Board Meeting
Minutes

Date:   Wednesday, January 27, 2021
Location:  Menands, NY

Present:
Geraldine A. Reilly, Chair
Randall T. Douglas, Member (via videoconference from Plattsburg, NY)
Michael T. Greason, Member (via videoconference from Brooklyn, NY)
Marilyn P. O’Mara, Member (via videoconference from Corning, NY)
June F. O’Neill, Member (via videoconference from Canton, NY)
Jayson S. Myers, Chief Administrative Law Judge (via videoconference from Albany, NY)
Tracie L. Covey, Acting Executive Secretary (via videoconference from Syracuse, NY)
Christopher M. Tate, Principal Administrative Law Judge

Agenda:
1. Welcome and Call to Order
2. Reading and adoption of agenda
3. Reading and adoption of Minutes – October 21, 2020 meeting
4. Director’s report
5. Chief ALJ report
6. Principal ALJ for Appeals Report
7. Other
8. Adjourn

Welcome and Call to Order

- Board Chair Geraldine Reilly began her remarks by saying that 2020 was a year like no other. She hoped that all attending and watching, and their families are in good health. She noted that like so many others the UIAB was directly impacted by the pandemic, and we grieved. The UIAB continues to do what we can to serve the public and care for our employees. She asked everyone to join in a moment of silence for those who we have lost and those who have suffered or are suffering.

- Chair Reilly welcomed everyone back to the regularly scheduled Board Meeting and conveyed her wishes for a very happy, healthy and joyful New Year.
Board Chair Reilly was presiding from the Board’s office in Menands, New York for this Wednesday, January 27, 2021 public meeting of the Board. The meeting had been noticed, the draft agenda had been published, the minutes from the previous, October 21, 2020 meeting had been circulated to the members, and the public had been invited to observe. This meeting is being recorded and will be made available, along with the minutes on the UIAB website.

All members were present, there was a quorum and the meeting was recognized as the first official meeting of 2021.

Chair Reilly expressed her gratitude to all of those who have supported the work of the Board in addressing the many tasks that they faced, including the staff and leadership of all UIAB offices and her colleagues on the Board.

The consistent, quarterly schedule of Board meetings presents a Board that is proactive and accessible - and a Board which aggressively addresses the 21st century challenges that we face or that we anticipate—and that we address those tasks with optimism and confidence in the skill and effort of our many talented employees."

Chair Reilly also wanted to acknowledge and thank Acting Executive Director and Board Secretary Tracie Covey, who is appearing remotely from Syracuse; Chief ALJ Jayson Myers was appearing remotely and Principal ALJ for Appeals Christopher Tate who attended the meeting in person in Menands as well.

Chair Reilly also extended her gratitude to Melissa Sousa for taking the minutes and Amy Higby for her assistance with the technology for this meeting.

Reminder: the next public meeting of the Board is tentatively scheduled for Wednesday April 21, 2021 at 11:00 a.m.

The meeting was called to order at 11:10 a.m.

- **Reading and adoption of the agenda**
  - Member June O’Neill moved to accept the agenda
  - Member Randall Douglas seconded the motion
  - Motion to accept agenda adopted unanimously

- **Reading and Adoption of the minutes, from the October 21, 2020 Board Meeting**
  - Member Michael Greason moved to waive the reading and to adopt the minutes
  - Member Marilyn O'Mara seconded the motion
  - Motion to suspend reading and adoption of the minutes unanimously approved

- **Director’s Report - Tracie Covey**
  - Staffing News:
    - The UIAB judicial and administrative staffing level is currently at 127 employees
The interview process for 10 new ALJ positions has been completed. This will result in a net gain of 2 judicial positions after taking into account the 8 judicial staff who either retired or left for other opportunities in 2020.

We anticipate that these new employees will be on-boarded and trained by the end of March 2021. This will be the first new hire training headed by our new Training Coordinator, Alison Ferrara. She is currently working to update all the wonderful training guides developed by Deborah Esrick over the last few years.

Administrative staffing has also slightly increased due to additional work associated with our switch to telephone hearings. We hired 13 hourly administrative staff across the state, resulting in a net increase of 6 employees (7 administrative staff either retired or left for other opportunities in 2020).

Technology Update:

- The UIAB will soon be starting an electronic file pilot project using a document storage system called FileNet.

- ITS will have to adapt the existing system to fit the UIAB’s needs. The build should only take a couple of weeks to complete. ASO will then use the system to save documents for a certain number of case files, and a small number of judges on our end will have access to the system and will use that in place of a physical paper file.

- The UIAB have put together a great team who we believe will make this project successful. Amy Higby is the project lead and liaison with ITS. Senior ALJ Justin Denton is the judicial lead and Labor Services Representative Heather Malmberg is the administrative lead for the project. Senior ALJ Herbert Fowler and ALJs Susanna Iafrate, Julie Rosen, and William Friedman will also play critical roles in the project by holding the hearings with the new e-file and reporting back to us on impediments and needed improvements.

- The pilot will last approximately 60 days and will give a good indication of whether the system can be used as a stop gap measure until UISIM goes live.

- Our team continues to move forward with the UISIM computer modernization project and are now entering the design phase. As stated at the last Board meeting, there is now a more aggressive project schedule which targets completion of the modernization by the end of 2022.

- The UIAB robocalling program continues to be a success. In the beginning of November 2020, the message was updated to include the telephone number of the office where the hearing is scheduled, and the date and time of the hearing.

- We are currently working on an update to the hearing video on our website. We envision a split screen video that walks a party through a telephone hearing. We are also looking into creating content that explains difficult UI terms. We continue to upload recent Board decisions into the searchable decision database.
UIAB staff continue to work on the library digitalization project. A team of administrative staff have been working to organize 186 banker boxes full of Board decisions. Those decisions will be sent to an outside vendor for scanning into PDF format. We will then house them electronically in an internal archive.

- Agency Statistics:
  - Unfortunately, the UIAB is still not receiving cases quickly enough to achieve compliance with USDOL acceptable level of performance markers. The validated data as of December 2020 shows that the Lower Authority average case age was 62.69 days, which is above the 30-day acceptable level of performance.
  - At the current time, we are also not meeting compliance standards with 30 and 45-day time lapse markers, with only 5% of cases being decided within 30 days and 21% of cases being decided within 45 days.
  - The UI Division has a backlog of over 1300 cases and the average case age, prior to the cases even reaching us, is 86.2 days. For the last couple of months, between 90-95% of the cases they have sent us are already too old for us to meet the USDOL timeliness markers.
  - The UIAB is meeting USDOL acceptable level of performance standards for the Higher Authority. Validated data for December 2020 shows that our average case age is 38.37, which is below the 40-day USDOL marker. We have a certain number of cases that are under a litigation stay due to a bankruptcy proceeding and cannot move forward. If we take those out of the equation, our average case age is 33.87.

- Finally, throughout December, the UIAB held our employee recognition ceremonies in each of the offices statewide. While participation in these celebrations was virtual, it was still nice to be able to recognize the hard-working people we have at the UIAB. All winners will be announced in the upcoming newsletter.

- Chair Reilly asked for questions or comments.
  - Member Randy Douglas asked when the new ALJs would be in place. Acting Executive Director Tracie Covey stated that it is anticipated that onboarding will begin during the first or second week of March 2021.
  - Member June O’Neill asked if it would be possible for Board Members to meet the new ALJs virtually to which Acting Executive Director Tracie Covey said that a meeting can be set up.

- Member Randall Douglas moved to accept the report into the record. Member Michael Greason, seconded. The report was unanimously accepted into the record.

- Chief Administrative Law Judge Report - Jayson Myers
  - Latest Federal Quality Review:
The UIAB ALJs’ average grade was 97.33% for the third quarter of 2020. Twenty randomly selected cases were scored according to the 31 federal quality criteria. Nineteen out of the 20 cases scored achieved the U.S. Department of Labor’s passing grade of 85% or better, easily surpassing the acceptable level of performance of 80 percent, or 16 cases, passing with grades of 85 or better. Ten of the 20 hearings scored had perfect scores of 100.

The UIAB continues to administer its own Quality Assurance Program. The audits focus on the fundamental elements of fair hearings and decisions. At least 140 of those audits are completed every quarter. UIAB staff are committed to rigorous internal quality control, and we believe that doing 120 more audits per quarter, or 600 percent greater than what the U.S. Dept. of Labor requires, demonstrates that commitment.

- UIAB Organizational News:
  - As of February 1, Acting Principal ALJ Mark Sokolowski will oversee the upstate offices from Menands across to Buffalo. Principal ALJ Teresa DeMeo will oversee the Brooklyn, Long Island and White Plains offices.
  - Chief Judge Myers offered his continuing acknowledgment of the ALJs and Senior ALJs who generally work on Board appeals at the Menands location. Their flexibility and versatility have enabled us to assign them to conducting hearings when the workload demands it. They sometimes shift from hearings to appeals and back again in the same week, and their operational flexibility is very much appreciated.

- Staffing News:
  - In the first week of March the UIAB will welcome 10 new ALJs – three apiece in Brooklyn and Menands, two in Rochester and one apiece in Syracuse and Buffalo.
  - The new ALJs will be trained for five weeks by our training team led by Training Coordinator Senior ALJ Alison Ferrara. The trainers for the various topics will be chosen in the next week or two. Following the five weeks of concentrated training, the new ALJs will be observed for their first 20 hearings by supervisory judges before beginning to hold hearings on their own.
  - By late April or early May, it is conceivable that you will begin to see their work come to the Board on appeal.

- In the court the UIAB saw another momentous victory for the Board when the Appellate Division Third Department affirmed the Board’s decision involving an Uber driver in the Capital Region and his status as an employee for unemployment insurance purposes rather than an independent contractor. PALJ Chris Tate will report on that decision later in this meeting.

- UIAB Projects:
  - ALJs Michelle Burrowes and Will Friedman, based in Brooklyn, have contributed to two important projects. One is a rewrite of our website’s video script informing the
public of our hearing process. Since all our hearings are now on the telephone, it is important to replace the existing video with one that describes and depicts the telephone hearing process. The UIAB intends to partner with the Department of Labor’s Communications Office to produce the video once our “screenplay” is finalized.

- ALJs Burrowes and Friedman also have worked on an instructional piece about controlling the hearing when the animosities and emotions of the parties rise to a high level.

- Brooklyn ALJs Rachelle Rosenberg and Viren Pergadia have drafted an instructional piece concerning the steps ALJs, mainly newer ALJs, can take to increase their efficiency and minimize decision backlogs. This project was spawned by our knowledge transfer initiative which seeks to capture and explicitly retain the best practices of our longer-serving staff.

- Menands ALJ Kathleen Mannix is serving as a Subject Matter Expert in the UISIM system modernization project, and she is also looking at the recent Commissioner of Labor’s order on the non-charging of employers for unemployment insurance benefits and what changes in our decisions are necessary as a result of this order.

- The new partial unemployment program announced by Governor Cuomo last week is a welcome advance. It should eliminate situations where claimants must choose between a part-time job and receiving any UI benefits at all. This meeting will be followed by a short training program conducted by Chris Tate on the essential elements of partial unemployment.

- In October, the UIAB conducted successful WebEx-based training on the topic of worker status and employer contributions. Judicial staff were divided into four one-day session groups.

- We are very thankful for ALJ June Egeland in Buffalo who continues to analyze the ever-growing federal legislation that aids the unemployed during the pandemic. She has steadily updated our training materials on the various programs that have been enacted from last March through the recent Continuing Appropriations Act. New legislation is expected in the next month or two, and ALJ Egeland remains the go-to person in this very important area. She is also working hard on adding to our Bench Manual with sections on Worker Status and Employer Contributions.

- Other projects recommended by our Knowledge Transfer Committee composed of Chris Tate, Mark Sokolowski, UIAB Manager Janet Beaudoin, Amy Higby, Supervising Labor Service Representative Vanessa Castillo, and Tracie Covey are progressing. Menands ALJ Jane Scott has drafted materials concerning the conforming order process following court decisions and the attorney fee approval process. These will be added to our collection of user guides so that these tasks can be performed by anyone in the organization. The purpose of the knowledge transfer initiative is the preservation of the efficiencies and best practices of our specialists so that our entire staff can benefit from them and apply them seamlessly when they take on those tasks.
• Workload:
  o UIAB ALJs have recently heard a significant number of cases involving the issue of whether there is a reasonable assurance of similar employment in the next academic year or term as compared to the preceding academic year or term. Those cases are now reaching the Board.

• Chief Judge Myers concluded his report by stating that the UIAB looks forward to a busy Winter and Spring that should see the completion of several important projects.

• Chair Reilly asked for questions or comments
  o There were none

• Motion to adopt the report and incorporate into the record was made by Member Randall Douglas. Member June O’Neill seconded the motion which was unanimously adopted.

  o Principal ALJ Report - Christopher Tate
    • Principal ALJ Tate discussed four cases affirmed by the Court:
      o Matter of Thomas, 2020 N.Y. App. Div. LEXIS 7855
      • Chair Reilly asked for questions
        o There were no questions or comments

    • Motion to adopt the report and incorporate into the record was made by Member Marilyn O’Mara. Member Michael Greason seconded the motion which was unanimously adopted.

  o Other
    • Chair Reilly asked for new business and hearing none asked for a motion to adjourn

  o Adjourn
    • Member Marilyn O’Mara moved to adjourn the meeting and Member June O’Neill seconded the motion. The motion to adjourn was unanimously adopted. The meeting was adjourned at 11:39 a.m.

Adopted April 21, 2021