

First Supplement to Memorandum 90-72

Subject: Study N-103 - Administrative Adjudication (Central Panel--
more views of the agencies)

Attached to this supplementary memorandum as Exhibits are additional letters of state agencies relating to the concept of centralization of all administrative law judges and hearing officers in an agency separate from the agencies for which they hold hearings.

ADMINISTRATIVE HEARINGS, OFFICE OF

Memorandum 90-72 states that the Office of Administrative Hearings (OAH) supplies administrative law judges for about 50 different agencies. Attached as Exhibit 1 is a listing provided by the Director of OAH indicating state and miscellaneous agencies for which OAH conducts hearings. There are 95 entries on the list.

MARITIME ACADEMY, CALIFORNIA

Exhibit 2 is a letter from the California Maritime Academy. The Academy conducts student disciplinary hearings. "The Academy feels that it is important that decisions on our campuses be made by representatives of the faculty, in our case, who know the rules, the students, the requirements of Coast Guard licensing, and other pertinent features that impact on student discipline in this para-military school." Pending further investigation by the staff, we do not believe that Academy student disciplinary hearings would be impacted by this proposal, since we do not believe that such hearings are constitutionally or statutorily required.

Faculty matters might be affected. In this connection it is worth noting that OAH does provide hearing officers in connection with State University and Community College systems. The staff believes this may warrant further investigation.

As to other personnel matters, the Academy notes that those currently the responsibility of the State Personnel Board are

adequately handled through the Personnel Board's hearing process which involves expertise in personnel matters.

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

Exhibit 3 is a letter from the Occupational Safety and Health Appeals Board. The board has a number of concerns with the concept of removal of their administrative law judges to a central panel. These concerns include (1) occupational safety and health law is a specialty area requiring experienced judges with extensive knowledge of a vast body of regulations as well as detailed knowledge of search warrant issues and trade secret matters; (2) agency administrative law judges also assist in the drafting of board precedent decisions, and loss of the judges could require the board to hire additional legal staff for this purpose; (3) the board has a large hearing schedule and tight scheduling requirements that could be compromised by having to work through a central panel; (4) the California OSHA appeals system is coordinated with the federal system and any changes in the California procedure could require federal approval.

The board points out that it was created as an agency independent of the Division of Occupational Safety and Health and its decisions are binding on the agency. There has never been any evidence of bias in board hearings and "over the years both management and labor representatives have commended the impartiality and expertise of our administrative law judges." In the past when the board has occasionally used OAH judges, the experience was not satisfactory, primarily because of lack of specialized knowledge of the judges and the peculiar scheduling needs of the board.

Based on the information provided by the board, the staff recommends against removal of the board's administrative law judges to a central panel.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

Accountancy
Acupuncture Advisory Comm
Aeronautics
Aging
Alarm Company
Alcohol and Drug Program
Alcoholic Beverage Control (ABC)
Architectural Examiners
Attorney General(Gaming)
Auctioneer
Automotive Repair

Banking
Barber Examiners
Behavioral Sciences
Boating & Waterways

Cal Trans
Chiropractic Examiners
Classified Employees
Collection Agency
Comm. College-Bd of Governors
Comm. College-Teachers-for cause
Comm. College-Teacher-prob/layoff
Conservation
Contractor's License Board
Control, Board of
Cosmetology
Corporations
Contra Costa County

Dental Examiners

Education
Engineers

Dept Fair Employment & Housing
Fair Political Practices Comm
Fire Marshal
Food & Ag
Forestry
Funeral Directors

Geologist & Geophysicists

Health Services
Health Services (Toxic Waste)
Hearing Aid Examining Comm
Highway Patrol
Horse Racing
Housing & Community Development

Industrial Relations
Insurance
Investigative Services

Justice

Landscape Architect
Lottery Commission

Medical Quality Assurance(BMQA)
Motor Vehicles (DMV)

Navigation & Ocean Development
Nurses - Registered
Nursing Home Administrators

Optometry
Osteopathic Examiners
Other(SAC-Cities, Counties, etc.)
Other(SF-Cities, Counties, etc.)

Parks & Rec
Personnel Administration
Personnel Services
Pharmacy Board
Physical Therapists
Physician's Assistant
Pilot Commission
Podiatry Examining Comm
Polygraph Board
Private Investigator
Probationary Teachers
Psychiatric Technicians
Psychology Examining Committee
Public Employees Retirement(PERS)

Real Estate
Repair Services
Respiratory Care

Sacramento (City of)
SF-Ret (City & County)
Secretary of State
Shorthand Reporters
Smog Check
Social Services
State Mandate
State Univ & College (Faculty)
Structural Pest Control
Student(School Dist & College)
Student Aid Commission

Tax Preparers
Teacher Credentialing
Teacher Grievance
Teacher Retirement
Tenured Teacher (Stull)

University of CA Ret

Veterinary Medicine
Vocational Nursing

CA LAW REV. COMM'N

MAY 21 1990

RECEIVED

CALIFORNIA MARITIME ACADEMY

P.O. BOX 1392
VALLEJO, CA 94590-0644
707-648-4200



May 22, 1990

CA LAW REVISION COMMISSION

MAY 23 1990

RECEIVED

Mr. Edwin K. Marzec
Chairperson
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4729

Dear Mr. Marzec:

I would like to make two comments regarding the proposal that all administrative hearings required by statute be conducted for each agency by an administrative law judge of the Office of Administrative Hearings (OAH) in the Department of General Services.

- a. It is hoped that adjudication of student discipline in higher education will not be incorporated in this concept. The Academy feels that it is important that decision on our campuses be made by representatives of the faculty, in our case, who know the rules, the students, the requirements of Coast Guard licensing, and other pertinent features that impact on student discipline in this para-military school.
- b. It is considered that matters which are currently the responsibility of the State Personnel Board are adequately handled through their hearing process which involves expertise in personnel matters.

I appreciate the opportunity to comment on the concept of a central panel.

Sincerely,

A handwritten signature in black ink, appearing to read "J. J. Ekelund".

J. J. EKELUND
Rear Admiral, USMS
President

JJE:pm

DEPARTMENT OF INDUSTRIAL RELATIONS

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD



1006 FOURTH STREET, 4TH FLOOR
SACRAMENTO, CA 95814-3370
(916) 322-5080

To: Edwin K. Marzec
Chairperson, California Law Revision Commission
4000 Middlefield Rd., Suite D-2, Palo Alto, CA 94303-4739

From: *Elaine W. Donaldson*
Elaine W. Donaldson, Chairman, Cal/OSHA Appeals Board
1006 4th Street, 4th Floor, CA 95814

Date: May 23, 1990

Re: Conduct of administrative hearings, your letter of
May 3, 1990

Dear Mr. Marzec:

Please be advised that on May 16, 1990, the members of the Occupational Safety and Health Appeals Board held a full discussion regarding the proposed concept contained in your letter noted above. As a result of that discussion, we share the following concerns regarding this concept:

Assessment of the proposed recommendation involves consideration of three basic issues:

1. BIAS. Do our administrative law judges conduct fair hearings and write fair decisions? Are their career paths too much controlled by the three-member Occupational Safety and Health Appeals Board?

Labor Code Section 148(a) establishes the three-member Occupational Safety and Health Appeals Board--one member from the field of management, one from the field of labor and one member from the general public. The Appeals Board is given the power of a head of department under Labor Code Section 148.8, and its decisions are binding upon the Director and Division of Industrial Safety with respect to the parties involved in any particular appeal (section 148.6). This statutory independence of the Appeals Board from the Division of Occupational Safety and Health is specified in preliminary remarks at every hearing to reduce the possibility of the appearance of bias. Nor has there been in the 17-year history of our Board any evidence that the Board has unduly influenced its ALJs. Over the years both management and labor representatives have commended the impartiality and expertise of our administrative law judges.



2. EXPERTISE. Would the use of administrative law judges who are unfamiliar with Appeals Board precedent and the myriad of health and safety regulations impact upon the quality of decisions?

Occupational safety and health law is a specialty. There are few general practitioners in the area and the law is directly linked to four volumes of safety orders--which include over ten thousand regulations found in Title 8, Code of Regulations. The Board employs experienced attorneys as administrative law judges (5 years of legal practice, with at least one year of experience presiding over administrative hearings) who are under the guidance of a presiding judge and executive officer. Our agency has devised its own unique procedures for handling discovery, motions, etc., and the subject matter of hearings may involve detailed knowledge of search warrant issues as well as trade secret matters. These evidentiary and procedural differences may well create real difficulties for administrative law judges unfamiliar with the OSH Appeals Board.

3. EFFICIENCY/COST. Will there be savings in costs and/or increases in efficiency if hearing functions are removed from the Appeals Board?

In 1977, the Department of Finance conducted a study of all state administrative agencies to determine the economic feasibility of consolidating hearing functions under one agency. It concluded that "there is no clear and obvious evidence" such a consolidation "would be either functionally or economically preferable to the present decentralized structure." With respect to the Appeals Board, we have historically called upon our administrative law judges to assist in the drafting of Appeals Board precedent decisions (Decisions After Reconsideration) during times of heavy workload. Such transferability of job assignments would be much more difficult under the central panel concept, and would likely require that the Board hire additional staff to assist its chief counsel in preparing Board decisions after reconsiderations.

Since the Appeals Board has reorganized from the 1987-1989 disengagement, it has been able to keep abreast of its decisions. There is no existing backlog, and appeals docketed by the Board are heard within four to six months. As many as 2000 appeals may be docketed and heard during a particular year. Because our scheduling of hearings must be coordinated with nineteen district offices in the enforcement division of Cal/OSHA throughout the state, as well as the Board's desire to make these hearings reasonably accessible to employer-

appellants, there is very real concern that a central panel would not be able to efficiently schedule these hearings.

In earlier years, the Appeals Board occasionally utilized ALJs from the Office of Administrative Hearings. This experience was not satisfactory, primarily because of the lack of specialized knowledge of these hearing officers, and peculiar scheduling needs of our office. Also, California has its own state plan under the Federal OSHA program. Any changes made to the existing appeals process, more than likely would have to be approved by federal OSHA personnel.

For the above reasons, it is respectfully recommended that the commission reject the central panel concept.

cc: Board Members

Ron Rinaldi, Director
Department of Industrial Relations

John Rea, Chief Counsel
Department of Industrial Relations