

**KENTUCKY PERSONNEL BOARD
MINUTES OF JULY 9, 2010**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Vice Chair Suzanne Cassidy on July 9, 2010, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Cecil F. Dunn, Chairman
M. Suzanne Cassidy, Vice Chair
Larry B. Gillis, Member
David B. Stevens, Member
Wayne "Doug" Sapp, Member
David Hutcheson, Member
Susan Gardner, 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 Members, Mr. Cecil Dunn, who was appointed by Governor Steven Beshear, and Mr. Larry Gillis and Ms. Susan Gardner, Merit Employee Members, who were elected by their fellow merit employees. General Counsel Boyce A. Crocker administered the oath of office.

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 11, 2010**

The minutes of the last Board meeting had been previously circulated among the members. Vice Chair Cassidy asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Hutcheson seconded, and the motion carried 7-0. The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek congratulated the new Board members and stated he looked forward to working with them. He also advised that if there is anything they need to feel free to ask staff for assistance.

Mr. Sipek advised that the voter turnout for the Board election with the new procedures was disappointing. The new methods of voting (fax, e-mail, etc.) made it easier for employees to vote, but there were fewer candidates.

Mr. Sipek informed the members that he participated in a presentation at the Attorney General's hearing officer training. All-in-all it was a valuable experience.

Lastly, all ten Hearing Officer contracts were renewed and they have already started hearing cases.

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

4. PERSONNEL CABINET'S REPORT

Secretary Nikki Jackson and the Hon. Dinah Bevington, General Counsel, for the Personnel Cabinet, came forward to present the Cabinet's report.

Secretary Jackson and Ms. Bevington presented the Cabinet's New Emergency Administrative Regulation - 101 KAR 5:015E, Furloughs. This new regulation is being promulgated in accordance with House Bill 1 which was passed during the 2010 Kentucky General Assembly Extraordinary Session. Ms. Bevington handed out the new regulation to the Board members and staff and advised that this will be under Chapter 5 of the Kentucky Administrative Regulations and will be a general chapter. Ms. Bevington explained all Executive Branch employees, both classified and unclassified, shall be furloughed six days.

Dr. Stevens asked how the furlough days will be implemented. Secretary Jackson advised that three statewide common days are to be taken during Veterans' Day, Labor Day and Memorial Day weekends and three non-designated days. Employees shall be provided written notice by seven (7) calendar days. This furlough plan will save approximately 400 jobs. Since furloughs are mandated statewide, employees do not have a right to file an appeal with the Personnel Board.

Mr. Sapp asked how furlough days will affect state prisons. Secretary Jackson stated that she anticipates some agencies will need exceptions; therefore, those agencies will need to submit plans for implementing furlough days for her approval.

Ms. Cassidy asked if the denial of an appeal right was in HB 1, which Ms. Bevington stated it was. Mr. Crocker stated that there will probably be appeals filed. Ms. Cassidy wondered if the constitution forbids filing an appeal. Mr. Sapp asked if the Personnel Cabinet will ensure that there is uniformity in applying furloughs, regardless of the agency. Secretary Jackson stated, "Accountability starts and stops with me for adherence."

Mr. Sipek asked if the agencies are being asked to shut-down during the non-designated days. Secretary Jackson envisioned agencies would shut down; however, it would depend on the size of the agency and customer complement.

Mr. Sipek asked if the Cabinet wanted feedback from the Board today concerning the new regulation. Ms. Bevington stated it would be helpful. Mr. Sipek stated the Board will discuss the matter during closed session and asked if someone from the Cabinet would be available to answer any further questions. Ms. Bevington stated they would be available to answer any questions.

5. ORAL ARGUMENTS

A. Jason Blackburn v. Transportation Cabinet

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

B. Ernest Dunstan v. Cabinet for Health and Family Services

Present were the Appellant, Ernest Dunstan, and counsel for Appellee, the Hon. Muriel Varhely, for oral argument. The parties answered questions from the Board.

C. Thaddeous Price v. Department of Agriculture

--Appellant's Motion to Reopen the Record to Receive Additional Documents and Testimony

--Appellant's Motion for Leave to Enlarge Time to File Amended Exceptions

--Appellee's **Response** to Motion to Reopen the Record
(Both Motions Deferred from June meeting)

Present were counsel for Appellant, the Hon. Henry Curtis, and counsel for Appellee, the Hon. Nicole Liberto, for oral argument.

Ms. Cassidy asked the parties to argue their motions first, as the Board's decision could impact oral arguments. After presentation of the parties' arguments, Ms. Cassidy asked for a motion to go into closed session for the purposes of discussing the parties' motions.

6. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Dunn seconded. Chair Cassidy 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 7-0. (10:55 a.m.)

Mr. Sapp moved to return to open session. Ms. Gardner seconded and the motion carried 7-0. (11:07 a.m.)

7. **MOTIONS**

Thaddeous Price v. Department of Agriculture

--Appellant's **Motion** to Reopen the Record to Receive Additional Documents and Testimony

--Appellant's **Motion** for Leave to Enlarge Time to File Amended Exceptions

--Appellee's **Response** to Motion to Reopen the Record
(Both Motions Deferred from June meeting)

Mr. Dunn moved to overrule the Appellant's motions. Dr. Stevens seconded and the motion carried 7-0.

8. **ORAL ARGUMENTS (CONT'D)**

C. Thaddeous Price v. Department of Agriculture

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

9. **ELECTION OF BOARD OFFICERS**

Mr. Sapp moved to elect Mr. Dunn as Chairman. Dr. Stevens seconded and the motion carried 6-0.

Mr. Hutcheson moved to elect Ms. Cassidy as Vice Chair. Dr. Stevens seconded and the motion carried 6-0.

Due to prior commitments, Ms. Cassidy left the Board meeting without having voted on any of the cases to be decided. (11:40 a.m.)

10. **SECOND CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Sapp seconded. Chair Cassidy 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 7-0. (11:21 a.m.)

Dr. Stevens moved to return to open session. Mr. Hutcheson seconded and the motion carried 6-0. (12:47 p.m.)

11. 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. Jason Blackburn v. Transportation Cabinet

Mr. Hutcheson moved to note Appellants' Exceptions, Appellee's Response and oral arguments, and to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 6-0.

B. Ernest Dunstan v. Cabinet for Health and Family Services

Mr. Sapp moved to note Appellee's request and oral arguments, and to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 5-1, with Dr. Stevens opposing.

C. Thaddeous Price v. Department of Agriculture

Dr. Stevens moved to note Appellants' Exceptions, Appellee's Response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Gardner seconded and the motion carried 6-0.

D. Jennifer Westermeyer v. Department of Public Advocacy **(Deferred from April)**

Mr. Hutcheson moved to note Appellee's exceptions and oral arguments, and to alter the recommended order in accordance with the Final Order attached to these minutes sustaining the appeal to the extent that the dismissal of Appellant be rescinded and modified to a thirty-day suspension and a demotion from Appellant's previous position of Staff Attorney II to Staff Attorney I, with accompanying loss of pay. Dr. Stevens seconded and the motion carried 6-0.

E. Sherl Edwards v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

F. Margaret Gaines v. Cabinet for Health and Family Services
(Appeal No. 2008-271)

Mr. Sapp moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 6-0.

G. Stephanie Marshall v. Justice and Public Safety Cabinet

Mr. Gillis moved to defer this matter to the next Board meeting. Mr. Hutcheson seconded and the motion carried 6-0.

H. Paulette Metcalfe v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

I. Victor Morris v. Justice and Public Safety Cabinet (2 appeals)

Mr. Hutcheson moved to accept the recommended order dismissing the appeals. Mr. Sapp seconded and the motion carried 6-0.

J. Kimberly Ouedraogo v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

K. Debra Ratliff v. Transportation Cabinet

Mr. Sapp moved to accept the recommended order sustaining the appeal to the extent that the Appellant's reclassification be set aside. Mr. Hutcheson seconded and the motion carried 6-0.

M. James Robinson v. Department of Military Affairs

Dr. Stevens moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 6-0.

Show Cause Order – Appeal Dismissed - No Response Filed

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

N. Roger Stubblefield v. Justice and Public Safety Cabinet

Mr. Hutcheson moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Dr. Stevens seconded and the motion carried 6-0.

12. WITHDRAWALS

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Sapp seconded and the motion carried 6-0.

- A. Amanda Johns v. Justice and Public Safety Cabinet
- B. Michael Owens v. Transportation Cabinet
- C. Hilary Skees v. Personnel Cabinet

13. SETTLEMENTS

Mr. Hutcheson 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. Ms. Gardner seconded and the motion carried 6-0.

- A. Jennifer Cox v. Transportation Cabinet
- B. Will Coy-Geeslin v. Department of Public Advocacy – (2 appeals) – (mediated)
- C. Jennifer Harrod Ewell v. Finance and Administration Cabinet (on remand)
- D. Carmen Lancho v. Cabinet for Economic Development (2 appeals)
- E. John Ross v. Justice and Public Safety Cabinet
- F. Margaret Gaines v. Cabinet for Health and Family Services (Appeal No. 10-67)

14. OTHER

Personnel Cabinet's New Emergency Administrative Regulation
--101 KAR 5:015E, Furloughs

Mr. Sapp moved to approve the Personnel Cabinet's emergency regulation and that a letter with suggestions be sent to Secretary Nikki Jackson with a copy attached to the minutes. Mr. Hutcheson seconded and the motion carried 5-0, with Mr. Gillis recusing.

Chairman Dunn asked if there was any other matters before the Board. Mr. Blackburn came forward to apologize, on record, to Mr. Crocker. Mr. Blackburn stated that Mr. Crocker was his first Hearing Officer and he wanted to apologize for being angry, and that his wife said he should have been nicer. Mr. Crocker stated that he only remembers Mr. Blackburn asserting his rights and that there was no problem. Chairman Dunn thanked Mr. Blackburn for his participation.

There being no further business, Dr. Stevens moved to adjourn. Mr. Hutcheson seconded and the motion carried 6-0. (12:53 p.m.)

Cecil F. Dunn, Chairman

M. Suzanne Cassidy, Vice Chair

Larry B. Gillis, Member

David B. Stevens, Member

Wayne D. Sapp, Member

David Hutcheson, Member

Susan Gardner, Member