

**KENTUCKY PERSONNEL BOARD
MINUTES OF NOVEMBER 13, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on November 13, 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
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Boyce A. Crocker, General Counsel (on military leave)

2. **READING OF THE MINUTES OF REGULAR MEETING HELD OCTOBER 9, 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. Dr. Stevens 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 asked the Board members if they had received a copy of the 2010 budget. As discussed at the October Board meeting, this was a "continuation" budget, which involves the same items, but with normal increases of expenses.

Mr. Sipek stated that although Mr. Crocker is on military leave, he continues to assist the office. Mr. Crocker sent an e-mail to Representative Cherry concerning the Personnel Board Election Procedures [KRS 18A.0551] to see if he was going to sponsor the Board's proposed legislative changes. The goals are to reduce costs and increase participation in the next election.

Mr. Sipek announced that it was Mr. Frazer's last Board meeting. He presented Mr. Frazer with a plaque commemorating his tenure on the Board and thanked him for his service. [Mr. Frazer was appointed by Gov. Fletcher to the Board on January 11, 2007, and he served until his resignation effective November 15, 2009.] Chair Goodmann also thanked Mr. Frazer for his service as Vice-Chair.

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

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington came forward to present the Personnel Cabinet's report.

A. Requested Changes to 101 KAR 1:325, Initial Probationary Periods

Ms. Bevington stated that the Personnel Cabinet received several proposed amendments from various agencies to the regulation on probationary periods. Ms. Bevington stated that if the Board members had any questions concerning these changes to please contact her.

B. Reconsideration of Employee Suggestion Regulation previously approved [101 KAR 2:120].

Ms. Bevington stated that amendments were previously submitted to the Board in July 2009. The regulation was amended to include Chapter 16 employees. A number of errors were found, so the Cabinet withdrew their proposed amendment and are now re-submitting it. She stated that there were no substantive changes, but wanted the Board to have a chance to review it before it was filed with LRC and looked forward to getting the Board's response today. Ms. Bevington stated that this was mirrored to be consistent with KRS Chapter 16.

Ms. Cassidy moved to accept the proposed amendment to 101 KAR 2:120. Ms. Gibson seconded and the motion carried 5-0.

Ms. Bevington stated that the Kentucky Employee Health Plan open enrollment for 2010 ended October 25, 2009. She stated that it was very successful and that 99.18 percent of all plan holders actively enrolled. For those who did not actively enroll were defaulted to an HRA account.

Ms. Bevington stated that about 12,000 individuals enrolled in the Virgin HealthMiles plan, which far exceeds the initial goal of 10,000 in the first year. Virgin HealthMiles is part of the Personnel Cabinet's Journey to Wellness Plan to get Kentucky healthy.

At the December Board meeting, the Personnel Cabinet would like to present year-end numbers. If the Board would like anything compiled, to let Mr. Sipek know and that information can be presented either formally or informally. Mr. Gillis stated that he would like to know how many written reprimand removals there were.

5. PETITIONED POSITION(S)

A. Executive Assistant – Kentucky State Fair Board

Present were Mr. Paul Herberg, Director of Personnel, and the Hon. Ellen Benzing, General Counsel. Mr. Herberg stated that the State Fair Board is requesting approval from the Board to establish a new position, Executive Assistant. The primary duties to be performed by this position are to oversee all aspects of facility operations of the Kentucky Exposition Center and the Louisville Arena (which is scheduled to open in November 2010). Mr. Gillis asked why this position could not be filled by a merit employee. Mr. Herberg stated that due to the scope of responsibility and requirements of this position it could not be filled by a merit employee. Ms. Cassidy asked if there were any general fund monies available. Mr. Herberg stated that funds would come from reimbursements from the Louisville Arena Authority. Ms. Benzing stated that by virtue of an extensive Management Operations Agreement, the Louisville Arena Authority has engaged the Kentucky State Fair Board to manage the arena. Each month employees who provide their services to the arena are accounted back to the Fair Board via the Louisville Arena Authority funding. Mr. Frazer asked what the salary would be and Mr. Herberg responded about \$7,000 a month.

Mr. Gillis moved to approve the petitioned position. Dr. Stevens seconded and the motion carried 4-1, with Mr. Frazer opposing.

6. ORAL ARGUMENTS

A. Marion Estill v. Justice and Public Safety Cabinet

Present were counsel for Appellant, the Hon. John Frith Stewart, and counsel for Appellee, the Hon. Angela Cordery, for oral argument. The parties answered questions from the Board.

~~B. Robert Burns v. Energy and Environment Cabinet (Request by Appellant)~~ **Moved to December Meeting**

~~C. Donald Haggard v. Auditor of Public Accounts (Request by Appellee)~~ **Moved to Settlements**

7. MOTIONS

A. Jami Hall v. Cabinet for Health and Family Services --Appellant's Motion to Extend Deadline to File Exceptions --Appellee's Response to Motion

No parties were present. Mr. Sipek stated that the Appellant's attorney, due to illness, was requesting the Board to extend the deadline to file exceptions to the Hearing Officer's Findings of Facts, Conclusions of Law and Recommended order. The Agency objected. As of this date, no exceptions have been tendered.

Mr. Frazer moved to accept Appellant's Motion to Extend Deadline to File Exceptions. Dr. Stevens seconded and the motion carried 5-0.

Mr. Sipek stated the appeal was on today's agenda, but would not be considered. The Board agreed to give the Appellant an additional fifteen (15) days from the date of the Board's order to file exceptions.

B. Bradley Mitchell v. Cabinet for Health and Family Services
--Appellee's Motion to File Late Response to Exceptions

No parties were present. Mr. Sipek stated that the Appellant filed exceptions, but did not copy the Agency. The Personnel Board gave the Agency a copy of the exceptions and the Agency filed a response to the exceptions within five days of receiving it from the Board.

Ms. Cassidy moved to accept Appellee's Motion to File Late Response to Exceptions. Mr. Frazer seconded and the motion carried 5-0.

Mr. Gillis asked if the language could be changed in the Notice of Exception and Appeal Rights, as it states to file exceptions with the Personnel Board. He felt that unrepresented Appellants may not know to copy the Agency, and that this situation could happen again. Mr. Sipek stated that the language could certainly be changed.

8. INVESTIGATIONS

A. Education and Workforce Development Cabinet –
Request by Terri Brogan
-- Update filed by Ms. Brogan

Present were Ms. Terri Brogan and the Hon. Randall Justice, counsel for the Education and Workforce Development Cabinet.

Ms. Brogan stated that most of the timekeeping issues have been addressed, but did express concern about retaliation. Mr. Justice stated that any concern of retaliation has been resolved. Ms. Brogan stated that she was advised of the Whistleblower's Act and given the KRS cite by Mr. Justice. Mr. Justice also advised that Mr. White had conducted an audit of timesheets and a memo was sent to all employees (about 600+) in the Office of Employment and Training concerning time and attendance.

After a brief discussion, a Joint Motion to Dismiss was agreed upon, signed by Ms. Brogan and the Hon. Randall Justice, and tendered to the Board. Therefore, no further action is needed by the Board.

9. 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. (11:00 a.m.)

Mr. Frazer moved to return to open session. Ms. Gibson seconded and the motion carried 5-0. (12:22 p.m.)

10. 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. Marion Estill v. Justice and Public Safety Cabinet

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

~~B. Robert Burns v. Energy and Environment Cabinet—4 appeals—~~
Moved To December Board

~~C. Donald Haggard v. Auditor of Public Accounts (Settled)~~

D. Courtney Jones v. Justice and Public Safety Cabinet

Ms. Cassidy having noted Appellant's Exceptions and Appellee's Response moved to accept the hearing officer's order dismissing the appeal. Mr. Frazer seconded and the motion carried 5-0.

E. Barbara Bonds v. Department of Veterans Affairs

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

F. Joseph Bundy v. Transportation Cabinet and Onnie Meadors

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

G. Robert J. Ewing v. Transportation Cabinet

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

H. Larry Fredley v. Justice and Public Safety Cabinet

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

I. Jami Hall v. Cabinet for Health and Family Services

(The Board voted unanimously to accept Appellant's Motion to Extend Deadline to File Exceptions. See above Motions.)

J. Mike Helton v. Auditor of Public Accounts

Ms. Gibson moved to accept the recommended order sustaining the appeal as to the reclassification and dismissing the appeal as to discrimination. Dr. Stevens seconded and the motion carried 4-0, with Mr. Gillis recusing.

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. Jody Castle v. Justice and Public Safety Cabinet (2 appeals)
- L. Douglas Downs v. Department of Veterans Affairs
- M. Jayme Linville v. Cabinet for Health and Family Services
- N. Karla Maiden v. Transportation 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.

11. WITHDRAWALS

Mr. Gillis 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. Earl Gresham v. Transportation Cabinet
- B. Dorothy Jackson v. Finance and Administration Cabinet
- C. Dean Loy v. Transportation Cabinet
- D. Patricia Pregliasco v. Cabinet for Health and Family Services
- E. Sharon Sullivan v. Personnel Cabinet
- F. Kim Weathers v. Cabinet for Health and Family Services
- G. William Collins v. Department of Public Advocacy
- H. Angela Gilley v. Department of Public Advocacy
- I. Faye Harris v. Cabinet for Health and Family Services
- J. Jeffrey Koehn v. Justice and Public Safety Cabinet
- K. Alan Long v. Justice and Public Safety Cabinet
- L. Harold Markey v. Finance and Administration Cabinet

12. SETTLEMENTS

Ms. Gibson moved to consider the following settlements [A, C, D, E, F, and G] *en bloc* and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement Ms. Cassidy seconded and the motion carried 5-0.

- A. Phillip D. Bradley v. Justice and Public Safety Cabinet (Deferred from October)
- C. Caroline Ford v. Cabinet for Health and Family Services (2 appeals)
- D. Kimberly Gray v. Cabinet for Health and Family Services

- E. William J. Richardson v. Cabinet for Health and Family Services (2 appeals)
- F. Donald Haggard v. Auditor of Public Accounts
- G. Harry Vinson v. Justice and Public Safety Cabinet

Mr. Gillis moved to defer the following settlement [B] to the next meeting of the Board. Mr. Frazer seconded and the motion carried 4-1, with Mr. Frazer opposing.

- B. Kathy Jo Blank v. Justice and Public Safety Cabinet

13. OTHER

- A. Discussion of Pending Investigations
 - Doug Doerting Petition
 - Patton Database

Mr. Sipek stated that he had a meeting with Mr. Gillis and Chair Goodmann and they discussed the two main investigations, Doug Doerting Petition and the Patton Database. Mr. Sipek stated that these two investigations are too large to be handled with the limited staff and resources at the Board. Mr. Sipek provided a brief background for the benefit of new Board members. Mr. Frazer said the Doug Doerting investigation should have stayed with the Personnel Board and not with the Attorney General's office. Chair Goodmann stated she would like to see these investigations resolved.

Ms. Cassidy wanted to know if Mr. Doerting had been made whole, has he been vindicated. Mr. Gillis expressed his concern about the Board not resolving the issues. Mr. Frazer stated that he did not see why the Board should spend any more time or resources on an investigation. Mr. Gillis said that he was interested in seeing what was done wrong and educate the agencies. Ms. Cassidy stated that it was the non-merit employees causing problems and employees in non-merit positions change every four or eight years.

Mr. Sipek stated that the worst message to send to people is "the law always gets violated and there is nothing you can do about it." Mr. Sipek stated that one goal would be to send out another message, "It's simple, follow the law." Ms. Cassidy stated that there is always value in restating what should happen; and although these allegations may be moot, the Personnel Board may want to restate general principles (KRS Chapter 18A and Ethics). Mr. Gillis stated that these investigations should be

wrapped up and not be summarily dismissed and that lessons could be learned from both investigations. Dr. Stevens suggested that the parties be contacted to see if there is any interest in pursuing these investigations. Ms. Cassidy agreed that the Board at the least owes that. Mr. Frazer said both investigations should be dismissed.

Mr. Frazer moved to dismiss both investigations, subject to contacting the parties (complainants) and issue letters to reaffirm the principles of KRS Chapter 18A. Ms. Gibson seconded and the motion carried 3-2 with Mr. Gillis and Ms. Cassidy opposing.

B. 101 KAR 1:325 Initial Probationary Period

Ms. Cassidy moved to accept the amendments to 101 KAR 1:325. Mr. Frazer seconded and the motion carried 5-0.

Mr. Sipek stated that an amended regulation reflecting the changes would be prepared for the Board at its next meeting.

There being no further business, Ms. Gibson moved to adjourn. Mr. Frazer seconded and the motion carried 5-0. (1:52 p.m.)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

M. Suzanne Cassidy, Member

Larry B. Gillis, Member

Dr. David B. Stevens, Member