

**ADVISORY COUNCIL MEETING 9-29-2021
VIA WEB EX DUE TO COVID 19**

MEETING DATE: WEDNESDAY, SEPTEMBER 29, 2021

TIME: 9:00 A.M.

LOCATION: VIA WEB EX TELECONFERNCING DUE TO COVID

Advisory Council Members Present: Chair, Jay Siegel, Jodi Ross, Denise Casey, Kate Shea, Sheryl Pace Webb, Nicholas Anastasopoulos, Will Evans, Maria O'Brien, Alfred Gray, Lynn Alexis.

Ex Officio Members: Philip T. Roberts, Director, Marjorie Wittner, Chair.

Other participants: Meghan Ventrella, Hearing Officer and, Kimberly Eustace Administrative Assistant.

Advisory Council Members Absent: Michele Heffernan, Bryan McMahon, John Mann.

9:03 a.m. the meeting begins with a quorum.

Director Roberts hands over the meeting to Chair Jay Siegel, who asks the Council to accept the minutes from last meeting April 8, 2021. Kate Shea and Denise Casey move to accept the minutes from April 8, 2021. The minutes are unanimously approved.

Director Roberts: First on the agenda is COVID cases, we have been receiving covid ULP charges mostly are unilateral changes, most recently vaccine mandates. We have approximately 6 cases pending regarding vaccine mandates. Two from the Trial Courts. The Trial Courts are NOT covered by the Executive Order. One from the Town of Groton and a few from law enforcement agencies, MCOFU, SPAM and COPS. The DLR has been prioritizing these charges as Level 1 cases with mandatory mediation. MCOFU and COPS have asked for expedited investigations seeking injunctions. The DLR does not have authority to pursue injunction. However, as these are Level 1 cases, investigation has been expedited. SPAM's request for injunction was denied by the court.

Second we have delayed on moving forward to regulations, we have been making changes and modifications. The one proposed change to the regs contained in section 14.19(16) is to convert WMAM cases to regular 'R' cases. This proposed change has been taken out. The DLR maintains that it has the statutory authority to reclassify a petition, however, we feel it is unnecessary to put this in the regulations. We are on target to moving forward with the Notice of Hearing within the next week or two. The Hearing will be in November or December on proposed regs.

Kate Shea: When did you circulate the language on proposed dismissals not being reviewable?

Director Philip Roberts: I may put Marjorie on the spot, CERB Decisions on written majority cases indicate that there is no right to appeal? My interpretation that it was supposed to be quick?

Kate Shea: I believe management can request an appeal. What happens if dismissed and Union feels cards are not counted correctly how is it reviewable?

Director Philip Roberts: Statutory provisions are sparser when it comes to written majority. Technically, there is no appeal. Rather, where the employer challenges the unit status of positions, and the status of those positions is not outcome determinative, the DLR certifies the unit and the employer can ask the CERB to review the unit status of those positions.

Third, CERB member Joan Ackerstein has announced she does not wish to be re-appointed to her seat after serving 4 years. Her term expired August 2021. We don't have to post the CERB position, but we have in the past to expand the pool. We posted as a regular vacancy and then funneled the applicants to the Advisory Council Sub Committee to review. Then we interviewed, and the Advisory Council will send recommendations to the Governors Office. The Governor will make the final decision.

Jay Siegel: Following the same procedure should be repeated.

Kate Shea: The procedure is fine, I am concerned limiting the posting to state web site. Huge number of unqualified people. We need to post in labor relations specialist places, maybe Lawyers Weekly. We need a retired labor specialist with flexibility.

Marjorie Wittner: We can send to New England Consortium, ALRA and Cornell.

Maria O'Brien: American Association of Law Schools has many professors.

Jay Seigel: American Bar Association has 21,000 members.

Director Philip Roberts: please send suggestions to me.

Fourth, In-person hearings vs. remote hearings. We have sent out "Notice of Hearings" stating we have the facilities available to conduct in-person hearings if all parties agree to an in-person hearing. We are not ready for hybrid hearings yet. We hope in December we have in-person hearings. I would like your input.

Jay Seigel: Depending on the public health officials say. I think its hard to say right now with the mask mandates. You need proper safeguards. We need to stay consistent with the public health guidelines.

Director Philip Roberts: We are going to do what's appropriate to public safety. If we wait for COVID to be over I don't think it will ever be fully over. We need to give the parties three months' notice that we will be doing hearings in person.

Kate Shea: It's a case-by-case basis. The question is everyone vaccinated? I don't know if the DLR can require proof of vaccine. I would NOT do an in-person procedure.

Jodi Ross: COVID is still here. We should still do virtual procedures since even vaccinated individuals can get the new variant, so I don't agree with in-person procedures.

Director Philip Roberts: WebEx is much more convenient. It does make sense to keep WebEx. Investigations will stay remote. However, having people in person during hearings is better for settlement purposes.

Jay Siegel: I understand everyone's concerns maybe do a test case for now. Maybe have a trial period and get feedback.

Will Evans: The lack of opportunity to talk in person discourages settlement though some cases settle in break out rooms. Having attorney side talks always helps in settlement. However, remote procedures are going forward more, not much reschedules.

Director Philip Roberts: The DLR has seen the number of hearings going on the record, instead of settling, is up 30% since March 2020 and I think this can be attributed to how easy it is to do remote hearings.

Will Evans: In person prehearing conferences usually settle before hearing.

Denise Casey: There needs to be guidance on the vaccine. However, much easier on the parties to continue via WebEx.

Will Evans: Pre-COVID, there were always accommodations for witnesses who couldn't make the trip into the office or disabilities. Hybrid hearings can work as well.

Sheryl Pace-Webb: I agree with everyone. We need to be more patient and cautious. Continue with the remote procedures. DUA is doing 95% remote hearings.

Director Philip Roberts: Next meeting Tuesday, December 14, 2021 at 9:00 a.m.

Motion to adjourn meeting by Denise Casey and seconded by Sheryl Pace-Webb.