

October 16, 2006 PWCA Committee Meeting Minutes

PUBLIC WORKS CONTRACT ARBITRATION COMMITTEE MINUTES

October 16, 2006

The meeting was called to order at 10:05 a.m. by Co-chairperson Robert Pieplow, representing the Department of Transportation (Caltrans). Other voting members present were David McCosker and Cecil Mark, representing the construction industry; Bob Courtnier, representing the Department of General Services (DGS); and Daniel Whisman, representing the Department of Water Resources (DWR). Member Tim McGowan was not in attendance. Others present included Steve Cohen, DWR; Michael Doughton, Department of Corrections and Rehabilitation (CDCR), and Phoenix Vigil, Program Administrator with the Office of Administrative Hearings (OAH).

I. MINUTES OF THE FEBRUARY 28, 2006 MEETING

The draft minutes of the February 28, 2006 meeting were adopted without change.

II. ADMINISTRATOR'S REPORT

New member

The Administrator welcomed new committee member Bob Courtnier, Chief Construction Supervisor of the Construction Services Branch, Real Estate Services Division, Department of General Services.

Program Summary

The Administrator reported on the status of the program. The cases filed to date appear to be down compared with previous years.

Reports

The Committee was provided with a copy of the PWCA statistical report from 1997. The report is believed to be accurate with the exception of four cases from 2005 and two cases that have been recently filed that are not yet included. The committee expressed concern that there are still active cases from as far back as 1997. The Administrator explained that there are a lot of factors that could contribute to how long a case remains active, such as petitioners not actively pursuing their cases; parties unable or unwilling to remit requested deposits towards their arbitrator's contract; unfamiliarity with the arbitration process; reluctance to hire an attorney; attorney case load; death or change of contractor ownership; or contractor work load.

Arbitrator news

Judge William Byrne submitted his resignation from the arbitrator panel effective December 31, 2006. Judge Byrne is at long last fully retiring from Alternative Dispute Resolution cases. Judge Byrne served on the PWCA panel of arbitrators since 1987.

III. STATUS OF REGULATION 1395

The Administrator reported that the Office of Administrative Law approved regulation section 1395 and it was effective on April 27, 2006. The statutes and regulations booklet on the PWCA webpage has been updated to reflect the change and the Committee was provided with an updated page for their booklets.

IV. FILING FEES

At the last meeting, the Committee requested an indication of the three largest agency users of the program in order to consider OAH's Director's suggestion of charging the three largest agency users of the program an annual prorated fee of the projected costs of the program and then reimburse the agencies once all the filing fees for the year had been collected. The Administrator reported that after the last meeting OAH ran a report of the program's users and Caltrans came in first, DGS came in second and CDCR came in third. It was noted however that until recently the CDCR had no cases filed since 1999.

Also at the last meeting, the Committee requested an estimate of the cost for OAH to break even. The Administrator reported that, over the past 13 years, the program's costs averaged about \$136,000 a year. Over those 13 years, OAH recovered an average of 55% of its costs, leaving an average yearly deficit of \$61,200. During fiscal year 04/05 OAH lost over \$91,000. After the last meeting OAH ran cost reports through February 2006 and it appeared that OAH could break even for fiscal year 05/06. This was attributed to the recent change in administration of the program and the lack of staffing during the beginning of the fiscal year.

The Committee discussed the filing fee situation and ultimately decided to continue to monitor the situation until the effect of the change in administration can be fully ascertained for future years.

V. REVIEW OF ARBITRATOR APPLICATIONS

No new applicants were considered at this meeting for certification to the arbitrator panel. All pending applications will be considered at the Committee's next meeting in November 2006.

VI. NEW BUSINESS/PUBLIC COMMENT

The Committee requested that the consideration of a potential disparity between sections 1313 and 1332 be placed on the agenda for the next meeting. Michael Doughton will submit proposed language for review and consideration at the next meeting.

The Committee requested that the consideration of changes to the standard arbitrator contract be placed on the agenda for the next meeting.

The Committee requested that the consideration of "disclaimer" language for possible addition to the arbitrator panel list and initial letter be placed on the agenda for the next meeting. Michael Doughton will submit proposed "disclaimer" language for consideration at the next meeting.

VII. SCHEDULING OF NEXT MEETING

The next meeting is tentatively scheduled for November 15, 2006, at 10:00 a.m., with November 16 as an alternative date.