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PERSPECTIVES (Column)

### **Reform the EDD Appeals Process**

By ROGER M. GRACE

From what I've seen of the California Unemployment Insurance Appeals Board, Gov. Jerry Brown's proposal that the Legislature abolish it is sensible.

As I related on Tuesday, I fired a reporter on Jan. 2, 2007, for insubordination. The Employment Development Department determined that he wasn't fired for misconduct—even though he refused to do what he was told to do—and was entitled to benefits (to be siphoned from our reserve account). The administrative law judge agreed, citing a single case which was not even arguably in point; we appealed to the CUIAB, setting forth why the case was inapposite.

The board's opinion incorporated by reference the statement of facts and conclusions of law in the ALJ's decision, not discussing or even mentioning the case the ALJ relied upon, not addressing our other contentions, and merely rubber stamping the decision.

The two members of the CUIAB to whom the case was assigned were a leader of the Teamsters, appointed by Democratic Gov. Gray Davis, presumably as a pay-back for union support, and a political hack and GOP loyalist, named by Republican Gov. Arnold Schwarzenegger. Neither the teamster, Jack Cox, nor the career politician, Fred Aguiar, is an attorney.

I bring up this experience as an illustration of what can happen when cronies or supporters of appointing authorities are given high-paying jobs with no output that is visible to the public. The opinion is unpublished; an ALJ drafted it and there is no clue as to how much attention, *if any*, the board members devoted to it. There is a doubt as to whether either was capable of making an independent determination as to the applicability of the cited case.

Under the present system, five of the seven members of the board are appointed by the governor, one by the Senate Rules Committee, and one by the speaker of the Assembly. Only two of the members need be attorneys even though the board members theoretically are passing on the legal correctness of decisions by the board's ALJs, who are attorneys.

And as I discussed yesterday, none of the six term-ed-out ex-lawmakers now on the board is a merit appointee.

There would be nothing wrong with the present system if all CUIAB members were chosen on the basis of merit, not political patronage; were attorneys; worked on the premises of the CUIAB, facilitating communication with ALJs and other

staff members; and put in at least 40-hour work-weeks. That isn't the present reality.

The existing system invites abuse—and the invitation has been accepted by the appointing authorities.



**David Kline, for several** years a syndicated columnist and chief of our Sacramento Bureau, is now vice president of communications and research for the California Taxpayers Association. I asked him for a comment, on behalf of CalTax.

He responds, in an e-mail:

“Reducing the cost of government by eliminating unnecessary boards and commissions is a worthy goal, and the governor’s effort should be applauded. As costs are reduced, however, taxpayers’ rights must be protected, and the state needs to have a mechanism both for employees to appeal denied unemployment insurance claims and for employers to appeal tax determinations in a timely manner. When details of the governor’s proposal are released, our analysis will consider these factors along with the impact on the state budget.”

Whatever Brown might propose, I think it is clearly feasible to eliminate the jobs of the present board members—each of whom is annually paid \$128,109 except the chair, whose pay is \$132,179—and not find ourselves without a mechanism for resolving appeals.



**The best course**, as I see it, would be to scrap the CUIAB, as Brown proposes, and create a system of review within the Employment Department with the right to a hearing before an ALJ, as at present. Simply move the CUIAB’s field ALJs to an administrative hearings division of the EDD. Then, permit a written appeal, to be determined by an ALJ in the appeals division. This is, in essence, what occurs now since an ALJ drafts the board opinion. Then, in place of token review of the ALJ opinions by board members, institute a new procedure for maintaining a check on the resolution of appeals, without dairymen or teamsters playing a role.

What I have in mind is to create a right to petition for reconsideration based on a particularization of deficiencies and infirmities in the board opinion, limited to specified grounds such as legal misinterpretation of case law, statute, or regulation, or failure to consider matters raised in the appeal. All such petitions would be heard by a senior ALJ who could deny reconsideration, draft a new opinion, or route the case to another ALJ.

Whatever remedy is fashioned, it should be recognized that the present way of doing things harks to the spoils system, fosters cronyism, and reeks of wastefulness. Change is needed.

