

**KENTUCKY PERSONNEL BOARD
MINUTES OF MARCH 12, 2010**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on March 12, 2010, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair
M. Suzanne Cassidy, Vice Chair
Betty Gibson, Member
Larry B. Gillis, Member
Wayne "Doug" Sapp, Member
David Hutcheson, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

David B. Stevens, Member
Boyce A. Crocker, General Counsel (on military leave)

2. **READING OF THE MINUTES OF REGULAR MEETING HELD FEBRUARY 12, 2010**

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. Ms. Cassidy 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 informed the Board that the Board newsletter went out with the assistance of the Personnel Cabinet. The Board has received positive feedback from employees, including expressing interest in the Board's election.

Mr. Sipek advised that Mr. Crocker will be returning from military leave on March 31, 2010, and will be attending the April Board meeting.

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

4. PERSONNEL CABINET'S REPORT

Mr. Sipek advised that the Hon. Dinah Bevington will not be available to present the Personnel Cabinet's Report. However, the regulations Ms. Bevington handed out at the February Board meeting will be discussed at the April meeting.

A. ~~Amendments to regulations:~~ **(Moved to April at Agency request)**

5. PETITIONED POSITION(S)

Tourism, Arts and Heritage Cabinet, Kentucky Horse Park
- - Staff Assistant for the Food Service Operation

Present were Mr. John Nicholson, Executive Director, and Stephanie Gibson, Personnel Manager. Mr. Nicholson stated that it would be financially beneficial for the Horse Park to operate its own food service. The Staff Assistant will oversee the food services for the restaurant, concessions and catering of events; apply and enforce departmental policies; and be responsible for the overall budget for food service operation. This will be a non-merit position as it is policy-making. Mr. Sapp asked how many additional employees will be hired. Mr. Nicholson responded that he anticipated hiring two merit employees and a number of interim (part-time) employees. Mr. Mike Scales, Director of Support Services, came forward and reported that after a careful analysis and a conservative estimate, the Park would earn more than what was brought in through the food service vendors. Mr. Scales stated the Park's profit from the vendors' sales was \$180,000, but hoped to profit \$190,000 or more through its own concession sales. Mr. Hutcheson asked if the non-merit position was consistent with food management positions at other state parks. Ms. Tiffany Yeast came forward and added that the Department of Parks for their Food Service Division each have a Division Director that operates and oversees the seventeen state resort parks that have food service divisions and three local entities that are non-merit. However, the Chefs (merit employees) run the actual operation of the facility.

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

6. **ORAL ARGUMENTS**

A. Michael Cornwall v. Cabinet for Health and Family Services

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

B. Cathy Miller v. Cabinet for Health and Family Services

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

C. Victor Morris v. Justice and Public Safety Cabinet

Present were Appellant, Victor Morris; counsel for Appellant, the Hon. John Frith Stewart; and counsel for Appellee, the Hon. J. Todd Henning, for oral argument. The parties answered questions from the Board.

D. John Ruth v. Cabinet for Health and Family Services and Personnel Cabinet

Present were counsel for Appellant, the Hon. Donald Duff, counsel for the Appellee Health and Family Services, the Hon. Brian Judy, and counsel for the Appellee Personnel Cabinet, the Hon. Dinah Bevington, for oral argument. The parties answered questions from the Board.

E. Leroy Wakeland v. Finance and Administration Cabinet and Cynthia R. Brown

Present were counsel for Appellant, the Hon. Paul Fauri, counsel for Appellee, the Hon. Travis Powell, and the Intervenor, Cynthia Brown, for oral argument. The parties answered questions from the Board.

7. INVESTIGATION

Request for Investigation from Brenda Lewis into the hiring practices at the Department of Corrections, Eastern Kentucky Correctional Complex (EKCC) [Investigation No. 10-01].

--Correspondence from Brenda Lewis dated February 24, 2010

The Hon. Tyra Redus, counsel for the Department of Corrections, was present on behalf of Commissioner LaDonna Thompson. Ms. Redus stated that Commissioner Thompson advised Ms. Lewis' by letter dated July 31, 2009, that the hiring practices at EKCC would be looked into. Commissioner Thompson did investigate Ms. Lewis' allegations and responded by letter dated October 27, 2009. Commissioner Thompson's investigation did not find any evidence to support Ms. Lewis' grievance that employees are being passed over for promotions and that only friends and family of supervisors were hired at EKCC. Ms. Redus stated that out of 49 positions advertised at EKCC between February 2007 and October 2009; only 7 positions were filled with outside hires.

As to Ms. Lewis' complaint regarding the hiring of Ms. Sarah Henley, Ms. Redus stated that Ms. Henley did have knowledge of the operations at EKCC through her experience with Correct Care at the institution.

Ms. Cassidy inquired about the memo from Ms. Lewis dated February 24, 2010 to the Personnel Department and asked if it was meant for the Personnel Cabinet. Mr. Sipek was not sure what Ms. Lewis intended this memo for, but thought it could be a further request for investigation, a response to a Motion to Dismiss in her appeal, or whether it was meant for another entity, but the Board received it on February 26, 2010. Ms. Cassidy inquired whether Commissioner Thompson did any other investigation beyond talking to the Warden at EKCC, because according to the February 24 memo to the Personnel Department Ms. Lewis specifically asks that someone come to EKCC to talk to other employees. Ms. Redus stated that she did not think Commissioner Thompson did, since the Warden took into consideration the five factors and he has the final decision of who is hired.

Ms. Cassidy asked if Commissioner Thompson responded to the request for investigation [received by the Board February 1, 2010]. Ms. Redus stated that Commissioner Thompson did review the request for investigation. As to Ms. Lewis' allegation that Mr. Sam Thompson [husband of Fiscal Manager Sandy Thompson] was hired for the position of Mechanical Maintenance Operations Technician III and that

position had not been posted, Commissioner Thompson's investigation revealed that it had been properly advertised and the register was provided to Ms. Lewis. With respect to the hiring of Mr. Jerry Lindon, Ms. Redus stated that Mr. Lindon had over twenty years experience with the Department of Corrections.

Mr. Sapp asked if the Warden was the appointing authority since he had the final say when hiring. Ms. Redus stated that the Warden is the appointing authority. Mr. Sapp asked if any of the 49 hires were Correctional Officers. Ms. Redus stated the list provided does not indicate Correctional Officers, that the positions listed were promotional (i.e. Correctional Sergeants, Correctional Lieutenants, Deputy Wardens, etc.). Chair Goodmann asked if the positions were individually looked at to see if any of them were relatives or if there was any relationship. Ms. Redus stated that Commissioner Thompson did, but did not find any reason for concern. Ms. Redus stated that West Liberty is a small town and not too many people outside that area want to travel there to work and that some hires may be friends or relatives. Chair Goodmann asked if the car wash incident had been looked into. Ms. Redus stated she does not have any information specifically from Commissioner Thompson regarding that issue.

Mr. Sapp wanted to know where the Board was in relation to Ms. Lewis' memo dated February 24, 2010, which states she is withdrawing her hearing on the grievance. Ms. Morris stated that it is unclear whether Ms. Lewis meant withdrawing her grievance or her appeal. Mr. Sipek stated that Ms. Lewis currently had an appeal with the Personnel Board. The issues of her appeal are denial of a position which was given to Ms. Henley and that she did not get a response to her grievance.

Ms. Cassidy stated that prior to deciding whether further investigation needed to be conducted by the Board, the particular agency would respond comprehensively to each point or issue. Ms. Cassidy stated that may have not been done in this case, since Ms. Lewis has raised issues that were not in the original grievance. Ms. Cassidy stated that she would like to see the documents Ms. Redus brought to the meeting and have the agency fill in any gaps before the Board decides whether to investigate.

Mr. Gillis stated that if there is no merit to Ms. Lewis' allegations, she still has an appeal pending to prove any allegations at a hearing.

Ms. Redus stated that she could have a response by the next Board meeting. Mr. Sapp stated that he would like an opportunity to review the documents before a response was requested. Ms. Cassidy stated that the Board could discuss what

information they wanted and give it to Mr. Sipek to relay to the Department of Corrections.

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

Mr. Sapp asked for the status of Ms. Lewis' appeal. Mr. Sipek stated that there is a motion pending and a pre-hearing scheduled.

8. CLOSED SESSION

Ms. Cassidy 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. (12:28 p.m.)

Ms. Gibson moved to return to open session. Ms. Cassidy seconded and the motion carried 5-0. (2:24 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. Michael Cornwall v. Cabinet for Health and Family Services

Ms. Cassidy moved to note Appellee's exceptions, Appellant's response, and oral arguments, and to accept the recommended order sustaining the appeal as the action was not taken by the appointing authority. Mr. Hutcheson seconded and the motion carried 4-1, with Mr. Gillis opposing.

B. Cathy Miller v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellee's exceptions, Appellant's response, and oral arguments, and to accept the recommended order sustaining the appeal as the action was not taken by the appointing authority. Ms. Cassidy seconded and the motion carried 4-1, with Mr. Gillis opposing.

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

Ms. Cassidy moved to defer this matter to the next Board meeting and to **SUSTAIN** Appellee's objection to Appellant's exhibits during oral argument. Mr. Sapp seconded and the motion carried 5-0.

D. John Ruth v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellee's exceptions, Appellant's response, and oral arguments, and to accept the recommended order sustaining the appeal as the action was not taken by the appointing authority. Ms. Cassidy seconded and the motion carried 4-1, with Mr. Gillis opposing.

E. Leroy Wakeland v. Finance and Administration Cabinet and Cynthia R. Brown

Mr. Sapp moved to note Appellant's exceptions, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 5-0.

F. Susan Carter v. Department of Veterans Affairs
(Deferred from February)

Ms. Gibson moved to note Appellant's exceptions, Appellee's response 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 Appellant's dismissal be modified to a 30-day suspension. Mr. Sapp seconded and the motion carried 5-0.

G. Joanie Louis v. Department of Veterans' Affairs
(Deferred from February)

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 Appellant's dismissal be modified to a 15-day suspension. Mr. Sapp seconded and the motion carried 5-0.

H. Neil Honeycutt v. Energy and Environment Cabinet
(Deferred from February)

Ms. Cassidy moved to note Appellant's exceptions, Appellee's exceptions, Appellant's response and oral arguments, and to alter the recommended order in accordance with the Final Order attached to these minutes sustaining the appeal and reclassifying Appellant from a Mine Safety Analyst I (grade 25) to a Mine Safety Analyst II (grade 26). Ms. Gibson seconded and the motion carried 5-0.

I. Glenn Hawkins v. Transportation Cabinet

Ms. Cassidy moved to accept the recommended order sustaining the appeal and that the one-day suspension imposed upon Appellant be rescinded. Mr. Gillis seconded and the motion carried 5-0.

J. Prince Kolubah v. Justice and Public Safety Cabinet

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

K. Mabel Murray v. Justice and Public Safety Cabinet

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

L. Melinda Rockwell v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order sustaining the appeal to the extent of restoring Appellant's leave time, but dismissing the remaining issues. Mr. Hutcheson seconded and the motion carried 5-0.

M. Autumn Rollings v. Health and Family Services

Mr. Gillis moved to accept the recommended order sustaining the appeal and that Appellant be reinstated to her previous position or a position of like pay and status. Ms. Gibson seconded and the motion carried 5-0.

N. Daniel Ruth v. Education and Workforce Development Cabinet

Ms. Cassidy moved to accept the recommended order sustaining the appeal to the extent of reclassifying Appellant to the position of Workforce Development II, but dismissing the remaining issues. Mr. Hutcheson seconded and the motion carried 5-0.

O. Vivian Sousa v. Cabinet for Health and Family Services

Mr. Hutcheson moved to accept the recommended order sustaining the appeal, with clerical correction, and that the three-day suspension imposed upon Appellant be rescinded, as the action was not taken by the appointing authority. Mr. Sapp 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).

P. Tiffany Hall v. Justice and Public Safety Cabinet

Q. Dwuan Sherrill 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**

Mr. Sapp moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Gibson seconded and the motion carried 5-0.

- A. Tiffany Collins v. Cabinet for Health and Family Services
- B. Rebecca Dykes v. Personnel Cabinet
- C. Melissa Rigney v. Personnel Cabinet
- D. Wayne Stevens v. Justice and Public Safety Cabinet
- E. Carri Sullivan v. Justice and Public Safety Cabinet

11. **SETTLEMENTS**

Mr. Sapp moved to defer this matter to allow clerical correction, to the next Board meeting. Ms. Gibson seconded and the motion carried 5-0.

- A. James W. Bewley v. Tourism, Arts and Heritage Cabinet

Mr. Hutcheson moved to consider the following settlements [B, C and D] *en bloc* and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Sapp seconded and the motion carried 5-0.

- B. Jennifer Combs v. Cabinet for Health and Family Services
- C. Charles Graham v. Cabinet for Health and Family Services
- D. Curtis Gamblin v. Tourism, Arts and Heritage Cabinet

12. **OTHER**

Request for Investigation from Brenda Lewis into the hiring practices at the Department of Corrections, Eastern Kentucky Correctional Complex (EKCC) [Investigation No. 10-01].

--Correspondence from Brenda Lewis dated Feb. 24, 2010

Ms. Cassidy moved that the Department of Corrections provide a more detailed response to Ms. Lewis' allegations. Mr. Hutcheson seconded and the motion carried 5-0.

Mr. Sipek stated that he would allow the Department of Corrections two months to provide a more detailed response, to which the Board members agreed.

There being no further business, Mr. Sapp moved to adjourn. Mr. Gillis seconded and the motion carried 5-0. (2:27 p.m.)

Christine J. Goodmann, Chair

M. Suzanne Cassidy, Vice Chair

Betty Gibson, Member

Larry B. Gillis, Member

Wayne D. Sapp, Member

David Hutcheson, Member