

MEMO

TO: Members, Ad Hoc Committee to Review
the Pilotage Rate-Setting Process

October 30, 2021

FROM: Dennis Eagan, Board Counsel

RE: Review of Board Rate Decision by CalSTA Secretary

Chairman Carr and Members of the Committee,

The Committee has discussed whether a rate adjustment decision proposed to the Board by an ALJ and approved by the Board would require an additional approval by the Secretary of CalSTA before it became effective. If such an “up or down” decision by the Secretary is to be required, that raises the question of what standards, if any, are to be applied by the Secretary in reviewing the Board’s decision. The following are some of the possibilities.

1. **No standards.** The Secretary would have complete, unfettered discretion and could simply say yes or no, without explanation. The Secretary’s decision could be based on any reason or no reason at all.
2. **No standards, but decision accompanied by explanation.** The analogue here would be the veto messages issued by Governor when vetoing bills passed by the Legislature.
3. **Evidence to support factual findings not inquired into, but Secretary could assess whether the factual findings, taken at face value, support the Board’s decision.** Essentially, the test here is, given these factual findings, does the Board’s conclusion make sense? Is there a rational basis for the ultimate decision? Or, conversely, are there “missing links” or unwarranted assumptions in the Board’s reasoning process leading to its ultimate conclusion? This standard borrows from one of the standards that courts use in determining whether an agency has “abused its discretion” in an adjudicative proceeding. Subdivision (b) of section 1094.5 of the Code of Civil Procedure provides that abuse of discretion is established if “the order or decision is not supported by the findings.” The legislation could provide that, in making this assessment, the Secretary should accord deference to the Board’s decision, given the expertise that Board members acquire in dealing with all matters relating to the training and performance of pilots.
4. **The Secretary does not accept the factual findings at face value, but orders up the full evidentiary record and inquires into the evidentiary basis for the findings of fact made by the ALJ and accepted by the Board.** In such situations there are two possible standards of review: First, the Secretary could independently reweigh the evidence in the record, not according any deference to the ALJ’s or the Board’s assessment of witness credibility or to the Board’s expertise in matters relating to the pilots. Second, the Secretary could employ a more deferential standard of evidentiary review, and approve the factual findings if they were supported by “substantial evidence.” (See Gov. Code, § 11350, subd. (b)(1); Code Civ. Proc., § 1094.5, subd. (c).)