

**KENTUCKY PERSONNEL BOARD
MINUTES OF AUGUST 14, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on August 14, 2009, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair
Robert B. Frazer, Vice-Chair
Betty Gibson, Member
M. Suzanne Cassidy, Member
Larry B. Gillis, Member
David B. Stevens, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

The first order of business was to swear in the newest Board Member, Dr. David B. Stevens, who was appointed by Governor Steven Beshear, to complete the term vacated by former member Mr. John Dunaway. He was sworn in by General Counsel Boyce A. Crocker.

2. READING OF THE MINUTES OF REGULAR MEETING HELD JULY 10, 2009

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Ms. Gibson moved to approve the minutes, as submitted. Mr. Gillis seconded, and the motion carried 5-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek welcomed Dr. Stevens to the Board and stated that the Board looks forward to working with him.

Mr. Sipek informed the Board that the most significant matter to report is that Mr. Crocker is going on military leave; and that this is his last Board meeting until February or March 2010.

Mr. Sipek stated that Mr. Crocker met with Representative Cherry and talked to him about proposed legislation; specifically, the Board's election. Mr. Sipek turned to Mr. Crocker for additional information. Mr. Crocker advised that Representative Cherry will re-file and sponsor the statute (KRS 18A.0551) on Board elections for merit employee members, which will be held in 2010. As it stands now, the cost to the Personnel Board to run the election is approximately \$40,000. Last year, the same amended statute passed the House, but not the Senate. If the amended statute passes, it will save the Board a lot of money and it may encourage more participation, since no Social Security Number will be used on the ballots. He further advised that the Board will need an emergency regulation ready to go, if the legislation passes

Mr. Sipek advised that the Court of Appeals issued an Order concerning the *Cabinet for Health and Family Services v. Lowell Workman* which deals solely with attorney's fees. The Court of Appeals also issued an Opinion and Order Dismissing *Department of Fish and Wildlife Resources v. Julie Badgett*, as the Department did not name the Personnel Board as a party and, as the Personnel Board is an indispensable party, the court lacks jurisdiction to proceed. Franklin Circuit Court issued an order in *David Waller v. Finance and Administration Cabinet* that attorney fees would be paid jointly and severally by the Finance and Administration Cabinet and the Personnel Board. Mr. Sipek stated that the Board will file a Motion to Alter, Amend or Vacate. Since Waller was remanded back to the Personnel Board, a pre-hearing conference will be scheduled.

Mr. Sipek advised that the Personnel Board's newsletter, which was initiated by Chair Goodmann and Mr. Gillis, is coming along and he should have something for the Members to review and discuss at the September 2009 Board Meeting.

Ms. Cassidy asked Mr. Sipek who will assist the Board while Mr. Crocker is on military leave. Mr. Sipek advised that the Board can rely on Hearing Officers for assistance; especially Mr. Hanson Williams, who is the former Executive Director of the Personnel Board, and Mr. Steve Bolton, who has served an advisory role to the Board. Mr. Crocker will also be available by e-mail and phone.

At the conclusion of Mr. Sipek's report, Chair Goodmann called for the Personnel Cabinet's Report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dan Egbers and Dr. Sissy Meredith, Commissioner for the Department of Human Resources Administration, came forward to present the Personnel Cabinet's report.

Mr. Egbers first introduced the new Commissioner, Dr. Sissy Meredith, to the Board. Mr. Egbers stated that Dr. Meredith brings a lot of expertise. She has previous experience with the Personnel Cabinet at the Governmental Services Center and also taught at the University of Kentucky for a number of years.

Mr. Egbers stated that the Governor's Employee Advisory Council (GEAC) began unit negotiations and those are progressing. Mr. Egbers stated that he will keep the Board informed as they proceed.

There are some regulatory changes to the health insurance, i.e. current pay system. For example, lengthy suspensions may overlap pay periods and cause problems concerning health insurance. Instructions are currently being written and will be sent to agencies to advise them of the consequences of a suspension of more than ten working days. Both the agency and employee need to understand that there may be an interruption in the health benefits, which would be a part of the penalty imposed.

Mr. Egbers advised that Dinah Bevington will be returning August 18, 2009, and he is looking forward to her return.

The Kentucky Employee Health open enrollment for 2010 will begin the middle of October. Hopefully, software will be available for employees to utilize and they will be able to pull up their medical bills to help them select which level of protection would be appropriate and the costs involved. This software will allow the employees to make a more informed choice of which level of coverage is appropriate to their circumstances.

5. PETITIONED POSITION(S)

- A. Personnel Cabinet, Department of Human Resources Administration
--Deputy Commissioner

Present were Mr. Jim Lambert, Manager of the Classification and Compensation Branch at the Personnel Cabinet, and Ms. Suzette Gash, Personnel Administrator.

Mr. Lambert stated that this position was previously abolished in May 2008. However, there is a need to bring this position back. As it is a policymaking position and will handle confidential matters, it is necessary that a non-merit employee fill the position. Ms. Cassidy asked Mr. Lambert if there was a more detailed position description than what was provided to the Board. Mr. Lambert advised there was a Position Description (PD), and he would make sure copies were made for the Board. Mr. Lambert stated that another non-merit position was abolished, so that there will not be an increase in non-merit positions. Mr. Frazer asked if the abolished position had the same salary as this position. Mr. Lambert advised that the abolished position had a lower salary.

Ms. Cassidy moved to approve the petitioned position. Ms. Gibson seconded and the motion carried 5-0.

6. ORAL ARGUMENTS

A. ~~Cecil Colliver v. Education and Workforce Development Cabinet~~
Moved to September

B. Christopher Newton v. Transportation Cabinet (Board Ordered)

Present were counsel for Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Ed Logan, for oral argument. The parties answered questions from the Board.

C. David Draggs v. Department of Public Advocacy

Present were counsel for Appellant, the Hon. Henry Curtis, and counsel for Appellee, the Hon. Mary Ann Palmer, for oral argument. The parties answered questions from the Board.

D. Thaddeous Price v. Department of Agriculture

Present were counsel for Appellant, the Hon. Joe Blandford, and counsel for Appellee, the Hon. Clint Quarles, for oral argument. The parties answered questions from the Board.

7. INVESTIGATIONS

A. Investigation 09-01 –Anonymous Request from Transportation Cabinet --Response by Transportation Cabinet

Mr. Sipek stated that the Board received an anonymous letter, which Mr. Sipek interpreted to be a request for investigation. Since the only known party is the Transportation Cabinet, Mr. Sipek asked that Agency to look into the matter and advise the Board whether there should be an investigation. Mr. Sipek stated that Mr. J. R. Dobner, Personnel Administrator in the Office of Human Resource, is present and prepared to answer any questions from the Board. Mr. Dobner stated that there is one issue that Mr. Dobner is curious to find out about, and that is whether Ms. Michele Houston is performing the duties of a Highway Equipment Operator II.

As far as Mr. Fred McCarty, Mr. Dobner advised that he spoke with Candace Link, Administrative Coordinator, and stated that four employees came forward to Mr. Kevin Russ, who in turn reported it to her (Link). Mr. Dobner stated that he received several e-mails from employees which supported allegations about Mr. McCarty. Mr. Dobner further stated that this has been going on since 2007 and should have been reported sooner. Mr. McCarty, having been placed on directed sick leave, has the option of filing an appeal with the Personnel Board.

Ms. Cassidy moved to deny the request for investigation; however, the Board requests a report from the Transportation Cabinet. Mr. Frazer seconded and the motion carried 5-0.

8. CLOSED SESSION

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chair Goodmann stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:48 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 5-0. (1:12 p.m.)

9. **CASES TO BE DECIDED**

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. ~~Cecil Colliver v. Education and Workforce Development Cabinet~~
Moved to September

B. Christopher Newton v. Transportation Cabinet

Mr. Frazer moved to defer this matter to the next Board meeting. Ms. Cassidy seconded and the motion carried 5-0.

C. David Draggs v. Justice and Public Safety Cabinet

Ms. Cassidy moved to defer this matter to the next Board meeting. Mr. Frazer seconded and the motion carried 4-1, with Ms. Gibson opposing.

D. Thaddeous Price v. Department of Agriculture

Ms. Cassidy moved to reject the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order and to remand this matter to be heard with Appellant's other appeal. Mr. Frazer seconded and the motion carried 5-0.

E. Walter Gribbins v. Justice and Public Safety Cabinet and Roger A. Allen

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

F. Teresa Hall v. Finance and Administration Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 5-0.

G. Kimberly Johnson v. Education and Workforce Development Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

H. William Haycraft v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

I. Michael Long, Ricky Martin, Mark Lyons and Lon Cameron v. Justice and Public Safety Cabinet (4 appeals)

Mr. Frazer moved to accept the recommended order dismissing the appeals. Ms. Gibson seconded and the motion carried 5-0.

J. Cory Risk v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 5-0.

K. Monique Roberts v. Education and Workforce Development Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

Show Cause Order(s) – Appeal(s) Dismissed - No Response(s) Filed

The following case(s) had a show cause order entered by the hearing officer recommending that the appeal(s) be dismissed for failure to timely prosecute unless a statement was filed by the Appellant(s) stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellant(s) to the show cause order(s).

K. Catherine Daniel v. Personnel Cabinet

L. Mark Murphy v. Justice and Public Safety Cabinet

M. Dennie Perkins v. Justice and Public Safety Cabinet

N. Elizabeth Saylor v. Justice and Public Safety Cabinet

Ms. Gibson moved to find that the Appellant(s) had not responded to the show cause order(s) and that the recommended order be accepted dismissing the appeal(s) for failure to timely prosecute the appeal(s). Ms. Cassidy seconded and the motion carried 5-0.

10. WITHDRAWALS

Ms. Cassidy moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 5-0.

- A. Sheila Emerson v. Personnel Cabinet
- B. Janet Mullins Griffey v. Personnel Cabinet
- C. John Grimes v. Cabinet for Health and Family Services
- D. Marissia Izlar v. Personnel Cabinet
- E. Mary Maeser v. Cabinet for Health and Family Services
- F. Allen Thomas v. Transportation Cabinet
- G. Natalie Brown v. Personnel Cabinet

11. SETTLEMENTS

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Dr. Stevens seconded and the motion carried 5-0.

- A. Elizabeth Berry v. Justice and Public Safety Cabinet (mediated)
- B. Scott Powers v. Justice and Public Safety Cabinet (2 appeals)
- C. Joseph Cushingberry, Jr. v. Commerce Cabinet
- D. Steven Newell v. Public Protection Cabinet

12. OTHER

There being no further business, Dr. Stevens moved to adjourn. Mr. Gillis seconded and the motion carried 5-0. (1:15 p.m.)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

M. Suzanne Cassidy, Member

Larry B. Gillis, Member

David B. Stevens, Member