



**7. Chief ALJ of Appellate Operations, Elise Rose Report:**

Chief ALJ AO Rose reported that Appellate Operations is now in compliance with all time lapse and case aging requirements. They have been experiencing a bit of a workload reduction. AO registrations were about 150 cases down from last month, dispositions were down almost 300 cases and the open balance is about 400 fewer than last year's average.

**8. Chief Information Officer, Nick Dressler Report:**

CIO Dressler reported that they have been instructed by CalHR and the Data ISO's Office to send out a reminder about computer-use policies to all employees, which will go out within the week.

CIO Dressler reported that they are almost finished with Microsoft software audit. This audit prepares them for the renewal of CUIAB's enterprise license agreement that expires in April 2016. They are about 95% in compliance with the current license.

**9. Chief Administrative Services, Robert Silva Report:**

Chief Silva reported that they are currently working on a Call Letter for capitalized assets for the state fiscal year 2016/17. This is an annual drill to apprise Labor Agency of departments' capital-asset needs for the budget year for larger ticket items. It is due next Tuesday, both for data processing items and non-data processing items.

**10. Chief Counsel's Report:**

Chief Counsel Levy reported there were five new writ petitions file, and year-to-date 28 new writ petitions have been filed with a total of 146 affirmances, 6 reversals, and 2 remands.

**11. Unfinished and New Business:**

Chair Dresser deferred the Telecommute Report to next month's meeting.

Chief ALJ/Executive Director Gonzales reported that the economic recovery continues to cause a significant decline in the UI appeal workload and at a much greater rate than projected. The drop is due to the improving economy along with the end of the federal extension program in December 2013. This unexpected steep drop in appeal workload has dramatically impacted CUIAB's budget and

CUIAB is facing a significant budget shortfall for state fiscal year 2015/16. We have experienced a 24% drop in UI appeal workload in 2014/15, compared to fiscal year 2013/14. This is more than double the original projected 11.4% drop. CUIAB is funded based on workload and CUIAB's budget is reduced commensurate with these workload changes.

Also, federal funding for the program has been cut each year since 2013 as part of the federal government's efforts to avoid sequestration cuts to all programs while reducing the federal budget deficit. A shortfall in UI program funding nationally has a significant impact on CUIAB's budget as the UI program typically represents 95% of the workload. CUIAB has taken action in every possible area to generate cost savings this fiscal year and budget reductions for next fiscal year. CUIAB has imposed internal hiring restrictions with an exception process for only the most critical positions in order to reduce staffing to align with the declining workload. CUIAB has restricted the use of retired annuitants and eliminated the use of permanent intermittent hours in the ALJ classifications. For non-ALJ classifications, retired annuitant use has been restricted; student assistants and permanent intermittent hours have been reduced; and the use of overtime has been eliminated except in very limited circumstances with prior approval.

Travel has been reduced to only the most mission critical trips. The number of hearing rooms and office space; they have closed hearing facilities where facility usage has decreased and the leases could be terminated. CUIAB has restricted training and purchases to only the most mission critical. Further, CUIAB is in the process of monitoring workload demand and lease terms to identify other areas where we may further downsize hearing facilities and continue to meet current workload demands. CUIAB has also begun a staff survey to ascertain interest in voluntary reduced work hours and partial service retirement.

Chief Silva updated the board on the 2015/16 budget. CUIAB's current budget authority for state fiscal year 2015/16 is \$75.1 million. This budget authority includes \$35.4 million for salaries and wages; \$22.3 million for the personnel benefits associated with those salaries and wages; and \$17.4 million for OE&E, operating expenses and equipment.

Chief Silva reported that CUIAB has made significant reductions in operating expenses as we begin 2015/16. These reductions include closures of the West Covina, Santa Ana and Van Nuys hearing facilities, as well as, the suites 907 and 908 in the Inglewood Office of Appeals. We have also vacated the former location of the San Francisco Office the Appeals on Berry Street in China Basin in the city. Also, the IT branch was able to reduce data processing, maintenance and licensing agreements by 46% as we enter the fiscal year. In addition, we have

reduced expenditures in workload driving categories of office supplies, travel, postage, and interpreters for hearings.

However, even with those reductions factored into the projected 2015/16 expenditures, if CUIAB continues to operate at the current staffing level, we project to overspend our budget authority in 2015/16 by \$2.8 million. This is the current projected shortfall without any further workload adjustments in 2015/16 and our budget authority is based on a spring 2015 workload projection of 253,150 UI dispositions for state fiscal year 2015/16. CUIAB workload projections will be put together for the Governor's fall revision and an accompanying budget adjustment will be made at that time and they will be completed based on the updated workload projections.

At this time, the amount of any budget adjustment would be speculative however internal analysis of both incoming and outgoing UI workload for the past 6 to 8 months leads them to believe that CUIAB will have insufficient workload to be able to achieve the level of 253,150 UI dispositions; the workload figure on which the current budget authority is based and that any adjustments in the fall would be a budgetary reduction from the current authority. That is essentially what CUIAB is facing in 2015/16.

Vice Chair Allen asked, when there are discussions regarding the rightsizing of our agency and the diminishment of resources that come to our agency is there any discussion about looking at trends as to what might happen with unemployment other than what the current figures are. Chief Silva responded that it does. EDD's program estimates group has a staff that considers those factors those when putting projections together during both the fall and spring revises.

Member Corbett acknowledged that considerable cuts and efficiencies in OE&E had already been made, but she asked whether additional efficiencies were feasible. Chief Gonzales responded that staff has substantially decreased its overhead in all areas, but infrastructure has been cut to the bone at this point. There may come a point where the Board would have to consider whether to change policies, cut headquarters, and compel parties to have phone hearings throughout parts of the state to further save on management and overhead. But the Board's preference has always been that parties are better served with in-person hearings.

Member Corbett asked if the Department of Labor gives CUIAB any guidance with regard to trends. Chief Gonzales responded that the Department of Labor funds each state individually, based on a formula. In California the funding is through EDD. Chair Dresser stated that EDD probably works with the Department of Labor

in terms of trends, but CUIAB relies upon EDD for forecasts.

Member Allen asked for a description of the outreach that was solicited from staff regarding cost-saving ideas and ways to conserve resources. Chief Silva described the internal budget advisory committee, which has representation from across the agency to generate staff proposals and recommendations for approving or disapproving proposed expenditures. Chief Gonzales stated the presiding judges were requested to bring any ideas they receive to the management staff and that they will consider it.

Chair Dresser announced that the next item on the agenda was to vote on staff layoffs for fiscal year 2015/16. He stated that they have received at least 6 written responses. Chief Counsel Levy identified six comment letters received from Pamela Cooke, Lita Krowech, Vernon Bogy, Marc Levine, Cynthia Thornton, and J. Kevin Elmendorf, respectively, which have been circulated and will be deemed part of the record.

Chair Dresser opened the meeting for public comment.

#### **10. Public Comment:**

Mark Cwern, ALJ in the Los Angeles Office of Appeals, speaking on his own behalf, emphasized the vital role that this agency and its judges play in the process of assisting those who are unemployed through no fault of their own or disabled. He stated that the ALJs ensure that benefits are paid when due, and that the ALJs take their responsibility seriously. Since 2009 he has presided over about 9,000 hearings, and he and his colleagues have eliminated the backlog of tens of thousands of cases by conducting mass calendars for two weeks per month, even though at the same time they were being furloughed and their pay was cut by about 14%. He stated that they repaid for their hard work with layoffs, and despite their pleas, 54 ALJs were separated from the agency last year in the layoffs alone. He stated that CUIAB's layoff was challenged, and those who appealed were reinstated with back pay. But now CUIAB again seeks to layoff judges and once again the layoff is ill-advised, unnecessary, and inappropriate, and is being challenged. Judge Cwern stated that had the Board ever sought public comment about its proposed course of action, it could have benefited from the experience and wisdom of its judges, but this never happened because the layoff plan was filed without any public notice or discussion whether there should be any layoffs. He stated that by failing to have an open meeting regarding layoffs, the agency violated the Bagley-Keene Open Meeting Act of 2004, prompting another lawsuit. He stated that since the Board is now discussing layoffs at a board meeting, depending on how the Board proceeds, the agency might come into compliance

with the Bagley-Keen Act. Judge Cwern quoted passages from the Attorney General's "A Handy Guide to the Bagley-Keen Open Meeting Act of 2004." He also stated that while the body is permitted to cure and correct a violation so as to avoid having its decision overturned, he recommended that CUIAB set aside the layoff and start the process over, disclosing publicly any non-public materials the board may have received or heard relating to the layoffs or need for layoffs.

Cynthia Thornton, ALJ from the San Diego Office of Appeals, submitted a handout consisting of a table she referenced in her comment letter. She stated that the numbers Chief Silva presented today (253,150 cases) are different than those she received from Workforce Planning last week (270,000 cases). She stated that a vote in favor of layoffs would increase the workload of the judges to an unprecedented level as shown on the table. Based on the 270,000 estimate, she stated that each judge after the layoff would be expected to decide 1928 decisions next year (at a cost of \$280 per decision), which is higher than at any point in CUIAB's history. Based on today's projection of 253,150 cases, it would still yield a workload of 1,108 decisions per year, per judge (at a cost of \$278 per decision), which she stated was similar to the recession levels, and she doesn't recommend it. She stated that between 2009 and 2011, CUIAB spent less than \$200 per decision. Yet we're spending per decision is at an historic high. There is fat in the budget and it is not the judges. She argued that since the recession has ended, CUIAB should return to regular meetings and regular trainings, instead of opting to increase workload levels by targeting only judges for layoff. She stated that judges are the most expensive workers to train, that it takes two years to do so, and that if you vote in favor of layoff, you risk that there won't be enough judges to carry the workload which cannot be corrected immediately. She stated that a vote to layoff these ALJs will create lengthy waits for justice down the road.

Susan Lee, ALJ from the Oakland Office of Appeals, stated that she has been with CUIAB for 12 ½ years. She thanked Chair Dresser for visit the field offices. She stated that answers to the overarching question of why we are only laying off ALJs again, that we've had attrition in the other staff that we haven't backfilled, but we've not attrited ALJs, are incorrect. She presented a list of the ALJs who have separated from CUIAB since September 1 of 2014, and September 1 of 2015. She stated that CUIAB has had 80.3 total ALJ separations in less than 13 months.

In response to the comment that there used to be four assistant chiefs but now there's only two, she stated it is only partially true because now there are two special assistants to the executive director, and the executive director and the chief are the same person. And in the tax office we have a Presiding Administrative Law Judge that doesn't have any more tax work because all the tax cases have been sent to the field. So now she's been doing the reasonable accommodation

requests on behalf of the chief's office. So arguably, the Chief now has five assistants, all making 100,000 or \$134,000 a year, four of which supervise no one.

She stated she is not suggesting that any managers be laid off, or that any category of employees be laid off, because she doesn't the Board has enough information to make an informed decision. She stated that since judges are the only revenue-producing employees of the agency, therefore CUIAB needs to know the financial loss from laying off each ALJ before deciding whether laying them off is a cost-effective way of doing business. She also stated that she fears the remaining judges will end up doing a higher number of cases to generate the same revenue. She stated that reports she has generated from eCATS each week shows CUIAB has been hovering around 17,000 to 18,000 UI cases since February, and overall caseload is 28,000. She stated that UI is not the only cases that we hear, but that DI and tax cases contribute to the workload. Therefore, focusing on the UI caseload is disingenuous. She stated that CUIAB continues to use retired annuitants alarming rate, the highest in the executive department and AO in 2014/15 totaling 3,868 hours. She stated the lump-sum payout to separating employees was enormous, noting overages in IT, AO, and exec. She stated that the IT department should not maintain a project management office since the projects (Cal-Mail clean-up, Dictaphone upgrade, Windows 7 rollout) seem completed, and they don't seem mission critical.

Judge Lee questioned whether automated calendaring protect the rights of California's employers and disabled workers, whether CUIAB should be relying on EDD workload projections as opposed to DOL workload projections, and the value of CUIAB's senior special investigator. She stated that every ALJ protect the rights of employers, unemployed and disabled by resolving disputed unemployment, disability and tax determinations promptly and efficiently, and that laying off any ALJ would be contrary to CUIAB's mission. She questioned why field ALJs could not be reassigned to help Appellate Operations rather than retired annuitants. She stated that the budget advisory committee should have rank-and-file representation.

Judge Lee ended her comments by reading portions of an e-mail from an EDD representative to the budget advisory committee from the budget last year, bearing the subject "Questions Regarding 2014/2015 CUIAB Budget," dated April 23, 2014. Chair Dresser asked who the person was that wrote the email, and she stated she would supply it later.

In closing, she stated that CUIAB has allowed outside entities to interfere in its budget and operations and to successfully divide and conquer management and the rank and file. Instead, she asked the Board to rescind the layoff, include the

ALJs in the decision making, because any action in furtherance of a layout that only includes ALJs will be contrary to CUIAB's mission and only further destroy CUIAB.

Daniela Urban, Executive Director of the Center for Workers' Rights, stated she was representing a coalition of low-wage, immigrant-worker advocates, a statewide advocacy group for low-wage workers. She stated they are concerned about the proposal to layoff ALJs statewide because low-wage workers need prompt hearings and timely decisions, and laying off ALJs would delay their ability to receive benefits. She stated that 56% of misconduct cases are overturned for workers at the CUIAB level, meaning they have already waited for their benefits when they get to CUIAB. She offered concerned about the future and another surge in unemployment, without adequately trained ALJs. She urged the Board not to layoff ALJs.

Pat Whalen, General Counsel for CASE, the labor organization that CUIAB's ALJs read out loud the written comment letter from ALJ Pamela Cooke (copy received in the record).

ALJ Robert Nagle asked why CUIAB taking a 30% budget cut when EDD isn't having its budget reduced? He stated that in 2015/2016 EDD added 900 employees and had a substantial increase in their budget from the state.

In addition to her written comments, ALJ Pamela Cooke stated that she can't emphasize enough how much CUIAB's ALJs have given to you since the recession. She stated that they took salary cuts to become CUIAB ALJs via the furloughs and lower salary in state service as compared with private practice. She stated she was financially struggling, it took her years to recover, and now she's facing layoff. She stated that last year when others were facing layoff, she interviewed with DSS, but withdrew her name from consideration so others could have the job. She asked the Board to consider that every job will count for someone, and they will most likely face financial struggles. She also asked the Board to ask the Executive Director to stay in touch with the PJs as far as the number of judges that will be retiring, and to consider the public impact when it comes to these layoffs. Judge Cooke stated that when she applied for to be a workers' compensation judge, even though CUIAB ALJs that have handled DI cases has actually received workers' compensation experience, she received a rude response from the Los Angeles presiding judge who indicated that CUIAB ALJs don't have workers' compensation experience under Labor Code Section 123.5. She stated that was devastating for CUIAB's Los Angeles and Sacramento area ALJs, as 12 job vacancies are unavailable, which, she stated, does not conform to state law.

There being no more public comments the Chair invited discussion from the Board.

Vice Chair Allen requested that staff prepare responses to the written and oral comments received.

Member Corbett emphasized that she doesn't want anyone to think that the Board doesn't understand the human part of the budget cuts and possible layoffs, and that the Board does appreciate very much the work that the ALJs do. She thanked those who commented for their presentations.

Chair Dresser proposed that following closed session, the Board adjourn its meeting until Thursday, September 10, 2015 at 10:30 a.m., to resume consideration of Item 12, after the staff has had an opportunity to generate responses to the comments received. The board voted unanimously to do so.

**13. Closed Session:**

The Board went into closed session at 11:49 a.m.

The Board adjourned from closed session at 12:50 p.m. No votes were reported, except the Board announced it would also continue consideration of Item 13 on September 10<sup>th</sup> when the adjourned meeting resumes.

**Adjournment at 12:50 p.m. until 10:30 a.m., on Thursday September 10<sup>th</sup>, for further consideration of Items 12 and 13.**