

PUBLIC WORKS CONTRACT ARBITRATION (PWCA) COMMITTEE MINUTES

February 24, 2009

The meeting was called to order at 10:07 a.m. by co-chairperson M.B. "Tim" McGowan, representing the construction industry. Other voting members present were John Messner, representing the construction industry; Mark Leja, representing the Department of Transportation (Caltrans), and Jim Peddy, representing the Department of Water Resources (DWR). Others present included Stephen Cameron, Caltrans; Steve Cohen, DWR; Paul Davidson, Department of General Services; Chao Lor, Office of Administrative Hearings (OAH), and Phoenix Vigil, Program Administrator, OAH.

The Committee welcomed new member Jim Peddy, Assistant Division Chief, Division of Engineering, Department of Water Resources.

1. MINUTES OF THE JUNE 24, 2008 MEETING

The draft minutes of the June 24, 2008 meeting were adopted without change.

Mark Leja was selected to be the new state agency co-chair with Tim McGowan as the industry co-chair. In accordance with the Committee's Standing Rules, each co-chair will sit for two consecutive meetings before passing the chair to the other co-chair.

It was clarified on the record that Phoenix Vigil is Office of Administrative Hearings non-voting member on the Committee as delegated by OAH's Director.

2. ADMINISTRATOR'S REPORT

The Administrator reported on the status of the program.

Program Summary

The Committee was provided with a current copy of the PWCA statistical report which is also available online.

Filings are down with only one complaint filed so far this calendar year. In calendar year 2008, 29 complaints were filed while the average is about 34. There are currently 63 active cases.

The Committee discussed the low number of filings and opined that the decrease could be attributed to the success of pre-arbitration attempts at resolving disputes such as dispute review boards.

Last fiscal year OAH recovered 140% of its costs. The increase was attributed to the filing of several larger claim cases which require larger filing fees and a decrease in administrative costs and operating expenses. OAH does not expect this trend to continue, but will closely monitor the filing fees and, if the trend continues, then the Committee will consider reducing the filing fees. At this time OAH projects that it will recoup about 90% of its costs for fiscal year 2008-2009.

Arbitrator news

Recently it was discovered that two arbitrators had passed away in 2007 – Justice Robert Kane (Ret.) and Rodney Moss. This leaves 52 active arbitrators on the panel.

Other news

The Administrator advised the Committee that the PWCA Program was served with a subpoena in a civil case for production of Committee's records. Specifically the subpoena sought thirty years worth of Committee records, such as Committee meeting minutes and applications to the arbitrator panel.

The Administrator advised the Committee of a non-published California Court of Appeals' opinion wherein an arbitrator's decision was partially modified to strike an award of attorney's fees to Caltrans. The court found that Caltrans did not have a contractual right to attorney's fees because the subcontractor only alleged tort claims against Caltrans, not breach of contract claims. The remainder of the arbitrator's decision was affirmed.

3. PROGRAM SUPPORT AND RESOURCES

At prior meetings, the Committee was advised that there was a substantial backlog of arbitration cases and that the Administrator did not have sufficient time necessary to devote to the Program due to other duties. The Committee was understandably concerned about the delay and its impact on the arbitration cases. The Committee asked that a representative from OAH be present at this meeting to discuss options for support of the Program.

Chao Lor, a manager with OAH, was present at the meeting to hear the Committee's concerns. OAH is aware of the Program's backlog and anticipates several things will be happening in the near future which will increase the Administrator's available time towards the Program. OAH is advertising for a staff counsel who is expected to be able to take over some of the Administrator's legal responsibilities for OAH, such as litigation and legislation. An office technician is expected to be able to provide some assistance with data entry and other clerical duties. In addition, some of the Administrator's other duties are already in the process of being shifted to other staff.

The Administrator will update the Committee on the status of the backlog at the Committee's next meeting in June.

4. WEBSITE REVIEW

At the Committee's request, the Administrator showed the Committee the Program's website. Since OAH's conversion to the new look-and-feel, the PWCA Program is now more prominent on the website which provides easier access to information to parties in arbitration. The Administrator explained that all the data on the website is real-time and pulls directly from the case management system.

The Committee approved of the website and did not have any suggestions for changes.

5. ARBITRATOR RECRUITMENT

At its last meeting the Committee acknowledged that the arbitrator panel is in need of additional members.

The Administrator suggested placing links to the arbitrator application on OAH's Job Opportunities page to which the Committee agreed.

The Administrator received approval from OAH to place an ad in the California AGC magazine and will contact various other organizations to see if we can place an ad in their magazines.

6. REGULATION REVISIONS

The Committee briefly discussed various regulation revisions. The Administrator suggested and the Committee agreed to sending letters to every attorney and representative with an active case and every arbitrator on the panel to solicit regulation revision suggestions for consideration at the next Committee meeting.

7. REVIEW OF ARBITRATOR APPLICATIONS

Alan Harris and Craig McCollum were certified to the arbitrator panel. George Calkins, David Cornwell, R. Troy Fichtelman, Leroy Gire, John Herrig, Richard Holderness, Bernard Kamine and Stephen Wexler were recertified to the arbitrator panel.

8. NEW BUSINESS/PUBLIC COMMENT

No new business was presented.

9. SCHEDULING OF NEXT MEETING

The next meeting is tentatively scheduled for June 9, 2009.