

ADVISORY COUNCIL MEETING 11-29-2022
VIA WEB EX

MEETING DATE: TUESDAY, NOVEMBER 29, 2022

TIME: 1:00 PM

LOCATION: VIA WEB EX

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

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

Other participants: Susan Atwater Hearing Officer Supervisor, Lan Kantany, Chief Counsel, Kimberly Eustace Administrative Assistant.

Advisory Council Members Absent: Bryan McMann, John Mann and Lynn Alexis.

Chair Siegel calls the meeting to order at 1:07 p.m.

Item 1. Approval of minutes of past meetings.

- December 14, 2021 minutes. Kate Shea moves to omit word 100% from page 2. Jodi Ross & Jay Siegel 2nd this motion. Approved unanimously.
- February 2, 2022 minutes. Jay Siegel moves to correct typo on page 2; "role her" should be "role here." Jay Siegel and Kate Shea second the motion. Approved unanimously.
- March 3 & 4 2022 minutes. Jay Siegel no changes to minutes. Kate Shea moves and Alfred Gray second the motion. Approved unanimously. All minutes adopted.

Item 2. Personnel changes. Director Roberts said

- Shirley DeMarco Siciliano has retired.
- New Chief Counsel Lan Kantany has been here since last April 2022.
- Nicholas Balatsos started on November 14, 2022, as a Counsel 1 and was previously at Sandulli Grace.
- New CERB member Victoria Caldwell came in as highly qualified and was recommended to the Governors office. And has been appointed yet not sworn in yet. Ms. Caldwell firstly must resign as deputy chief counsel for Town of Salem. However, she found it problematic due to overload of work to finish in Salem. Ms. Caldwell should be sworn in by mid-December. We will notify the Advisory Council once she is sworn in.
- The JLMC will be adding a Vice Chair position to their staff. We haven't had a vice chair in years; however, the budget allows for a vice chair position. This will be helpful as there has been times in the past where Chairman Hanson had to step down or was unavailable.

Item 3. Briefing on COVID-related DLR cases. Susan Atwater reports we have had very few related covid cases going to hearing the parties have settled prior to hearing, only one Arbitration Award had a decision ARB-20-8279 City of Lowell. The arbitrator upheld the discharge. There is another hearing

going forward next week UP-21-8884 Massport and IAFF for failure to provide information regarding vaccination requirements and reasonable accommodations. Nick Anastasopolous reminds the Council that there is a SJC case in January 2023 involving the City of Boston. Will this affect further cases at DLR? Marjorie Wittner addresses Council that this case involves Public Safety (Boston police superiors, detectives, and Fire). The City allegedly repudiated an MOA from late 2021 regarding vaccines. In January 2022 the policy changed, and the Unions filed for injunctive relief. An injunction was granted and this was appealed to the SJC. Oral argument will be January 6, 2023, at 9:00 a.m.

Item 4. Recent strike cases. Director Roberts said that the DLR had three strike investigations this year, one in May involving Brookline schools and two in October, one with Haverhill schools and one with Malden schools. In such cases, the employer files a petition for a Strike Investigation and the CERB conducts an investigation and if merit is found, issues a cease-and-desist order. If the order is not complied with, the Chief Counsel seeks an injunction and sanctions. In all three of these cases the union circulated an FAQ document discussing strikes, including how they work and what might happen. In all three cases a strike vote was scheduled for a Friday afternoon with a strike to take place the following Monday.

In the Brookline case, the petition for strike investigation was filed on Wednesday, the CERB conducted an investigation on Thursday and issued its decision, with a cease-and-desist order, that evening. Chief Counsel Kantany obtained an injunction in Superior Court on Friday. The strike vote took place Friday afternoon as planned and the teachers went out on strike on Monday morning. Chief Counsel Kantany returned to court on Monday and got a contempt order with fines of \$50,000 per day escalating by \$10,000 per day thereafter.

In the Haverhill case, the petition was filed on Wednesday and the CERB conducted an investigation on Thursday and Friday. It issued a bench decision and cease-and-desist order against the Haverhill Education Association on Friday evening with a full written decision on Saturday finding a violation by the Mass. Teachers Association as well. After the strike began on Monday, Chief Counsel Kantany went to court and got a temporary restraining order. The strike continued and on Tuesday she got a preliminary injunction. On Wednesday, she got a contempt order and fines of \$50,000 per day escalating by \$10,000 per day thereafter. The strike settled on Thursday evening. The DLR is still pursuing the matter of the fines.

In the Malden case, the School Committee did not have evidence of strike activity until it actually occurred on Monday and they filed their petition on Monday morning. The CERB began its investigation Monday afternoon and continued the case over to Tuesday morning but the strike settled Monday night.

Item 5. Electronic Elections and regulations. Director Roberts said we are working with the Secretariat on the regulation changes and they have a lot of very useful input on possible changes to all sections of the regs. Proposed reg changes need to go through the Executive Office of Administration and Finance and it is my understanding that it would be difficult to get through their approval process this close to the end of the administration. Once the new administration comes in, we intend to readdress the regulation changes.

Item 6. In-person proceedings. Director Roberts said that since June 2022 the Policy has been that hearings, but not investigations, will be held in person unless the parties show good cause to hold the hearing remotely. One exception is any case that was started via WebEx, any continued days of hearing

will also be conducted via WebEx. To date only three hearings have gone forward since June and there have been no problems noted with doing them in person. Mediations are via WebEx unless an in-person mediation is requested, in which case the mediation will be in person as long as the mediator is available to do so. Ultimately, the Mediator is in control of how the mediation will take place. The trend seems to be if the parties work in person, they are more likely to request an in-person proceeding whereas if the parties work remotely they prefer remote mediation. Nick Anastasopolous asked if the three hearings went forward in person by the parties' choice. Director Roberts said no, but there was no objection and the hearings went fine.

Item 7. Legal Case Management update to Time Matters. Director Roberts said that the current case tracking system is approximately 12 years old and needs updating. We are working with some other small state agencies to develop a new common platform. We are making progress and had an initial roll out meeting a few weeks ago. Most of the new features will largely be of use internally but one feature we would like to build is an "outward facing" portal that would allow parties to file briefs and documents directly into system and track events in a case much like the federal courts' PACER system. Kate Shea will the new system be in real time? Yes, the new system does have real time capabilities.

Chair Siegel -does anyone have any open discussion? No responses

Director Roberts suggested we try to schedule our next meeting or meetings. Chair Siegel suggested the next meeting be in March. Director Roberts asked Chief Counsel Kantany when the current authorization for remote meetings expires, as relates to the Open Meeting law and she said it expires in July 2023. Director Roberts suggested we schedule a meeting for June, before the authorization expires. There was discussion of in-person meetings versus remote and most Advisory Council members agreed that remote meeting is preferable. Director Roberts said he will send out some proposed dates for meetings in March and June 2023.

There being no other business, Chair Siegel adjourned the meeting at 2:08 pm