment letter from Madlyn Hilton, and this morning, at 10:28 a.m., a comment letter from Mark Cwern. He stated that copies of those comments along with the comments received during the September 8 board meeting had been provided to the Board.

Chair Dresser asked if there was any additional public comment either in-person or on the phone.

Chief Counsel Levy stated that one person has identified a desire to present comments in-person and there were others on the phone.

ALJ Greg Windheim, of the Sacramento Office of Appeals, stated he believes laying off ALJs would constitute age discrimination. He presented and referred to what he said was a copy of the model jury instructions for the Ninth Circuit. He said, since (based on his estimate) the average age of the administrative staff is between the 30s and 40s, supervisory staff ages are between 40s and 50s, and several ALJs are in their mid-60s, the layoff of ALJs raises a prima facie case of

disparate-impact age discrimination. He conceded that were a prima facie case shown, the employer may rebut the disparate-impact evidence by presenting a good reason for the decision. He stated he has not seen a good reason. They had 30 judges in the Sacramento Office of Appeals about a year and a half ago. Two-thirds of those are gone now, but two-thirds of the staff and the supervisors are not gone. He argued there is not enough work for the other staff but that the ALJs are still carrying a full caseload. He said that ALJs don't have information about expected attrition in other classifications, but he believes ALJ attrition has been greater than other classifications. He stated that layoffs based upon salaries present indicia of discrimination because older Americans generally have had longevity and therefore higher salaries. A copy of the document he referenced was received into the record.

Judge Cwern with the Los Angeles Office of Appeals adding to his comments of September 8, inquired why CUIAB was hiring additional Information Technology personnel at the time it is laying off ALJs. He questioned the justification for hiring "non-revenue producers" and laying off only the job classification that produces revenue for the agency. He stated that Mr. Silva's presentation concluded that personnel cuts were required, Judge Cwern didn't hear any analysis about which personnel should be cut, and wanted to know how the decisions were made in that regard. He stated that he believes Mr. Silva's report indicated that the current anticipated budget shortfall is \$2.8 million. Assuming that each ALJ salary plus benefits comes to about \$180,000 in savings, that would equate with about 15.5 ALJ positions. He wanted to know why more than that were being laid off. He wanted to know whether the board has disclosed everything that was considered before the current layoff plan was authorized, and he wanted answers to all the questions the ALJs have asked before proceeding.

Judge Susan Lee, with the Oakland Office of Appeals, asked whether the board has received her follow up questions. Chief Counsel Levy responded that all of the comments that were submitted to the board yesterday were circulated to the board members yesterday. Judge Lee then questioned, since the board now has information that CUIAB has had 34.4 ALJ separations since September 1, 2014, and the layoff plan calls for 34 ALJ elimination positions, can the board now cancel the layoff plan based on the fact that we have already made those numbers.

Judge Cynthia Thornton, San Diego Office of Appeals, questioned whether the budget analysis that she requested in her email to Chair Dresser of September 9 had been completed related to the last 10 fiscal years.

There being no further public comments, Chair Dresser asked Chief ALJ/Executive Director Gonzales for a staff response to the comments and the staff

recommendation.

Chief Gonzales reported that staff has reviewed all of the comments that were submitted with regard to the agenda items on a potential layoff and that they are prepared to address those comments. The main people that have been designated to respond to your comments are Chief Administrative Officer Rob Silva, and Assistant Chief Hugh Harrison, who is in the audience.

She stated that CUIAB's budget consists of both OE&E expenses and personnel expenses. The major portions OE&E expenses are travel, interpreters, and leases. CUIAB has reduced travel expenses. Specifically, there has been a 57% reduction in travel costs based upon workload reduction from 2010 to the present, equating with a reduction from \$1.1 million to \$471,000. But, in order to serve the outlying areas of the public, they cannot be reduced entirely.

Interpreters are required by law, so CUIAB cannot reduce that cost.

CUIAB has substantially reduced the cost of leases, which has gone from \$9.9 million to \$8 million, and included reductions from 23 to 18 outstations and from 90 to 67 outstation hearing rooms. Most of the larger outstations have closed and the only remaining significant savings for leases would be achievable by closing field office headquarters. That would not avoid a layoff, but would most likely, result in a regional all-staff reduction in force. Any other facilities savings would require less in-person hearings and substantially more phone hearings. Chair Dresser asked if they were still considering closure of part of the San Diego office. Chief ALJ/Executive Director Gonzales responded that CUIAB is currently in the process of renegotiation of that lease to lessen our footprint at the San Diego facility.

Chief Gonzales stated that the comments that the ALJs in the field are the only revenue-producing employees of this agency were not correct. For an ALJ to conduct a hearing, you need an OT, an MST, an IT department and other essential staff. Support staff are just as essential to generating revenue as are the ALJs. Every person in this agency contributes to CUIAB's ability to ensure parties have their cases heard and their decisions timely issued. She also noted that the appellate operations ALJs also and their staff work very hard along with the Board to get the decisions issued, and they are likewise essential to the process. She noted that the amount of reimbursements received from the Department of Labor is per case, and each person contributes to that case getting issued. Chair Dresser agreed that her comment was well taken.

In terms of the inquiry about IT expenditures, Chief Gonzales noted that one suggestion was to transfer IT to EDD, but that would not save CUIAB money as

the budget authority for those positions along with the positions would revert to EDD. Furthermore, the level of service that we have received from IT has been very good. IT is responsive to special projects from Board Members, field offices, Appellate Operations, etc., and the IT department in CUIAB is an essential part of the operations. As of today, there are 29 employees in IT, and at the highest level there were 42. That is a 31 percent reduction in IT employees and this is at a time where technological advances in all state agencies and throughout the world are what are making operations more efficient and cost-effective, including here at CUIAB with our electronic case-management, tracking, and reporting systems, as well as our decision-generation tools such as our dictation software, relied upon by our ALJs. Our initiatives that allow us to send decisions electronically to EDD, for instance, have not only saved in postage and copying costs, but decisions may now be implemented within a day or two rather than the week it might have taken when they were mailed, which of course, is a big improvement in public service to our stakeholders. Without an IT department at CUIAB, I believe that our level of service would be seriously impacted. She stated it was her understanding that other agencies' IT departments are approximately 10% of their workforce. At CUIAB it is about 6%. IT contributes greatly to the service that we provide to the public.

Chief Gonzales stating that OE&E expenses have been reduced as much as possible, and further cuts must come from personnel. Personnel costs constitute approximately 77 percent of CUIAB's total budget. But, from the height of the recession in fiscal year '10 to '11 through fiscal year '14/'15 there has been a 44 percent reduction in cases.

Chief Silva reported that CUIAB's current budget is based on a projection of 253,000 UI and extension cases this fiscal year. But based on just July and August, we're actually tracking at about 243,000 cases, a drop of almost 10,000. Chief Gonzales emphasized that figure is the projected UI caseload. But the UI cases range from 91 to 95 percent of CUIAB's workload, and 91 – 95% of CUIAB's total funding. Furthermore, current projections show further workload declines in fiscal year 2016/17. These are factors that have been considered by staff at all levels when preparing a recommendation for the Board.

Chief Gonzales reported that input has been solicited from the presiding judges, and representatives from each department have provided input, including the field through some of the presiding judges, and Appellate Operations, through Chief ALJ Rose.

Chief Gonzales stated that the concern that ALJ staffing reductions would prevent timely adjudication of CUIAB's cases was not correct. She stated that CUIAB

intends to comply with the terms of the written agreement between CASE and CUIAB. She stated, however, that the judges have not been working at a maximum caseload. The ALJs in the field have been at a caseload of 25 for ALJ-Is and 28 for ALJ-IIs since October of 2012. The Appellate Operations ALJs are also operating more recently at a lower caseload of 20 and 22 for ALJ-Is and IIs respectively. Chair Dresser asked if that was the maximum allowed by the MOU. Chief Gonzales responded that it was not, and that any staff reduction would not impose a higher workload upon staff than historically they've had to contend with, or than has been agreed to under the MOU.

Chief Gonzales stated that the conclusion from these analyses is that CUIAB does not have the work, and consequently the budget, to support the current staffing levels and at this point. She deferred to Rob Silva, with Hugh Harrison's assistance, to explain in detail and address some of the information presented to the Board for its review and the public comment session.

Chief Silva responded to the Board's request that he provide a response to comments, including the data submitted by ALJ Thornton on September 8th, and presented a PowerPoint presentation for reference.

Chief Silva first explained that the projected number of decisions for fiscal year 2015/16, as provided to and used by ALJ Thornton, was 270,000 decisions as of September 3rd, which per her request, related to all programs. The figure of 253,150 decisions used by staff at the Board meeting on Tuesday only related to projected UI decisions. Chief Silva also explained that the discrepancies Judge Thornton mentioned about the amount of the 2015/16 budget (\$75.1 million from the staff presentation vs. \$75.7 million that had previously been reported) resulted from changes in how the Statewide Cost Allocation Program (SWCAP) and the pro rata charges (which allocates the costs associated with centralized administration services to each agency) are being handled. Historically, EDD had paid these two expenditures on behalf of CUIAB, but beginning with the 2015/16 fiscal year, CUIAB will be allocated funds and directly charged for these services. The larger budget number was derived from historical data, but in late August, the budget for these two categories was finalized by EDD, and it was \$611,000 less than anticipated. Notably, these funds are pass-through items, so they would artificially inflate the current budget when compared with our historical budget, where these funds had not been allocated to CUIAB.

Chief Silva walked through the various columns and figures in Judge Thornton's chart. He stated the purpose of the submission appears to be to project a large number of decisions per ALJ in 2015/16 following layoffs, as well as a substantial increase in dollars spent per decision projected for 2015/16.

Based upon delays in the layoff timeline, the total number of ALJs projected at CUIAB in full-time equivalents, would be 145, on average. He explained that in 2007/08 CUIAB spent \$39.6 million on salaries and \$16.2 million on the associated benefits. In 2015/16 the salaries are proposed at \$35.4 million but the benefits are proposed at \$22.3 million with almost 63 percent rate. Thus, in the period from 2007/08 to 2015/16 we've had an 11% percent decrease in salaries but a 38% percent increase in benefits. Benefits are currently projected to be at an all-time high, and the only way CUIAB can control its benefits expenditures is by controlling salary and wages.

Since the cost of benefits is so much higher than nine years ago, in order to accurately compare the relative cost-per-decision, benefits need to be removed from the equation. When factoring out the benefits and benefit rate, the difference between 2007/08 and 2015/16 actually a 7% decrease in the cost-per-decision as as opposed to the 3% percent increase as calculated by Judge Thornton. Across Comparing the 2014/15 fiscal year with that of 2015/16, the data reflect about a 1.5% decrease in dollars spent per decision (rather than the 1 percent increase reported by Judge Thornton).

In terms of the number of decisions per ALJ, after making these corrections to Judge Thornton's chart, the projection is 1862 per year (as opposed to the 1929 she had projected). That represents about a 1.5% increase from the 2007/08 fiscal year. More importantly, these figures are predicated on a projection of 270,000 decisions. However, Presiding Judge Harrison has reported that UI projections are trending much lower than the revised figures, and if that holds true for 2015/16 then this number will be greatly reduced, which also greatly reduces the decisions per ALJ projected for 2015/16 to a level that's well beneath 2007/08 and 2008/09 levels.

Chief Silva concluded by stating that if CUIAB continues to operate at its current staffing levels, the agency would overspend its budget authority in 2015/16 by a projected \$2.8 million, a figure based on the May revise for 2015/16 which shows that UI workload will be at 253,150 cases. However, internal review of the incoming and outgoing UI workload leads staff to believe there will be insufficient workload at CUIAB to reach that level of 253,150 cases for 2015/16. The budget shortfall is thus likely to be greater, since the October revise is likely to reduce projected UI dispositions accordingly, and the accompanying budget authority would likewise be reduced.

Member Corbett asked if the caseload projections are tracked on an ongoing basis. Chief Silva responded that these figures are tracked weekly and monthly.

Vice Chair Allen stated that he appreciates Chief Silva's clarifications in the presentations. He stated that he hopes that in the future the budgetary process can be more inclusionary of both represented and unrepresented staff. He emphasized that CUIAB is an integrated organization, and everyone is dependent upon each other to provide due process and adjudications in all of the cases we have. He stated that needs to be taken into consideration, and he believes it has been taken into consideration, but it should definitely continue. He noted that we must remain flexible because there may well be changes to the economy. He emphasized that he wants to save every job that's possible to be saved, but he feels that is being handled as best as possible.

Member Corbett also thanked Chief Silva for the presentation. She stated that she appreciates the thoroughness in the addressing of the issues and the questions that have been raised during the week. She stated that it is enlightening to see the numbers and to see what the trends are. She added that the board appreciates the recommendation and the direction in order to address our fiscal issues going forward. She agreed with Member Allen that they desire to preserve jobs when they can and where they can. Finally, she stated she appreciates the efficiencies that the agency has undertaken, including the work achieved by the IT department. She appreciates the information that has been presented.

Chair Dresser thanked everyone for having taken time to bring to the board's attention their concerns and thoughts. He noted for the record that CASE has already obtained all the materials the Board has in its possession related to these questions that have been posed on this item, through a number of its requests under the Public Records Act. He noted that he stopped the CUIAB layoff that was initiated in the mid-2000s as General Counsel of the Labor and Workforce Development Agency, because at that time there was plenty of federal money, but now there isn't. Therefore, he stated, with great reluctance, that in consideration of the continuing decline of CUIAB's workload and our current projected budgetary shortfall for fiscal year 2015/16, he moves that the Board direct staff to initiate a reduction in workforce and authorize the executive director to implement the reduction in workforce as she determines appropriate. Furthermore, he moves that the executive director is directed to terminate the existing reduction in workforce that was initiated on July 24, 2015.

The board voted and the motion carried unanimously.

13. **Closed Session:** The Chair announced there were no items for closed session.

Adjournment at 11:44 a.m.