

## **February 26, 2008 PWCA Committee Meeting Minutes**

### **PUBLIC WORKS CONTRACT ARBITRATION (PWCA) COMMITTEE MINUTES**

February 26, 2008

The meeting was called to order at 10:20 a.m. by Co-chairperson M.B. "Tim" McGowan, representing the construction industry. Other voting members present were Diane Miller and John Messner, representing the construction industry; and Greg Rowsey, representing the Department of Water Resources (DWR). Others present included Steve Cohen, DWR; Stephen Cameron, Department of Transportation (Caltrans); Dan Rios, Department of General Services (DGS); and Phoenix Vigil, Program Administrator with the Office of Administrative Hearings (OAH). Committee representatives from Caltrans and DGS were not present.

The Committee welcomed new Committee member John Messner, public member.

#### **1. MINUTES OF THE JUNE 12, 2007 MEETING**

The draft minutes of the June 12, 2007 meeting were adopted without change.

#### **2. ADMINISTRATOR'S REPORT**

The Administrator reported on the status of the program.

##### **Program Summary**

In November 2007, the Office of Administrative Hearings (OAH) converted all of the PWCA data to its new case management system. The technology department is in the process of remapping the fields online to pull from the new system. The new system has the functionality to easily add data fields to collect new data as needed.

The Committee was not provided with a copy of the PWCA statistical report due to the inability to print the report from OAH's new case management system.

Although early in the calendar year, the cases filed to date appear to be up when compared with previous years. To date, seven complaints have been filed while the average for this time of the year is five. There are approximately 60 to 70 active cases.

It is estimated that OAH will break even this fiscal year. Part of the reason for this could be the limited amount of time that the Administrator is able to devote to the program due to other conflicting duties.

##### **Arbitrator news**

Four arbitrators were removed from the panel for not applying for recertification to the arbitrator panel.

### 3. ARBITRATOR DISCIPLINE

The Committee separately considered the responses of Robert Thum and James Madison, two arbitrators that took an unacceptable amount of time in issuing their decisions. In both cases the arbitrators took over a year to issue their decisions. The extraordinary length of time that it took for the arbitrators to render their decisions was inconsistent with the Program's purpose to provide the parties a speedy resolution to their disputes.

The Committee ultimately determined that the arbitrators' failure to inform the parties of circumstances likely to prevent a prompt decision in accordance with California Code of Regulations, title 1, section 1322, subdivision (a), was cause for their suspension and removal from the certified panel of arbitrators. Effective February 26, 2008, both arbitrators were suspended and removed from the PWCA panel of arbitrators.

### 4. REVIEW OF ARBITRATOR APPLICATIONS

Michael Bayard was certified to the arbitrator panel. David Robison and A. Grant Macomber were recertified to the arbitrator panel.

### 5. NEW BUSINESS/PUBLIC COMMENT

The Committee asked that the issue of interest accruing during the arbitration be put on the agenda for the next meeting.

### 6. SCHEDULING OF NEXT MEETING

The next meeting is tentatively scheduled for June 24, 2008

### 7. RESOLUTION

Co-chair Tim McGowan presented a Resolution signed by Senator Tom Torlakson to David Allen McCosker. Mr. McCosker served on the PWCA Committee for nine years.