

MEETING  
STATE OF CALIFORNIA  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF ADMINISTRATION  
BOARD GOVERNANCE COMMITTEE

CALPERS AUDITORIUM  
LINCOLN PLAZA NORTH  
400 P STREET  
SACRAMENTO, CALIFORNIA

TUESDAY, NOVEMBER 15, 2022  
3:30 P.M.

JAMES F. PETERS, CSR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

APPEARANCES

COMMITTEE MEMBERS:

Theresa Taylor, Chairperson

Rob Feckner, Vice Chairperson

Fiona Ma, represented by Frank Ruffino

Lisa Middleton

David Miller

Eraina Ortega

Betty Yee, represented by Lynn Paquin

BOARD MEMBERS:

Jose Luis Pacheco

Ramon Rubalcava

Mullissa Willette

STAFF:

Marcie Frost, Chief Executive Officer

Matt Jacobs, General Counsel

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PROCEEDINGS

1  
2 CHAIRPERSON TAYLOR: All right. Good afternoon.  
3 We're bringing the Board Governance Committee to order.  
4 The first item on the agenda is to call roll, please.

5 COMMITTEE SECRETARY: Theresa Taylor?

6 CHAIRPERSON TAYLOR: Here.

7 COMMITTEE SECRETARY: Rob Feckner.

8 VICE CHAIRPERSON FECKNER: Good afternoon.

9 COMMITTEE SECRETARY: Frank Ruffino for Fiona Ma?

10 ACTING COMMITTEE MEMBER RUFFINO: Present.

11 COMMITTEE SECRETARY: Lisa Middleton?

12 COMMITTEE MEMBER MIDDLETON: Present.

13 COMMITTEE SECRETARY: David Miller?

14 COMMITTEE MEMBER MILLER: Here.

15 COMMITTEE SECRETARY: Eraina Ortega?

16 COMMITTEE MEMBER ORTEGA: Here.

17 COMMITTEE SECRETARY: Lynn Paquin for Betty Yee?

18 ACTING COMMITTEE MEMBER PAQUIN: Here.

19 CHAIRPERSON TAYLOR: All right. Everyone is  
20 here.

21 Next item on the agenda is Agenda Item 2, it's  
22 your report, Mr. Jacobs.

23 GENERAL COUNSEL JACOBS: Very good. Good  
24 afternoon, President Taylor and Board members. Matt  
25 Jacobs. Happy to be here this afternoon. We have a

1 relatively light agenda this afternoon. We have on the  
2 action consent the annual review of the CEO's delegation.  
3 Staff does not have any changes recommended on that. And  
4 just a comment at this point. We've gone through a couple  
5 of cycles now when there have been no changes either on  
6 the CEO's delegation or the delegations to the committees.  
7 And if it were your pleasure, I could bring back an agenda  
8 item that moved the -- to change the Board Governance  
9 Policy from reviewing these items every year to some  
10 other -- some other period of time that you're comfortable  
11 with could be discussed at a later --

12 CHAIRPERSON TAYLOR: How about we do -- Matt,  
13 that sounds like a great idea. How about we do every  
14 other year unless requested, by the Committee or the  
15 person?

16 GENERAL COUNSEL JACOBS: Very good. I will bring  
17 back and agenda item at the next Board Governance  
18 Committee meeting to effectuate that change.

19 CHAIRPERSON TAYLOR: Okay. Perfect.

20 GENERAL COUNSEL JACOBS: Great. And then on the  
21 action consent -- excuse me on the action agenda, we have  
22 proposed revisions to the full Board hearing procedures.  
23 And I will walk you through those items -- that item when  
24 we get there.

25 And that concludes my Executive report.

1 CHAIRPERSON TAYLOR: All right. Mr. Jacobs,  
2 thank you very much.

3 That brings us to the action consent items.  
4 What's the pleasure of the Committee.

5 COMMITTEE MEMBER FECKNER: Move approval.

6 COMMITTEE MEMBER ORTEGA: Second.

7 CHAIRPERSON TAYLOR: Moved by Mr. Feckner,  
8 seconded by Ms. Ortega.

9 All those in favor?

10 (Ayes).

11 CHAIRPERSON TAYLOR: All those opposed?

12 Okay. Motion carries.

13 Information consent items. I have not received  
14 any requests to remove anything. So that's number four.

15 We move on to number five, action agenda items.  
16 So let's talk about the proposed revisions to the full  
17 Board hearing procedures. I already heard from someone  
18 that we some commentary on it, so...

19 GENERAL COUNSEL JACOBS: Excellent. Well, let me  
20 just also state at the outset that your independent  
21 counsel for administrative hearings, Mr. Chirag Shah, is  
22 on line and this is really a joint product kind of started  
23 by him really, so you have that resource available.

24 So as related in this agenda item, Mr. Shah  
25 recently recommended that CalPERS consider updating its

1 procedures for full Board hearings. The Legal Office  
2 agrees with that. The actual procedures -- the reasons  
3 really because the actual procedures that we've been  
4 employing had gotten a little bit away from the written  
5 document. And, of course, you always want to be pretty  
6 close to that written document if not precisely on that  
7 document, because it's guidance, not so much for staff but  
8 for the lawyers and the -- and their -- and the parties  
9 who are coming before the Board on a full Board hearing,  
10 who have probably never participated in any such hearing  
11 and may never again. So we thought that we would clean  
12 those up.

13           Mr. Shah took a first cut and sent us his  
14 thoughts to CalPERS Legal Office. Then made some  
15 additional changes. We went back and forth a couple of  
16 times, until we agreed that we had a pretty good product.  
17 And that's what we have before you this afternoon.

18           It does, we believe, more accurately reflect the  
19 actual procedures that are used at full Board hearings.  
20 It also simplifies and eliminates some duplicative  
21 language. There's nothing really too dramatic in it, but  
22 some of the more significant changes are as follows.

23           On page two, if you want to follow along on the  
24 red line, which is attachment 2, it recites the sequence  
25 of the hearing. In other words, how the -- how the

1 hearing opens, what happens after that, and on and on more  
2 accurately than what was reflected in the old version. It  
3 reduces the time limit for argument from 15 minutes to 10,  
4 which is what we have been doing now for several years  
5 anyway. We had been doing that via a notice that went out  
6 scheduling the full Board hearing as opposed to relying on  
7 the full Board hearing procedures.

8           On page three, the change -- a change makes clear  
9 that the independent counsel may attend the closed session  
10 of the Board to advise the Board with respect to the legal  
11 issues that may have arisen in the matter. This also  
12 eliminates the provision that the closed session would be  
13 recorded. As Mr. Shah pointed out when he made this  
14 recommendation, it's not required by law, and we don't  
15 typically intrude into the deliberations of either jurors  
16 or judges, as that can have a chilling effect on the  
17 discussion.

18           And this page -- also, the change on this page  
19 also makes clear that defend -- depending upon how the  
20 Board come out on a full Board hearing, the Board  
21 President may direct either independent counsel or one of  
22 the parties to draft a new decision. The way it had read  
23 previously was that CalPERS, the CalPERS Legal Office,  
24 would prepare the new decision.

25           CHAIRPERSON TAYLOR: Looks like there's a mistake



1 in that part just FYI. May direct -- the Board President  
2 may direct the, which is still in black, all crossed out,  
3 the Board's independent counsel and/or one or more of  
4 the -- and you left the last part.

5 GENERAL COUNSEL JACOBS: No, it continues on down  
6 at 12, one or more of the parties to prepare a formal --

7 CHAIRPERSON TAYLOR: Oh, there it is, parties. I  
8 saw prepare a formal decision. I didn't see the parties  
9 do. Okay. I got it.

10 GENERAL COUNSEL JACOBS: Right. Yeah.

11 CHAIRPERSON TAYLOR: Thank you.

12 GENERAL COUNSEL JACOBS: Sure. So that's kind of  
13 the more significant changes in the document. And open  
14 for questions and I'm sure Mr. Shah is as well.

15 CHAIRPERSON TAYLOR: Mr. Miller, go ahead.

16 COMMITTEE MEMBER MILLER: Yeah. I'm -- I didn't  
17 realize that we had been -- that we had been not following  
18 our procedure and reducing the time that anyone would have  
19 for argument or rebuttal historically to -- by, you know,  
20 from 15 to 10 or from five to three minutes. I support  
21 everything in this, except for making that our official  
22 approach. I would offer a motion to amend to not change  
23 the times and to -- we so rarely have someone in front of  
24 us. And these issues are complicated. I just -- it's so  
25 rare that a member has their day in court in front of the

1 entire board that it seems to me, you know, five minutes  
2 every once in a while every year. I would err on the side  
3 of, yeah, maybe an attorney is going to say something  
4 twice, or maybe someone who's representing themselves is  
5 going to, you know, babble on. That's kind of what I  
6 might do if I was in front of such an esteemed panel.

7 But to reduce that time by a third for the record  
8 as part of our policy and tell our members we don't have  
9 five minutes to spare for you, when the amount of time we  
10 waste sometimes around here. You know, it just seems  
11 really something I would not have expected. And I don't  
12 understand the -- it's just -- it really makes us look  
13 like we didn't ask any people who were in front of us  
14 historically or any of the counsel who routinely, you  
15 know, appear in front of us or may appear in front of us  
16 what they thought about that idea. Nobody asked unions  
17 what they thought about that idea.

18 It just -- this is the one thing that we can do  
19 directly to listen to our members and hear them out when  
20 they have something that we have to make a decision about.  
21 I'm not comfortable taking a minute from them, let alone,  
22 you know, a third of the minutes. And I didn't realize we  
23 had just kind of unilaterally done that in the past.

24 So that's pretty much my thoughts on it.

25 CHAIRPERSON TAYLOR: I will say I do remember the

1 hearing that we finally decided to do that -- do that at.  
2 But Mr. Jacobs and Mr. Shah, if you would like to opine on  
3 that a little bit. I think Mr. Feckner also remembers  
4 when that occurred. But I think the time frame we got --  
5 we ended up with --

6 GENERAL COUNSEL JACOBS: I think that we -- this  
7 was -- this dates back several years and I think we had  
8 kind of a rash of full Board hearings.

9 CHAIRPERSON TAYLOR: Um-hmm.

10 GENERAL COUNSEL JACOBS: And it's 15 and then 15  
11 from your staff, and then five and five. So it ended up  
12 being 40. I'm not arguing with you, Mr. Miller. I'm just  
13 kind of providing some context, because I understand your  
14 position. And then there's an opportunity for the Board  
15 members to question both sides, which can go on for an  
16 extended period, because there is no time limit on that.  
17 And it just ended up that we were spending as much as  
18 three hours, I think, on a full Board hearing. So I think  
19 that's where that derived from the kind of decision to try  
20 and shorten it up a little.

21 CHAIRPERSON TAYLOR: Well, and I just want to be  
22 clear. I don't think if I told SEIU about this, this  
23 would make a difference to them. But I understand the  
24 concept of having our members in front of us, having the  
25 members sitting there with their attorney. I do think

1 that they do get their time in court, because we ask the  
2 questions, and -- of both attorneys, whether it's our  
3 staff or their attorney. But I don't know, Mr. Shah,  
4 before I move on to my members, did you have anything to  
5 opine on?

6 MR. SHAH: No. Good afternoon, Madam Chair,  
7 Committee members. No, I pretty much agree with  
8 everything that Mr. Jacobs said in his report. As far as,  
9 you know, Mr. Miller's comments, absolutely makes a lot of  
10 sense, totally understand, and I'm with him on board. But  
11 the reason why this came about the reduction of time was  
12 really to make the process more efficient. And, of  
13 course, the Q&A portion of the -- of the hearing is --  
14 there's no time limit on that, so, you know, there's an  
15 opportunity for Board members to fully engage both parties  
16 and ask whatever questions they need.

17 I also believe that there's a provision here to  
18 extend the time limit on a case-by-case basis, if that's  
19 required, but just want to kind of give you some  
20 background on that. And the idea really was to just make  
21 it more efficient, because the last five minutes -- a lot  
22 of these hearings are focused on complex but, you know,  
23 single issues. And it was felt that the last five minutes  
24 was just not really adding anything to the -- to the  
25 Board's education. So that's -- that's what -- that's

1 what the reasoning behind that was. And the Board  
2 President had the discretion to limit the time limits as  
3 well, so that's why -- that's how that came into  
4 implementation.

5 CHAIRPERSON TAYLOR: All right. Great. And I do  
6 see at the top of page four, upon written request made the  
7 last five days before the hearing, the Board President  
8 may, in her or his decision, increase the time  
9 limitations.

10 Mr. Rubalcava.

11 BOARD MEMBER RUBALCAVA: Thank you, Ms. Chair --  
12 President. I had a question on the scope of review  
13 section. To me, it's a little -- I just need  
14 clarification, because on the one hand, it's says you're  
15 supposed to go based on the record. Under no circumstance  
16 would the Board accept any new witnesses unless clarified  
17 or evidence. But then the second paragraph before it says  
18 you can introduce it written -- in advance of the due date  
19 for written arguments. So I'm not quite sure is -- if  
20 this allows a process to -- it seems contradictory to me,  
21 unless there is an opportunity to introduce new evidence.

22 CHAIRPERSON TAYLOR: What page are you on?

23 BOARD MEMBER RUBALCAVA: It starts on page four  
24 and then goes to page five.

25 GENERAL COUNSEL JACOBS: Of which attachment.

1 BOARD MEMBER RUBALCAVA: The Scope of -- Scope of  
2 Review.

3 GENERAL COUNSEL JACOBS: But which attachment,  
4 attachment 3?

5 BOARD MEMBER RUBALCAVA: The red-line.

6 CHAIRPERSON TAYLOR: The red-lined attachment.  
7 Okay.

8 BOARD MEMBER RUBALCAVA: That way you can see the  
9 changes.

10 CHAIRPERSON TAYLOR: Will be notified prior to...

11 GENERAL COUNSEL JACOBS: Well, the way it works  
12 is that what it says is we're not going to accept any  
13 witness testimony. We're not set up to take witness  
14 testimony. In a rare occasion -- I mean, the basic idea  
15 is -- here is you are an appellate panel, so the record is  
16 already created before the OAH. So there's really no  
17 occasion for that record to get opened. If something  
18 critical happens in the interim, because there can be two,  
19 three months between the issuance of a -- of a proposed  
20 decision and the full Board hearing, if something critical  
21 happens, if some document comes out, if some ruling comes  
22 out that could change the decision, the idea is in that  
23 instance, the party can appeal, can basically file a  
24 motion to the President saying this event has occurred,  
25 and we would like to have this special exception to

1 present this particular documentary evidence, because we  
2 think it's significant enough.

3           And so it gives you that kind of narrow window  
4 opportunity to supplement the record. But it's -- that  
5 would be very rare and again basically the idea is you're  
6 an appellate panel and the record has been established in  
7 front of the hearing officer, the ALJ.

8           BOARD MEMBER RUBALCAVA: Okay. Thank you for  
9 clarifying. I must have misread it. So they -- so I see a  
10 different -- so there's documentary evidence -- Okay. I'm  
11 going to -- okay. Now, it makes sense -- you can -- okay.  
12 I --

13           CHAIRPERSON TAYLOR: You can request it ahead of  
14 time, but not at the hearing.

15           BOARD MEMBER RUBALCAVA: Gotcha. I think I got  
16 it. Thank you very much.

17           GENERAL COUNSEL JACOBS: You're welcome.

18           CHAIRPERSON TAYLOR: Okay. Mr. Miller.

19           COMMITTEE MEMBER MILLER: Just a final thought.  
20 It seems to me if we feel our counsel doesn't need 15  
21 minutes, we can take three minutes, but if the -- you  
22 know, the member's counsel wants the full 15 minutes and  
23 the full five minutes of rebuttal, we are, you know,  
24 giving up potentially eight minutes. And if this is a  
25 result of a rash of hearings, we haven't had that for a

1 long time. And if they were going for two, or three, or  
2 more hours, the eight minutes was not the problem.  
3 There's -- if there's a problem with that and we want to  
4 resolve it, we should be talking about what took all that  
5 time. It sounds like it was the interactions with the  
6 Board, with the parties, and their counsel, which this  
7 does nothing about. And, in fact, in theory, if you're  
8 reducing the amount of time someone has to present to you  
9 and they're not a very eloquent presenter or very legally  
10 knowledgeable, that could result in the Board needing to  
11 go back and forth with them quite a lot. This does  
12 nothing for that. So I'm all for the streamlining and the  
13 clarification, and simplification, but I'm not supporting  
14 taking those eight minutes off the table just as a matter  
15 of course.

16 CHAIRPERSON TAYLOR: Okay.

17 Ms. Middleton. In a minute. There you go.

18 COMMITTEE MEMBER MIDDLETON: All right. Thank  
19 you. We're a unique body and I'm very sympathetic to the  
20 points that Mr. Miller is raising. That said, it's always  
21 difficult when bodies such as ours are asked to act in  
22 some type of quasi-judicial fashion. That's not what  
23 we're used to being and doing. And there probably needs  
24 to be some allowance for the uniqueness of our body. All  
25 of that said, I think Mr. Jacobs hit the nail on the head.



1 We are an appellate body. They -- when matters get to us,  
2 they have gone through extensive hearings. There has been  
3 a very robust set of interactions between both sides and  
4 we delegate to an administrative law judge to make a  
5 decision. Overruling that decision can't come from  
6 anything other than it needs to be the law says that the  
7 administrative law judge has made a mistake. And if we up  
8 -- if we adopt any other standard other than to follow the  
9 law, we go down a rabbit's hole that we will never get out  
10 of.

11 CHAIRPERSON TAYLOR: Thank you.

12 Mr. Ruffino.

13 ACTING COMMITTEE MEMBER RUFFINO: Yeah. Thank  
14 you, Madam President. And I don't necessarily Disagree  
15 with what was just said, but I think -- and having -- by  
16 the way, having served on many consumer boards, which have  
17 act -- which they act in a quasi judicial position and  
18 other appeal boards, both at the local and State level, I  
19 tend to agree with Mr. Miller. And I was waiting for  
20 counsel to rebuttal, you know, his argument. And I heard  
21 that they did not have any issues so to speak. And so I  
22 think, and I would support, if we -- our office would  
23 support, if Mr. Miller is willing to make a motion, we  
24 will second and support that idea to have flexibility and  
25 not reduce the time, as we -- as has been said, you know,

1 we're talking here minimum, talking minutes. And I think  
2 we should allow and be prepared to the best of our ability  
3 to give the appellant sufficient time and not to reduce  
4 that time.

5 Thank you, Madam President.

6 CHAIRPERSON TAYLOR: Thank you.

7 So I will say one more time, this -- as Ms.  
8 Middleton stated, this has already gone to the Office of  
9 Administrative Law. So they've had their time in court.  
10 They are asking us usually -- we're either appealing,  
11 which our staff is, or -- but most of the time, they're  
12 asking us to overturn the judge, or the -- yeah, the  
13 Office of Administrative Law.

14 So I don't know that we're giving -- I'm not even  
15 sure. I think I remember one time out of my eight years  
16 that we had an actual member here. The rest of the time  
17 it was the attorneys. So I'm not sure, other than -- why  
18 we would need the extra five minutes, and -- because it  
19 cuts our time down too. So it's five minutes -- it's 10  
20 minutes for each and then three minutes for rebuttal. We  
21 could add -- if the time crunch is the Board, right, we  
22 could add a three-minute time frame for each Board  
23 member's -- you know, after they've done their question  
24 and the -- and the attorney answered, then they're done or  
25 a question -- you know, one question at a time type of

1 thing, if we want to do that to keep it fair. I don't  
2 know.

3 We're trying to figure out a way to streamline  
4 it, but it's up to the board or the Committee. So we are  
5 in the discussion and we can either have a motion to  
6 amend --

7 COMMITTEE MEMBER MILLER: I'll make a motion.

8 CHAIRPERSON TAYLOR: Huh.

9 GENERAL COUNSEL JACOBS: Well, you can go either  
10 way. Mr. Miller can make the motion --

11 CHAIRPERSON TAYLOR: Yeah, because it's been  
12 presented as a motion.

13 GENERAL COUNSEL JACOBS: -- to approve with that  
14 change or you can make a motion to approve without that  
15 change and then make a substitute motion.

16 CHAIRPERSON TAYLOR: Go ahead, Mr. -- oh, wait,  
17 wait, wait, wait. Sorry, my bad.

18 COMMITTEE MEMBER MILLER: I would motion that we  
19 approve the staff recommendation with the amendment to  
20 leave the time constraints as 15 minutes and 5 minutes for  
21 rebuttal, as it originally, but make all the other  
22 changes.

23 ACTING COMMITTEE MEMBER RUFFINO: Second.

24 CHAIRPERSON TAYLOR: All right. Motion made by  
25 Mr. Miller and seconded by Mr. Ruffino to accept all

1 changes except for the time frame changes. Mr. Miller,  
2 did you want to speak on the motion? Actually, you spoke  
3 on the motion.

4 COMMITTEE MEMBER MILLER: No. I'm sure I've  
5 wasted more than eight minutes of --

6 (Laughter).

7 CHAIRPERSON TAYLOR: All right.

8 COMMITTEE MEMBER MILLER: A lot of people feel  
9 that I've wasted more than eight minutes of their time and  
10 more than once a year on this Board. So, you know, just  
11 to put it in perspective.

12 CHAIRPERSON TAYLOR: So -- okay. So, all those  
13 in favor of the motion, aye?

14 (Ayes).

15 CHAIRPERSON TAYLOR: All those opposed?

16 All right. So the motion carries. It looks like  
17 Mr. Miller wants to - hold on - talk again.

18 COMMITTEE MEMBER MILLER: No. No, I thought I  
19 was --

20 CHAIRPERSON TAYLOR: Oh, you pushed your button,  
21 man.

22 (Laughter).

23 COMMITTEE MEMBER MILLER: Well, it was to vote.

24 CHAIRPERSON TAYLOR: All right. So it appears  
25 that we carried it with not reducing the time.

1           GENERAL COUNSEL JACOBS: Very good. So what  
2 we'll do is we will bring that change to the Board  
3 tomorrow and the Board can vote on it tomorrow and we'll  
4 get it done presumably.

5           CHAIRPERSON TAYLOR: Okay. Did anybody have a  
6 desire to see an addition -- it's too late now, but we can  
7 have Matt look at it for another time to cut down the  
8 Board members. Okay. I got a lot head shaking there.  
9 Never mind.

10           (Laughter).

11           CHAIRPERSON TAYLOR: All right. All right.  
12 Go -- Matt, was there anything else?

13           GENERAL COUNSEL JACOBS: No.

14           CHAIRPERSON TAYLOR: All right. I don't think we  
15 have any information agenda items, so at this point --

16           GENERAL COUNSEL JACOBS: Any public comment?

17           CHAIRPERSON TAYLOR: We have the summary -- we  
18 did have a summary of Committee direction remember.

19           GENERAL COUNSEL JACOBS: I think -- right.

20           CHAIRPERSON TAYLOR: You made the recommendation.

21           GENERAL COUNSEL JACOBS: Oh, yes. Yes. Thank  
22 you.

23           (Laughter).

24           GENERAL COUNSEL JACOBS: So I'll BRING that back  
25 at the next Board Governance Committee meeting. And I

1 don't have any further summary of Committee direction.

2 CHAIRPERSON TAYLOR: All right. Great. Then we  
3 are adjourned till 9 a.m. tomorrow. Have a nice evening  
4 everybody.

5 (Thereupon California Public Employees'  
6 Retirement System, Board Governance Committee  
7 meeting adjourned at 3:55 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing California Public Employees' Retirement System, Board of Administration, Board Governance Committee meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and was thereafter transcribed, under my direction, by computer-assisted transcription;

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of November, 2022.

JAMES F. PETERS, CSR  
Certified Shorthand Reporter  
License No. 10063